



EMPOWERING SURVIVORS: LEGAL RIGHTS OF IMMIGRANT VICTIMS OF SEXUAL ASSAULT

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Foreword

The National Immigrant Women's Advocacy Project, (NIWAP) (pronounced "new-app") opened its doors on April 2012 as a new project at American University, Washington College of Law in Washington, D. C. NIWAP's mission is to protect and expand legal rights, options and opportunities for immigrant women and their children and immigrant victims of domestic violence, sexual assault, human trafficking and other crimes. NIWAP aims (1) to help immigrant victims of violence against women end the destructive role that violence has played in their lives and the lives of their children and (2) to support all immigrant women in their struggles to care for and nurture their children, attain legal immigration status, and build safe, economically secure lives in the United States, lives in which they and their children may thrive.

This Manual *Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault* is part of an array of resources NIWAP provides on the legal rights and services available to help immigrant women, children and crime victims. In our web library, <http://niwaplibrary.wcl.american.edu/>, you will find a wide array of resources and information supporting your work helping immigrant women, immigrant children and immigrant survivors of violence against women. This Manual focuses on legal rights and options for immigrant survivors of sexual assault, covering sexual assault, sexual violence, sexual harassment and other forms of sexual abuse perpetrated by intimate partners, family members, acquaintances, employers, co-workers and strangers.

Sexual assault is a violent crime that results in physical, mental and/or emotional harm to a victim. It refers to rape as well as attempted rape, incest, child sexual abuse, exhibitionism, voyeurism, obscene phone calls, fondling, sexual harassment, and forced prostitution. Immigrant victims of sexual assault do not only bear psychological and emotional burdens from the violence experienced, but they also have to face legal, economic and social pressures as well as privacy and confidentiality concerns that are exacerbated by their status as non-citizens, limited English proficiency, and potentially cultural consequences of disclosing sexual violence victimization.

Thus, *Empowering Survivors* is a comprehensive tool that provides information that will be useful to advocates, attorneys, justice, and social services professionals working with and assisting immigrant survivors of sexual assault. This Manual will help advocates and professionals expand their knowledge and capacity to aid immigrant victims of sexual assault in accessing justice under federal and state civil, immigration, public benefits, social services, language access legal services and criminal laws in the United States. The goal is to help provide resources, assistance and support to help immigrant victims of sexual

violence and sexual harassment recover, heal and rebuild their lives. The chapters and tools included in this Manual may also be useful to advocates, attorneys, and social services professionals working with immigrant victims of domestic violence, stalking and human trafficking.

Empowering Survivors provides social science research findings, information about laws, policies and best practices, legislative history, tools and checklists that will help professionals working with immigrant survivors navigate intersecting legal and social services options that are legally available to assist all immigrant victims including those who are undocumented.

This Manual would not have been possible without the dedication, collaboration, creativity and industrious efforts of numerous authors who have devoted significant work during their careers to improving legal options and opportunities for domestic violence victims. Their work was supported by dedicated and hardworking interns who are also included as authors of the chapters they worked on. Over the years of this Manual's production and completion many of the interns who contributed to this Manual have gone on to become a new generation of lawyers, federal policy makers, social workers, and academics who have continued this important work.

Our goal is to aid advocates, attorneys, government agency personnel and other professionals with the holistic knowledge needed to confidently provide effective assistance to immigrant and limited English proficient victims of domestic violence, sexual assault, stalking, dating violence and human trafficking, and their families. If you are working with immigrant survivors of sexual assault please also consult *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* available at <http://niwaplibrary.wcl.american.edu/reference/manuals/sexual-assault>.

We have designed this Manual so each of its free-standing chapters can be used separately, as well as in combination with other chapters. This approach will also facilitate our ability to swiftly update the chapters as new laws, regulations and policies are implemented. Our goal is to provide users with a convenient and efficient way to obtain wide-ranging up-to-date information about immigrant survivors' legal options.

NIWAP provides national technical assistance for advocates, attorneys, police, prosecutors, judges, and other professionals working with immigrant crime victims and their children on the full range of issues covered in this Manual. As you work with this Manual or any of the materials contained in our web library, <http://niwaplibrary.wcl.american.edu/>, please contact us for technical assistance by emailing us at: niwap@wcl.american.edu or calling (202) 274-4457.

We, of NIWAP, hope that *Empowering Survivors* will be of great assistance in your work.

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The development of this Manual was a collaborative effort. The richness of the material presented represents the cumulative experience and expertise of many staff members of the National Immigrant Women's Advocacy Project, American University, Washington College of Law and Legal Momentum. This manual would not have been possible without insightful contributions from a wide array of allies who are experts from across the country serving immigrant victims in their communities. Many of the allies participating in this project were Advisory Committee Members of the National Network to End Violence Against Immigrant Women (1992-2011). This Manual reflects the long term commitment and the collective expertise of its many authors whose work has been dedicated to improving legal options and access to justice for immigrant victims of violence against women and their children.

We are also deeply indebted to the many interns who worked hard to make this Manual a reality. The interns who contributed to each chapter are identified either as co-authors or in the first footnote of the chapters containing their work.

We also wish to thank all of the Office on Violence Against Women grantees and the National Network to End Violence Against Immigrant Women members who sought technical assistance from and attended conferences planned by the staff of the National Immigrant Women's Advocacy Project, American University, Washington College of Law and previously by Legal Momentum. The allied professionals seeking technical assistance and training have helped identify the barriers and problems that needed to be addressed in this Manual. This valuable input helped us assure that this Manual would provide the types of information most useful to attorneys, advocates, and justice system personnel working to help immigrant victims of violence against women in their communities.

And, finally, deep appreciation goes to the Office on Violence Against Women, U. S. Department of Justice, for providing the funding to make this Manual possible. In particular we would like to thank Neelam Patel her support and guidance in shaping this project.

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Terminology

This list of terms intends to clarify the meaning and usage of specific words in this Manual, all of which are generic to the matter regarded in this Publication.

Victim/Survivor: 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.

She/He: 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.

Sexual Orientation and Gender Identity: 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.¹ As a result of these laws VAWA self-petitioning is now available to same-sex married couples² 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.

¹ The Windsor decision overruling on DOMA and new Department of Homeland Security policy following issuance of the Windsor decision deems same-sex married couples “spouses” for immigration purposes. *United States v. Windsor*, 12-307 WL 3196928; <http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>

² This includes protections for all spouses without regard to their gender, gender identity (including transgender individuals) or sexual orientation.

Dynamics of Sexual Assault and the Implications for Immigrant Women¹²

By Jessica Mindlin, Leslye E. Orloff, Sameera Pochiraju, Amanda Baran, and Ericka Echavarria

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

¹ "This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women." We would like to thank the Victim Rights Law Center for their work on this chapter and refer readers to their manuals and materials on Sexual Assault: <http://www.victimrights.org/>.

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 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

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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 of 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.

⁵ 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 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.

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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.⁹

The Victim Rights Law Center Explains¹⁰:

One out of every six American women¹¹ 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.¹² 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 12.¹³ While men are also victims of sexual violence, women are far more likely to be victimized.¹⁴

Immigrant women may be particularly vulnerable to sexual assault. Being an immigrant confers significant increased vulnerability to recurring sexual assault.¹⁵ 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.¹⁶ 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.¹⁷ This increased vulnerability may stem from increased isolation¹⁸ or from younger immigrant girls being actively targeted by sexual assault perpetrators who see them as particularly legally and socially vulnerable.¹⁹ 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.²⁰ 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.²¹

There is no uniform criminal law definition of sexual assault throughout the United States²²: 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

⁹ Bureau of Justice Statistics, 1992-2000, <http://www.ojp.usdoj.gov/bjs/pub/pdf/rsarp00.pdf>.

¹⁰ *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>.

¹¹ Victims of sexual assault are overwhelmingly female. *Sex Offenses and Offenders*. Bureau of Justice Statistics, U.S. Department of Justice, (1997).

¹² *Prevalence, Incidence and Consequences of Violence Against Women Survey*, National Institute of Justice and Centers for Disease Control and Prevention (November 1998).

¹³ 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).

¹⁴ For example, in 2002, nine out of every ten rape victims were female. See National Crime Victimization Study (2003).

¹⁵ Decker, M., Raj, A. and Silverman, J., *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13 *Violence Against Women* 498, 507 (2007).

¹⁶ *Id.* at 503.

¹⁷ Kalof, L., *Ethnic Differences in Female Sexual Victimization*, 4 *Sexuality and Culture* 75-97 (2000).

¹⁸ 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).

¹⁹ 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).

²⁰ *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 *13 UCLA WOMEN'S L.J.* 43, 89 (2003).

²¹ 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).

²² 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).

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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.²³

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.²⁴

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.²⁵

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.²⁶

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%).²⁷ 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.²⁸ Perpetrators include employers,²⁹ 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 fathers or step-fathers, 10% are committed by boyfriends or ex-boyfriends, and 9% are committed by husbands or ex-husbands.³⁰

Marital and Intimate Partner Sexual Assault

²³ 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.

²⁴ National Center for Victims of Crime, <http://www.ncvc.org>.

²⁵ Specific information on jurisdictions' criminal laws is available online at <http://www.ndaa.org/apri/programs/vawa/statutes.html>.

²⁶ See *id.*

²⁷ 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>.

²⁸ 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)

²⁹ 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).

³⁰ *Rape in America*, *supra* note 2.

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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.³¹ In another study, intimate partner and marital rape accounted for approximately 25% of rapes.³² 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.³³

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.³⁴ In one national study, female victims raped by their intimate partner were raped an average of 4.5 times.³⁵ 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.³⁶

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.³⁷

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.³⁸

Marital rape and other forms of sexual violence can occur in all types of marriages regardless of race, class, socio-economic status or ethnicity. Women who view sex as a marital obligation typically may be less likely to 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).³⁹

³¹ See Rennison *supra* note 13. Finkelhor, D., Yllo, K., *License to Rape: Sexual abuse of wives*. New York: Holt, Rinehart, & Winston (1985).

³² The Centers for Disease Control and Prevention and The National Institute of Justice, *Extent, Nature, and Consequences of Intimate Partner Violence* (July 2000).

³³ 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).

³⁴ 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).

³⁵ *Id.*

³⁶ 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).

³⁷ 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.

³⁸ 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).

³⁹ 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*

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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 non-immigrant 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, 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.)

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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.⁴⁸ In contrast, nearly 80% of rape crisis centers provided such training.⁴⁹ 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.”⁵⁰ 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.⁵¹ 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%).⁵² 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 isolated communities where non-English speaking immigrant victims may otherwise have difficulty accessing services.⁵³

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

⁴⁸ Bergen, R.K., *Wife Rape: Understanding the response of survivors and service providers*, Newbury Park, CA: Sage Publications, Inc. (1996).

⁴⁹ *Id.*

⁵⁰ Koss, M.P., (1988) *Stranger and Acquaintance rape: Are there differences in the victim's experiences?*, *Psychology of Women Quarterly*, 12, 1-24.

⁵¹ 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>.

⁵² 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).

⁵³ *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.

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were infants or young children at the time of their first assault (approximately 20% of rape victims were under the age of 12 at the time of their first assault), while others were in their teens.⁵⁶ 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.⁵⁷

“Child sexual abuse” is a term often used to refer to sexual acts, sexually motivated behaviors, or sexual exploitation involving minors (especially younger children).⁵⁸ 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.⁵⁹

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.⁶⁰ (Sexual abuse may be committed by other relatives or caretakers, too.⁶¹)

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 (non-assaultive) 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, and typically may not disclose even a minor’s confidential client information without the client’s informed consent.⁶²)

Effects of sexual assault

⁵⁵ 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.

⁵⁶ 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)

⁵⁷ 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).

⁵⁸ 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/>.

⁵⁹ See *Id.*

⁶⁰ 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.

⁶¹ *Id.*

⁶² 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”)

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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.⁶³

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.⁶⁴

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.⁶⁵

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.⁶⁶ For example, rape victims are three times more likely than non-victims of crime to suffer from depression.⁶⁷ Approximately 30% of rape victims have experienced at least one major depressive episode in their lifetime.⁶⁸ 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.⁶⁹ Rape victims are at least six times more likely than non-crime victims to develop PTSD.⁷⁰ PTSD includes a range of psychological distress: fear, emotional numbness, flashbacks, nightmares, obsessive thoughts and anger.⁷¹ PTSD can be extremely debilitating. Symptoms may include:

⁶³ 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).

⁶⁴ See Lisak D., Miller, P.M., *Repeat Rape and Multiple Offending Among Undetected Rapists*. *VIOLENCE AND VICTIMS* 2002; 17(1): 73-84.

⁶⁵ 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.* 191-194 (1999); M. P. KOSS, & M. R. HARVEY, *THE RAPE VICTIM: CLINICAL AND COMMUNITY INTERVENTIONS* (2d ed. 1991).

⁶⁶ 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).

⁶⁷ *Id.*

⁶⁸ *Rape in America*, *supra* note 2.

⁶⁹ *Id.*

⁷⁰ *Id.* at 7.

⁷¹ 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.

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- 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.⁷²

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.⁷³

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,⁷⁴ 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.⁷⁵ 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.⁷⁷ (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.

⁷² PTSD Alliance Resource Center, <http://www.ptsdalliance.org>. See also Diagnostic and Statistical manual of Mental Disorders IV-Text Revision (DSM-IV-TR).

⁷³ 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).

⁷⁴ 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).

⁷⁵ 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).

⁷⁷ Hunter, S., *Equal Justice? Not Yet for Victims of Sexual Assault*, Connecticut Sexual Assault Crisis Services, Inc. (2000).

⁷⁸ According 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>.

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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.⁷⁹ 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.⁸⁰ 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.⁸² 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.⁸³

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.⁸⁴ 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.⁸⁵

⁷⁹ 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.

⁸⁰ 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.opi.usdoj.gov/bjs/pub/pdf/raspr00.pdf.

⁸² 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.

⁸³ 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).

⁸⁴ 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>).

⁸⁵ 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:

(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.

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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.⁸⁶ 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.⁸⁷ Some states' laws are even broader, and require "any person" to report.⁸⁸

How much information triggers the reporting obligation varies from state to state.⁸⁹ 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.⁹⁰ Depending on the jurisdiction, a failure to report may result in criminal and or civil liability for the service provider.⁹¹ 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.⁹² 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. 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.⁹³

⁸⁶ See *supra* note 16.

⁸⁷ See *Id.*

⁸⁸ *Id.*

⁸⁹ 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.smith-lawfirm.com/mandatory_reporting.htm

⁹⁰ See *Id.*

⁹¹ 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.

⁹² *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>).

⁹³ 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*.

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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;⁹⁴
- 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.⁹⁵) 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.)

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

⁹⁴ 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>).

⁹⁵ 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."

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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

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).

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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.¹⁰¹ 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.¹⁰² 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).¹⁰³ 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.¹⁰⁴) 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,¹⁰⁵ 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.¹⁰⁶ Some states have standardized their sexual assault protocol to include a specific time frame for when certain evidence will be collected pursuant to a forensic exam.¹⁰⁷ 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

¹⁰¹ 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.

¹⁰² See supra note 74.

¹⁰³ 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).

¹⁰⁴ For a list of states' reporting laws see http://www.ndaa.org/apri/programs/vawa/state Rape_reportings_requirements.html.

¹⁰⁵ 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.

¹⁰⁶ 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).

¹⁰⁷ 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, Ph.D, 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).

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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 Issues¹⁰⁹

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.¹¹⁰ 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.¹¹¹ Other victims feel unsafe disclosing an assault to anyone within the social fabric of their community.

Recent immigrants may face additional difficulties in coping with a sexual assault.¹¹² 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.¹¹³ 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

¹⁰⁹ 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).

¹¹⁰ 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>

¹¹¹ Warrier, 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).

¹¹² 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>).

¹¹³ 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).

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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.¹¹⁴ 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.¹¹⁵ 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.¹¹⁶ Shelters may not maintain elements of tradition, such as food, language, childcare, sleeping accommodations, and religious observance to which an immigrant woman is accustomed.¹¹⁷ 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 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.¹¹⁸ 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.¹¹⁹ 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.

¹¹⁴ 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).

¹¹⁵ 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).

¹¹⁶ 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).

¹¹⁷ 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).

¹¹⁸ Many immigrant victims may lack the money, time, or resources to attend English as Second Language classes.

¹¹⁹ 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 the Southeastern United States: A Survey and Needs Analysis*, 19(2) *Journal of Family Violence*, 19, 2, 111-13, (2004).

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These linguistic limitations can seriously impede an immigrant victim's ability to seek or receive help following an assault.¹²⁰ 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.¹²¹ 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.¹²² 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.¹²⁴ 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.¹²⁵

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.

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.¹²⁶ 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

¹²⁰ 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. 41455, 21 (2002).

¹²¹ Civil Rights Act of 1964 Title VI, codified at 42 U.S.C. § 2000d (2008).

¹²² 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.

¹²⁴ Demographic and other information about the immigrant communities in a given area can be found at <http://www.census.gov/>.

¹²⁵ 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).

¹²⁶ 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.

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a Model Code for the standards of professionalism that all interpreters must satisfy.¹²⁷ 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 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.¹²⁸

Misconceptions About The Legal System¹²⁹

Language issues, privacy concerns, shame, self-blame, and culture can present significant barriers to an immigrant sexual assault victim's ability to access services.¹³⁰ 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

¹²⁷ See *Assessing Interpreter Qualifications: Certification Testing and Other Screening Techniques*, available at http://www.ncsconline.org/wc/publications/Res_Ctlnte_ModelGuideChapter5Pub.pdf.

¹²⁸ 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).

¹²⁹ 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).

¹³⁰ 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

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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.¹³¹ 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.¹³²

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

¹³¹ *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.)

¹³² 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 (2003); ROBIN L. CAMP, ET AL., *UNTOLD STORIES: CASES DOCUMENTING ABUSE BY U.S. CITIZENS AND LAWFUL RESIDENTS ON IMMIGRANT SPOUSES* (1993).

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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.¹³³

Fear of Removal (Deportation)¹³⁴

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.¹³⁵ 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 non-intimate 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 programs, and the courts.¹³⁶ 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.¹³⁷ 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

¹³³ 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.

¹³⁴ 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).

¹³⁵ 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)

¹³⁶ 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)

¹³⁷ 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.

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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.¹⁴⁰

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.¹⁴¹ 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 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.¹⁴²

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.

¹⁴⁰ For further discussion of each of these forms of immigration relief see the relevant chapters in this manual. VAWA Self-petitioning, (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).

¹⁴¹ Research data (2002) is pending publication, available from Dr. Rachel Rodriguez, University of Wisconsin Madison, School of Nursing.

¹⁴² 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>.

¹⁴⁵ Raquel Kennedy Berger, *Marital Rape*, VAWnet, available at http://new.vawnet.org/Assoc_Files_VAWnet/AR_MaritalRapeRevised.pdf (1999).

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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.

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Ensuring Language Access to Immigrant Victims of Sexual Assault¹²

By Leslye Orloff, Amanda Baran, and Martha Cohen

Introduction

According to the 2000 Census, 21.3 million foreign-born residents do not speak English “very well.”³ Despite this statistic, most services to victims of sexual assault are available only in English. For immigrant victims, meaningful access to life-saving services and assistance can be severely hampered by not speaking the English language. An immigrant victim of sexual assault in an intimate relationship may rely on her partner to serve as her interpreter or

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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 National Conference of State Legislatures, *Language Access: Giving Immigrants a Hand in Navigating the Health Care System*, STATE HEALTH NOTES, Oct. 7, 2002, available at <http://www.ncsl.org/IssuesResearch/Immigration/LanguageAccessGivingImmigrantsaHandinNavig/tabid/13143/Default.aspx>.

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language teacher.⁴ The situation becomes problematic in cases where the victim is fearful or ashamed of disclosing the sexual assault partner. Even if a victim does encounter people who speak her language, she might not be able to safely obtain assistance with interpretation from community resources without jeopardizing the confidentiality of communications. In small immigrant communities, sexual assault can be a very humiliating and shameful experience and it is possible that the immigrant victim knows the interpreter.⁵ Precautions should be taken so that the immigrant victim feels safe and that confidentiality will be honored.

Places where sexual assault victims seek assistance, such as rape crisis centers, shelters, police stations, health care providers, sexual assault hotlines, legal services offices, prosecutors' offices, and courts, may not have employees who can communicate in other languages or who are culturally competent. Without adequate language assistance, many immigrant victims cannot obtain police protection, counseling assistance, shelter, or emergency medical assistance they may need.⁶ Interpreters need to be available at courthouses to assist limited English proficient (LEP) applicants with language interpretation to help victims prepare, file, and appear at hearings for sexual assault or domestic violence protection orders or LEP victims will not be able to obtain protection orders.⁷ Furthermore, information about important immigration provisions in the Violence Against Women Act (VAWA)⁸ must be available in a wide range of languages and must be distributed at courthouses, police departments, and victim's services programs, so that LEP victims can learn about and apply for VAWA immigration benefits.

The following case examples illustrate the gravity of the problem experienced by limited English proficient immigrant victims:⁹

**Tan-Fei is an immigrant victim of sexual assault. She is working in a large garment factory. Her family helped her find this job. After a week of working, her supervisor approached her and sexually assaulted her in one of the back rooms of the factory. Afterwards, Tan-Fei ran out of the factory. She wants to tell her family and maybe the police, but she is afraid that she will not be able to work. She does not speak English and does not know if the police can even help her. She has heard from other people in her community that if she is caught she will be sent back to China.*

**Hoang is an immigrant victim of sexual assault. She is working for as a domestic helper for a family. She is being sexually abused by her employer. Hoang is unable to leave the home without her employer's permission. She speaks very little English. She does know that what is happening to her is wrong, but she does not know where to turn to for help. She is afraid to call the police because she does not speak or understand English very well. She is also afraid of losing her job.*

**Ana Marie is an immigrant victim of domestic violence and sexual assault. Her boyfriend has severely beaten and raped her on several occasions. Ana Marie had just moved here from her native country. Her boyfriend injured her and she fears that she may be pregnant. She is alone here and is dependent on her boyfriend who speaks English to communicate with others. She does not know what to do. She has a neighbor that speaks Spanish and English, but she is afraid to reach out and ask for help.*

⁴ BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS § 1.1 at 15 (Leslye E. Orloff & Kathleen Sullivan eds., 2004) (hereinafter, BREAKING BARRIERS).

⁵ See NAT'L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, SERVING LIMITED ENGLISH PROFICIENT VICTIMS OF SEXUAL ASSAULT AND DOMESTIC VIOLENCE: A SURVEY OF ISSUES 17 (2006).

⁶ *Id.*

⁷ See BRENDA UEKERT ET AL., NATIONAL CENTER FOR STATE COURTS, SERVING LIMITED ENGLISH PROFICIENT (LEP) BATTERED WOMEN: A NATIONAL SURVEY OF THE COURTS' CAPACITY TO PROVIDE PROTECTION ORDERS (2006), available at http://www.ncsconline.org/D_Research/Documents/LEP_NIJFinalReport.pdf.

⁸ For more information on immigration protections under VAWA, see BREAKING BARRIERS, *supra* note 4, § 4.

⁹ An LEP individual is one who does not speak English as their primary language and who has a limited ability to read, speak, write, or understand English. These individuals may be entitled to 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. Examples of the services or activities very likely to require provision of language access include but are not limited to: 1) victims communicating with police at the scene of a crime; 2) providing emergency medical services; 3) providing interpretation at court proceedings in criminal or protection order cases; 4) communicating rights to a person who has been detained for criminal or immigration related activities; 5) providing information regarding bankruptcy or foreclosure proceedings; and 6) services that offer critical protections including but not limited to health, safety, or ability to exercise their legal rights.

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These real-life stories demonstrate that although immigrant victims can legally access services that are available to protect victims regardless of immigration status, such as sexual assault and domestic violence services, law enforcement protection, and immigration relief, many immigrant victims are unlikely to seek help due to language barriers, isolation, and lack of information about available help. When services are not offered in a language immigrant victims can understand fully and clearly, the services are effectively closed to them. This chapter will provide a brief overview of the requirements under federal law to ensure meaningful language access. Additionally, it will discuss ways to evaluate whether programs offer meaningful language access, as well as tips for working with your community to improve the delivery services to immigrant victims of sexual assault.

Title VI of the Civil Rights Act of 1964 and Executive Order 13166

Title VI of the Civil Rights Act of 1964¹⁰ prohibits recipients from discriminating on the basis of race, color, or national origin. Under Title VI, organizations receiving federal funding have an obligation to ensure that:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.¹¹

Further, under Title VI implementing regulations that outlaw practices or policies that have a discriminatory impact, recipients of federal financial assistance have a responsibility to take reasonable steps to provide limited English proficient (LEP) individuals with meaningful access to their programs and activities. Discrimination on the basis of national origin can occur if a recipient of federal funds does not provide appropriate language assistance to LEP individuals because an individual, whose language is usually tied to their national origin, will not have access to the same benefits, services, information, or rights that the agency receiving federal funds provides to everyone else.

Although Title VI has been in effect for over 40 years, more recently, the federal government has taken additional measures to improve compliance with respect to providing access to federal services for Limited English Proficiency persons. Executive Order 13,166,¹² titled “Improving Access to Services for Persons with Limited English Proficiency” went into effect in 2000. This order requires federal agencies to take reasonable steps to provide meaningful access for LEP people to federally conducted programs and activities. It also requires every federal agency that provides financial assistance to non-federal entities to publish guidance on how grant recipients can provide meaningful access to their services for Limited English Proficiency persons.

Pursuant to Executive Order 13,166, the Department of Justice (DOJ) published its LEP guidance. The DOJ Limited English Proficiency guidance seeks to assist recipients of federal financial assistance from DOJ in fulfilling their legal responsibilities to provide meaningful access for Limited English Proficiency persons. The LEP Guidance provides a description of four factors recipients of federal funds should consider in fulfilling their responsibilities to LEP persons. Under Title VI these four factors are:

1. The number or proportion of LEP persons in the eligible service population;
2. The frequency with which LEP individuals come into contact with the program;
3. The importance of the benefit, service, information, or encounter to the LEP person (including the consequences of lack of language services or inadequate interpretation/translation); and
4. The resources available to the recipient and the costs of providing various types of language services.

Programs receiving federal financial assistance from DOJ can use these factors to determine whether and when there is an obligation to provide language assistance to LEP persons needing or seeking their services and how the program will meet their obligation to provide language assistance to LEP persons.

Although the DOJ LEP Guidance is meant to serve as a general template for all recipients of federal financial assistance, each federal agency that awards federal financial assistance has developed its own agency specific

¹⁰ 42 U.S.C. § 2000d, et seq.

¹¹ *Id.*

¹² Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

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guidance. For example, the U.S. Department of Health and Human Services (HHS), which funds community health centers, public health programs, childcare centers, shelters, and domestic violence programs, has its own Limited English Proficiency guidance based on what is both necessary and reasonable for a community in light of the four factor analysis established by the Department of Justice.¹³ Many victims' services programs receive funding from a combination of sources, including the DOJ, HHS, and HUD.¹⁴

The Violence Against Women Act is one of several sources of DOJ funding that supports governmental and nongovernmental programs that offer assistance to victims of sexual assault, domestic violence, and trafficking. Recipients of federal funds from the Department of Justice include police, prosecutors, courts, hotlines, counseling and domestic violence programs. Programs receiving funding from multiple government sources are encouraged to review the LEP guidelines issued by each governmental funding agency.¹⁵ To find a federal agency's guidance, refer to www.lep.gov.

How would a rape crisis center evaluate its responsibilities to LEP clients based on the four LEP Guidance factors?

The following is an example of a series of actions HHS deems as sufficient to comply with Title VI regulations:¹⁶

A rape crisis center is operated by a recipient of HHS funds and located in an area where 15 percent of the women in the service area speak Spanish and are LEP. Seven percent of the women in the service area speak various Chinese dialects and are LEP. The center uses competent community volunteers to help translate vital outreach material into Chinese and Spanish. The center's hotline has a menu providing key information, such as location, in English, Spanish, and two of the most common Chinese languages. The bilingual staff handles calls for immediate assistance. The center has one counselor and several volunteers fluent in English and Spanish. Some volunteers are fluent in different Chinese languages and in English. The center works with community groups to access interpreters in the several Chinese languages that they encounter. The center's staff trains community volunteers in the sensitivities surrounding sexual assault issues and counseling. Volunteers sign confidentiality agreements. The shelter is looking for a grant to increase its language capabilities despite its tiny budget.¹⁷

Who is covered by Title VI?

Any recipient of federal financial assistance (including non-cash, in-kind assistance) is covered by the requirements of Title VI. This includes:

- Law enforcement agencies
- Sexual assault and domestic violence programs
- Shelters
- Courts
- Special education programs
- Social service agencies
- Hospitals and health care providers
- Benefits granting agencies¹⁸

¹³ See U.S. DEP'T OF HEALTH AND HUMAN SERVICES, GUIDANCE TO FEDERAL FINANCIAL ASSISTANCE REGARDING TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AFFECTING LIMITED ENGLISH PROFICIENT PERSONS 24, *available at* <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/policyguidancedocument.html>. (hereinafter, HHS LEP Guidance).

¹⁴ See U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, Guidance to Federal Financial Assistance Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 70968 (Dec. 19, 2003) (hereinafter, HUD LEP Guidance).

¹⁵ It is also advisable for programs who receive separate state funding to review any state LEP requirements.

¹⁶ Please note that not all federal agencies have an Office of Civil Rights (OCR). For example, the Department of Labor has a Civil Rights Center. The DOJ LEP guidance was issued by the Coordination and Review Section of the Civil Rights Division. There is an OCR at the Office of Justice Programs, but they did not issue the guidance. See U.S. DEP'T OF JUSTICE, Guidance to Federal Financing Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons, 67 Fed. Reg. 41455 (Jun. 18, 2002) (hereinafter "DOJ LEP Guidance").

¹⁷ See HHS LEP Guidance, *supra* note 13, 46.

¹⁸ See Nondiscrimination in Federally Assisted Programs, 28 C.F.R. § 42.104(b)(2) (2003).

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HHS recipients:

HHS LEP guidance provides the following types of agencies as examples of HHS recipients:¹⁹

- State, county, and local health agencies
- Programs for families, youth, and children
- Non-profit agencies providing victim assistance (such as sexual assault and domestic violence programs)
- Hospitals and health care providers

DOJ recipients:

DOJ LEP Guidance provides the following types of agencies as examples of DOJ recipients:²⁰

1. Courts
 - Departments of corrections, jails, and detention facilities, including those that house detainees of Immigration and Customs Enforcement.
2. Police
 - Other agencies with public safety and emergency service missions.
3. Prosecutors
4. VAWA-funded victim services programs

It is important to note that coverage extends to a recipient's entire program or all parts of a recipient's activity.²¹ In other words, even if only one part of the recipient agency's program receives federal assistance, the remaining operations of that recipient agency are also covered by the LEP requirements of Title VI.²²

What does providing access to LEP individuals mean?

Ensuring that LEP immigrant victims are afforded access requires an in-depth analysis of the community, the needs of the community, and resources currently available. Collaboration and partnerships among agencies and services are key to ensuring that LEP immigrant victims are able to access assistance. Below are some examples of activities that can be undertaken that attempt to meet the needs of their LEP community members.

*Emergency Service Lines*²³

A large city has determined that 10% of the city's population is LEP and 60% of the LEP population speaks Spanish. The city has decided to take on the following steps:

- *Provide bilingual operators for the most frequently encountered languages.*
- *Use a commercial telephone interpretation service when it receives calls from LEP persons who speak other languages.*
- *Add a 311 line for non-emergency police services that has Spanish speaking operators, and uses a language bank.*

*Courts*²⁴

¹⁹ Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services, 45 C.F.R. §80.3(b) (2005). See also HHS LEP Guidance, *supra* note 13, 24. There are other recipients. However, these agencies probably will provide assistance to victims of sexual assault.

²⁰ See 28 C.F.R. § 42.104(b)(2).

²¹ See *id.*

²² See *is*. The regulations use the following example: DOJ provides assistance to a state Department of Corrections to improve a particular prison facility. All of the operations of the entire state Department of Corrections, not just the particular prison, are covered.

²³ DOJ LEP Guidance, *supra* note 16.

²⁴ *Id.*

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A court in a rural county receives Department of Justice funds, but does not have the same budget as a court in a nearby urban county. Both counties have a substantial Spanish-speaking population. The urban county court has developed Spanish translations of its materials. The rural county court has decided to adapt the urban court materials for their use with the assistance of local family law and domestic violence and sexual assault advocates serving Spanish-speaking communities.

The court in Seattle has developed extensive networks of resources to find interpreters in a wide range of languages. The court through e-mail, internet research, and referrals has developed contacts across the country that includes universities, other courts and individual qualified interpreters who live elsewhere in the country.²⁵ They use this network creatively to find interpreters they need and have used an experienced and trained interpreter in New York who speaks six African languages to provide telephone interpretation when a local interpreter in that language was not available.²⁶ A similar approach could be used by victim services programs to help them serve LEP victims who speak languages for which no local interpreter can be located.

State and Local Government Offices²⁷

A county in Minnesota is the largest of the state's 87 counties. Approximately 100,000 individuals, in the county have limited English proficiency. Thirty-three departments deliver over 1000 programs to the citizens of this county and surrounding jurisdictions. From 1995 to 1999, patient visits to this county's Medical Center requiring language assistance increases 111 percent.

In 2000, the county did the following to meet the needs of this new community:

- *Established the Office of Multi-Cultural Services to facilitate the delivery of services to this new limited English proficient population.*
- *Hired a staff of 44 individuals that speak 28 languages to act as a bridge between county departmental staff, its LEP clientele, and the community.*
- *Created a language bank of 10 interpreters.*

Hospitals²⁸

A county in Wisconsin has a population of 450,000. An estimated 15,000 come from Spanish-speaking communities and have limited English proficiency. There is also a significant Hmong population. In order to meet the rising language assistance needs of these communities, eight hospitals and clinics in one of the states' counties created the Health Care Providers' Interpreter Services Group. This group has developed standardized interpreter policies as well as a system to assess individuals' abilities to provide competent translation services for the service group members.

Community Based Organizations²⁹

A community-based organization in Northern Virginia established a full-service health care interpreting program that has identified identify the need for trained interpreters and cultural competency training for health care providers. The program recruits, screens, and tests interpreters.

How does Title VI get enforced?

²⁵ See UEKERT ET AL., *supra* note 7, 94-99.

²⁶ See *id.* at 98-99.

²⁷ See generally, MARA YODELMAN & JANE PERKINS, THE COMMONWEALTH FUND, PROVIDING LANGUAGE INTERPRETATION SERVICES IN HEALTH CARE SETTINGS: EXAMPLES FROM THE FIELD 13 (2002), available at http://www.cmwf.org/usr_doc/810_Youdelman_providing_language_services.pdf (referring to the office of Multi-Cultural Services in Hennepin County, Minnesota).

²⁸ *Id.* at 25 (referring to the Health Care Providers' Interpreter Service Group in Dane County, Wisconsin).

²⁹ *Id.* at 31 (referring to the Northern Virginia Health Education Center (AHEC)).

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Both the Department of Health and Human Services (HHS), and the Department of Justice (DOJ) have published policy guidance documents that concern LEP compliance under Title VI of the Civil Rights Act to recipients of federal funds.³⁰ This policy guidance also explain how federal agencies enforce Title VI.

Although federal agencies engage in and encourage voluntary compliance by providing information and technical assistance, federal agencies that provide federal financial assistance will take any complaints regarding recipients *from any individual or specific class of individuals who believe themselves to be subjected to discrimination* that is prohibited under Title VI.³¹ It is important to note that a victim's advocate or agency can assist in the filing of this complaint. The federal agency will investigate complaints and conduct compliance reviews of recipients of federal financial assistance. If there is finding of compliance, it will inform the agency of its decision and the basis for the decision. If the federal agency finds the recipient to be noncompliant, it will send a Letter of Findings to the recipient, and will include a list of the appropriate steps the agencies must take to become compliant. The federal agency will give the recipient the opportunity to become compliant through informal means, but will act more aggressively, or terminate federal assistance, if compliance is not met by voluntary means. Finally, the complaint can be referred to DOJ to achieve compliance through other legal means.³²

Working with LEP Immigrant Victims of Sexual Assault³³

Often LEP victims do not report sexual assault or domestic violence due to language barriers. Unaware that interpretation services exist, LEP victims assume their only options are to find an interpreter at their own cost or request assistance from family or friends.³⁴ Hence, providing language access, assistance, and resources is critical if LEP immigrant victims are to find help and attain legal remedies. Information about the fact that interpreters can be requested and are available from the agency must be advertised, posted, and provided in multiple languages.³⁵ Additionally, properly translated materials and competent trained interpreters are essential for immigrant victims to have the same access to relief and law enforcement protection as other victims of sexual assault. The prosecutions of rape and sexual assault perpetrators are hampered when police and prosecutors cannot fully and clearly understand victims and witnesses.³⁶

Immigrant victims benefit greatly when they receive assistance and support from bilingual advocates. However, it is essential that roles of interpreter and advocate remain separate and distinct. Each requires special training and skills. Just as interpreters do not have the skills and training to advocate for victims, bilingual advocates should not be used for interpretation in lieu of trained qualified interpreters. The interpreter's role is to provide the non-English speaking person the same opportunity to hear everything and to respond that an English speaking person would have.³⁷ "To achieve this goal, the interpreter must interpret every unit of meaning faithfully, reflecting the language register (level of language), errors, hesitations, etc., while at the same time trying to be as unobtrusive as possible. There must be no paraphrasing or summarizing."³⁸ Bilingual advocates who have received interpreter training are capable of serving as qualified interpreters for immigrant victims with courts, police, and other agencies. When advocates are serving as qualified interpreters their goals are those of the interpreter, not the victim's advocate. They will be required to interpret faithfully all that is said by the victim and the person the victim is speaking to when they are serving in the role of interpreter.

³⁰ HHS LEP Guidance, *supra* note 13, 24. Although Executive Order 13,166 gave DOJ the unique authority to provide LEP Guidance to other Federal Agencies and ensure consistency among each agency, HHS developed its own guidance document for purposes of clarifying, organizing, and accommodating particular programmatic needs and purposes.

³¹ 45 C.F.R. § 80.3(b). See HHS LEP Guidance, *supra* note 13, 24; see also Nondiscrimination in Federally Assisted Programs, 28 C.F.R. § 42.107 (1973), 28 C.F.R. § 42.104 (b)(2).

³² See HHS LEP Guidance, *supra* note 13, 24.

³³ This section is partially adapted from BREAKING BARRIERS, *supra* note 4, § 1.1 at 15.

³⁴ See NAT'L IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, *supra* note 5, 8.

³⁵ See UEKERT ET AL., *supra* note 7, 51-52, 58.

³⁶ See *id.* at 9, 11.

³⁷ Martha Cohen, King County Superior Court, Office of Interpreter Service (2007); see also NATIONAL CENTER FOR STATE COURTS, PROTECTION ORDERS AND LIMITED ENGLISH PROFICIENT INDIVIDUALS, available at http://www.legalmomentum.org/assets/pdfs/25-protection_orders_and_lep_individuals_ncsc.pdf.

³⁸ Martha Cohen, King County Superior Court, Office of Interpreter Service (2007).

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Bilingual advocacy is another set of skills that provide crucial assistance to immigrant victims. When bilingual advocates accompany victims seeking services from courts, hospitals, benefits-granting agencies, and other organizations, their role is to advocate to ensure their clients gain access to all services and assistance they are legally entitled to receive. Their language skills and ability to communicate effectively with non-English speaking victims is an important component of effective advocacy. Their role in this context is as an advocate, not interpreter. Immigrant victims need access to advocates who will support them throughout their interactions with the justice and health care systems and other services designed to help sexual assault victims. A key function of good advocacy on behalf of immigrant victims is to assure that victims are provided qualified interpreters by the agencies from which they seek services in compliance with Title VI of the Civil Rights Act of 1964.

Each agency -- non-profit, legal services, health care or government -- to whom victims of sexual assault turn for help should develop and have readily available interpretation services that will allow limited English proficient victims of sexual assault to fully access the same services and assistance available to English speaking victims. Agencies should develop relationships with interpreters who can be called upon to assist victims who turn to the agency for help. Interpreters for each of the significant language minority populations in the jurisdictions served should be identified. Efforts should be made to train interpreters on sexual assault and family violence issues. This increases interpreter's familiarity and comfort with the subject matter and the specialized terms used. Many programs serving victims encourage interpreters to participate in the trainings that the program offers its staff, volunteers and crisis line workers. In recruiting interpreters to work with victims of sexual assault it is important to assure that female interpreters are recruited in addition to male interpreters. Some immigrant women will be more comfortable disclosing intimate sexual assault details through a female interpreter.

Learning About the Immigrant Communities in Your Area

The first step in providing meaningful access to LEP individuals is to learn about the immigration populations in your given area.³⁹ This must include a review of the language needs of the communities you serve or encounter. There are several tools available to find this information, including the 2000 Census data and demographic information.⁴⁰ Additionally, immigrant community-based groups, the local school system, and faith-based groups that serve immigrant communities may also have information on the different immigrant populations residing in your community. This information-gathering process works best when agencies collaborate. Answering the following questions can assist in learning about the different immigrant populations in your area:

- What are the demographics of immigrant population(s) in the community and state?⁴¹
- What are the countries of origin of the immigrant women in the community?
- What factors may have caused these immigrant women to immigrate to the United States and come to your community?
 - Are they fleeing civil war, persecution, or economic despair?
 - Did they come to the United States with their family or to reunite with relatives in an established immigrant community?
 - Did they come primarily to work or for school?
 - Were they recruited to work in the United States?
 - Did they come as wives who met their spouses through international matchmaking organizations?
 - Did they come as wives of servicemen?
 - Did they come through an arranged marriage to someone from their home country who now is currently living in the United States from their home country?
- Do they reside permanently in the community? Do they annually migrate to the community to do seasonal work?
- Do immigrant populations generally reside in the city, county, or township?

³⁹ See GAIL PENDLETON, THE FAMILY PREVENTION FUND, BUILDING THE RHYTHM OF CHANGE: DEVELOPING LEADERSHIP AND IMPROVING SERVICES WITHIN THE BATTERED RURAL IMMIGRANT WOMEN'S COMMUNITY (Emily Goldfarb, Carolyn Hubbard & Leni Marin eds., Family Prevention Fund) 2001, available at <http://www.endabuse.org/userfiles/file/ImmigrantWomen/Building%20the%20Rhythm%20of%20Change.pdf>.

⁴⁰ Demographic and other information about the immigrant communities in a given area can be found at the U.S. Census Bureau website, available at <http://www.census.gov/>.

⁴¹ Demographic and other information about the immigrant communities in a given area can be found at the U.S. Census Bureau website, available at <http://www.census.gov/>.

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- Is the immigrant population isolated from the rest of the community?
- Are immigrant women isolated from the rest of the immigrant community?
- Which individuals are considered immigrant women community leaders?
- Is there a community center for immigrants?
- Where do immigrant women congregate, seek services, and organize? (e.g., work, shops, places of worship)?
- Whom do immigrant women in the community trust, confide in, and seek services from?
- What information about cultural or religious beliefs in the immigrant population might affect the way agencies might try to reach immigrant women?
- What are the significant immigrant populations in the area, and what language(s) do they speak?⁴²
- What attitudes toward sexual abuse and domestic violence does the immigrant community hold?
- Where can an agency find statistics or materials, either national or local, on how the victim's culture or community look upon or treat sexual assault victims?
- Where can an agency find statistics or materials, either national or local on the dynamics of domestic violence experienced by this population? Where can an agency find statistics or materials, either national or local, on how the victim's culture or community look upon or treat domestic violence victims?
- What services do non-profit or faith-based organizations offer in the immigrant community?
- Which, if any, organizations are in contact with isolated immigrant women? Do these organizations have any resources that would help educate difficult-to-reach populations?
 - Such organizations might include:
 - Family Support Centers on military bases
 - Women's centers at universities
 - Health clinics and health care workers in rural and migrant communities⁴³
- Are there immigrant communities that your agency is not reaching? These communities may need additional outreach.

Agencies seeking help in gathering information about the immigration populations in your community should consult with local and national service providers, immigrant community-based organizations, and women leaders in immigrant communities. These programs can help you identify both the populations of immigrants and the gaps in services for immigrant victims in the community served by your agency. Examples of unmet needs may include: interpreters, strengthening relationships with immigrant community-based organizations, or information about the best ways to approach immigrant women in your community. Agencies should focus on identifying resources that could help build services for women in different immigrant communities. For family law issues, research conducted on LEP access to courts that grant protection orders found that many (90 percent) of immigrant community-based organizations surveyed nationally reported being actively involved in assisting petitioners with protection orders. Also, over 90 percent of these organizations accompany petitioners to protection order hearings.⁴⁴ Agencies should also consider tapping into resources available in city government offices, public libraries, and through national advocacy groups that work on issues pertaining to immigrant women.⁴⁵ Furthermore, national advocacy organizations can provide multilingual educational materials that can be adapted and translated for local use. This helps keep local agencies from having to invest time recreating existing materials.

Undertaking this research will also help advocates form collaborative relationships with agencies who have a history of working with the immigrant community and with respected and established community leaders. Collaborating with other programs will benefit mainstream sexual assault and domestic violence victim services because immigrant women are more likely to trust agencies that have a positive relationship with trusted

⁴² Try to identify language minority communities in your area, but also be aware that there will also be individual immigrant women living in your area isolated from their cultural communities.

⁴³ SOMEWHERE TO TURN: MAKING DOMESTIC VIOLENCE SERVICES ACCESSIBLE TO BATTERED IMMIGRANT WOMEN. A "HOW TO" MANUAL FOR BATTERED WOMEN'S ADVOCATES AND SERVICE PROVIDERS 96-111 (Leslye E. Orloff & Rachael Little eds., Ayuda 1999).

⁴⁴ See UEKERT ET AL., *supra* note 7, 60.

⁴⁵ Materials are available through the National Network to End Violence Against Women and coordinating organizations: The National Immigrant Women's Advocacy Project, 4910 Massachusetts Ave NW – Suite 16, Lower Level – Washington, DC 20016, (202) 274-4457, <http://www.wcl.american.edu/niwap/>; The Family Violence Prevention Fund, 383 Rhode Island St., Suite 304, San Francisco CA 94103-5133, (415) 252-8900, www.endabuse.org; and ASISTA Immigrant Women's Technical Assistance Project, 515 28th Street, Des Moines, IA 50312, (515) 244-2469, www.asistaonline.org.

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community-based or faith-based organizations.⁴⁶ Many immigrant victims will feel more comfortable accessing help from a program partnering with an agency that has a history of trust in the immigrant community.

Agencies can begin to build the trust that will lead immigrant victims to seek assistance through various means including getting involved in the immigrant communities. Advocates can participate in meetings, interact with immigrant community members, work with trusted community-based organizations, and attend activities planned by community-based or faith-based organizations serving the immigrant community. Advocates should always ask the victim what services she needs and what programs she feels comfortable accessing. Some immigrant victims are more likely to seek services from agencies they hear about through other women in their immigrant community.⁴⁷ Contrarily, some victims may be fearful of going to an organization in their own immigrant community because of shame and confidentiality concerns.⁴⁸ These victims may prefer receiving services from a mainstream program that is not as closely connected with their community

Improving Language Capacity to Serve Immigrant Victims of Sexual Assault

After learning about the immigrant communities in the area, the next step is to do an internal review of your agency to see how you can improve capacity to serve immigrant victims of sexual assault. The following questions can help you ascertain the capacity your agency has:

- What staff is currently bilingual/bicultural? How are these staff members utilized in the program? What additional training and support can you provide to maximize their skills and experience?
- What materials are available in the community or from national organizations in other languages other than English? Is it possible to adapt some of the materials for your agency?
- What interpretation/translation resources are available in your community? What is the cost?
- What relationships can you build with other programs to assist in developing your language capability in your agency; can you recruit volunteers from colleges, universities, or places of worship?
- Can you develop a partnership contract with a local immigrant serving community-based organization hiring their staff to provide language interpretation?
 - Bilingual staff, community based advocates and volunteers should be offered training to become qualified interpreters. This will expand the pool of interpreters available to your immigrant victim clients and will help assure that victims receive interpreter services from persons sensitive to sexual assault issues.
- Is it possible to do cross-trainings with the immigrant community-based organizations on the services your agency provides and the services and cultural issues the immigrant community-based organizations can provide?
- Begin keeping track of the languages encountered at your agency. The data should be reviewed to determine your agency's immediate language needs.

Developing a Plan to Serve LEP Immigrant Victims of Sexual Assault

Identify Translation/Interpretation Resources for the Agency

In-house interpreters may be necessary depending on the size of the LEP immigrant communities in your area and the frequency in which individuals from each community access your services. Skilled interpreters in the languages and in the dynamics of sexual assault provide invaluable assistance to providing meaningful aid to immigrant victims. While a bilingual individual may be fluent and well-suited to having direct conversations in the LEP person's primary language, this individual may not be skilled at converting conversations from one language to another and may not understand the role of an interpreter. It is important to assess the interpretation skills of your

⁴⁶ THE FAMILY PREVENTION FUND, DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN (Deeana L. Jang, et al. eds., The Family Violence Prevention Fund 1997); Del-An BryAnn Chen, "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); FAMILY VIOLENCE PREVENTION FUND, ROMPIENDO EL SILENCIO, MANUAL DE ENTRENAMIENTO PARA ACTIVISTAS, CONSEJERAS Y ORGANIZADORAS LATINAS 35 (Sonia Parras Konrad et. al. eds., The Family Violence Prevention Fund 2003); see also UEKERT ET AL., *supra* note 7, 68.

⁴⁸ See NAT'L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, *supra* note 5, 5.

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staff, as some may need training to build their interpretation skills. The skills do not only include being fully bilingual, but they include knowledge of specialized terminology in both languages, methodology, protocol, cultural competency and knowledge of ethics, including confidentiality, role of an interpreter and cultural competency.⁴⁹ Even if some of your staff may be less than fully bilingual, their language skills may still be helpful in outreach and basic conversation to set victims at ease or to provide simple directions.⁵⁰ Agencies that actively recruit bilingual/bicultural staff will be able to better serve all victims who need their services. When recruiting and hiring, bilingual or multilingual ability should be considered a priority and compensable hiring criterion.⁵¹

It may also be necessary to develop a pool of qualified interpreters that can be contracted to work with the agency. Formal contracting with interpreters who provide services in each of the languages represented in a given community offers assurance that an agency will be able to offer its full range of services to immigrant victims of sexual assault. When contracting with interpreters it is important to keep in mind the following considerations:

- Agencies should include a line item in their budgets to pay for interpreters and translators for materials
- Hiring your agency's own group of interpreters avoids conflicts that arise in small ethnic communities where the interpreter may be an acquaintance of the victim, of the family, or of the perpetrator.
- Make sure that the interpreters are trained on the sensitive criminal, legal, and sexual assault issues and terminology that is likely to be used during interpretation.

Children, family members, friends, or other companions of immigrant victims should not be used as interpreters. It is dangerous and inappropriate.⁵² Children lack the necessary maturity and skills to interpret. Interpretation can be especially traumatic for children because it places them in a position to hear and have to repeat the details of the abuse. It will also be difficult for children to interpret specialized terminology. Companions should not be used either. Companions may have an interest in the immigrant victims' decision-making and can pose confidentiality and safety risks.⁵³

If the LEP victim brings her own interpreter, they should be screened, particularly if they are a volunteer interpreter.⁵⁴ Your agency should verify if the volunteer is sensitive to sexual assault issues, can remain impartial, possess the necessary interpreting skills and will voluntarily sign a confidentiality agreement.⁵⁵ It is also important to determine the extent to which the volunteer is acquainted with the victim or even the perpetrator, as well as any ties to the community.⁵⁶ The agency should privately interview the victim and confirm that the person she came with can safely interpret for her.⁵⁷

It is also important to be aware of issues surrounding gender when hiring and identifying interpreters who will be helping sexual assault victims. In many immigrant communities, sex is a taboo subject. Immigrant victims may not feel comfortable sharing details about a sexual assault around males.⁵⁸ Similarly, male interpreters may have preconceived notions about victims of sexual assault including disbelief that rape can happen within a marital context. It is critical that advocates working with immigrant victims talk with their clients about what services would make her feel most comfortable and safe. This is especially important with LEP victims whose language has no word or phrase for the concept of counselors or victim advocates and the services they provide.⁵⁹

⁴⁹ *Id.* at 9.

⁵⁰ Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

⁵¹ BREAKING BARRIERS, *supra* note 4.

⁵² Despite this fact, this problem is quite prevalent. A 2006 survey of courts conducted by the National Center for State Courts found that 30 percent of courts in non-rural counties acknowledge relying on adult family members and friends of the LEP victim to interpret at a court hearing and that 7 percent of all courts reported using children as interpreters in protection order cases. See UEKERT ET AL., *supra* note 7.

⁵³ There are instances when LEP immigrants may be more comfortable with a family member or friend interpreting. However, agencies should take care to ensure that these informal interpreters are appropriate and have received some training in light of the circumstances and subject matter of the program, service, or activity. See DOJ LEP Guidance, *supra* note 16.

⁵⁴ BREAKING BARRIERS, *supra* note 4, § 2.

⁵⁵ *Id.*

⁵⁶ *Id.* at 7.

⁵⁷ *Id.* If no employee at your agency can communicate with the victim, the National Domestic Violence Hotline can provide assistance with the interview to discover if the victim has any concerns about the interpreter.

⁵⁸ See NAT'L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, *supra* note 5, 5, 17.

⁵⁹ *Id.* at 7.

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Language lines and telephonic interpretation services are another option when there is no interpreter pool or when immediate interpretation is needed. These lines are particularly useful for law enforcement, hotlines, and 911 services. However, language lines can be expensive. Explore whether this option is available at least in emergency situations, or if possible, collaborate with law enforcement and hotline services to access this assistance.⁶⁰

The quality of interpretation, including completeness and accuracy, can be better achieved if agencies understand and address the common problems that often occur:⁶¹

- There can be linguistic differences within a language depending upon the region the victim comes from.
- Interpreters summarizing the victim's statements either because the interpreter inappropriately determines the relevance of the statements, does not want the victim to become confused or overwhelmed with an abundance of information, or is uncomfortable with repeating certain statements.
- Interpreters providing inaccurate renditions when no comparable cultural concept or linguistic term exists, allowing personal feelings to influence the interpretation, or using terms having contradictory meanings across cultures.

It is not only crucial to provide interpreters that are accurate, sensitive, and knowledgeable, but also to secure interpretation services for the LEP victims immediately. Delay in services may hinder a victim's interaction with law enforcement as well as the ability to obtain effective emergency medical and mental health services.⁶² Moreover, postponing the victim's interview with police until an interpreter is found and an interview conducted⁶³ may cause the perpetrator to be released from custody.

Using Professional Interpreters Rather Than Volunteers

If your agency determines that the demand for more extensive language services is great based on the size of the LEP communities in your area, the frequency in which LEP individuals do or should be accessing your services, and the type of services provided by your agency, then the use of professional interpreters instead of volunteers should be strongly considered.

Qualified professional interpreters as opposed to volunteer interpreters help prevent a variety of problems that arise. While volunteer interpreters usually understand the need to accurately interpret during court proceedings, volunteer interpreters may not fully comprehend the ramifications of imprecise and inaccurate interpreting during the counseling and investigative stages of a case. Interpreted statements are relied upon by emergency room doctors in treating the victim, victim advocates in counseling and danger assessment, police conducting an investigation, by prosecutors in determining whether to prosecute the perpetrator, and by legal services providers in developing legal strategy. Volunteer interpreters may not understand that paraphrasing a victim's story on a police report or during the interpretation of testimony at a court proceeding can be used to attack a victim's credibility, affect the legal outcomes for the victim, or affect the chances of successful appeal.⁶⁴

The use of professional interpreters offers the most comprehensive language services for the LEP immigrant victims of sexual assault. Bilingual/bicultural persons may be able to assist in conversations with LEP victims based upon their fluency in a given language and familiarity with a particular culture. However, fluency and cultural awareness are not the sole indicators of competency for interacting with LEP victims. Trained, qualified interpreters can offer more extensive language assistance based on their specialized skills and technical ability.

⁶⁰ A hotline to call: Multilingual Volunteer Interpreters Project: (413) 577-1691.

⁶¹ See NAT'L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, *supra* note 5, 12-14.

⁶² *Id.* at 9.

⁶³ *Id.* at 5, 17.

⁶⁴ *Id.* at 11-12; see also Maria L. Ontiveros, Rosa Lopez & Christopher Darden, *Issues In Gender, Ethnicity, And Class in Evaluating Witness Credibility*, 6 HASTINGS WOMEN'S L. J. 135, 272 (1995) (discussing how the English interpretation version of court testimony is the only version recorded by court reporters). Inaccurate interpretation can affect the chances of a successful appeal if there is no record to refer to.

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State courts have developed a Model Code for the standards of professionalism and testing for court interpreters.⁶⁵ For an interpreter to be qualified,⁶⁶ the interpreter must be able to perform the following:

- Simultaneous interpretation from English to the foreign language
- Consecutive interpretation, English to the foreign language and foreign language to English
- Sight translation of English documents into the foreign language
- Sight translation of foreign language into English

Testing techniques help ensure that the interpreter can demonstrate competence, accuracy, and professionalism.⁶⁷ A competent interpreter should possess a broad vocabulary that includes formal, casual, and colloquial language. This skill includes the ability to communicate and understand the nuances in language based on the culture, gender, and class of an LEP individual. Second, an interpreter must be able to express what the victim is saying without omitting, adding, or making any changes to the victim's story.⁶⁸ Interpreters are members of a profession, and must remain impartial and maintain a low profile when facilitating a communication, even where the interpreter is a volunteer, or a friend or acquaintance of the victim.⁶⁹ Exhibiting cultural competency and awareness, maintaining accuracy by acknowledging that one's job is to merely convey the words of another, and keeping a neutral position are methods through which interpreters can help preserve a victim's credibility.

It is important that your agency has a means for identifying the language victims seeking services speak and for communicating to them that you can secure interpreters to help them receive services from your agency. Language identification cards can be purchased to help victims identify the language they speak. Signs can be posted in your agency in multiple languages advertising your agency's willingness to provide interpreters. The following list of questions can help you assess a sexual assault victim's needs for interpretation and to assess whether an interpreter is qualified to interpret:⁷⁰

Sample Questions to Assess The Victim's Understanding of English

- Can you please tell me your name?
- How old are you?
- How did you get to our office today?
- How did you find out about us?
- What kind of work do you do?
- How comfortable are you talking with me in English about what happened to you?
- Would you like us to provide you with a free interpreter to help you talk to us about what happened and what kind of help we can give you?

Determining the Language Needed

- Determine the language of the party using language ID cards
- If the victim cannot read you can
 - Call a language line for assistance determining the language the victim is speaking.

⁶⁵ See WILLIAM HEWITT, NATIONAL CENTER FOR STATE COURTS, COURT INTERPRETATION: MODEL GUIDELINES FOR POLICY & PRACTICES IN THE STATE COURTS, ASSESSING INTERPRETER QUALIFICATIONS: CERTIFICATION TESTING AND OTHER SCREENING TECHNIQUES (National Center for State Courts 1995), available at http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter5Pub.pdf.

⁶⁶ The term qualified includes certified interpreters. There are not formal interpreter certification programs for all languages. Thus, it is important for programs to be able to distinguish between interpreters who are qualified to interpret and persons who are not qualified.

⁶⁷ DEBORAH M. WEISSMAN, *Between Principles and Practice: The Need for Certified Court Interpreters in North Carolina*, 78 N.C. L. REV. 1899, 1956-57 (2000).

⁶⁸ *Id.*

⁶⁹ SEATTLE OFFICE OF CIVIL RIGHTS, CITY OF SEATTLE, CITY OF SEATTLE INTERPRETER TOOL KIT: A GUIDE TO HELP YOU PROVIDE INTERPRETATION AND TRANSLATION SERVICES TO SEATTLE'S MULTILINGUAL COMMUNITY, APPENDIX C: CODE OF PROFESSIONAL CONDUCT FOR INTERPRETERS AND TRANSLATORS 14 (May 1999), at <http://www.seattle.gov/civilrights/documents/litk.pdf#search=%22Code%20of%20Professional%20Conduct%20for%20Interpreters%20and%20Translators%2C%20Seattle%20Office%20for%20Civil%20Rights%22>.

⁷⁰ See UEKERT ET AL., *supra* note 7, 171-172.

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- You may also try asking about the victim's country and city of origin which may have the same or similar name in English as in the victim's native language.

Sample Questions to Assess Interpreter Qualifications

- What training or credentials do you have as an interpreter?
- Are you or have you been a qualified or certified interpreter in this or another state?
 - If so, by what agency?
- Have you been qualified or certified by a court to interpret?
- Are you familiar with the Code of Professional Responsibility for interpreters?
- What are its main points?
- How did you learn English?
- How did you learn (non-English language)?
- Do you know the victim or the perpetrator? If yes, how do you know them?
- What is your educational background?

What to Expect From a Qualified Interpreter.

A good interpreter will:

- Interpret in the first and second person
- Interpret everything said, with no additions, omissions, explanations, or personal input
- Request clarification if a phrase or word is not understood
- Ask you to speak one sentence at a time
- Will ask you to slow down to give him or her time for interpretation if you are talking for too long
- Encourage you to speak to the client not to the interpreter
- Use appropriate interpreter tools such as a language dictionary and note-taking materials
- Be as unobtrusive and professional as possible

Developing Materials for LEP Immigrant Victims of Sexual Assault

Written materials are an important way to convey information and to conduct community outreach. After identifying the LEP immigrant communities in your area, identify existing materials that could be adapted for your agency. Courts, law enforcement, immigrant community-based organizations, victim services organizations, hotlines, and national organizations working on immigrant victims' legal rights may already have materials that have been developed that your agency can put your contact information on and use. If you are working with an immigrant population that is different from the one that the materials were developed for you may want to consider starting with these materials and adapting them for your immigrant community.⁷¹

It is important that materials use language that is appropriate and accessible to the target LEP community. Avoid legalese as it is hard for even English speaking victims to understand and may be difficult to translate. It is essential to have the materials reviewed by several trusted and skilled translators. Do not assume that all immigrant communities will understand the terminology your agency typically uses in English. There may be variations in language that can have different meanings for different immigrant groups. Furthermore, not all immigrants will have the same fluency level in their native language. Translated materials that use more simplified language will be understood by a broader range of immigrant victims both in English and when translated. It is important to be aware of these differences.

⁷¹ For examples of resources, see Limited English Proficiency, A Federal Interagency Website, <http://www.lep.gov/>; National Center for State Courts, <http://www.ncsconline.org/>; U.S. Department of Housing and Urban Development, Limited English Proficiency, <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>; Legal Momentum, Language Access Tools, <http://endabuse.org/userfiles/file/ImmigrantWomen/Language%20Access%20Tools.pdf>.

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When working with immigrant victims of sexual assault, special attention must be given to producing a culturally competent publication. Sexual assault is viewed differently in each immigrant community. There may be stigmas attached to being a victim of sexual assault. In addition, some immigrant communities may view sexual assault as a taboo subject. Words like ‘sexual harassment’, ‘stalking’, ‘rape’ may not be easily translated to other languages.⁷² Other terminology may need to be used to explain this behavior. It is important for women from immigrant communities and sexual assault experts to be involved in the development, so that the materials are culturally competent.

The following are subjects that are useful to include in translated materials for immigrant victims of sexual assault:

- Lists of resources and agencies where immigrant victims can seek help;
- Brief information about eligibility for VAWA immigration relief and access to services and benefits available to all immigrant victims regardless of immigration status;⁷³
- Information on relief available from courts, e.g. sexual assault protection orders and criminal prosecution of sexual assault perpetrators;
- Access to Victim of Crime Compensation (VOCA);
- Information on health care issues affecting immigrant victims of sexual assault and victims’ legal rights to access health care;
- Overview of sexual assault, sexual harassment, stalking, rape, and child sexual abuse.

Interpreters for LEP Victims at Court Proceedings

Courts should make every effort to ensure that LEP immigrant victims of sexual assault are provided competent interpreters at all criminal and civil court appearances including hearings, trials, and motions.⁷⁴ Courts should also be responsible for providing interpreters to help victims complete applications in order to file for and receive emergency protection orders.⁷⁵

Advocates and attorneys working with LEP victims play an important role in assuring that courts provide interpreters for LEP victims.⁷⁶ The National Center for State Courts found in a National Institutes of Justice funded survey of LEP victims’ access to protection order courts that a “court’s capacity to provide interpreters fell substantially short of what was required to meet the needs of the LEP population they served.”⁷⁷ Despite this lack of resources, over 59 percent of courts reported that they believed they had sufficient language services to meet the needs of LEP petitioners for protection orders.⁷⁸ This figure rose to 79 percent for rural courts.⁷⁹ Where advocates, attorneys, and community-based organizations worked with their courts and had good communication, LEP petitioners’ access to the courts and interpreters for LEP protection order petitions improved.⁸⁰

Federal and state courts have different methods of qualifying interpreters. At the federal level, the Court Interpreters Act of 1978 led to a national certification exam to assess the competency level of court interpreters.⁸¹ This federal certification process is only available in Spanish.⁸² It is therefore important that programs and government agencies make themselves accessible to LEP victims by knowing how to qualify interpreters who speak other languages.

Standards for interpreter certification and/or qualification may vary from state to state, but many states have joined together and formed “The Consortium for State Court Interpreter Certification” to develop and regulate court

⁷² See NAT’L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, *supra* note 5, 5.

⁷³ BREAKING BARRIERS, *supra* note 4, § 4.

⁷⁴ See DOJ LEP Guidance, *supra* note 16.

⁷⁵ See UEKERT ET AL., *supra* note 7, 197-206.

⁷⁶ *Id.* at 7, 204.

⁷⁷ *Id.* at 3.

⁷⁸ *Id.* at 5.

⁷⁹ *Id.*

⁸⁰ *Id.* at 8, 67-81.

⁸¹ The NCSC now administers the Federal Court Interpreter Certification Exam for the Administrative Office of the U.S. Courts. See Federal Court Interpreter Certification Program, http://www.ncsconline.org/d_research/fcice_exam/index.htm.

⁸² *Id.*

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interpreter certification procedures.⁸³ In fact, at least 35 percent of all courts rely on a state register of qualified interpreters.⁸⁴ To find out what your state requires, contact the court interpreter program in your state. If there is no state court interpreter program, check with the administrative office of the courts in your state.⁸⁵

Immigrant victims should understand the role of court interpreters. Judges should take the time to explain the interpreter's role as a neutral party present to interpret the court proceedings. For many immigrant victims, this may be their first experience with the judicial system and their first experience explaining the traumatic events that have brought them to court. For this reason, it is also important to have a bilingual advocate accompany the immigrant sexual assault victims to court since the interpreter cannot serve in that role.

Advocates accompanying victims to court can play an important role helping victims dispel myths, understand court proceedings, be less afraid, and be more comfortable in testifying. Many immigrants may come from countries with a civil law system where evidence is typically accepted in the form of signed, notarized, and sealed affidavits.⁸⁶ For many immigrants, the courts may have also been the enforcers of oppressive laws and provoked feelings of fear and distrust for some immigrants.⁸⁷ It is important for advocates and attorneys to take the time to explain the court process and answer any questions the immigrant victim may have. They should explain that oral testimony is not only valid evidence, but the primary method that evidence is presented to the court.⁸⁸ They should be assured that the courts function independently and are a neutral ground for parties to resolve their disputes. Immigrant women may expect that persons who succeed in court are wealthy and politically connected. Advocates and attorneys should also inform victims that a sexual assault perpetrator or batterer cannot use his legal immigration status or economic status against them in court. Bringing immigrant victims to see testimony in court proceedings in similar cases can help immigrant victims better understand legal relief that is available to victims in the United States. This will help a victim who may have to testify in a criminal or civil court action be a more effective witness because she knows what to expect when she testifies. This works particularly well in protection order and family law cases.

Ensuring quality of interpretation is also a vital requirement for court proceedings. When advocates who are proficient in the language are present at court proceedings, they can help evaluate the accuracy of the interpretation. Sometimes interpreters will paraphrase or supplement a witness' testimony, instead of interpreting the meaning of what has been stated. This is especially problematic for immigrant victims who are testifying about rape, sexual assault, and domestic violence.⁸⁹ Attorneys should control the questioning and the interpretation. The interpreter should be instructed to interpret fully everything stated by any party, the judge, or any attorney to the proceeding. In courts that have a system for tape recording proceedings, attorneys should request that the proceedings are tape recorded. Should problems arise with the interpretation, the victim's attorney will be able to make an objection to the interpretation for the record and the tape recording will provide an opportunity to have the interpretation reviewed by a qualified interpreter. Some attorneys representing immigrant victims bring to court persons who are fluent in the language that the victim speaks to inform the attorney of interpretation problems when the attorney does not speak the client's language.

Healthcare Access

Healthcare access is one of the most crucial areas in which LEP immigrants must be provided assistance in their primary language. Nowhere could this be more true than when victims of rape or sexual assault seek healthcare for injuries and forensic exams. Many health programs provide information about their services only in English. Too often LEP immigrants seek services from hospitals and medical clinics with receptionists, nurses, and doctors who speak only English. Interviews to determine eligibility for medical care or social services are often conducted in

⁸³ National Center for State Courts, Consortium for State Court Interpreter Certification—Frequently Asked Questions (Mar. 14, 2005).

⁸⁴ See UEKERT ET AL., *supra* note 7, 44.

⁸⁵ National Center for State Courts, Court Interpretation, http://www.ncsconline.org/D_Research/CourtInterp.html (last visited Dec. 14, 2009) (listing several resources on court interpretation programs).

⁸⁶ GRACE HUANG, *Immigrant Women of Color Face Special Barriers to Legal Redress: Celebrating the Courts in an Inclusive Society*, EQUAL JUSTICE NEWSLETTER, Mar. 2000, at 2, available at http://www.courts.wa.gov/programs_orgs/pos_mjc/newsletter/032000/equaljustice.cfm?article=immigrant.htm.

⁸⁷ See NAT'L. IMMIGRANT RIGHTS AND PUBLIC INTEREST LEGAL CENTER, *supra* note 5, 6.

⁸⁸ *Id.* at 2.

⁸⁹ See MARIA L. ONTIVEROS, ROSA LOPEZ & CHRISTOPHER DARDEN, *Issues In Gender, Ethnicity, And Class in Evaluating Witness Credibility*, 6 HASTINGS WOMEN'S L. J. 135, 272 (1995).

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English by intake workers who do not speak any language other than English. This often results in the denial of medical care or social services, delays in the receipt of such care and services, incomplete or inaccurate medical records, or the provision of care and services based on inaccurate or incomplete information.⁹⁰ These delays are particularly problematic and dangerous for immigrant victims of rape, sexual assault, and domestic violence who are seeking healthcare and forensic examinations.

The medical community is crucial in providing assistance and relief to immigrant victims of sexual assault. At times they are the first point of contact for help. Below are some suggested actions you can take to ensure that immigrant victims of sexual assault are provided adequate, competent and language accessible assistance from the healthcare system:

- Find out what collaborations the healthcare community has with immigrant and sexual assault advocacy groups.
- Research the Sexual Assault Response Team (SART) in the community and find out what resources and partnerships it has for LEP immigrant victims of sexual assault.
- Approach healthcare providers about periodic cross-trainings on sexual assault, immigrant communities, and resources and services available to all immigrant victims and build relationships and collaborate with them.
- Find out what interpreter services and translated materials are available for LEP immigrant victims of sexual assault in the community, in the state, and nationally.
- Adapt materials created nationally or in your state for your community and translate the materials in the language(s) LEP victims need in your community.
- Provide training to healthcare providers and organizations on how to work effectively with interpreters.

Conclusion

Improving the delivery of services to immigrant victims of sexual assault requires a significant assessment of LEP access. Crucial information vital to assisting immigrant victims of sexual assault must be made available in various languages. This includes: information on law enforcement, healthcare, VAWA and other immigration relief, sexual assault services, and access to public benefits. The best programs include of collaborative partnerships between law enforcement, prosecutors, courts, healthcare, sexual assault services, legal services and programs working with immigrant communities that have gained the trust of immigrant women.

For more information on how to assess and develop your programs to ensure LEP access, please see www.lep.gov, specifically http://www.lep.gov/Law_Enforcement_Planning_Tool.htm.

⁹⁰ See e.g. JOHN HORNBERGER, MD, MS ET. AL., *Bridging Language and Cultural Barriers Between Physicians and Patients*, 112 PUB. HEALTH REP., 410-417 (Sept.-Oct. 1997).

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VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections¹²

By Leslye E. Orloff

Introduction

VAWA Confidentiality protections emerged from a critical need to prevent abusive partners from using government tools to perpetuate abuse. In particular, the three major provisions now known collectively as “VAWA Confidentiality”³ remove critical barriers that may otherwise cause a chilling effect for immigrant survivors accessing legal and social service protections. It recognizes that information about a victim provided to the Department of Homeland Security often comes from the batterer or the crime perpetrator as part of ongoing efforts

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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 1) Protections against disclosure of information the government has on the victim, 2) Reliance upon information provided by the abuser, crime perpetrator, or his family members in a case against or for the benefit of the victim, 3) Prohibitions against enforcement actions being taken at protected locations (e.g., shelters, courthouses, rape crisis centers).

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to control the victim, or to keep her from disclosing or redressing the abuse, or from holding him accountable for the abuse.

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History

There are a variety of federal and state laws designed to protect the confidentiality of information relating to victims of domestic violence and sexual assault. These provisions generally restrict the disclosure of information collected by victim service providers and state and federal agencies.⁴ Under the 1984 Family Violence Prevention and Services Act (FVPSA), as amended, and the 1994 Violence Against Women Act (VAWA), as amended, any shelter, rape crisis center, domestic violence program, or other victim service program that receives either VAWA or FVPSA funding is barred from disclosing to anyone any information about a victim receiving services, including any locational information.⁵ Disclosure of the very fact that a victim is now receiving or has ever received services is prohibited. State funding of domestic violence and rape crisis victim services have similar confidentiality requirements.⁶ Programs that violate the confidentiality requirements, risk losing federal or state funding.⁷ When the Violence Against Women Act was created in 1994 it commissioned a study on the means by which abusers might obtain information revealing the present *location* of their victims, and on the feasibility of creating effective

⁴ For information on state victim-advocate confidentiality laws and steps that can be taken to promote victim safety when domestic violence or sexual assault victim advocacy program is assisting an immigrant victim in collecting the documentation the victim will need to file for immigration relief as a VAWA self-petitioner, a U-visa or a T-visa applicant, see: Leslye Orloff and Laurie DePalo, Collaboration, Confidentiality and Expanding Advocacy, in Kathleen Sullivan Ed., *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (2004) available at: <http://wlp.legalmomentum.org/reference/manuals/domestic-violence-family-violence>

⁵ See Family Violence Prevention and Services Act (“FVPSA”) Pub. L. No. 98-457, § 303(a)(2)(E), 42 U.S.C. § 10402(a)(2)(E) (1984) (mandating that the Federal government may make grants to States only if the States “provide documentation that procedures have been developed, and implemented including copies of the policies and procedure, to assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under this chapter and provide assurances that the address or location of any shelter-facility assisted under this chapter will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public”); See also ACF Grant Opportunities, Family Violence Prevention and Services/Grants to State Domestic Violence Coalitions, available at: http://www.acf.hhs.gov/grants/open/HHS-2007-ACF-ACYF-SDVC-0122.html#part_3_1.

⁶ See e.g. Arizona Revised Statutes ARS 36-3005 “Shelter requirements for eligibility” (stating that a shelter receiving state funding must “Require persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify persons served by the shelter”); ARS 36-3009 “Disclosing location of shelters; prohibition; civil penalty” (stating that “Information that may disclose the location or address of a shelter for victims of domestic violence is confidential and is not subject to public disclosure by a person or by a public or private agency in a manner that identifies the location or address as a shelter and threatens the safety of the inhabitants”); See also e.g. Virginia Code § 63.2-104.1 (stating that “Programs and individuals providing services to victims of sexual and domestic violence are prohibited from: (a) Disclosing any personally identifying information or individual information collected in connection with services requested, utilized, or denied through sexual or domestic violence programs, or; (b) Revealing individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian; or in the case of an incapacitated person as defined in § 37.2-1000, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, incapacitated person, or the abuser of the other parent of the minor.

⁷ See 28 C.F.R. § 70.61 “Department of Justice Uniform Administrative Requirements for Grants: Termination” (stating that awards may be terminated if a recipient materially fails to comply with the terms and conditions of an award); 42 U.S.C. §13925(b)(2) “Violent Crime Control and Law Enforcement: Violence Against Women: Definitions and Grant Provisions: Nondisclosure of confidential or private information.”

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regulations to protect confidentiality of both location and address. It also instructed the Attorney General to study and evaluate the need for additional confidentiality protections.⁸

VAWA, FVPSA and state confidentiality protections were specifically designed to prevent crime perpetrators from being able to track their victims and further harm them.⁹ However, there remained gaps in victim protection. Additional protections were needed to prevent the abuser from manipulating the system in order to track the victim and get the victim arrested or deported. Recognizing these gaps, Congress made improvements first in Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996¹⁰ and then in both the 2000¹¹ and 2005¹² VAWA reauthorization acts.

VAWA Confidentiality¹³ and Victim Safety Provisions provide three types of protection to immigrant victims of violence, including battered immigrants and immigrant victims of sexual assault, trafficking and other U-visa-listed crimes.¹⁴ Specifically, VAWA:

- Protects the confidentiality of information provided to the Department of Homeland Security, the Department of Justice or the Department of State by an immigrant victim in order to prevent abusers, traffickers and crime perpetrators from using the information to harm the victim or locate her (hereinafter called “nondisclosure provisions”),¹⁵
- Stops immigration enforcement agencies from using information provided solely by an abuser, trafficker or U visa crime perpetrator, a relative, or a member of their family,¹⁶ to take an adverse action regarding admissibility or deportability against an immigrant victim, without regard to whether a victim has ever filed or qualifies to file for VAWA related immigration relief (hereinafter referred to as “source limitations”).¹⁷
- Prohibits enforcement actions at any of the following locations: domestic violence shelter; victim services program; family justice center; supervised visitation center; or courthouse if the victim is appearing in connection with a protection order case, a child custody case or other civil or criminal case related to domestic violence, sexual assault, trafficking, or stalking. If any part of an enforcement action took place at any of these locations, DHS must disclose this fact in the Notice to Appear and in immigration court proceedings, and must certify that such action did not violate section 384 of IIRIRA (hereinafter referred to as “enforcement limitations”).¹⁸

In its discussion of VAWA 2005, Congress not only clarified its intention to recommend that removal proceedings filed in violation of VAWA Confidentiality provisions be dismissed,¹⁹ but also included enforcement provisions

⁸ See Violent Crime Control and Law Enforcement Act (“VAWA 1994”), Pub. L. No. 103-322, 108 Stat. 1796 (1994) §40153 (Confidentiality of Communications between Sexual Assault or Domestic Violence Victims and their Counselors); §40281, (Confidentiality of Abused Person’s Address); and §40508, (Report on Confidentiality of Addresses for Victims of Domestic Violence).

⁹ See VAWA 1994 supra note 1 at Sec. 40508, “Report on Confidentiality of Addresses for Victims of Domestic Violence” at (a)(2) (stating that the feasibility study on protecting victim address confidentiality will consider “feasibility of creating effective means of protecting the confidentiality of information concerning the addresses and locations of abused spouses *to protect such persons from exposure to further abuse* while preserving access to such information for legitimate purposes.” (emphasis added))

¹⁰ See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, §384; codified at 8 U.S.C. § 1367 (1996).

¹¹ See Victims of Trafficking and Violence Protection Act of 2000 (“VAWA 2000”), Pub. L. No. 106-386, Div B, Title V, §1513(d) (2000).

¹² See Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”), [Pub. L. No. 109-162](#), Title VIII, Subtitle B, §817 (2006).

¹³ Throughout the course of this chapter, the author uses the term *VAWA confidentiality* to describe a broad scope of protections including the protections of non-disclosure, limitations of abuser provided information, and limitations on enforcement actions in protected locations.

¹⁴ IIRIRA § 384, supra note 6.

¹⁵ IIRIRA Section 384 (a)(2); 8 U.S.C. 1367(a)(2).

¹⁶ *Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA Section 384*. May 5, 1997, Office of Programs, /s/ Paul W. Virtue, Acting Executive Associate Commissioner. (“Virtue memo”).

¹⁷ IIRIRA Section 384 (a)(1); 8 U.S.C. 1367(a)(1). DHS has not come out with an official interpretation of what constitutes an adverse determination of admissibility or deportability.

¹⁸ Immigration and Nationality Act (“INA”) § 239(e); codified at 8 U.S.C. §1229(e) “Initiation of Removal Proceedings: Certification of compliance with restrictions on disclosure.”

¹⁹ See “Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. 3402” H.R. Rep. No. 109-233, at 123 (2005); see also 151 Cong. Rec. E2606-07 (2005) (statement of Rep. Conyers) (“Conyers remarks”).

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designed to deter individual officers from violating these provisions. Section 8 U.S.C. 1367(c) provides that each violation of any of the three types of VAWA Confidentiality or Victim Safety Protections described above is punishable by a \$5,000 fine as well as disciplinary action.²⁰

Evolution of VAWA Confidentiality and Safety Protections for Immigrant Victims

Confidentiality protections for immigrant victims were originally developed within the context of family based immigration petitions. The Immigration Marriage Fraud Amendments of 1986²¹ allowed U.S. citizens and lawful permanent residents to sponsor their spouse and spouse's children for conditional permanent residence in the United States. In order to remove the conditions on immigration status and obtain permanent residence in the United States, the law required both spouses to file a joint petition to remove the conditions. A battered spouse hardship waiver²² of this joint petitioning requirement was created as part of the immigration reforms that became law in 1990.²³ The hardship waiver offered protection to spouses and children who had been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident by allowing the immigrant spouse and child to file the petition to remove conditions on their own behalf and without the involvement of the abuser. This limits the abuser's ability to exert control over the victim's immigration status. By providing immigration relief, the law significantly reduced the hold that abusive citizen and lawful permanent resident spouses and parents had on their spouses and children.²⁴

As part of the Immigration Act of 1990 ("IMMACT 90")²⁵ hardship waiver for battered spouses and children, Congress imposed the following requirement:

The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.²⁶

The INS published regulations implementing these IMMACT provisions in 1991.²⁷ The regulation stated:

As directed by the statute, the information contained in the application and supporting documents shall not be released without a court order or the written consent of the applicant; or, in the case of a child, the written consent of the parent or legal guardian who filed the waiver application on the child's behalf. Information may be released only to the applicant, his or her authorized representative, an officer of the Department of Justice, or any federal or State law enforcement agency. Any information provided under this part may be used for the purposes of enforcement of the Act or in any criminal proceeding.

This regulation offered little meaningful confidentiality protection for immigrant victims and was much broader than that intended by Congress. While the statute stated that the information in the victim's immigration case *may* be used for the purposes of enforcement of the Act or in any criminal proceeding, it did not say that it *must* be used for

²⁰ VAWA 2005, supra note 8 at § 817; VAWA 2005, supra note 8 at § 825(c); 8 U.S.C. 1229; INA Section 239(e).

²¹ Pub. L. No. 99-639

²² Immigration and Nationality Act, § 216(c)(4), codified at 8 U.S.C. §1186a

²³ Immigration Act of 1990 ("IMMACT 90"), Pub. L. No. 101-649 (1990), codified as amended at 8 U.S.C. 1186a(c)(4).

²⁴ The Protections for Battered Immigrant Women and Children section of VAWA 1994 significantly expanded the scope of protections for immigrant spouses by permitting abused spouses and children to directly file their own petition for family based immigration status with the INS without the abuser's involvement. The battered spouse waiver contained in Section 701(a)(4)(c) of IMMACT 90 was the first piece of legislation in the United States offering special immigration relief to immigrant family violence victims. In IMMACT §701(a)(4)(c) and INA §216(c)(4), Congress enacted legislation that recognized the need to amend U.S. immigration laws to prevent abusive citizen spouses and parents from using them as a power and control tool. This was also the first piece of federal domestic violence legislation in the United States, predating VAWA by four years. The battered spouse waiver, however, only helped immigrant victims of spouse abuse whose abusers had initiated an immigration case on the victim's behalf. Most victims who benefit from battered spouse waivers are immigrant spouses and their children abused by U.S. citizens. Ignatius Bau and William R. Tamayo, *Immigration Marriage Fraud Amendments of 1986 and Other Related Issues*, in Domestic Violence in Immigrant and Refugee Communities: Asserting the Rights of Battered Women, manual produced by the Family Violence Prevention Fund, Coalition for Immigrant & Refugee Rights & Services Immigrant Women Task Force, and the National Immigration Project of the National Lawyer's Guild, Inc. (1999).

²⁵ Immigration Act of 1990, Pub. L. No. 101-649 §701(a)(5) (1990).

²⁶ *Id.*

²⁷ 8 C.F.R. §216.5(e)(3)(viii), 56 FR 22635 (1991).

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these purposes. In effect the regulation allowed for free access to and use of the information by INS, immigration courts, and law enforcement agencies. Following the issuance of these regulations many groups commented about the danger these 1991 INS regulations posed for battered immigrant spouses and children.²⁸ However, INS made no changes in the regulations. Abusers of immigrant victims were able to, and, in a number of cases actually did, track the location of immigrant victims through information that was made publicly available by INS and by state and local law enforcement agencies. Ultimately Congress agreed and revised the law in 1996. When Congress designed the VAWA Confidentiality and Immigrant Victim Safety protections in 1996 as Section 384 of IIRIRA, Congress replaced both the INS regulation and the immigration law confidentiality protections written into the 1990 IMMACT, with statutory requirements that significantly limited disclosure of information and barred immigration officials from using abuser-provided information against the victim.²⁹ It limited the release of information to law enforcement to “disclosure of information to law enforcement officials to be used solely for legitimate law enforcement purposes.”³⁰

1994 Violence Against Women Act (VAWA)

Summary of relevant VAWA 1994 Confidentiality provisions:

- *Protected the address of domestic violence victims and domestic violence shelter programs;*³¹
- *Requested studies on confidentiality of communications between domestic violence victims and counselors, victim address information, and recordkeeping;*³²
- *Allowed the immigrant parent of a child abused by the child’s other parent who was a citizen or lawful permanent resident to file for VAWA suspension of deportation.*³³

History and Purpose—Violence Against Women Act Confidentiality Provisions

From its inception, the purpose of the first Violence Against Women Act (“VAWA 1994”) was “to deter and punish violent crimes against women,” both by providing law enforcement with additional tools to combat domestic violence, and by making it easier for victims to come forward. The Surgeon General and the Department of Justice issued reports identifying the need for this legislation. From the outset, the Act was conceived to protect immigrants, as Congress found that “[m]any immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave.” VAWA 1994 sought to resolve this problem by “permitting battered immigrant women to leave their batterers without fearing deportation.”³⁴ Specifically VAWA 1994 created a visa category of VAWA self-petitioners to enable battered immigrant women and children abused by citizen and lawful permanent resident spouses and parents to file for legal immigration status and lawful permanent residency independent of their abuser,³⁵ and creating VAWA suspension of deportation relief to assist battered immigrant women and children in deportation proceedings.³⁶

Additionally, the VAWA 1994 recognized that a number of confidentiality issues might affect the safety of battered women – including the confidentiality of communications between abused women and their counselors,

²⁸ See e.g. 68 *Interpreter Releases* 669-70 (1991).

²⁹ See IIRIRA Section 384(b) that will be discussed further below.

³⁰ See IIRIRA Section 384(b)(2).

³¹ Section 40281 of the Violence Against Women Act contained in the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994).

³² Section 40153 of the Violence Against Women Act of 1994 contained in the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994).

³³ INA Section 244(c)(3)(as in effect before March 31, 1997).

³⁴ Violence Against Women Act of 1993: Summary and Purpose, H.R. Rep. No. 103-395, at 25 (1993).

³⁵ VAWA 1994, *supra* note 1, at subtitle G, §40701 “Protections for Battered Immigrant Women and Children: Alien Petitioning Rights for Immediate Relative or Second Preference Status,” currently INA §101(a)(51)

³⁶ *Id.* at §40703 “Suspension of Deportation,” Immigration and Nationality Act (INA) §244(a)(3) as in effect prior to March 31, 1997; renumbered 240A(a)(3) by Pub. L. No. 104-208 (1996).

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confidentiality of abused women's address information, and recordkeeping related to domestic violence – and commissioned studies of each area.³⁷

1995-96, Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)

Summary of relevant VAWA Confidentiality provisions:

- Prohibits reliance on information provided solely by the abuser or people associated with the abuser including but not limited to the abuser's family members regardless of whether or not the victim has ever filed a specific VAWA-related case:³⁸
- Bars the use by or disclosure to anyone of any information relating to:
 - VAWA self-petitioners and their children;³⁹
 - VAWA applicants for battered spouse waivers of conditional permanent resident status;⁴⁰

History and Purpose—VAWA Confidentiality⁴¹ Amendments:

Though Congress included some confidentiality protections for immigrant family violence victims in IMMACT 90, these provisions and their implementing regulations did not provide meaningful protections for battered immigrants.

In 1995, as the House Judiciary Committee discussed what was to become the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Representative Pat Schroeder introduced an amendment that would ultimately become IIRIRA §384 – *VAWA Confidentiality*.⁴² In presenting the amendment, Representative Schroeder explained:

[This amendment] deals with the very essential issue of confidentiality vis-à-vis battered women and children. I think we all know confidentiality is a matter of life and death whether or not they are citizens or whether they are immigrants. And that we must make sure that if there's some kind of battering going on, that the INS is not breaching confidentiality. As you know abusers can be anyone and basically what we're doing here is making sure that decisions affecting a battered woman's immigration couldn't be based on statements of the abuser. That giving the abuser the ability to influence the INS would give the abuser control over the victim's status. If you could imagine if you had an abuser being tried in court for abuse, he could get the victim deported so she could not testify if we didn't do this.

In the debate that followed, Representative Schroeder made it clear that information provided by an abuser or his family was tainted not only when it touched on immigration status, but when it alleged any wrongdoing by the victim whatsoever.

[The proposed amendment] says information furnished by an abusive sponsor, family member ... abusive being the operative word. And the fear would be that if someone is ... abusive, then any information might be tainted. They might accuse the other person of crimes, they might accuse the other person of all sorts of things.

Congresswoman Schroeder explains that the taint is effective “because the INS has got so much authority,” and goes on to say:

³⁷ *Id.* at §§ 40153, 40281, 40508, and 40509.

³⁸ Section 384(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Pub. L. No. 104-208, 110 Stat. 3009-546 (1996); 8 U.S.C. 1367(a)(1); John P. Torres, Immigration and Customs Enforcement, Interim Guidance Related to Officer Procedure Following Enactment of VAWA 2005, p. 2 (January 22, 2007) available at: http://iwp.legalmomentum.org/vawa-confidentiality/government-memoranda-and-factsheets/VAWA%20CONF_Torres%20ICE%20VAWA%20Confidentiality%20Memo_1.22.07.pdf.

³⁹ Section 384(a)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Pub. L. No. 104-208, 110 Stat. 3009-546 (1996); 8 U.S.C. 1367(a)(2).

⁴⁰ *Id.*

⁴¹ While Confidentiality protections for battered women came out of several different immigration acts, the term VAWA Confidentiality is typically used to describe the cornerstone provisions enacted in IIRIRA section 384.

⁴² See Full Committee Mark Up: Hearing on H.R. 2202 Before the House Judiciary Committee, 104th Cong. (September 19, 1995).

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[T]he ... problem is [that] the abusive thing so taints it, it might be some kind of retaliation appearing to be in another field...here [it] is the abusive sponsor or family member [that] is the operative word and the idea being that once a person has been determined to be abusive, anything that they turn in could be a retaliation, it could be whatever. It couldn't just be on that specific item.⁴³

As the IIRIRA debate continued, the late Senator Paul Wellstone echoed:

It would be unconscionable for our immigration laws to facilitate an abuser's control over his victim. It would be unconscionable for our immigration laws to abet criminal perpetrators of domestic violence. It would be unconscionable for our immigration laws to perpetuate violence against women and children.⁴⁴ The final VAWA confidentiality provisions of IIRIRA §384⁴⁵ furthered these purposes of the VAWA legislation in two ways: (1)⁴⁶ by restricting access to officially filed documents in order to prevent abusers from obtaining information about even the existence of a case, and (2) by preventing immigration authorities from relying solely on information furnished by abusers to make determinations such as denying victims' applications for immigration benefits and making deportation decisions.⁴⁷

The immigrant victim safety protections articulated in IIRIRA section 384(a)(1) were explicitly applicable to all immigrant victims of battery or extreme cruelty and their children without regard to whether or not they qualified for or had filed for any form of immigration relief. The VAWA confidentiality non-disclosure protections covered all forms of VAWA related immigration relief that existed at the time that IIRIRA 384 became law,⁴⁸ including VAWA self-petitioners,⁴⁹ applicants for battered spouse waivers,⁵⁰ and VAWA suspension of deportation applicants.⁵¹

Immigration and Naturalization Service memoranda implementing VAWA confidentiality protections recognized that some immigration officials, prior to enactment of VAWA confidentiality protections, had released information about the fact of a pending VAWA immigration case and information about the whereabouts of self-petitioners to abusers.⁵² INS stated, "[t]he VAWA provisions ... were created by Congress so that the battered alien can seek status independent of the abuse. Thus, disclosure of information to the alleged abuser or any other family member was inappropriate even prior to the new law. With enactment of section 384, however, such inappropriate conduct is now also grounds for disciplinary action or fine, or both."⁵³ INS policies also clarify that adverse information received from an immigrant's abusive spouse, parent and any of the abuser's relatives or family members cannot be the sole information relied upon by an immigration judge, or any immigration enforcement personnel or adjudicator to make an adverse determination against an alien.⁵⁴

In subsequent legislation, VAWA's confidentiality provisions have been repeatedly amended, strengthening protections and expanding coverage to immigrant domestic violence, sexual assault, trafficking, or crime victims may access. IIRIRA's victim safety protections now cover a wider range of immigrant victims and their children or, in the case of victimized children, their parents.⁵⁵

VAWA 2000

Summary of relevant VAWA Confidentiality provisions:

⁴³ *Id.*

⁴⁴ 142 Cong. Rec. S4306 (1996) (Statement of Sen. Wellstone).

⁴⁵ IIRIRA § 384, *supra* note 6.

⁴⁶ *Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA Section 384*. May 5, 1997, Office of Programs, /s/ Paul W. Virtue, Acting Executive Associate Commissioner.

⁴⁷ *Id.* at (a)(1) and (2).

⁴⁸ Enumerated in *id.*, at (2).

⁴⁹ *As defined in VAWA 1994*, *supra* note 1 at § 40701.

⁵⁰ INA § 216(c)(4)(C); 8 U.S.C. 1186a(c)(4)(C), "Conditional Permanent Resident Status for Certain Alien Spouses and Sons and Daughters: Requirements... for removal of condition: Hardship waiver."

⁵¹ *As defined in VAWA 1994* at § 40703, *supra* note 18.

⁵² *Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA Section 384*. May 5, 1997, Office of Programs, /s/ Paul W. Virtue, Acting Executive Associate Commissioner.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See, e.g.* Balanced Budget Act of 1997, Pub. L. No. 105-33 § 5572 (adding para. (b)(5) to 8 U.S.C. 1367); VAWA 2000, *supra* note 7; and VAWA 2005, *supra* note 8.

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- Extended VAWA Immigrant Victim Safety Protections to U-visa applicants;⁵⁶
- Extended VAWA Confidentiality Protections to U-visa applicants.⁵⁷

History and Purpose—VAWA Confidentiality Amendments

In deliberating over the 2000 Battered Immigrant Women Protection Act (Title V of VAWA 2000), Congress found that “providing battered immigrant women and children... with protection against deportation... frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser’s control.”⁵⁸ The Senate explicitly stated that “[VAWA 2000] immigration relief is designed to improve on efforts made in VAWA 1994 to prevent immigration law from being used by an abusive citizen or lawful permanent resident spouse as a tool to prevent an abused immigrant spouse from reporting abuse or leaving the abusive relationship.”⁵⁹

Although VAWA 1994 contained several provisions that limited the ability of an abusive citizen or lawful permanent resident to use the immigration laws to perpetuate the abuse and control and to commit violence against a spouse or child, Congress found preexisting VAWA immigration relief to be insufficient. In VAWA 2000, Congress created the U-visa, a “new nonimmigrant visa for victims of certain serious crimes that tend to target vulnerable foreign individuals without immigration status.”⁶⁰ The U-visa was designed to provide temporary immigration benefits, leading to permanent resident status, to victims of certain statutorily enumerated crimes if the victim suffered substantial physical or mental abuse as a result of the crime, the victim has information about the crime, and a law enforcement official or a judge certifies that the victim has been helpful, is being helpful, or is likely to be helpful in investigating or prosecuting the crime.⁶¹ In creating a centralized process for adjudicating U-visa applications, the Department of Homeland Security’s policy directive confirmed that “U nonimmigrant status, a new nonimmigrant classification for victims of crimes... was created to strengthen the ability of law enforcement to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking or persons, and other criminal activity of which aliens are victims, while offering protection to victims of such offenses.”⁶²

While creating the U-visa, Congress explicitly expanded the 1996 VAWA confidentiality and safety protections in Section 384 of IIRIRA (8 U.S.C. 1367) to include U-visa-eligible victims of domestic violence, sexual assault, and other serious crimes.⁶³

VAWA 2005

Summary of relevant VAWA Confidentiality provisions:

- Extended VAWA Confidentiality and Immigrant Victim Safety Protections to eligible T-visa applicants;⁶⁴
- Expanded definition of VAWA self-petitioners (thereby extending VAWA confidentiality and safety protections) to include:⁶⁵
 - Victims of elder abuse
 - VAWA Cuban adjustment applicants
 - VAWA HRIFA

⁵⁶ VAWA 2000, supra note 7 at Section 1513(d)(3) amending IIRIRA Section 384(a)(1); 8 U.S.C. 1367(a)(1).

⁵⁷ VAWA 2000, supra note 7 at Section 1513(d)(4) amending IIRIRA Section 384(a)(2); 8 U.S.C. 1367(a)(2).

⁵⁸ VAWA 2000, supra note 7 at § 1502 (a)(2).

⁵⁹ 146 Cong. Rec. S10195 (2000), “Title V, the Battered Immigrant Women Protection Act of 2000 - Section-by-section summary.”

⁶⁰ Congressional Record, Vol.146, No.126 Trafficking Victims Protection Act Of 2000--Conference Report -- (Senate - October 11, 2000) page S10196.

⁶¹ Id.

⁶² *Centralization of Interim Relief for U Nonimmigrant Status Applicants*. October 8, 2003, Office of Associate Director of Operations, /s/ William R. Yates, Associate Director of Operations.

⁶³ See VAWA 2000, supra note 7 at § 1513(d).

⁶⁴ Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”), [Pub. L. No. 109-162](#), Title VIII, Subtitle B, §817 (2006).

⁶⁵ Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”), [Pub. L. No. 109-162](#), Title VIII, Subtitle B, (2006), Sections 817, 811; INA Section 101(a)(51); 204(a)(1)(A)(vii).

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○ VAWA NACARA

- Imposed restrictions on immigration enforcement actions at specified locations (e.g. shelters, victim services, courthouses) and required that there must be a certification that IIRIRA §384 was not violated when such actions are taken;⁶⁶
- Allowed DHS to make referrals to victims' advocates;⁶⁷
- Added penalties for violations of mandatory certifications;⁶⁸
- Added a requirement that DHS develop policies, protocols, and training for DHS employees on VAWA confidentiality.⁶⁹

History and Purpose—VAWA Confidentiality Amendments

In reauthorizing the Violence Against Women Act, it sought to improve confidentiality, privacy and safety of victims of violence against women.⁷⁰ VAWA 2005 substantially expanded confidentiality protections for all persons served by entities receiving Violence Against Women Act grants including governmental (e.g. police, prosecutors, courts) and non-governmental grantees (e.g. shelters, rape crisis centers, legal services programs).⁷¹ In addition to enhancing confidentiality protections as a prerequisite for receiving funding under the Violence Against Women Act,⁷² VAWA 2005 enhances victim privacy and confidentiality for programs that include, law enforcement,⁷³ health care,⁷⁴ housing⁷⁵ and immigration related benefits.⁷⁶

The legislative history of VAWA 2005 includes an extensive discussion of the importance of the VAWA nondisclosure, source limitation, and enforcement action limitations. Of particular interest is the bipartisan statement authored by Chairman James Sensenbrenner and Representative (Current Chairman) John Conyers of the House Judiciary Committee that states as follows:

“Prohibition of Adverse Determinations of Admissibility or Deportability Based on Protected Information”

⁶⁶ Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”), [Pub. L. No. 109-162](#), Title VIII, Subtitle B, (2006), Section 825(c); INA Section 239(e).

⁶⁷ Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”), [Pub. L. No. 109-162](#), Title VIII, Subtitle B, §817 (2006).

⁶⁸ 8 U.S.C. 1367(c); Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”), [Pub. L. No. 109-162](#), Title VIII, Subtitle B, §817 (2006).

⁶⁹ 8 U.S.C. 1367(d); Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”), [Pub. L. No. 109-162](#), Title VIII, Subtitle B, §817 (2006). The bipartisan report authored by Chairman James Sensenbrenner and Representative John Conyers See “Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. 3402” H.R. Rep. No. 109-233, at 123 (2005) (“This Committee encourages the Secretary of DHS to (a) develop a training program for trial attorneys and other DHS staff who regularly encounter alien victims of crimes, and (b) craft and implement policies and protocols on appropriate handling by DHS officers of cases under VAWA 1994, the Acts subsequently reauthorizing VAWA, and IIRIRA.”) see also 151 Cong. Rec. E2607 (2005) (statement of Rep. Conyers on Section 817).

⁷⁰ Bipartisan Section by Section description of the Violence Against Women Act of 2005, Senator Joseph Biden, Congressional Record DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009 -- (Senate - December 16, 2005) Page: S13749-13765.

⁷¹ Adding new Section 40002(b) to the Violence Against Women Act of 1994, See Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”), [Pub. L. No. 109-162](#), Title VIII, Subtitle B, §817 (2006). 42 U.S.C. 13925. (Required to protect confidentiality and privacy of persons receiving services; non-disclosure of personal identifying information mandated; release only when compelled by specific court order or statute and if any release required grantee must take action to notify the victim and take steps to protect the safety and privacy of the victim affected by the release of information.)

⁷² In VAWA 2005 Congress enhanced victim confidentiality in each of the following sections of the Act including Section 102 (Grants to Encourage Arrest); Section 107 (Privacy Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking grants); Section 303 (Grants to Combat Domestic Violence, Dating Violence, Sexual Assault, and Stalking in Middle and High Schools).

⁷³ VAWA 2005 Section 1115 (Improving confidentiality of victim information in national criminal record databases).

⁷⁴ VAWA 2005 Section 503 (Training and Education for Health Professionals in Domestic and Sexual Violence. These grants also address confidentiality for victims in rural communities).

⁷⁵ VAWA 2005 Sections 602 and 607 (victim confidentiality in public and assisted housing, including in rural communities); Section 605 (Victim confidentiality under the McKinney-Vento Homelessness Act); Section 606 (Victim confidentiality under the Low-income housing assistance program).

⁷⁶ VAWA 2005 immigration confidentiality related sections are: Section 817 (VAWA Confidentiality for immigrant victims of domestic violence, sexual assault, trafficking and other crime victims); Section 827 (Corrections to Real ID to require confidentiality protections for domestic violence, sexual assault, trafficking, stalking, dating violence, and crime victims in the implementation of the Real ID program including protections for immigrant victims consistent with IIRIRA Section 384); Section 833 (Confidentiality of prior victim information in connection with the International Marriage Broker Regulation Act).

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“In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims’ immigration cases, and encouraging immigration enforcement officers to pursue removal actions against their victims. This Committee wants to ensure that immigration enforcement agents and government officials covered by this section do not initiate contact with abusers, call abusers as witnesses or relying on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault and trafficking, as prohibited by section 384 of IIRIRA. In determining whether a person furnishing information is a prohibited source, primary evidence should include, but not be limited to, court records, government databases, affidavits from law enforcement officials, and previous decisions by DHS or Department of Justice personnel. Other credible evidence must also be considered. Government officials are encouraged to consult with the specially trained VAWA unit in making determinations under the special “any credible evidence” standard.... [I]nformation in the public record and government data bases can be relied upon, even if government officials first became aware of it through an abuser.”⁷⁷

In a statement issued along with the passage of VAWA 2005, Representative Conyers reiterated this congressional intention regarding the importance of all three prongs of VAWA confidentiality protections.⁷⁸ He indicated that Congress intended to:

- 1) Direct DHS and other government agencies to refrain from seeking out or relying upon information provided by abusers and relatives or family members of the abuser to take any adverse action against an immigrant victim of domestic violence, battering extreme cruelty, child abuse, trafficking, sexual assault or other U visa listed crime;
- 2) Prohibit the disclosure of any information related to the existence of or content of a VAWA, T or U visa case⁷⁹; and
- 3) Discourage DHS from taking enforcement actions at specified protected locations by requiring cases brought in immigration court to include a certification that such an enforcement action was performed in compliance with the Section 384 protection mandates.

As noted above, in addition to expanding protections relating to confidentiality and source limitations, VAWA 2005 also imposed new safeguards on DHS enforcement actions so as to assure that immigrant victims of domestic violence sexual assault, trafficking and U visa crimes can safely seek help from police, prosecutors, courts, shelters, and other victims’ services without fear of deportation. The statute identifies certain protected locations in which DHS enforcement actions are to be limited. The locations protected from enforcement actions are:⁸⁰

- Domestic violence shelters
- Rape crisis centers
- Supervised visitation centers
- Family justice centers
- Victim’s services or victim’s services providers or community based-organizations

⁷⁷ “Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. 3402” H.R. Rep. No. 109-233, at 122 (2005).

⁷⁸ Conyers Extension of Remarks, *supra* note 14 at E2606-07. These remarks quoted substantially from and reiterated the legislative history and intent contained in the bi-partisan Sensenbrenner – Conyers House Report, H.R. Rep. No. 109-233, *supra* note 14.

⁷⁹ See *Hawke v. Dep’t of Homeland Sec.*, No. C-07-03456 RMW, 2008 WL 4460241, at *7 (N.D. Cal. Sept. 29, 2008) (holding that the policy behind the statute compels the court to prohibit the disclosure of a mooted petition compared to a petition “denied *on the merits*”).

⁸⁰ INA Section 239.

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- Courthouses (or in connection with that appearance of the immigrant at a courthouse) if the immigrant is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the immigrant has been battered or subject to extreme cruelty or if the immigrant is a victim of trafficking or one of the crimes listed under U visa (crime victim) visa protections.

When a DHS enforcement action takes place in a protected location DHS is required to disclose that fact in the Notice to Appear and is required to certify that the action did not violate the prohibition against reliance upon abuser-provided information and was in this and in all other ways compliant with section 384.⁸¹

In explaining the kinds of practices these location-based enforcement provisions were designed to protect against Congress noted that:

“[I]t is very important that the system of services we provide to domestic violence victims, rape victims and trafficking victims and our protection order courtrooms and family courts are places to which victims can safely turn for help without worrying that their abuser may have sent immigration enforcement officers after them when they are seeking service and protection. Section 825(c) establishes a system to verify that removal proceedings are not based on information prohibited by section 384 of IIRIRA. When any part of an enforcement action was taken leading to such proceedings against an alien at certain places, DHS must disclose these facts in the Notice to Appear issued against the alien. DHS must certify that such an enforcement action was taken but that DHS did not violate the requirements of Section 384 of IIRIRA. The list of locations includes: a domestic violence shelter, a rape crisis center, and a courthouse if the alien is appearing in connection with a protection order or child custody case.”⁸²

Congress expressed its views both in statute and legislative history that violations of VAWA confidentiality provisions were to carry sanctions. In addition to disciplinary actions, section 384 imposes a penalty of up to \$5,000 for each violation for anyone who “willfully uses, publishes, or permits information to be disclosed in violation of [these provisions].”⁸³ VAWA 2005 added failure to comply with INA section 239 certification requirements when any part of an enforcement action took place at a protected location to the list of IIRIRA 384 VAWA confidentiality violations that could result in employment penalties and/or a fine of \$5000 for each violation.⁸⁴ “Persons who knowingly make a false certification shall be subject to penalties.”⁸⁵ In addition to penalties against the DHS employees, Congress also sought to provide a remedy to victims when VAWA confidentiality was violated. “Removal proceedings filed in violation of section 384 of IIRIRA shall be dismissed by immigration judges. However, further proceedings can be brought if not in violation of Section 384.”⁸⁶

To help assure that DHS officials were made aware of VAWA confidentiality requirements so that they could carry out their duties without violating these important provisions, VAWA 2005 required that DHS issue guidance on these provisions.⁸⁷ Congress explained these statutory requirements as follows:

“This section requires that the Department of Homeland Security and the Department of Justice provide guidance to their officers and employees who have access to information protected by Section 384 of IIRIRA, including protecting victims of domestic violence, sexual assault, trafficking and other crimes from the harm that could result from inappropriate disclosure of information. Congress encourages the DHS's specially trained VAWA unit and CIS VAWA policy personnel: (1) to develop a training program that can be used to train DHS staff, trial attorneys, immigration judges, and other DOJ and DOS staff who

⁸¹ Immigration and Nationality Act (“INA”) § 239(e); codified at 8 U.S.C. §1229(e) “Initiation of Removal Proceedings: Certification of compliance with restrictions on disclosure.”

⁸² Conyers Extension of Remarks, supra note 14 at E2606-07. These remarks quoted substantially from and reiterated the legislative history and intent contained in the bi-partisan Sensenbrenner – Conyers House Report, H.R. Rep. No. 109-233, supra note 14.

⁸³ 8 U.S.C. 1367(c).

⁸⁴ Id.

⁸⁵ Conyers Extension of Remarks, supra note 14 at E2606-07. These remarks quoted substantially from and reiterated the legislative history and intent contained in the bi-partisan Sensenbrenner – Conyers House Report, H.R. Rep. No. 109-233, supra note 14.

⁸⁶ Id.; INA Section 239(e), codified at 8 U.S.C. §1229a.

⁸⁷ Section 817(d) of the Violence Against Women Act of 2005, 8 USC §1367 (2005).

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regularly encounter alien victims of crimes, and (2) to craft and implement policies and protocols on appropriate handling by DHS, DOJ and DOS officers of cases under VAWA 1994, the Acts subsequently reauthorizing VAWA, and IIRIRA.”⁸⁸

Department of Homeland Security Victim Protection Policies 2010 and 2011

In 2010 and 2011 the Department of Homeland Security issued a range of policy directives and initiated a number of projects designed to significantly increase the DHS role in identifying immigrant crime victims, including victims of human trafficking, domestic violence, sexual assault and other U-visa listed crimes, and helping them secure immigration protections under the Violence Against Women Act and the Trafficking Victims Protection Act. DHS launched agency-wide initiatives, such as the DHS Blue Campaign, to combat human trafficking and assist immigrant victims of violence against women and sexual assault.⁸⁹

DHS policies issued in 2010 and 2011 that improve protections for immigrant victims covered by VAWA confidentiality include:

- **Computerized VAWA Confidentiality “384” Flag:** In 2010 DHS established a new “384” code in the Central Index System database that allows DHS employees to “verify quickly whether an individual is covered by the confidentiality provisions.”⁹⁰ This alerts DHS employees that an individual is protected by the VAWA Confidentiality provisions, that immigration enforcement, detention or removal actions are generally not to be taken against these individuals, and that information about victims may not be released.⁹¹ When an individual files for a VAWA self-petition or T or U status, the code in the database will be updated to 384. The code 384 will be maintained on that file indefinitely unless the case is denied on its merits and all final appeal rights are exhausted.⁹² This method seeks to allow DHS to “fully comply with and prevent violations” of VAWA Confidentiality.⁹³ ICE has since encouraged employees who see the code 384 to contact the local ICE Office of Chief Counsel.⁹⁴
- **Training of DHS Employees on VAWA Confidentiality:** DHS and the Federal Law Enforcement Training Center are working together on the development of computer-based training curricula. Training on the confidentiality protections afforded victims of trafficking, domestic violence and other crimes will be required of all DHS personnel.⁹⁵
- **DHS Enforcement Priorities Urge Identification and Protection of Crime Victims:** In June 2011, DHS has decided to focus the use of its enforcement resources on national and border security, public safety, and the integrity of the immigration system.⁹⁶ In furtherance of this mission and the DHS role in victim protection and the prosecution of traffickers, abusers and crime perpetrators, DHS issued policy guidance

⁸⁸ Conyers Extension of Remarks, supra note 14 at E2606-07. These remarks quoted substantially from and reiterated the legislative history and intent contained in the bi-partisan Sensenbrenner – Conyers House Report, H.R. Rep. No. 109-233, supra note 14

⁸⁹ See, Department of Homeland Security, Fact Sheet DHS Blue Campaign (April 2011) available at: http://www.dhs.gov/ynews/gc_1279809595502.shtm (hereinafter “Blue Campaign Fact Sheet”).

⁹⁰ Executive Summary, Blue Campaign Stakeholder Meeting with Senior Counselor Alice Hill, at 2 (Dec. 10, 2010), available at: http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Stakeholder%20Meeting%20Executive%20Summary%20Dec%2010%202010.pdf/at_download/file (hereinafter “Blue Campaign Memo”).

⁹¹ U.S. Citizenship and Immigration Services, DHS Broadcast Message on New 384 Class of Admission Code (Dec. 21, 2010), available at: http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/message%20to%20DHS%20384%20COA%20Final%2012.21.10.pdf/at_download/file.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ John Morton, Director, U.S. Immigration and Customs Enforcement, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, at 3 (June 17, 2011) (hereinafter “Crime Victims and Witnesses Memo”), available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton-Prosecutorial-Discretion-Memo-06-17-2011.pdf>

⁹⁵ Blue Campaign Fact Sheet, supra note 89.

⁹⁶ John Morton, Director, U.S. Immigration and Customs Enforcement, Exercising Prosecutorial Discretion Consistent with Civil Immigration Enforcement Priorities of the Agency, at 2 (June 17, 2011), available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton%206.17.11prosecutorial-discretion-memo.pdf> (hereinafter “Prosecutorial Discretion Memo”).

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designed to minimize the effect that immigration enforcement has on the willingness and ability of victims, witnesses, and plaintiffs in non-frivolous civil rights lawsuits⁹⁷ to call the police and pursue justice.⁹⁸

- **Exercise of Prosecutorial Discretion Favorably in Cases of Immigrant Crime Victims and Witnesses:** DHS issued policies in June 2011 that established factors for immigration officers to weigh in the exercise of prosecutorial discretion. Factors that weigh in favor of immigration enforcement include: risk to national security, public safety risk, repeated criminal offenses, known gang activity, and an egregious record of immigration violations.⁹⁹ Factors that may lead to the favorable exercise of prosecutorial discretion include but are not limited to: crime victimization or witness in a criminal case (domestic violence, human trafficking, and other serious crimes);¹⁰⁰ the likelihood of being granted a U-visa, T-visa, or VAWA self-petition; age and circumstances of arrival; length of time in the United States; a U.S. citizen or lawful permanent resident parent, spouse, or child; age (minor or elderly); person suffers or is the caretaker for a person with a serious mental or physical disability or health condition; pursuit of high school or college education; and person or spouse is pregnant or nursing.¹⁰¹
- **Release From Detention and Dismissal of Removal Proceedings Involving Crime Victims:** In August of 2010 DHS implemented a policy to release from detention immigrants with filed, pending, or approved applications for U-visas, T-visas, VAWA self-petitions, and VAWA Cancellation of Removal.¹⁰² DHS will dismiss removal actions without prejudice if DHS believes the applicant is likely to receive an immigration benefit, unless the applicant has criminal convictions or misconduct, the applicant is a threat to public safety or national security, or there is evidence of fraud.¹⁰³
- **Expedited Adjudication of VAWA Self-Petitions, T and U-Visa Cases Within 30 or 45 Days:** Immigration and Customs Enforcement (ICE) is required to notify the VAWA Unit at the DHS Vermont Service Center when an immigrant in removal proceedings or in immigration detention has a pending application for immigration benefits, including VAWA, T or U-visa applications.¹⁰⁴ ICE in cases of immigrant victims is also directed to send the victim's "A" file, the immigration case file, to the VAWA Unit.¹⁰⁵ DHS policies further direct the VAWA Unit to endeavor to adjudicate the victim's application for VAWA, T or U visa immigration relief within 30 days if the victim is detained and within 45 days in the cases of non-detained victims.¹⁰⁶ However, the VAWA Unit has discretion in its collaboration with ICE that affects the extent to which the VAWA Unit will meet these adjudication targets.¹⁰⁷ The VAWA Unit will require that advocates and attorneys working with immigrant victims in detention and in removal proceedings request expedited adjudication based on the following additional factors: severe financial loss to company or individual; extreme emergent situation; humanitarian situation; Department of Defense or national interest situation; USCIS error; and compelling USCIS interest.¹⁰⁸

⁹⁷ This includes cases brought for sexual violence, sexual harassment and discrimination in the workplace, to individuals engaged in a protected activity related to civil rights, such as union organizing or landlord-tenant disputes. Crime Victims and Witnesses Memo, *supra* note 94.

⁹⁸ *Id.*, at 3.

⁹⁹ Prosecutorial Discretion Memo, *supra* note 96, at 5.

¹⁰⁰ It is important to note that the exercise of prosecutorial discretion is not limited to crimes and victims eligible for immigration relief through VAWA, T or U-Visas. This policy guidance provides DHS officials greater latitude to exercise this discretion in favor of immigrants who are victims or witnesses and extends to any crime, including crimes not listed in the U-visa.

¹⁰¹ See Prosecutorial Discretion Memo, at 4.

¹⁰² John Morton, Assistant Secretary, U.S. Customs and Immigration Enforcement, Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions (August 20, 2010), available at <http://www.ice.gov/doclib/detention-reform/pdf/aliens-pending-applications.pdf> (hereinafter "Pending Applications Memo").

¹⁰³ *Id.*, at 2.

¹⁰⁴ Pending Applications Memo (This memorandum extends to all approved and pending but likely to be approved immigration cases in which the applicant has an immediate basis for immigration relief and includes VAWA, T and U visa cases).

¹⁰⁵ *Id.*

¹⁰⁶ U.S. Citizenship and Immigration Services, Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings; Revisions to the Adjudicator's Field Manual (AFM) New Chapter 10.3(i): AFM Update AD 11-16 (PM-602-0029) (February 4, 2011), available at:

<http://www.uscis.gov/USCIS/Outreach/Interim%20Guidance%20for%20Comment/coordination-adjud-removal-proceedings.pdf>;

¹⁰⁷ *Id.*

¹⁰⁸ U.S. Citizenship and Immigration Services, Expedite Criteria (June 17, 2011), available at:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=16a6b1be1ce85210VqNVCM10000082ca60aRCRD&vgnnextchannel=db029c7755cb9010VqNVCM10000045f3d6a1RCRD>. Expedite requests made in VAWA

Violations of VAWA Confidentiality, Victim Safety Protections and Locational Enforcement Limitations

The VAWA confidentiality provisions were created to prevent batterers, rapists, traffickers and other crime perpetrators from using the immigration system as a tool of power, coercive control,¹⁰⁹ abuse, or to retaliate against, their victims.¹¹⁰ In the past, perpetrators of criminal acts have used threats to turn immigrant victims (both documented and undocumented) in to immigration authorities for deportation in order to coerce victims and secure their silence. Abusers, traffickers and crime perpetrators have also used information provided by DHS to locate and harm their spouses, children, and other crime victims to stop them from providing information and testimony to law enforcement officers, prosecutors and courts.

Abusers and crime perpetrators contact DHS officials and seek to enlist their support to secure initiation of an immigration enforcement action against their victim or seek to provide DHS information that will lead or contribute to DHS denying the victim's pending immigration case or taking a negative enforcement action against a victim. Harmful actions might include disclosure of the fact that the victim has filed for immigration relief in a VAWA self-petition, VAWA cancellation of removal or suspension of deportation case, a battered spouse waiver or a T- or U-visa case. Other actions include triggering an interview, investigation or issuance of a notice to appear against a victim, filing of a removal case against a victim, or using abuser-provided information to contribute to an unfavorable ruling denying a victim's application for an immigration benefit.

VAWA confidentiality rules strengthen criminal prosecutions by eliminating the abuser's ability to influence the adjudication of the victim's immigration case including deportation. At the same time VAWA confidentiality rules enhance protection for immigrant victims of domestic violence, sexual assault and trafficking, freeing them to safely seek victim services and justice system protection without fearing the deportation that their abusers have told them will occur if they seek help. VAWA's immigration confidentiality protections are an essential part of the Violence Against Women Act's increasing protection of the confidentiality, privacy and safety of victims of violence against women and their children. Without the VAWA immigration relief and the VAWA confidentiality, abusers of immigrant victims cannot be held accountable for their crimes, victims will be forced into silence and abusers will continue perpetrating crimes in our communities.

Violations of VAWA confidentiality non-disclosure rules create serious, even life-threatening dangers to individual crime victims – men, women and children. Violations compromise the trust that immigrant victims have in the efficacy of services that exist to help them. They lead federal government officials to unknowingly help crime perpetrators to retaliate, harm and manipulate victims and elude or undermine criminal prosecutions.¹¹¹

Advocates, attorneys, and justice system and immigration system professionals need to be aware of the various activities that constitute violations of VAWA confidentiality. The violations can be grouped into the following categories:

- Violations for releasing protected information:¹¹² Release of information contained in a protected VAWA immigration file to the abuser or others (including the existence of or the facts of a VAWA immigration case; locational information, or information about victimization contained in an immigration case (VAWA self-petition, VAWA cancellation or suspension, T visa, U visa or battered spouse waiver or any other family-based visa or removal case involving such victim). These rules apply to information victims file with the Department of Homeland Security, the Department of State and the Department of Justice. DHS authorities have also taken

confidentiality protected cases are made directly to the VAWA Unit of the Vermont Service Center. E-mail to Leslye Orloff from Lynn A. Boudreau, Assistant Center Director, Vermont Service Center VAWA Unit (March 4, 2011).

¹⁰⁹ Mary Ann Dutton & Lisa Goodman, Coercion in Intimate Partner Violence: Towards A New Conceptualization, 52 Sex Roles: A J. of Res. 743 (June 2005).

¹¹⁰ See *Hawke*, 2008 WL 4460241, at *7 (N.D. Cal. Sept. 29, 2008) (“[O]ne of the primary purposes of the VAWA confidentiality provision, namely, to prohibit disclosure of confidential application materials to the accused batterer.”) (citing 151 Cong. Rec. E2607-07 (2005)).

¹¹¹ See, e.g. Rep. Schroeder's comments, Hearing on H.R. 2202 (1995), supra note 24.

¹¹² IIRIRA Section 384 (a)(2); 8 U.S.C. 1367(a)(2).

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the position that this protected information should not be released through family courts, criminal courts and law enforcement.¹¹³ The goal of this provision is to prevent disclosure of information that a perpetrator could use to harm or locate a victim.

- **Victim Safety-Endangerment Violations—Prohibition on Reliance on Abuser Provided Information:** Gathering and/or use of information provided solely¹¹⁴ by an abuser, trafficker, crime perpetrator, or family member of any victim to initiate or undertake any part of an enforcement action, or to make any other adverse determination, in any immigration case against the crime victim is prohibited. These protections apply to reliance on information provided by an abuser or perpetrator without regard to whether the victim has filed a VAWA, T or U visa immigration case and are not limited to victims who have filed cases for immigration relief. These protections stop immigration enforcement agencies from using information provided solely by an abuser, trafficker or U visa crime perpetrator, a relative, or a member of their family,¹¹⁵ to take an adverse action regarding admissibility or deportability against an immigrant victim, without regard to whether a victim has ever filed or qualifies to file for VAWA related immigration relief.¹¹⁶
- **Prohibited Location Violations:** Enforcement actions are not to be taken against victims at shelters, rape crisis centers, victim services programs, community based organizations, courthouses, supervised visitation center or family justice centers.¹¹⁷ The fact that immigration officials have shown up at shelters (e.g. New Mexico and Alaska) and at courthouses (e.g. California, New York, New Mexico, , and North Carolina) was of grave concern to members of Congress. These VAWA confidentiality violations led Congress to strengthen the law to better deter these practices both in VAWA 2000¹¹⁸ and again in VAWA 2005.¹¹⁹ If any part of an enforcement action took place at any of the prohibited locations, Department of Homeland Security (DHS) must disclose this fact in the Notice to Appear, and to the immigration court, and must certify that such action did not violate VAWA confidentiality provisions.¹²⁰ DHS must certify and, if necessary, prove¹²¹ to the immigration judge that VAWA confidentiality was not violated by, for example, relying upon abuser-provided information.¹²²

Section 8 U.S.C. 1367(c) provides that violations of any of the three types of VAWA Confidentiality or Victim Safety Protections described above are punishable by a \$5,000 fine as well as disciplinary action.¹²³ VAWA 2005 required guidance and training for Department of Homeland Security officials including trial attorneys and enforcement officers on all of VAWA confidentiality's protections.¹²⁴

Adverse Decisions

¹¹³ U.S. Immigration and Customs Enforcement "Violence Against Women Act (VAWA 2005)." Online training 2007. p. 15. See *Hawke*, 2008 WL 4460241, at *6 (holding that disclosure is allowed only in judicial review of a government determination of the status of the immigration petition, not in other civil and criminal proceedings).

¹¹⁴ The policy of USCIS is that if the information can be independently corroborated by an unrelated source, the information may use used. See *Virtue*, INS Office of Programs, "Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA § 384," (May 5, 1997). Advocates and attorneys working with immigrant victims need to know that DHS officials may rely upon information in the public record and government databases, even if government officials first became aware of it through an abuser. "Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. 3402" H.R. Rep. No. 109-233, at 122 (2005).

¹¹⁵ *Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA Section 384*. May 5, 1997, Office of Programs, /s/ Paul W. Virtue, Acting Executive Associate Commissioner. ("Virtue memo").

¹¹⁶ IIRIRA Section 384 (a)(1); 8 U.S.C. 1367(a)(1).

¹¹⁷ Memorandum from the U.S. Customs Enforcement, Office of Detention and Removal Operations Director John P. Torres to Field Office Directors and Special Agents in Charge (January 22, 2007) (on file with the U.S. Department of Homeland Security). The memorandum offers interim guidance on operating procedures, including VAWA confidentiality requirements, prohibitions against relying on abuser-provided information, and enforcement actions taken at prohibited locations.

¹¹⁸ VAWA 2000, *supra* note 7.

¹¹⁹ VAWA 2005, *supra* note 8.

¹²⁰ Immigration and Nationality Act ("INA") § 239(e); codified at 8 U.S.C. §1229(e) "Initiation of Removal Proceedings: Certification of compliance with restrictions on disclosure."

¹²¹ Conyers Extension of Remarks, *supra* note 14 at E2606-07 (removal proceedings in violation of Section 384 of IIRIRA shall be dismissed); Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. 3402 (2005).

¹²² Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. Re. No. 109-233, at 122 (2005).

¹²³ Violence Against Women Act of 2005 ("VAWA 2005") in the Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA 2005"), [Pub. L. No. 109-162](#), Title VIII, Subtitle B, § 825(c) (2006), 8 U.S.C. 1229; INA Section 239(e).

¹²⁴ VAWA 2005 Section 817(d); Conyers Extension of Remarks, at E2606-07.

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An alien cannot be deemed inadmissible or deported based solely¹²⁵ upon information from her batterer or, under certain circumstances, his family members. Furthermore, the DHS cannot deny a VAWA self-petition, U visa, or cancellation of removal application or a family-sponsored immigrant visa petition based on information provided solely by the batterer.¹²⁶ This prohibition applies specifically to information provided by:

- a spouse or parent who has battered or subjected the applicant to extreme cruelty;
- a member of the spouse's or parent's family residing in the same household as the applicant who has battered the applicant or subjected her to extreme cruelty, if the spouse or parent consented to, or acquiesced in, such battery or cruelty;
- a spouse or parent who has battered or subjected the applicant's child to extreme cruelty;
- a member of the spouse's or parent's family residing in the same household as the applicant who has battered the applicant's child or subjected the child to extreme cruelty, if the spouse or parent consented to or acquiesced in such battery or cruelty; or
- the perpetrator of the substantial physical or mental abuse and the criminal activity against a U visa applicant, unless the applicant has been convicted of specific crimes.¹²⁷

If the Department of Homeland Security initiates removal proceedings against a battered immigrant based solely on statements by her abuser or another individual listed in IIRIRA Section 384(a)(1), her attorney¹²⁸ should move to terminate removal proceedings. The motion should include relevant facts about the abusive relationship, what steps the battered immigrant is taking to remove herself from the abuse, and what information the batterer has supplied that the Department of Homeland Security has acted upon. Examples of relevant factual information include:

- dates of any police reports filed;
- the existence of any civil protection order;
- the battered immigrant's application for VAWA relief;
- the battered immigrant's actions to seek help from a shelter;
- what information the batterer has given to the Department of Homeland Security employee;
- the name and position of the Department of Homeland Security employee; and
- what action that employee took.

The relevant portions of IIRIRA § 384 should be cited and attached for the judge's reference. Providing the immigration judge with a summary of the law's purpose can also strengthen the motion. The law was created so that abusers could not use the immigration system as a weapon against domestic violence victims.¹²⁹ When the immigration authorities take action based on information provided by the batterer, they violate the law and contravene the purposes behind VAWA. A 1997 INS memorandum concerning disclosure of information in VAWA cases provides language about the purpose of the law.¹³⁰ The memo, in relevant part, states:

...this provision appears to have been enacted in response to concerns from the advocacy community that INS officers have provided information on the whereabouts of self-petitioners or on their pending applications for relief to the allegedly abusive spouse or parent. The VAWA provisions ... were created by Congress so that the battered alien can seek status independent of the abuser. Thus,

¹²⁵ This requirement reduces the batterer's ability to retaliate against the victim, typically by attempting to jeopardize the victim's immigration status.

¹²⁶ See generally IIRIRA § 384(a)(1); 8 U.S.C. § 1367(a)(1).

¹²⁷ See IIRIRA § 384(a)(1)(E); 8 U.S.C. § 1367(a)(1)(E). For a list of the applicable crimes, see Immigration and Nationality Act (INA) § 241(a)(2); 8 U.S.C. § 1251(a)(2).

¹²⁸ Generally only an attorney or accredited representative recognized by the Board of Immigration Appeals may represent an immigrant before the immigration authorities or in removal proceedings.

¹²⁹ See *Hawke*, 2008 WL 4460241, at *7 (stating that the VAWA confidentiality provisions were intended to ensure that "abusers...cannot use the immigration system against their victims") (internal quotations omitted).

¹³⁰ Memorandum from INS Acting Executive Associate Commissioner Paul Virtue, "Non-Disclosure and Other Prohibitions Relation to Battered Immigrants: IIRIRA § 384," May 5, 1997.

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disclosure of information to the alleged abuser or any other family member was inappropriate even prior to the new law. With enactment of section 384, however, such inappropriate conduct is now also grounds for disciplinary action or fine, or both.

The brief supporting a motion to terminate removal proceedings should include a demand that DHS prove it obtained independent corroborative information before it acted. The 1997 memorandum states: “If an INS employee receives information adverse to an alien from the alien’s U.S. citizen or lawful permanent resident spouse or parent, or from relatives of that spouse or parent, the INS employee must obtain independent corroborative information from an unrelated person before taking any action based on that information.”¹³¹

Attorneys should also consider moving to suppress evidence that comes from the abuser or his family members and should ask the court to require that the Department of Homeland Security prove that any corroborative sources the government wishes to use do not relate back to the abuser. In deciding whether information was obtained about the victim is allowed the court should carefully examine whether there is a connection between DHS learning about the information and the abuser or crime perpetrator that DHS would not have sought or obtained otherwise. If the information would have been obtained when DHS conducted a criminal background check of the victim in connections with her application for immigration benefits, an immigration judge could reasonably conclude that the information was independently corroborated. If, on the other hand, DHS was highly unlikely to obtain the information other than from the abuser, such as information that the victim was undocumented and was living at a women’s shelter, in such cases the court should be encouraged to dismiss the immigration court proceeding brought against the victim when the tip as to the victim’s whereabouts or the victim’s undocumented status was provided to DHS by the perpetrator.

Violations of VAWA Confidentiality and Victim Safety Protections: Case Examples

The following are examples of VAWA confidentiality violations taken from actual cases occurring in a variety of jurisdictions across the country. These stories are being shared to improve knowledge among government agency personnel, victim advocates, legal services lawyers, and immigration attorneys about the three different types of protections included in VAWA confidentiality. These stories illustrate steps advocates and attorneys working with immigrant victims took to help their clients when VAWA confidentiality was violated. The names of the victims have been changed and locational information removed to protect victim safety and consistent with VAWA confidentiality.

Case #1 Release of protected information

ICE officer disclosed protected information by giving the abuser the victim’s “A” number and allowing him to make copies of the victim’s U visa case file

Location of ICE’s arrest of victim:	Victim’s workplace
Date of ICE’s arrest of victim:	Fall of 2005
Victim’s immigration case:	U interim relief
Violation of 8 U.S.C. 1367(a)(2):	ICE officer directly gave to the abuser the victim’s “A” file and allowed him to make copies of the victim’s U interim relief application
Victim:	Phuong Nguyen

Phuong Nguyen was arrested and detained by ICE in fall of 2005, a few weeks after having filed an application for U interim relief. Unbeknownst to her, she had a final removal order that her prior counsel had never told her about. Phuong’s new immigration attorney eventually got her released from ICE custody, and Phuong was granted U

¹³¹ *Id.* It is also possible to move to suppress evidence that was obtained as a result of a violation of Section 384. This argument is similar to the “fruit of the poisonous tree” doctrine in criminal law, which precludes the introduction of evidence discovered due to information found through an illegal search or other unconstitutional means

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interim relief in the beginning of 2006, after her attorney made numerous requests for CIS to expedite the U visa application.

The abuser was arrested and detained by ICE in December 2005. In January 2006 the abuser called Phuong's mobile telephone from the ICE detention center, repeatedly harassing her and threatening to take their child from her. The abuser told Phuong that he knew she had applied for U interim relief because an ICE officer had shown him her "A" file and allowed him to make copies of all documents in the file including her declaration in support of the U interim relief application. The abuser made copies of these documents and mailed them to their mutual friends and acquaintances.

Phuong's immigration attorney made many inquiries to the deportation unit (via telephone, email, fax), to the individual officer, the deportation unit supervisor, and the ICE Field Office Director to determine why VAWA non-disclosure rules had not been followed in this case. After receiving a voicemail from a deportation officer saying that it was an ICE trial attorney who provided Phuong's "A" file to the abuser, Phuong's attorney sought an explanation from the ICE Chief Counsel. ICE Chief Counsel was responsive and joined a motion to reopen for the victim, and an ICE officer agreed to put a block on Phuong's mobile telephone so that her abuser could no longer call her from the ICE detention center.

The violation of VAWA non-disclosure rules (8 U.S.C. 1367(a)(2)) in this case led to an internal ICE investigation in the office. This case illustrates how the prohibited actions of an individual ICE employee - directly handing over the victim's "A" file to the abuser and allowing him to make copies of her U interim relief application - enabled the abuser to inflict additional harm and cruelty on the victim and her child through repeated telephone harassment and threats. The responsiveness of the ICE Chief Counsel and officers who tracked down the responsible employee and blocked the abuser from contacting the victim reflect the willingness of ICE to work to rectify such occurrences - but indicates the need for DHS (ICE, CBP, and CIS) to put in place a system for monitoring files, controlling access to them, to ensure that such a situation is prevented before it ever occurs. The quick response of ICE supervisors in this case promotes victim safety. When abusers can obtain information about a victim or the existence of a victim's case it can increase harm and risk of future injury or death of the victim.

Case #2- Release of Protected Information

VAWA cancellation case information was given on the immigration court's automated information system allowing a third party to obtain confidential information about the victim at court. Tapes from victims' VAWA cancellation case were released to abuser's attorney

Location of Violation:	Immigration court proceedings
Date of incident:	Summer 2007
Violation of 8 U.S.C. 1367(a)(2):	Release of information about the existence of and taped transcripts from VAWA cancellation of removal case.
Victim's immigration case:	VAWA Cancellation of Removal
Victim:	Ana Garcia Chessmore

Ana was married to Samuel Chessmore who was a U.S. citizen or lawful permanent resident. During the course of their marriage, Samuel started to become abusive towards Ana. He never filed a family based petition to provide Ana lawful permanent residency based upon marriage. Ana ultimately left Samuel and began dating Miguel who was also undocumented. Ultimately, Ana was placed in removal proceedings where she obtained an attorney and learned that she was eligible for VAWA cancellation of removal based on the abuse perpetrated against her by her husband Samuel. As a battered immigrant, Ana was entitled to the protections of VAWA confidentiality in removal proceedings and her attorney reminded the court of this at their first appearance.

Shortly after this appearance, details of Ana's court information were made available on the automated telephone service for the court. Shortly after, Ana's attorney received a call from an attorney who was representing Miguel. Miguel's attorney had received tapes of Ana's confidential testimony from her individual immigration court hearing. The testimony described the abuse perpetrated by Samuel and included other personal information.

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This case illustrates a direct violation of VAWA confidentiality IIRIRA 384(a)(2) protections. In this case once the court and the trial attorney for the government knew that the victim was a battered immigrant, VAWA confidentiality would bar any release of information about the existence of that case in the electronic or telephone information system. The goal of this provision was to protect against abusers finding out about the immigration case and tracking down the victim through that case. The release of copies of the transcript from a VAWA cancellation of removal hearing is a second violation of VAWA confidentiality's explicit prohibitions. In this instance the release to Miguel's attorney was particularly dangerous after Miguel had used DHS information about the hearing to locate Ana. This case illustrates the need for ongoing training of ICE trial attorneys, immigration judges, and immigration court officials on VAWA confidentiality, as well as an enforcement system to deter violations and hold violators accountable.

Case #3- Use of abuser provided information

ICE officer relied upon information provided by a USC batterer and child abuser to issue a Notice to Appear and seek arrest of his alien spouse who was in hiding with their children at a shelter.

Location of incident:	ICE contacted victim's immigration attorney for information
Date of ICE's arrest of victim:	Fall 2005
Victim's immigration case:	Eligible to self-petition under VAWA
Violation of 8 U.S.C. 1367(a)(1):	ICE officer contacted victim's family lawyer and immigration attorney in attempt to serve Notice to Appear on victim and her children
Victim:	Aisha Noori

Aisha Noori left an abusive home with her children and later, with an attorney's assistance, self-petitioned under VAWA. Unable to find his wife and stepchildren, the batterer repeatedly called, faxed, and appeared at the ICE office insisting that his wife had tricked him into marriage and that the marriage was a sham. The abuser told ICE that Aisha had overstayed her fiancée visa. He also told ICE that Aisha had moved twice since leaving him and had failed to file a Form AR-11 (change of address). The abuser fabricated a web page and posted false information to make it look like Aisha was seeking another U.S. citizen spouse. In the fall of 2005 an ICE Officer contacted Aisha's family lawyer saying that a Notice to Appear had been issued. The ICE officer asked for Aisha's location, which the family lawyer refused to furnish.

The ICE officer then contacted Aisha's immigration lawyer, again seeking her location, which the immigration attorney refused to furnish. The ICE officer told the immigration attorney that he had issued the Notice to Appear based on what the abuser had told him. When the immigration attorney raised the VAWA confidentiality protections contained in 8 U.S.C. 1367(a)(1), the ICE officer replied that he had never heard of them. He told the attorney that this case sounded like the typical foreign bride who had defrauded the poor U.S. citizen husband. The attorney then faxed the ICE officer the DFCS finding of child abuse as well as a copy of 8 U.S.C. 1367(a)(1). It was only after he received these documents and had several more conversations with Aisha's attorney that the ICE officer agreed not to arrest Aisha and her children.

This case demonstrates the potential danger posed to victims of well-documented spousal and child abuse by immigration enforcement agents who either have not been trained in – or do not abide by – the VAWA confidentiality rules that prohibit taking removal action based on information provided solely by an abuser. This family benefited from the adherence of their family and pro bono immigration attorneys to VAWA confidentiality rules, and the efforts of their bono immigration attorney to educate the ICE officer on the family violence and VAWA confidentiality guarantees. However, another victim might not be so lucky. A system of accountability in which disciplinary actions and investigation for violations that do in fact occur, with public distribution of information about disciplinary actions taken, will contribute substantially to avoiding such a situation in the future. This will deter agents from undertaking enforcement or removal actions based on prohibited information. The complaints

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procedure created by the DHS Office of Civil Rights and Civil Liberties provides an important enforcement mechanism to ensure compliance with VAWA confidentiality by DHS employees.¹³²

Case #4- Use of Abuser Provided Information

Abuser repeatedly went to ICE office to report his wife as having overstayed her visa. ICE arrested his abused wife who was ultimately released and granted legal immigration status.

Location of ICE’s arrest of victim:	Residence of victim’s sister, as furnished by abuser
Date of ICE arrest:	Summer 2003
Violation of 8 U.S.C. 1367(a)(1):	ICE acted on information furnished by abuser to arrest the victim
Victim’s immigration case:	Granted asylum Winter 2004
Victim:	Marlene Petersen

Abuser repeatedly showed up at the ICE office to report his wife, Marlene Petersen, as overstaying her visa. He gave ICE the address where Marlene was staying with her sister. The ICE officer acted on this information and arrested Marlene at her sister’s residence in the summer of 2003. In this case, the victim was eligible not only for VAWA relief, but for asylum as well, and the abuser nearly succeeded in making ICE an unwitting accomplice to his ongoing abuse of the victim. Marlene was granted asylum in winter of 2004.

This case illustrates how an abuser might attempt to use an immigration enforcement officer to further harm and control his domestic abuse victim, in particular to retaliate for her assertiveness in leaving him. As in the case above, comprehensive training for all immigration enforcement officers and agents, combined with an established system of accountability that includes a transparent complaints procedure that publishes the request of its investigators publicly in a way that protects victim confidentiality could minimize the risk of such a situation arising again in the future.

Case #5- Use of Abuser Provided Information

Border Patrol officers, at abuser’s urging, accompanied police responding to a domestic violence call and arrested the victim:

Date of ICE arrest:	Spring of 2006
Violation of 8 U.S.C. 1367(a)(1):	Abuser called Border Patrol and gave them the victim’s home address. When victim called the police after the abuser had threatened her, Border Patrol accompanied police in responding to the call. Border Patrol arrested and detained the victim.
Victim’s immigration case:	Skeletal VAWA self-petition filed with CIS
Victim:	Catalina Gilberto

Following a history of domestic violence in this case, the victim, Catalina Gilberto, and the abuser were in the midst of divorce proceedings in which custody of their children was contested. In the spring of 2006 the abuser dropped the children off at Catalina’s home, and the abuser and Catalina had an argument during which she called the police for help. As the abuser got into his car, he said, “See, now they are going to take you away, and I will keep the children.” When the police arrived, they showed up with a Border Patrol agent. The agent asked the police officer what Catalina’s immigration status was. The police officer said he did not know. The agent then asked Catalina what her status was. She said nothing. Instead she showed the Border Patrol agent papers from the local legal services agency stating that she had a pending VAWA self-petition. The agent said that those papers meant nothing, and he threw them on the ground. The agent then asked Catalina how she entered the U.S. The agent then said that

¹³² Memorandum from the U.S. Customs Enforcement, Office of Field Operations to Regional Directors and Deputy Executive Associate Commissioner, Immigration Services Division (August 5, 2002) (on file with the U.S. Department of Homeland Security). The memorandum emphasizes that personnel who violate the confidentiality provisions are subject to disciplinary action and civil fines of up to \$5,000.

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he had to take Catalina in. A neighbor, who was witnessing this unfold, asked if it mattered that Catalina had a pending VAWA case. The agent said that it didn't. He then arrested Catalina and placed her in his car.

Upon arriving at the Border Patrol office, the agent spoke with another officer who said that Catalina had been reported three times by her husband because they were getting a divorce. The agent then said to Catalina, "Do you prefer that I deport you right now, or do you want a hearing with a judge?" Catalina said that she didn't know what to do. He got angry and said in a cruel and mocking tone, "Fine. I'll give you a hearing with a judge, but I don't know what you're going to tell him. That you have two children and don't work, and you don't have documents?" He told her to shut up. He then photographed Catalina and took her fingerprints.

This case illustrates how an abuser, irate over losing his wife and children, put immigration enforcement, via Border Patrol, on the victim's trail. Particularly troubling is how Border Patrol used the local police to arrest and detain the victim. The police, as guardians of public safety, are charged with the protection of all residents, regardless of immigration status. In this case the victim was punished for calling the police for help, when instead of receiving protection, she was arrested by Customs and Border Patrol. This practice created a chilling effect throughout all immigrant communities in the region who, fearing that calling the police will result in their deportation, are reluctant to contact the police. This case illustrates why training policies from DHS headquarters are needed to provide guidelines for interaction with domestic violence victims, and for handling information provided by abusers, across all three immigration enforcement branches of the department – ICE, CIS, and CBP. In the absence of such official guidance, agents in all three organizations are likely to act on their own biases and assumptions about domestic violence.

Case #6- Enforcement action at prohibited location

Immigration and Customs Enforcement (ICE) officer attempted to arrest a victim in family court:

Location of ICE's attempted arrest:	Child custody hearing, family court,
Date of ICE's attempted arrest:	Early 2006
Violation of 8 U.S.C. 1367(a)(1):	ICE acted on information furnished by abuser to show up at child custody hearings to arrest victim.
Victim's immigration case:	Eligible to self-petition under VAWA
Victim:	Rosa Vasquez

In early 2006 Rosa Vasquez sought custody of her child and filed a petition in a family court. In retaliation, the abuser contacted ICE and informed ICE of the location and dates of the child custody hearings. The ICE officer appeared in person at two different child custody hearings seeking to arrest Rosa. Rosa hid in a different part of the courthouse while the ICE officer spoke with Rosa's family lawyer and her child's attorney. The ICE officer told the attorneys that he was pursuing Rosa because she was a "criminal" and had a removal order. The family lawyer told the ICE officer that Rosa was preparing to self-petition under VAWA. The officer responded that she was not eligible for VAWA. Subsequent to ICE's attempted arrest of Rosa, Citizenship and Immigration Services (CIS) approved her VAWA self-petition.

During the above interaction, several other terrified immigrant women and children left the courthouse for fear that ICE would arrest them. This case illustrates how the abuser used ICE to scare and punish the victim for seeking custody of her child, and how the specter of an ICE officer hunting down a victim seeking help in family court scares other non-citizen applicants away from assistance. This type of behavior also places VAWA and U-visa eligible victims at risk of being deported from the US and permanently separated from their children before they can file their VAWA or U-visa cases. This is why Congress specifically prohibited this behavior in VAWA III, amending INA §239 to mandate certification of compliance with non-disclosure rules whenever enforcement actions leading to removal take place at courthouses.¹³³

Case #7- Enforcement Action at a Prohibited Location

¹³³ INA §239(e), added by §825(c)(1) of P.L. 109-162 (1/5/06, effective 2/4/06)

ICE officer acted on information provided by an abuser to attempt to arrest victim at a protection order court hearing:

Location of ICE’s attempted arrest:	Restraining order hearing, family courthouse
Date of ICE’s attempted arrest:	2003
Violation of 8 U.S.C. 1367(a)(1):	ICE acted on information furnished by abuser re: victim’s scheduled appearance at restraining order hearing, and sent several agents to stand watch outside the domestic violence courtroom.
Victim’s immigration case:	Conditional permanent resident
Victim:	Aster Kebede

In this case the batterer abused the victim, Aster Kebede, for several years, including repeated threats to get her deported. After a particularly violent episode, Aster left the batterer and stumbled to a bus station with her clothes torn. The bus driver took her to the police who referred her to a domestic violence shelter. With the assistance of a victim advocate, Aster filed for a restraining order. At the second restraining order hearing ICE agents showed up at the family courthouse and waited outside the domestic violence courtroom ready to arrest Aster upon conclusion of her restraining order hearing. While still inside the domestic violence courtroom, the victim advocate called Aster’s immigration attorney who came to the family court to intercede with the ICE agents. The attorney told the agents that they were violating the VAWA confidentiality protections contained in 8 U.S.C. 1367(a)(1), which they denied. The ICE agents stated that the husband had informed ICE that the marriage was a sham.

Restraining order hearings are generally open to the public, but, for the protection of victims, the system in which identifying information is kept is not easily accessed, and this information is directly provided only to the victim, her advocate, the abuser, and family court staff. It is unusual for immigration agents to track family court or protection order cases and to appear at such hearings unless they have been directly informed to do so. The attorney in this case negotiated with ICE to allow Aster to go through with her hearing to obtain a restraining order, agreeing to bring Aster to the ICE office later in the week. Ultimately, the ICE agents left the family courthouse. Family court records have no information about immigration status of the parties, and immigration enforcement officers would have to receive information from a party about immigration status from another party or witness to know about any particular protection order proceeding and the parties involved.

This case illustrates how an abuser, angered by being served notice of a domestic violence protection order proceeding, can attempt to use immigration enforcement agents to threaten and retaliate against the victim. It also demonstrates the origins and credibility of victims’ fears that seeking a protection order or otherwise availing themselves of the protections offered them through the US courts could put them in jeopardy of removal. News of this incident at the family courthouse – of immigration agents waiting to arrest the victim after her domestic violence restraining order hearing – spread rapidly, and victim advocates in the area are to this day struggling to assure immigrant victims that they can seek protection in the family courts without fear of immigration consequences.

Case #8- Enforcement Action at a Prohibited Location

ICE officer arrested a battered immigrant victim, her daughter and her niece during a hearing in a civil protection order courtroom in violation of 8 U.S.C. 1229 – INA Section 239(e):

Location of Violation:	State protection order courtroom
Date of incident:	Spring 2007
Violation of 8 U.S.C. 1229(e):	ICE officer appeared at a family courtroom at a case in which the victim was seeking a civil protection order against her abuser and arrested the victim, her child and the witness in the courtroom during the protection order hearing.
Victim’s immigration case:	U Visa case
Victim:	Louisa Fernandez

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In early 2007, Louisa Fernandez filed a Domestic Violence Protective Order against her husband and was granted an Ex Parte Protective Order. The ex-parte order was served on Louisa's husband and he was ordered to appear at the full protection order hearing. Louisa's husband had been threatening to call and turn her in to ICE officials and prior to the protection order hearing Louisa received a call from the wife of one of her husband's friends (a DEA informant) telling her that her husband was going to have ICE pick her up and deport her.

On the day of the hearing, a man who claimed to be an ICE agent entered the courtroom wearing plain clothes. He stomped into the courtroom, motioned to the abuser to confirm the identity of Louisa and insisted on interrupting the court's civil protection order hearing to arrest Louisa, her daughter and a witness (her niece). The ICE officer was physically and verbally confrontational to Louisa and her attorney. He claimed that the 2007 ICE memo instructing agents not to arrest victims in courtrooms or shelters was merely policy without the force of law. The agent also asserted that he was allowed to use tips from abusers (Louisa's husband had a pending criminal case for assault on another female) and that VAWA self-petitions were just ways to "circumvent the law." In the midst of the family court protection hearing, the ICE officer demanded that he take away Louisa, her daughter and her niece at that moment because he had a busy schedule. He was physically aggressive during the entire encounter, especially in handcuffing Louisa and her niece and taking them, and Louisa's minor daughter, to the ICE office.

At the ICE office Notices to Appear were issued and it took Louisa's immigration and family law attorneys six hours to convince ICE officials to release them from custody. Their release was secured by Louisa's attorneys who provided copies of VAWA 2005 and other DHS policy guidance on VAWA confidentiality to ICE officials at the local ICE office. *This case was brought to the attention of ICE officials including the Director of Operations who intervened to swiftly identify the VAWA confidentiality violations that had occurred in this case and to cancel the Notices to Appear that had been issued against Louisa, her daughter and her niece.*

Case # 9- Enforcement Action in a Prohibited Location

ICE arresting a victim in a domestic violence shelter:

Location of ICE's arrest of victim:	Domestic violence shelter
Date of ICE's arrest of victim:	2003
Violation of 8 U.S.C. 1367(a)(1):	ICE acted on information furnished by abuser that victim was in hiding in a domestic violence shelter, and then exerted pressure on the local police chief to obtain access to the confidential shelter.
Victim's immigration case:	Eligible for U interim relief
Victim:	Eliska Novak

Eliska Novak fled to a confidential domestic violence shelter. ICE agents showed up at the shelter insisting to see Eliska, but the shelter director refused access citing that the confidential shelter was open to all domestic violence victims, regardless of immigration status. The ICE agents then left the shelter. Later the local police chief called the shelter director explaining that the ICE agents just wanted to ask Eliska a few questions. The shelter director and the local police chief had a well-established history of working together to serve all domestic violence victims. In response to the police chief's request, the shelter director allowed the ICE agents to enter the shelter. They immediately arrested Eliska and placed her in removal proceedings.

This case is extremely troubling and illustrates how the abuser used ICE to locate and punish the victim who was living for her protection in a confidential domestic violence shelter. It also illustrates how ICE agents enlisted the local police chief to mislead the shelter staff and persuade them to violate their own VAWA and Family Violence Prevention and Services Act non-disclosure obligations to gain access to the victim. This incident had far-reaching effects; many other immigrant women and children who had taken refuge in the shelter were frightened by the arrival of the ICE agents, and word quickly spread among immigrant communities that domestic violence shelters are not safe for immigrants. This leaves immigrant victims of domestic violence with no "safe" place to go; with no choice but to remain in violent, dangerous homes. VAWA III sought to minimize this scenario by prohibiting DHS officers from undertaking enforcement actions at shelters.¹³⁴

¹³⁴ ICE Memorandum, supra note 92.

HELPING VAWA CONFIDENTIALITY WORK TO HELP IMMIGRANT VICTIMS AND RESPONDING TO VIOLATIONS OF VAWA CONFIDENTIALITY¹³⁵

Collecting Information and Prevention of Violations

Safety Steps for Victims With VAWA Confidentiality Protected Cases Filed with DHS. Advocates and attorneys working with immigrant crime victims who have filed cases with DHS for VAWA, T, U or other VAWA Confidentiality protected immigration cases should take the following steps to protect themselves against immigration enforcement, detention and removal:

- Memorize the “A” Number: Once any immigration case has been filed the immigrant’s case file will be assigned an identification number. This number begins with the letter “A.” Victims should be strongly encouraged to memorize this number and if ever stopped by an immigration enforcement official or local police, should tell them the following:
 - They are a crime victim
 - They have filed a VAWA confidentiality protected immigration case with DHS. Provide the officer their “A” number.
- Ask the DHS Official to Check the “384 Red Flag” System: DHS officials have been directed when they encounter a potential victim to check the “Central Index System” for the victim’s name and/or “A” number. All persons who have filed VAWA Confidentiality protected cases will appear in the system. DHS has been instructed not to pursue enforcement actions against crime victims and witnesses, except in limited circumstances that include national security, public safety, history of criminal convictions or history of egregious immigration violations.
- Victims who are pregnant, nursing and/or are the primary caretakers of children: If the victim is the primary caretaker of children, pregnant, or nursing they should also provide that information to the first DHS official they encounter and continue telling this fact to DHS. DHS has policies designed to prevent the detention of these immigrants
- Ask to call their lawyer and/or advocate
- Ask for an interpreter if the victim is limited English proficient.

To help victims, particularly those who are limited English proficient, convey this vitally important information to immigration enforcement officials, advocates and attorneys should provide the client with a page that contains the information described above. This should be written in English and addressed to the DHS or law enforcement official. It should be filled in with the victim’s “A” number and your phone number.

Carry copies of VAWA confidentiality materials with you to family court proceedings. If a DHS enforcement officer (ICE¹³⁶ or CBP¹³⁷) agent arrives at the courthouse¹³⁸ to arrest a domestic violence or sexual assault survivor, it is likely that the agent does not know about the protections afforded by the confidentiality provisions of VAWA. You, as the advocate for the survivor, may be able to prevent her arrest and/or detention by educating the agent. Showing the agent and the judge copies of the following documents may help you. These statutes and DHS memoranda describe federal laws and DHS policies designed to offer protection to immigrant crime victims and to deter detention, removal and enforcement actions against immigrant survivors:¹³⁹

¹³⁵ This section of the chapter was jointly written by Hannah F. Little, Director, Immigrant Justice Project, Legal Services of Southern Piedmont, Charlotte, NC and Leslye E. Orloff. For technical assistance on VAWA confidentiality issues contact National Immigrant Women’s Advocacy Project. (202) 274-4457. niwap@wcl.american.edu

¹³⁶ Immigration and Customs Enforcement handles enforcement of immigration laws generally in the interior of the United States.

¹³⁷ Customs and Border Patrol handles enforcement of immigration laws at borders, airports, and other ports of entry as well as at DHS checkpoints within the United States.

¹³⁸ The same applies to any other location protected by VAWA confidentiality including: domestic violence shelters, rape crisis centers, supervised visitation centers, family justice centers, victim’s services or victim’s services providers or community based-organizations, and courthouses. See INA, Section 239(e).

¹³⁹ All documents are contained in Legal Momentum’s web library at: www.iwp.legalmomentum.org

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- IIRIRA §384: prohibits DHS employees from acting solely on information given by the abuser and/or family members of the abuser; prohibits DHS from disclosing any information relating to VAWA self petitioners or applicants for T and U visas.¹⁴⁰
- INA § 239(e): certification of VAWA confidentiality compliance for enforcement actions at prohibited locations.¹⁴¹
- DHS Broadcast Message on New 384 Class of Admission Code: informs DHS officials "to become familiar with a new code in the Central Index System (CIS). The new Class of Admission (COA) code "384" was created to alert DHS personnel that the individual is protected by confidentiality provisions. Information about the location, status, or other identifying information of any individual with the code "384" may not be released."¹⁴²
- Crime Victims and Witnesses Memo, John Morton, Director, U.S. Immigration and Customs Enforcement, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, at 3 (June 17, 2011).¹⁴³
- Prosecutorial Discretion Memo, John Morton, Director, U.S. Immigration and Customs Enforcement, Exercising Prosecutorial Discretion Consistent with Civil Immigration Enforcement Priorities of the Agency, at 2 (June 17, 2011).¹⁴⁴
- Memorandum from Paul Virtue, Acting Executive Associate Commissioner, on Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA Section 384 (May 5, 1997).¹⁴⁵
- Memorandum from John P. Torres, Director of Detention and Removal Operations, & Marcy M. Forman, Director of Office of Investigations, Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005 (January 22, 2007) (designates prohibited locations including, but not limited to, state courthouses, domestic violence shelters, rape crisis centers, victims services centers, and supervised visitation centers and clarifies that a self-petitioner is someone the officer believes presents credible evidence that she is eligible for one of the designated forms of relief).¹⁴⁶
- Pending Applications Memo, John Morton, Assistant Secretary, U.S. Customs and Immigration Enforcement, Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions (August 20, 2010).¹⁴⁷
- Cases in Proceedings Adjudication Memo, U.S. Citizenship and Immigration Services, Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings; Revisions to the Adjudicator's Field Manual (AFM) New Chapter 10.3(i): AFM Update AD 11-16 (PM-602-0029) (February 4, 2011).¹⁴⁸
- This chapter

Reporting Violations to ICE

Record facts and initial impressions immediately. It is well known that people forget information with the passage of time. Most of us have experienced it in our work with clients as we attempt to nail down the details of events, names, and dates in the preparation of cases. As it is true for our clients, it is true for us as attorneys and advocates. If you suspect a violation of VAWA confidentiality, it is important to write down a detailed account of what happened as soon as possible after it happened. This may mean jotting notes down while meeting with your client or while en route to the local ICE office or state courthouse. At this point, the purpose of your notes is to retain the details of what happened while the details are still fresh, not to create a formal summary of the events.

¹⁴⁰ Available at: http://iwp.legalmomentum.org/vawa-confidentiality/statutes/VAWA%20CONF_8%20USC%201367_2005.pdf

¹⁴¹ Available at: http://iwp.legalmomentum.org/vawa-confidentiality/statutes/VAWA%20CONF_8%20USC%201229_2005.pdf

¹⁴² Available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/message%20to%20DHS%20384%20COA%20Final%2012.21.10.pdf>

¹⁴³ Available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton-Prosecutorial-Discretion-Memo-06-17-2011.pdf>

¹⁴⁴ Available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton%206.17.11prosecutorial-discretion-memo.pdf>

¹⁴⁵ Available at: http://iwp.legalmomentum.org/vawa-confidentiality/government-memoranda-and-factsheets/c_VAWAConf_DHSGuidanceSec%20384_05.05.97_FIN.pdf

¹⁴⁶ Available at: http://iwp.legalmomentum.org/vawa-confidentiality/government-memoranda-and-factsheets/VAWA%20CONF_Torres%20ICE%20VAWA%20Confidentiality%20Memo_1.22.07.pdf

¹⁴⁷ Available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/aliens-pending-applications.pdf>

¹⁴⁸ Available at: <http://www.uscis.gov/USCIS/Outreach/Interim%20Guidance%20for%20Comment/coordination-adjud-removal-proceedings.pdf>

VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections

If the violation was an ICE arrest in a prohibited location and you were present for the arrest, your notes should include what the agent said to you and how the agent responded after you told him you believed his actions were a violation of the confidentiality provisions of VAWA. You should also record who else was present and saw the arrest, e.g., the abuser, bailiffs, social worker, victim advocate, or the judge.

If the violation was an arrest or adverse determination for your client based on information provided by her abuser, this step may involve keeping a series of detailed notes rather than recording one single event. For example, if your client has told you that her abuser has threatened to report her to ICE or to sabotage her pending immigration case, note the circumstances of the threat(s), when the threat(s) occurred, and the frequency of the threat(s). DHS officials are unlikely to tell you whether they are acting on information received from the abuser. Thus, it will be important to record the details of the arrest or adverse determination in order to connect these facts to the abuser or the abuser's family member. For example, the arrest may have occurred in a location or at a time that the abuser specifically threatened or the adverse determination may have been made based on information only the abuser would have. Violations of this nature can be more difficult to document, but detailed notes may give you a better chance of proving that there was a violation.

If the violation involved a disclosure of information by DHS to the abuser, the abuser's family member or any other person, then this step may also involve a series of notes. It will be important to document how you or your client discovered the disclosure and why you believe the information came from a DHS employee.

Contact the local DHS office involved. Before preparing a formal complaint, contact the DHS office in your area. It is important to develop local relationships, as these relationships will immediately benefit your client(s). Reach out to the immediate supervisor of the ICE agent, USCIS¹⁴⁹ or CBP official involved and let them know that you think an arrest, part of an enforcement action, and/or adverse determination was made based on a violation of VAWA confidentiality. If your client has not yet filed the qualifying immigration application, carry enough evidence to show credible evidence that she would qualify.¹⁵⁰ If you do not know who the immediate supervisor is, you may also contact the local Victim/Witness Coordinator. The Victim/Witness Coordinator may not have the ability to correct the arrest or adverse determination but he or she can assist you in locating someone who can. Depending on the response from the local office, you may decide it is unnecessary to file a formal complaint with DHS about the violation.

Develop relationships to prevent further violations. Even if the violation does not lead to immigration enforcement, involvement of immigration officials can jeopardize the safety of immigrant victims. DHS employees should be encouraged to create mechanisms for protection of immigrant victims. These mechanisms may include:

- Identifying a DHS immigrant victim witness liaison or point of contact you can work with.¹⁵¹
- Developing a local mechanism for DHS and the immigration courts to quickly and safely input change of address information so that it remains confidential and batterers do not find out about immigration related interviews in victim's cases.
- Developing a local training with DHS adjudicators, enforcement agencies, DHS trial attorneys, and immigration judges to help them identify victims whom they encounter who qualify for VAWA, T, U, battered spouse waivers and other forms of immigration relief.

Immigration Relief

If your client is detained by DHS, outline other critical and compelling issues beyond the VAWA Confidentiality violation including:

- client being the primary/sole caretaker of a child;
- breastfeeding a child;
- health issues,

¹⁴⁹ U.S. Citizenship and Immigration Services. Handles the processing of visa applications and adjudication of grants of lawful permanent residency and naturalization.

¹⁵⁰ Evidence could include police reports, photos, protection orders, the protection order petition with the violence facts, civil or criminal court orders with a finding of abuse, or other documents that may be used to document abuse for a VAWA self-petition.

¹⁵¹ Call National Immigrant Women's Advocacy Project for a referral in your area.

VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections

- health and danger to other family members.

You should also advocate for:

- the cancellation of a Notice to Appear (“NTA”) if one has been issued;
- the prevention of any NTA from being served on the court if it hasn’t been served already;
- a joint motion to dismiss with the DHS trial attorney;
- the exercise of prosecutorial discretion not to issue an NTA

When The Victim Has Been Placed In Immigration Court Proceedings:

- Ask the immigration judge to require DHS to provide certifications required under INA section 239(e).
- Ask the immigration judge to require DHS to prove that no part of the enforcement action was related to any form of VAWA confidentiality violation.
- Ask the immigration judge to terminate the removal action against the immigrant victim(s).
- Request that the trial attorney representing DHS in the removal action join in a joint motion asking that the immigration judge terminate the removal proceedings.
- Subpoena the immigration enforcement agent to testify at a motion to dismiss hearing about the facts related to the enforcement action against your client.
- Insist that court proceedings in the immigration case be excluded from the court’s electronic notification system and that all proceedings be closed.

Violations in Family Court

File a Rule 11 *Motion in Limine* when the opposing counsel in family court threatens deportation or criminal action.

- See Rule 11 Memorandum attached as Appendix A to this chapter.
- See Rule 11 *Motion in Limine* to be used when the immigrant victim of violence is a Plaintiff, attached as Appendix B to this chapter. (In cases where the immigrant victim of violence is a Defendant, simply reverse “Plaintiff” and “Defendant” throughout the motion)

Make a Formal Complaint to the Office of Civil Rights and Civil Liberties with the Department of Homeland Security

If the violation is particularly egregious or if the local office is unresponsive, a formal complaint may be your best recourse. The DHS has set up procedures for receiving VAWA confidentiality enforcement requests. Complaints are to be filed with the DHS Office of Civil Rights and Civil Liberties as outlined below:

Prepare a detailed fact memo regarding the case. Start by including appropriate case identifying information including your client’s name, date of birth and A number, your client’s contact information to the extent available and your contact information. Flesh out and clearly outline the facts regarding the violation. This should include a brief procedural history of the case, your history with your client, the facts making your client eligible for immigration relief or protection under VAWA confidentiality provisions and the status of any pending family, immigration, or criminal law cases. Then, prepare a detailed summary of your notes regarding the VAWA confidentiality violation. Include as much detail as possible including name(s) and office of the DHS official(s) or employees involved; date, time and location of violation; what was said or done and by whom; who was present; who witnessed anything relevant; etc.

Attach supporting documentation.

Attach documentation that supports your client’s eligibility for protection under confidentiality provisions as well as other documentation supporting the allegation of a violation. This may include:

- Immigration notices and proof of eligibility as a VAWA, T or U visa victim
- Copies of DHS filings, including but not limited to I-360 Self Petitions, Petitions for U Nonimmigrant Status, Receipt Notices, Approval Notices, etc.
- DHS documentation served on your client as part of the violation
- Copies of state court pleadings relating to the case, including domestic violence protection order complaints, custody or divorce complaints, criminal charges

VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections

- Copies of state court orders relating to the case, including domestic violence protective orders, custody orders, child support orders, criminal convictions, and the history of any other court orders involving the victim, her children and the abuser.
- Fact memos or Affidavits from witnesses summarizing the incident. Third party witnesses such as state court officials or unrelated bystanders may be reticent to do this. However, it is worth asking and advocating for their assistance. If these witnesses do not provide a written summary, compile a list of their names and contact information to submit with your Complaint. This will enable the DHS officials who investigate the violation to interview witnesses.

File the complaint with the local office responsible for the violation.¹⁵²

It is important to first file this complaint with the supervisors in charge of the unit or employees responsible for the violation so that the local office can investigate or be given time to investigate and sanction violators as well as to develop appropriate protocol to address potential future violations.

Filing Complaints about VAWA Confidentiality Violations with the Department of Homeland Security

If the appropriate office fails to respond within a reasonable amount of time, file the complaint with DHS Office of Civil Rights and Civil Liberties. Your cover letter should include a formal complaint and request for investigation. Document what efforts you have made to address with the office responsible for the violation. The letter should cite INA §384 (8 USC §1367) and specify the violation. The letter should also serve as a roadmap to all the exhibits attached in support of your complaint. The Complaints should be addressed to:

The Department of Homeland Security
The Office of Civil Rights and Civil Liberties
Review & Compliance Unit
245 Murray Lane, SW
Building 410, Mail Stop #0800
Washington, DC 20528

Please contact NIWAP in advance of filing such complaints in order to strategize on filing the most effective complaint, centralize documentation of complaints, and for follow up with DHS CRCL on filed complaints.

¹⁵² For the formal DHS complaint process, see Appendix 3.x "Violence Against Women Act (VAWA) Confidentiality Provisions at the Department of Homeland Security" Department of Homeland Security, The Office of Civil Rights and Civil Liberty. Available at: http://iwp.legalmomentum.org/reference/additional-materials/vawa-legislative-history/government-memoranda-and-factsheets/VAWA%20CONF_DHS%20Complaint%20Instructions_2008.pdf/at_download/file.

Memorandum
VAWA Confidentiality and Federal Civil Procedure Rule 11 Violations¹⁵³

Discussion

The Federal Rule of Civil Procedure Rule 11 provides for the striking of pleadings and the imposition of disciplinary sanctions on attorneys or pro se litigants who abuse the signing of pleadings. Specifically, Rule 11(b)(1) provides that an attorney or pro se litigant presenting to the court a pleading, written motion, or other papers, certifies to the attorney's best knowledge that the claims, defenses, and other legal contentions are not meant to harass, cause unnecessary delay or increase the cost of litigation.

And further, Rule 11(b)(2) provides that an attorney or pro se litigant presenting to the court a pleading, written motion, or other papers, certifies to the attorney's best knowledge that the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

An attorney or pro se litigant is considered to be presenting to the court when the attorney signs, files, submits, or later advocates a pleading, written motion, or other paper. Fed.R.Civ.P. 11(b). The sanctions for an attorney or pro se litigant violating Rule 11 can be instituted on the court's initiative, or by motion. Fed.R.Civ.P. 11(c)(1). The procedure for filing a motion for Rule 11 sanctions includes a "safe harbor" of twenty-one days between the service of the motion and its filing with the court, so that the individual who has allegedly violated Rule 11 has twenty-one days to retract the statement. Fed.R.Civ.P. 11(c)(1)(A). Due to the nature of Rule 11 being a remedy deterring malicious behavior, rather than enriching the aggrieved party, the penalties include economic and direct costs only. Fed.R.Civ.P. 11(c)(2). Monetary sanctions are allowed for all Rule 11 violations, except Rule 11(b)(2) frivolous argument violation. Fed.R.Civ.P. 11(c)(2)(A).

Rule 11 was promulgated to limit abuses and bad faith acts by attorneys and pro se litigants in court. Tarkowski v. County of Lake, 775 F.2d 173, 175-176 (7th Cir. 1985). Rule 11 applies only to assertions contained in papers filed with or submitted to the court. This Rule does not cover matters arising for the first time during oral presentations to the court, where

¹⁵³ Developed by Michael Lyons and Darcy Paul, Morgan Lewis and Bockius, LLP

counsel or pro se litigant may make statements that would not have been made if there had been more time to study and reflect. However, the sanctions of Rule 11 take effect when the attorney or pro se litigant advocates or reaffirms to the court a position contained in a pleading after learning that the position ceases to have merit. Adv. Com. Notes Fed.R.Civ.P. 11.

To protect the clients of advocates or attorneys working with immigrant victims of violence during civil trials, the advocates or attorneys may take advantage of either:

(1) Rule 11(b)(1) and argue that threats of deportation or criminal action during a civil trial constitute harassment, cause unnecessary delay, or increase the cost of litigation; See People v. Wickes, 112 A.D. 39, 49 (S.Ct. N.Y. App. Div., 1906) citing People v. Eichler (75 Hun 26, 26 N.Y.S. 998; appeal dismissed, 142 N.Y. 642) (holding that an attorney who threatens criminal prosecution to a person involved in the same civil case commits moral turpitude, and the attorney's belief in the person's guilt is no defense, and not even a mitigating factor); or

(2) Rule 11(b)(2) and argue that threatening deportation or criminal actions in a civil trial is not warranted by existing law, or constitutes a frivolous argument to change the law or propose new law. See In re Hart, 131 A.D. 661, 666-667 (S. Ct. N.Y. App. Div., 1st Dept, 1909) (holding that threatening criminal prosecution in order to force a settlement of a civil action is illegal, improper and unprofessional; a threat for criminal prosecution may even be guised under a friendly veil, but the court analyzes the intent to induce the other side to act in a certain manner in the civil case).

Conclusion

Advocates or attorneys for immigrant victims of violence have two courses of action in a situation where the opposing counsel is making threats of deportation or criminal prosecution during or before a civil trial. Such threats are generally considered to be a crime, or at the minimum, a malicious behavior, and can qualify as a harassment or exertion of undue influence to fulfill the elements either Rule 11(b)(1) or (2). In such instances of receiving threats of deportation or criminal prosecution issued against their clients, advocates or attorneys representing immigrant victims of violence may serve a Rule 11 motion, and if the opposing counsel or pro se litigant has not retracted his/ her words in twenty-one days, the advocates or attorneys may file the motion and qualify for restitution. However, for proper delivery of a Rule 11 motion, the advocates or attorneys must determine whether the threat in a particular case can

be interpreted as a harassment or a frivolous representation in front of the court. This determination must be made on a case-by-case basis.

Motion in Limine for Federal Rule of Civil Procedure 11 starts on top of next page.¹⁵⁴

¹⁵⁴ Developed by Michael Lyons and Darcy Paul, Morgan Lewis and Bockius, LLP and Soraya Fata, Legal Momentum

[INSERT COURT NAME AND JURISDICTION]

_____)	
[INSERT NAME OF PLAINTIFFS])	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. [DOCKET NUMBER]
)	
[INSERT NAME OF DEFENDANTS])	
)	
Defendants.)	
_____)	

PLAINTIFFS’ *MOTION IN LIMINE* TO STRIKE THE DEFENDANTS’ PLEADINGS, MOTIONS, AND ADVOCACY FOR PLEADINGS AND MOTIONS FOR VIOLATION OF FEDERAL RULE OF CIVIL PROCEDURE 11

Through their undersigned counsel, Plaintiffs hereby move to strike the Defendants’ pleadings for violating the Federal Rule of Civil Procedure 11 (hereinafter “Rule 11”), on the grounds that Rule 11 provides for striking of Defendants’ pleadings and advocacy of pleadings that seek to harass, cause unnecessary delay, increase the cost of litigation, or set forth frivolous contentions of law. Plaintiffs have attached a Memorandum in Support of the Plaintiffs’ *Motion In Limine* that outlines the grounds for their motion.

Respectfully submitted,

_____/s/
[NAME
TITLE
CONTACT INFORMATION]

[INSERT COURT NAME AND JURISDICTION]

[INSERT NAME OF PLAINTIFFS])	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. [DOCKET NUMBER]
)	
[INSERT NAME OF DEFENDANTS])	
)	
Defendants.)	
)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ *MOTION IN LIMINE* TO STRIKE
THE DEFENDANTS’ PLEADINGS, MOTIONS, AND ADVOCACY FOR
PLEADINGS AND MOTIONS FOR VIOLATION OF
FEDERAL RULE OF CIVIL PROCEDURE 11**

I. INTRODUCTION

The Defendants’ pleadings and advocacy for their pleadings that seek to threaten deportation or criminal sanctions in a civil trial should be excluded and stricken from the record on the grounds that such pleadings, advocacy of such pleadings, and motions that violate Rule 11.

Rule 11 was promulgated to prevent abuses, acts of bad faith, and punish violations of conduct in the signing and advocacy of pleadings and motions, whether by an attorney or a pro se litigant. An abuse, an act of bad faith, or violation of conduct can be inferred from behavior that harasses, causes unnecessary delay, increases the cost of litigation, or presents frivolous legal contentions.

The Defendants may not threaten deportation or criminal sanctions to the Plaintiff due to the abusive, harassing and intimidating nature of doing so in a civil trial, and due to the bad faith and frivolous nature of conduct in making an argument for an unlawful contention of law.

For the reasons detailed below, this Court should strike the Defendants' pleadings, advocacy of such pleadings, and motions that violate Rule 11.

ARGUMENT

I. LEGAL STANDARD

The Federal Rule of Civil Procedure Rule 11 provides for the striking of pleadings and the imposition of disciplinary sanctions on attorneys or pro se litigants who abuse the signing of pleadings.

Rule 11 was promulgated to limit abuses and bad faith acts by attorneys and pro se litigants in court. Tarkowski v. County of Lake, 775 F.2d 173, 175-176 (7th Cir. 1985). Rule 11 takes effect when the attorney or pro se litigant advocates or reaffirms to the court a position contained in a pleading after learning that the position ceases to have merit. Generally, Rule 11 was enacted to require litigants to “stop and think” before making assertions in court. Fed.R.Civ.P. 11 advisory committee notes.

The provisions of Rule 11 apply to motions and other papers by incorporation of Rule 11 into the Federal Rule of Civil Procedure 7(b)(3), which expressly states that “[a]ll motions shall be signed in accordance with Rule 11.”

An attorney or pro se litigant is considered to be “presenting” to the court when the attorney or pro se litigant signs, files, submits, or later advocates a pleading, written motion, or other paper. Fed.R.Civ.P. 11(b). The sanctions for an attorney or pro se litigant violating Rule 11 can be instituted on the court’s initiative, or by motion. Fed.R.Civ.P. 11(c)(1). The procedure for filing a motion for Rule 11 sanctions includes a “safe harbor” of twenty-one days between the service of the motion and its filing with the court, so that the individual who

has allegedly violated Rule 11 has twenty-one days to retract the statement. Fed.R.Civ.P. 11(c)(1)(A).

An attorney who initiates, causes to be initiated, or threatens to initiate a criminal prosecution for the purpose of influencing a civil matter is violating the rules of ethics. See Model Code of Prof'l Responsibility DR 7-105 (1983). See also Gregory G. Sarno, Annotation, *Initiating, or Threatening to Initiate, Criminal Prosecution as Ground for Disciplining Counsel*, 42 A.L.R.4th 1000 (2006). Additionally, a practitioner may be sanctioned, or even disbarred, for coercing any person connected to the case, for making false statements of material fact or law, or for frivolous behavior before the immigration courts – a rule which closely mirrors Rule 11. 1-4 Immigration Law & Procedure § 4.03 (2007).

A Plaintiff that has been harassed, intimidated or treated in a bad faith manner by a Defendant has two recourses: Rule 11(b)(1) and Rule 11(b)(2).

A. Rule 11(b)(1)

Rule 11(b)(1) provides that an attorney or pro se litigant presenting to the court a pleading, written motion, or other papers, certifies to his/ her best knowledge that the claims, defenses, and other legal contentions are not meant to harass, cause unnecessary delay or increase the cost of litigation.

Presentations to the court that contain threats of deportation or criminal action during a civil trial constitute harassment, cause unnecessary delay, or increase the cost of litigation; See People v. Wickes, 112 A.D. 39, 49 (S.Ct. N.Y. App. Div., 1906) citing People v. Eichler (75 Hun 26, 26 N.Y.S. 998; appeal dismissed, 142 N.Y. 642) (holding that an attorney who threatens criminal prosecution to a person involved in the same civil case commits moral

turpitude, and the attorney's belief in the person's guilt is no defense, and not even a mitigating factor).

B. Rule 11(b)(2)

Rule 11(b)(2) provides that an attorney or pro se litigant presenting to the court a pleading, written motion, or other papers, certifies to the attorney's best knowledge that the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

Presentations to the court that contain threats of deportation or criminal action in a civil trial is not warranted by existing law, or constitutes a frivolous argument to change the law or propose new law. See In re Hart, 131 A.D. 661, 666-667 (S. Ct. N.Y. App. Div., 1st Dept, 1909) (holding that threatening criminal prosecution in order to force a settlement of a civil action is illegal, improper and unprofessional). The courts consider an improper threat for criminal prosecution to be made in bad faith even if guised under a friendly veil, as the court analyzes the intent to induce the other side to act in a certain manner in the civil case. Id.

C. Sanctions for Violating Rule 11

In crafting a sanction for violation of Rule 11, the courts have considerable discretion, including striking the offending presentation; issuing an admonition, reprimand, or censure; requiring participation in seminars and other educational programs; ordering fines payable to the court; and referring the matter to disciplinary authorities. Fed.R.Civ.P. 11 advisory committee notes.

Although Rule 11 carries the purpose to deter rather than to compensate, the Court allows in unusual circumstances for monetary sanctions payable to the offended party for violations of Rule 11(b)(1).

In analyzing the appropriate sanction, the court analyses whether the improper conduct was willful or negligent; whether it was part of a pattern of activity, or an isolated event; whether the offender has engaged in similar conduct in other litigation; whether the conduct has infected the entire paper, or only one particular count or defense; whether it was intended to injure; what effect the conduct had on the litigation process in time or expense; whether the offender person is trained in the law; what amount may be needed to deter the offender from repeating the offense; what amount is needed to deter other litigants from similar activity.

Fed.R.Civ.P. 11 advisory committee notes.

II. THE COURT SHOULD STRIKE THE DEFENDANTS' PLEADINGS, MOTIONS, AND ADVOCACY FOR PLEADINGS AND MOTIONS FOR VIOLATION OF RULE 11 BECAUSE THEY HARASS, INTIMIDATE, CAUSE UNNECESSARY DELAY OR INCREASE THE COST OF LITIGATION

[INSERT FACTS FOR APPLICATION OF THE RULE 11(b)(1) LEGAL

STANDARD ABOVE TO THE FACTS OF THIS CASE]

III. THE COURT SHOULD STRIKE THE DEFENDANTS' PLEADINGS, ADVOCACY FOR PLEADINGS, AND MOTIONS FOR VIOLATION OF RULE 11 BECAUSE THEY ARE FRIVOLOUS AND MADE IN BAD FAITH.

[INSERT FACTS FOR APPLICATION OF THE RULE 11(b)(2) LEGAL

STANDARD ABOVE TO THE FACTS OF THIS CASE]

Iç. CONCLUSION

The Defendants are attempting to present to the court pleadings and motions that unlawfully threaten deportation or criminal action to the Plaintiff, causing harassment, intimidating, unnecessary delays, and increases in cost of litigation to argue frivolous claims that are not proper statements of law.

This Court should strike the Defendants' presentation of pleadings and motions to the extent that they threaten deportation or criminal actions, and impose disciplinary sanctions on the Defendants and their attorneys for their bad faith conduct and abuse of Rule 11.

Dated: [MONTH DAY], 2007

By: _____ /s/
[NAME
TITLE
CONTACT INFORMATION]

[INSERT COURT NAME AND JURISDICTION]

[INSERT NAME OF PLAINTIFFS])	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.[DOCKET NUMBER]
)	
[INSERT NAME OF DEFENDANTS])	
)	
Defendants.)	
)	

ORDER

Having considered this matter on the Plaintiffs’ *Motion in Limine* to Strike the Defendants’ Pleadings, Motions, and Advocacy for Pleadings and Motions for Violation of Federal Rule of Civil Procedure 11, it is hereby

ORDERED that the motion is granted, and that the Defendants are barred from making threats of deportation or criminal action in the above-captioned case.

Date: _____

[NAME OF JUDGE]
[TITLE OF JUDGE/ COURT]

APPENDIX C

VAWA Confidentiality Violation Complaint starts on top of next page.

[Insert Date]

U.S. Department of Homeland Security
Office for Civil Rights and Civil Liberties
Review & Compliance Unit
245 Murray Lane, SW
Building 410, Mail Stop #0800
Washington, DC 20528

RE: VAWA Confidentiality Violation

Client Information: [Insert Client name, date of birth and A number]

To Whom It May Concern:

I am writing on behalf of my client, *[Insert client's name]*, to report a violation of the VAWA confidentiality provision, IIRIRA §384.¹⁵⁵ *[Insert client name]* is eligible for protection under this VAWA confidentiality.

[NOTE TO ADVOCATE-ATTORNEY: Victims can qualify for VAWA confidentiality protection whether or not they will be filing for immigration benefits under VAWA, a T-Visa or U-Visa. If your client has filed or will be filing for VAWA, T or U immigration relief add the following sentence: My client is filing [has filed] for relief as (specify which type of relief)].¹⁵⁶

IIRIRA §384 VAWA Confidentiality provisions provide three types of protections to immigrant victims of violence who qualify for protections either as self-petitioners or under a broader category of protected immigrants.¹⁵⁷ Protected immigrants include those who are victims of:

- Battery or extreme cruelty from a qualifying family member or the abuser's family member living in the same house,
- Any other VAWA self-petitioners,
- A qualifying U-visa criminal activity, or
- A severe form of trafficking in persons.¹⁵⁸

It should be noted that victims of battery or extreme cruelty perpetrated by family members receive VAWA confidentiality protections although they may not be eligible for and may not have applied for immigration relief as VAWA self-petitioners, VAWA suspension of deportation, VAWA cancellation of removal, T-visa or U-visa. T-visa and U-visa victims receive VAWA confidentiality protection if they are **eligible** for either a T or U visa.

VAWA self-petitioners include all of the following:

- an alien, or a child of the alien, who qualifies for relief as:¹⁵⁹

¹⁵⁵ IIRIRA §384; 8 U.S.C. §1367.

¹⁵⁶ Enclosed please find documentation demonstrating eligibility for VAWA confidentiality protections.

¹⁵⁷ IIRIRA §384 codified in 8 U.S.C. §1367.

¹⁵⁸ IIRIRA §384(a)(1) codified in 8 U.S.C. § 1367(a)(1).

¹⁵⁹ INA §101(a)(51); 8 U.S.C. §1101(a)(51).

- (A) An abused spouse, child, parent, intended spouse of a U.S. citizen INA Section 204(a)(1)(A) (iii), (iv), or (vii);
- (B) An abused spouse, child or intended spouse of a lawful permanent resident INA Section 204(a)(1)(B) (ii) or (iii);
- (C) A conditional resident spouse eligible for a battered spouse waiver INA Section 216(c)(4)(C);
- (D) a person who qualified under the first section of Public Law 89-732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty (spouse or child of a Cuban Adjustment Act immigrant whether or not the victim is Cuban);
- (E) a person who qualifies under section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 155 note) (Haitian National abused spouse or child);
- (F) a person who qualifies under section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act;¹⁶⁰
- (G) as person who qualified under section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208).¹⁶¹

There are three different types of VAWA Confidentiality protections. The first provision prevents the Department of Homeland Security, the Department of Justice or the Department of State from using information provided solely by a perpetrator or certain family members to take an adverse action regarding admissibility or deportability against any protected immigrant as defined above.¹⁶² The second provision precludes the Department of Homeland Security, the Department of Justice or the Department of State from disclosing information relating to self-petitioner unless there is a legitimate Departmental purpose.¹⁶³ The third prong creates locational protections precluding enforcement actions at any of the following locations: domestic violence shelter; victim services program; family justice center; supervised visitation center; or courthouse or in connection with the appearance at a courthouse in connection with a protection order case, a child custody case or other civil or criminal case related to domestic violence, sexual assault, trafficking, or stalking.¹⁶⁴

VAWA Confidentiality also creates specific certification requirements for the Department of Homeland Security. In the Notice to Appear (NTA), if any part of an enforcement action took

¹⁶⁰ Under VAWA, spouses and children subjected to battering or extreme cruelty were eligible to apply for NACARA 202 adjustment if the abuser was eligible for NACARA 202 benefits, even if he never filed for benefits. The application deadline for VAWA NACARA 202 has passed, but victims who filed would continue to be covered by VAWA confidentiality protections.

¹⁶¹ Under VAWA, spouses or children subjected to battering or extreme cruelty by an abusive Guatemalan, El Salvadoran or Eastern European NACARA 203 applicant may directly apply for NACARA 203 benefits. To qualify, the petitioner must be a spouse or child of the NACARA 203 applicant at the time the NACARA 203 applicant –was granted suspension of deportation or cancellation of removal; filed an application for suspension of deportation or cancellation of removal; or registered for benefits under the settlement agreement in *American Baptist Churches, etc. al. v. Thornburgh (ABC)*, applied for temporary protected status, or applied for asylum.

¹⁶² IIRIRA §384(a)(1) *codified in* 8 U.S.C. § 1367(a)(1).

¹⁶³ IIRIRA §384(a)(2) *codified in* 8 U.S.C. § 1367(a)(2). (The protections offered by this section are explicitly limited to victims who have filed cases for immigration relief from either DHS or an immigration judge.) The prohibition on disclosure continues until such case has been denied “on the merits,” rather than on mootness or procedural grounds. *See Hawke*, 2008 WL 4460241 at *7.

¹⁶⁴ INA §239(e)(2); 8 U.S.C. §1229(e)(2).

place at any of the prohibited locations DHS must certify in the NTA that no part of the enforcement action was undertaken in violation of section 384 of IIRIRA¹⁶⁵.

Congress recognized that abusers of immigrant victims and crime perpetrators of domestic violence, trafficking, sexual assault, and other criminal activity often threaten victims with deportation.¹⁶⁶ To stop abusers from using the victim's immigration status, including threats to deport or report the victim as a means to further abuse or criminal activity, Congress created VAWA immigration relief for immigrant victims and VAWA confidentiality. The VAWA confidentiality provisions were created so that batterers or crime perpetrators are not able to use the immigration system as a tool to further control their victims. In 1996, Congress enacted IIRIRA Section 384, which created the framework for these protections.¹⁶⁷ This provision has been subsequently expanded through reauthorizations of the Violence Against Women Act.

As provided for in the complaint process outlined by the Office for Civil Rights and Civil Liberties of DHS, I am submitting a complaint on behalf of my client, outlining violations of the VAWA Confidentiality provisions.

I. [Insert Client name] is eligible for protection under the VAWA Confidentiality Act Provisions.

As stated above, [Insert Client name] qualifies for §384 protections based on [his/her] status as a [protected immigrant/VAWA self-petitioner]. *[State the category of the client's qualification]* I have attached proof of this eligibility. *[If an application has not been filed but is a protected immigrant/self-petitioner, include a narrative of what makes your client eligible as a protected immigrant or a VAWA self-petitioner and identify documents demonstrating eligibility. Several types of possible documents are listed below]*

II. [Insert Client name] is/has been subject to a violation of the VAWA Confidentiality Act Provisions.

A. Procedural History of the case:

[Include the status of any immigration filings and enforcement actions, family, protection order or criminal cases. Include dates, jurisdiction and case numbers wherever possible.]

B. Facts of the Violation

¹⁶⁵ INA §239(e)(1); 8 U.S.C. §1229(e)(1).

¹⁶⁶ See 151 Cong. Rec. *E2605, E2607 (daily ed. Dec. 18, 2005)(statement of Rep. Conyers) (stating "I believe that Section 817 of this Act contains some of the most important protections for immigrant victims. This section enhances VAWA's confidentiality protections for immigrant victims and directs immigration enforcement officials not to rely on information provided by an abuser, his family members or agents to arrest or remove an immigrant victim from the United States. Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims and to avoid criminal prosecution. In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims' immigration cases, and encouraging immigration enforcement offices to pursue removal actions against their victims."); see also *Hawke*, 2008 WL 4460241, at *7 (citing statement of Rep. Conyers for proposition that the purpose of the confidentiality provisions is to prevent the use of the immigration system against victims).

¹⁶⁷ Illegal Immigration and Immigrant Responsibility Act of 1996, Pub. L. 104-208 (1996).

[Describe each VAWA Confidentiality provision that was violated and facts related to the qualifying category of protection. Explain the circumstances of each violation in as much detail as possible including: date, time, and location; gravity of violation; potential lethality and/or danger of further abuse or violence should the abuser, trafficker or other criminal perpetrator learn how to find the victim, learn the existence of any immigration case initiated on the victim's behalf; learn about any enforcement action against the victim; name(s) and office location and phone number of DHS official(s) or employees involved; the actions and communications of the DHS employees, victim, and any victim advocates; witnesses present or who otherwise have knowledge about each violation or other relevant information. Provide any information you have about whether or how the crime perpetrator was involved in the incident(s). Explain how the client's privacy and safety were compromised and rights violated as well as any harm to the client or the client's children.]

The actions of DHS officials and/or the disclosure of the nature described above, violate the VAWA confidentiality statute and are the types of behavior Congress sought to halt by creating and continuously improving VAWA confidentiality protections in each Violence Against Women Act reauthorization.

III. [Insert client's name] has made attempts to address this violation of VAWA confidentiality with the DHS employee in violation and his/her supervisors.

[Include a summary of steps that have been taken to resolve this complaint through local channels including specific dates, the names of the DHS employees and supervisors with whom you communicated and the response to or result of each communication.]

The law provides for a civil penalty of up to \$5000 and disciplinary action for each VAWA Confidentiality violation committed by a DHS employee. CRCL must fully investigate and issue penalties against DHS employees who violate VAWA confidentiality. Otherwise VAWA Confidentiality will be ineffective to protect victims and the violations of individual DHS employees will create greater incentives for crime perpetrators to continue using the government as a tool in their pattern of control and abuse. I strongly urge CRCL to take appropriate action under the law and provide my client justice with the payment of the \$5000 penalty and disciplinary action.

I have attached the following documentation demonstrating my client's eligibility for VAWA Confidentiality protection and for initiation of an VAWA confidentiality enforcement action.

- Affidavits of my client and witnesses to the violation(s);
- Protected immigrant or self-petitioner eligibility - Proof of victimization and other eligibility requirements [Identify evidence of victimization that might include photographs, protection orders, police reports, hospital records, and related proof of the perpetrator's criminal activity, affidavits from other parties witnessing the crime, hospital reports];
- Communication with [identify law enforcement agencies, courts, hospitals, social workers] regarding the battering or extreme cruelty, criminal activity or trafficking;

- Copies of state court pleadings relating to the case, including domestic violence protection order complaints, custody or divorce complaints, criminal charges and information related to the criminal history of the abuser/perpetrator;
- Copies of state court orders relating to the case, including domestic violence protective orders, custody orders, child support orders, criminal convictions, and the history of any other court orders involving the victim, her children and the abuser;
- Receipts of self-petitioner, crime victim or trafficking victim filing with DHS or an immigration judge;
- Copy of DHS filing including but not limited to I-360 Self-Petition, Petitions for U Nonimmigrant Status, Petition for T Nonimmigrant Status, Receipt Notices, Approval Notices, etc.;
- Communication with [identify DHS employees/supervisors] reporting the VAWA Confidentiality violation and records or a description of any response received;
- Immigration forms associated with the violation [specify which forms];
- Names and full contact information for client, witnesses, and all DHS employees involved.

I thank you for your attention to this matter and please contact me with any further questions at [insert phone number and e-mail address].

Sincerely,

[Practitioner Name]
Attorney at Law

APPENDIX D

Motion for Protective Order To Prevent Disclosure in Family Court Cases of VAWA
Confidentiality Protected Information starts on top of next page.¹⁶⁸

¹⁶⁸ Developed by Michael Lyons and Darcy Paul, Morgan Lewis and Bockius, LLP and Soraya Fata, Legal Momentum

[INSERT COURT NAME AND JURISDICTION]

[Insert])	
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v.)	No. [Docket Number]
)	
[Insert])	[Insert Judge Name]
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MOTION FOR PROTECTIVE ORDER

[In accordance with local rule ____],¹⁶⁹ [Petitioner] respectfully moves this Court for a Protective Order to maintain the confidentiality of any Violence Against Women Act (VAWA) confidentiality protected petition or application for immigration status or benefits filed by [Petitioner] pursuant to Immigration and Nationality Act (INA) §§ 101(a)(15)(T);¹⁷⁰ 101(a)(15)(U);¹⁷¹ 101(a)(51);¹⁷² 106;¹⁷³ 240A(b)(2);¹⁷⁴ or 244(a)(3)¹⁷⁵ (as in effect on March 31, 1999) and any information related thereto. [Petitioner] further requests that this Court bar [Respondent] from discovering, using or attempting to use (e.g., in direct or cross-examination of witnesses) confidential information protected by VAWA in these proceedings. The grounds for this Motion are set forth in the attached Memorandum of Law.

WHEREFORE, for good cause shown, [Petitioner] requests that the Court grant this Motion and enter a Protective Order accordingly.

¹⁶⁹ Fed. R. Civ. P. 26(c)(1) permits federal courts, for good cause, to forbid discovery of or use of information to protect a party or person from “annoyance, embarrassment, oppression”
¹⁷⁰ 8 U.S.C. § 1101(a)(15)(T) (2009).
¹⁷¹ 8 U.S.C. § 1101(a)(15)(U).
¹⁷² 8 U.S.C. § 1101(a)(51).
¹⁷³ 8 U.S.C. § 1105a.
¹⁷⁴ 8 U.S.C. § 1229b(b)(2).
¹⁷⁵ 8 U.S.C. § 1254a(a)(3).

Dated: *[Month, Day, Year]*

Respectfully submitted,

/s/

[Name

Title

Contact Information]

[INSERT COURT NAME AND JURISDICTION]

[Insert])	
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v.)	Civil No. [Docket Number]
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[Insert])	[Insert Judge Name]
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**[PETITIONER]’S MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

[Petitioner] respectfully submits this Memorandum of Law in support of [Petitioner’s] Motion for Protective Order to maintain the confidentiality of any self-petition for immigration status¹⁷⁶ or benefits filed by [Petitioner] pursuant to the Violence Against Women Act (“VAWA”) and any information related thereto. Self-petitions for immigration status or benefits by victims of domestic abuse, sexual assault, human trafficking and many forms of criminal activity, including the existence or any case, and any information related to them (collectively “VAWA protected information”) are protected by VAWA’s broad confidentiality provisions codified at 8 U.S.C. § 1367(a) (2008).¹⁷⁷ Absent limited exceptions, none of which apply here, these provisions expressly prohibit the release of protected information by the government to third parties. Although VAWA does not specifically address attempts by an abuser or a crime perpetrator to discover the same VAWA protected information from his victim in civil or criminal proceedings, Congress’s intent to prevent the use by or disclosure of any information

¹⁷⁶ Violence Against Women Act (VAWA) confidentiality protections apply to all petitions or applications for immigration status or benefits filed pursuant to Immigration and Nationality Act (INA) §§ 101(a)(15)(T); 101(a)(15)(U); 101(a)(51); 106; 240A(b)(2); or 244(a)(3) (as in effect on March 31, 1999), 8 U.S.C §§ 1101(a)(15)(T); 1101(a)(15)(U); 1101(a)(51); 1105a; 1229b(b)(2); 1254a(a)(3) and any information related thereto.

¹⁷⁷ See *Hawke v. Dep’t of Homeland Sec.*, No. C-07-03456 RMW, 2008 WL 4460241, at *7 (N.D. Cal. Sept. 29, 2008).

related to confidential VAWA applications to third parties is clear and unambiguous. Permitting abusers to discover or use protected information from their victims would render VAWA's confidentiality provisions meaningless and would subject victims to further abuse and harassment that VAWA is intended to prevent.

Therefore, and for the reasons described herein, [Petitioner] respectfully requests this Court issue a protective order to safeguard the existence and substance of any VAWA protected information and to bar any attempts by [Respondent] to discover or use such information in these proceedings.

I. FACTS

[Insert relevant facts of case, including facts related to the history of abuse, procedural background and defendant's actual or anticipated discovery request for VAWA protected information. Consider wording this section of the filing so as to not directly admit the existence of any VAWA protected immigration case.]

II. THE VIOLENCE AGAINST WOMEN'S ACT PROVIDES BROAD PROTECTIONS TO VICTIMS OF DOMESTIC VIOLENCE.

VAWA was originally enacted in 1994 primarily as a mechanism to provide funding for programs and services to assist victims of domestic violence and other specified crimes.¹⁷⁸ In addition, however, VAWA also created important legal protections for immigrant victims of domestic violence, child abuse, sexual assault, human trafficking and other criminal activity.¹⁷⁹ Those protections have expanded over the years through a series of amendments in 1996, 2000,

¹⁷⁸ Violent Crime Control and Law Enforcement Act ("1994 VAWA Act"), Pub. L. No. 103-322, 108 Stat. 1796 (1994).

¹⁷⁹ INA Section 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) offers immigration relief to victims of specific criminal activities. The U-visa regulations issued by the Department of Homeland Security summarize this criminal activity as follows: "INA sec. 101(a)(15)(U)(i), 8 U.S.C. 1101(a)(15)(U)(i). Qualifying criminal activity is defined by statute to be "activity involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]" Id.,(iii). The list of qualifying crimes represents the myriad types of behavior that can constitute domestic violence, sexual abuse, or trafficking, or are crimes of which vulnerable immigrants are often targeted as victims." 72 Fed. Reg. 53,014, 53,015 (Sept. 17, 2007).

and 2005.¹⁸⁰ Two significant VAWA provisions relating to battered immigrants and immigrant crime victims include: (1) the right to “self-petition” to obtain lawful immigration status and other benefits; and (2) broad confidentiality protections that prohibit release of the existence and substance of a VAWA petitioner’s application. As demonstrated repeatedly throughout VAWA’s legislative history, Congress specifically enacted these provisions to prevent abusers and crime perpetrators from using immigration status as a means to further control, harass, abuse or intimidate their victims. *See, e.g.*, H.R. REP. NO. 109-233 at 120 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 1636, 1671; 151 CONG. REC. E2605-04, E2607 (2005) (statement of Rep. Conyers) (VAWA confidentiality provisions “are designed to ensure that abusers and criminals cannot use the immigration system against their victims . . . [such as by] using DHS to obtain information about their victims, including the existence of a VAWA immigration petition. . . .”); H.R. REP. NO. 106-939 at 110 (2000), *as reprinted in* 2000 U.S.C.C.A.N. 1380, 1401-02 (Congress implemented these provisions “to ensure that domestic abusers with immigrant victims are brought to justice and that battered immigrants [] are able to escape the abuse”).

A. VAWA Allows Battered Immigrants and Immigrant Crime Victims to Self-Petition Without the Knowledge of Their Abusers.

Under normal circumstances, documented partners, spouses or family members are involved in petitioning for immigration benefits on behalf of their immigrant partners, spouses or family members. However, recognizing that victims of abuse need to break free from the control of their abusers, Congress, through VAWA, gave victims the right to self-petition for immigration status and benefits on their own and, importantly, without the knowledge, consent

¹⁸⁰ See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“1996 VAWA Act”), Pub. L. No. 104-208, 110 Stat. 3009 (1996); Victims of Trafficking and Violence Protection Act of 2000 (“2000 VAWA Act”), Pub. L. No. 106-386, Div B, Title V, 114 Stat. 1464 (2000); Violence Against Women and Department of Justice Reauthorization Act of 2005 (“2005 VAWA Act”), Pub. L. No. 109-162, Title VIII, Subtitle B, 119 Stat. 3057 (2006).

or aid of their abusive partner. *See, e.g.*, 2005 VAWA Act, codified at 8 U.S.C. § 1154(a)(1)(A)(i)-(iii) (2005) (describing procedure for granting immigration status). Congress also prohibited Department of Homeland Security (“DHS”) agents from making any adverse determinations regarding VAWA petitioners and other immigrant crime victims applying for VAWA related immigration relief using information provided solely by abusers, perpetrators or people associated with abusers or crime perpetrators, and required DHS agents to complete a certification of compliance in certain specified cases. *See* 8 U.S.C. § 1367(a).¹⁸¹

By allowing battered immigrants to “self-petition” and by providing them with a wide range of resources and benefits to assist them, Congress sought to empower battered immigrants to achieve independence from their abusers and limit the ability of abusers to retaliate against them. Immigrant victims of sexual assault, human trafficking and other mostly violent crimes were provided similar protection to enable and support victims in reporting crime and cooperating in the detection, investigation or prosecution of criminal activity by federal, state and local law enforcement, prosecutors, courts and state and local investigating agencies (e.g. child protective services, adult protective services, state labor boards, EEOC, etc.)

B. VAWA Broadly Prohibits Disclosure of VAWA Protected Information

The filing of any VAWA petition triggers strict confidentiality requirements that are intended to further protect victims from harassment and intimidation by their abusers. *See* 8 U.S.C. § 1367(a)(2); H.R. REP. NO. 109-233 at 120.¹⁸² Specifically, VAWA broadly prohibits federal authorities (including, but not limited to DHS, the Department of Justice and the

¹⁸¹ *See also* Memorandum from Director J. Torres to Field Office Directors and Special Agents in Charge re: “Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005” (Jan, 22, 2007), attached as Ex. 1.

¹⁸² *See also Hawke*, 2008 WL 4460241, at *7 (stating that the congressional policy behind the enactment of the VAWA confidentiality provisions requires even moot petitions to remain confidential).

Department of State) from permitting the use by or disclosure of *any information* related to confidential VAWA applications to *any third party*.¹⁸³ See 8 U.S.C. § 1367(a)(2).

The importance of VAWA confidentiality protections cannot be overstated. Over the years, Congress has carefully evaluated the need for and subsequently expanded VAWA’s confidentiality provisions each time it has reauthorized the Act to further protect VAWA self-petitioners from their abusers. See, e.g., 1994 VAWA Act, § 40508, 108 Stat. at 1950 (enacting confidentiality provisions to protect victims of domestic abuse and directing the Attorney General to analyze means for protecting confidential information of “abused spouses to protect such persons from exposure to further abuse”); 1996 VAWA Act, H.R. REP. NO. 104-828 (Conf. Rep.), (adding provision to prevent the “use by or the disclosure of” information pertaining to an alien’s application for relief where that individual is a victim of domestic abuse); 2000 VAWA Act, H.R. REP. NO. 106-939 at 111 (extending the scope of VAWA protections to improve its goal of “prevent[ing] immigration law from being used by an abusive citizen or lawful permanent resident spouse as a tool to prevent an abused immigrant spouse from reporting abuse or leaving the abusive relationship”); 2005 VAWA Act, H.R. REP. NO. 109-233, 118 (adding provisions to prevent reliance in immigration proceedings on evidence provided by abusers to “ensure that abusers and criminals cannot use the immigration system against their victims”). In addition, Congress provided for stiff penalties for those who violate the Act, subjecting federal agents and other government employees to disciplinary action and civil monetary penalties of \$5,000 for each violation. See *id.* at § 1367(c).

Congress created only a few limited exceptions to VAWA’s confidentiality provisions. Those exceptions include disclosure to specified agencies for certain legitimate law enforcement

¹⁸³ VAWA only permits the disclosure of information to certain specified individuals (*i.e.* sworn officers or employees of certain federal agencies) for specified purposes. See *id.* at § 1367(a)(2) (2008).

purposes, Congressional oversight, census purposes, and to assist with immigrant victim access to certain public benefits. *See* 8 U.S.C. § 1367(b). VAWA confidentiality may also be waived by the petitioner or disclosed, only with appropriate protections, in connection with an immigration court or administrative agency judicial review of a determination of a self-petitioner's immigration petition. *Id.*

Absent limited exceptions, VAWA's broad confidentiality provisions expressly prohibit the release of protected information by the government to third parties. Although VAWA does not specifically address attempts by an abuser to discover the same VAWA protected information from his victim in civil or criminal proceedings, Congress's intent to prevent the use by or disclosure of any information related to confidential VAWA applications to third parties is clear and unambiguous. Permitting abusers to discover or use protected information from their victims would render VAWA's confidentiality provisions meaningless and would subject victims to the further abuse and harassment that VAWA is intended to prevent.

The limited exceptions to VAWA mandated confidentiality of VAWA protected information do not extend to discovery or use in civil litigation between the victim and her abuser, or to criminal litigation in which the victim testifies against her abuser. Although there is an exception permitting "disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of [VAWA protected information]," 8 U.S.C. § 1367(b)(3), that exception relates to judicial review of a self-petitioner's immigration application in immigration proceedings before an immigration judge, at the DHS administrative appeals unit or by the Board of Immigration Appeals.¹⁸⁴ Self-petitions are broadly protected by

¹⁸⁴ *See Hawke*, 2008 WL 4460241, at *6 (holding that the "judicial review" exception to VAWA confidentiality extends only to judicial review of a government determination of the immigration status of a VAWA self-petitioner, not in other civil and criminal proceedings).

VAWA and nowhere in VAWA or its extensive legislative history is there any evidence that Congress contemplated an exception that would result in disclosure of VAWA protected information by a victim to her abuser. Rather, the opposite is true; through VAWA, Congress intentionally sought to prevent abusers from obtaining or using VAWA protected information at all.

VAWA clearly and unambiguously describes the information that the statute protects and the limited circumstances in which the information may be disclosed. A plain reading of VAWA and common sense dictate that absent the voluntary disclosure of the information by the victim¹⁸⁵ or other enumerated exceptions listed in section 1367(b), VAWA protected information should remain confidential regardless of whether the information resides with the government or with the victim. Any other reading of the statute would undermine the very purpose of VAWA and render utterly meaningless the statutorily mandated confidentiality provisions that are intended and designed to protect victims from further abuse, intimidation and harassment by their abusers.

If [PETITIONER] filed for immigration status or benefits under VAWA, the existence and substance of that petition, as well as any additional information related to that petition, would be covered by VAWA's broad confidentiality provisions. If [*Respondent*] in turn requested VAWA protected information from DHS or other federal agencies, government officials could not disclose that information under any circumstances without violating VAWA confidentiality requirements and subjecting themselves to sanctions. Logic and a fair reading of the statute dictate, therefore, that [*Respondent*] should not be allowed to circumvent VAWA and seek the very same protected information from the [*Petitioner*]. The fact that a victim may have

¹⁸⁵ Any action by a party or a judge in a civil or criminal court proceeding seeking or ordering disclosure of information that the court or the party seeking the information could not obtain from DHS would be coercion and not voluntary disclosure and would be contrary to the intent of federal VAWA confidentiality laws.

retained copies of or otherwise possess VAWA protected information (*e.g.*, copies of documents related to the VAWA petition or other related information) should not change the outcome; VAWA protected information should remain confidential.

Significantly, VAWA's strict confidentiality requirements do not expire *unless* the self-petition is denied on the merits and all opportunities for appeal of the denial are exhausted. *Id.* at § 1367(a). Confidentiality regarding granted petitions *never expires*.¹⁸⁶

III. ARGUMENT

A. The Court Should Issue a Protective Order to Ensure Confidentiality of Any VAWA Protected Information.

Although VAWA does not specifically address discovery of VAWA protected information by the abuser directly from his victim in civil or criminal litigation, [*Respondent*] should not be able to obtain VAWA protected information from [*Petitioner*] that he could not legally obtain from the government. VAWA clearly and unambiguously describes the information that the statute protects and the limited circumstances in which the information may be disclosed. A plain reading of VAWA and common sense dictate that absent the voluntary disclosure of the information by the victim or other enumerated exceptions listed in section 1367(b), VAWA protected information should remain confidential regardless of whether the information resides with the government or with the victim. Any other reading of the statute would undermine the very purpose of VAWA and render utterly meaningless the statutorily mandated confidentiality provisions that are intended and designed to protect victims from

¹⁸⁶ See *Hawke*, 2008 WL 4460241, at *6 ("[W]hen Congress wrote 'denied,' the word meant 'denied on the merits.' The text of section 1367(a) harmonizes with this interpretation. The full provision dictates that the confidentiality expires 'when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.' 8 U.S.C. § 1367(a). But a mooted petition cannot be appealed because there is nothing to appeal. Congress' focus on the exhaustion of all opportunities for review underscores its intent to limit the expiration of confidentiality to petitions that have been denied on the merits. This focus on the merits also accords with the fact that the confidentiality never expires on *granted* petitions filed by the victims of abuse.").

further abuse, intimidation and harassment by their abusers.

If [PETITIONER] filed for immigration status or benefits under VAWA, the existence and substance of that petition, as well as any additional information related to or contained in that petition, would be covered by VAWA's broad confidentiality provisions. If [RESPONDENT] in turn requested VAWA protected information from DHS or other federal agencies, government officials could not disclose that information under any circumstances without violating VAWA confidentiality requirements and subjecting themselves to sanctions. Logic and a fair reading of the statute dictate, therefore, that [*Respondent*] should not be allowed to circumvent VAWA and seek the very same protected information from the [*Petitioner*]. The fact that a victim may have retained copies of or otherwise possess VAWA protected information (e.g., copies of documents related to the VAWA petition or other related information) should not change the outcome; VAWA protected information should remain confidential.

B. No Statutory Exception to VAWA Mandated Confidentiality Applies in this Litigation.

The limited exceptions to VAWA mandated confidentiality of VAWA protected information do not extend to discovery or use in civil litigation between the victim and her abuser, or to criminal litigation in which the victim testifies against her abuser. Although there is an exception permitting “disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of [VAWA protected information],” 8 U.S.C. § 1367(b)(3), that exception relates to judicial review of a self-petitioner's immigration application.¹⁸⁷

Self-petitions and all VAWA related immigration cases filed by immigrant crime victims

¹⁸⁷ See *Hawke*, 2008 WL 4460241, at *7 (holding in a case of first impression that the term “determination” in § 1367(b)(3) refers to “the government's determination of a VAWA self-petitioner's immigration status” and not to civil or criminal court proceedings).

and immigrant family violence victims are broadly protected by VAWA, and nowhere in VAWA or its extensive legislative history is there any evidence that Congress contemplated an exception that would result in disclosure of VAWA protected information by a victim to her abuser.

Rather, the opposite is true; through VAWA, Congress intentionally sought to prevent abusers from obtaining or using VAWA protected information at all.

IV. CONCLUSION

For the reasons stated herein, [*Petitioner*] respectfully requests that the Court grant [*Petitioner's*] Motion for a Protective Order to maintain confidentiality of any VAWA protected information and to further prohibit [*Respondent*] from seeking discovery of or otherwise using or attempting to use VAWA confidential information in this proceeding.

Dated: [*Month, Day, Year*]

Respectfully submitted,

/s/

[Name

Title

Contact Information]

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, _____, I caused a true copy of the foregoing Motion for Protective Order, Memorandum of Law and proposed Protective Order to be served by U.S. mail, postage prepaid, and to be delivered to a process server with instructions promptly to serve it personally upon:

*[Name
Contact Information]*

/s/
*[name
Title
Contact Information]*

Attorney[s] for [PETITIONER].

[INSERT COURT NAME AND JURISDICTION]

_____)	
[Insert])	
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)	Criminal No. [Docket Number]
v.)	
)	[Insert Judge Name]
[Insert Name Of Defendant])	
)	
Defendant.)	
_____)	

PROTECTIVE ORDER

This matter comes before the Court on [Petitioner]’s Motion for Protective Order. Having considered [Petitioner’s] Motion, Memorandum of Law, [any Opposition thereto], and the record herein, it is HEREBY ORDERED that:

[Petitioner’s] Motion for Protective Order is GRANTED.

It is further ORDERED that:

1. All information regarding any self-petition by [Petitioner] under VAWA is protected from disclosure by 8 U.S.C. § 1367(a) and no statutory exception listed in 8 U.S.C. § 1367(b) permits disclosure of information protected by VAWA in this litigation.

2. [Petitioner] is not required to produce any information regarding a VAWA self-petition, if it exists.

3. Absent further Order of this Court, [Respondent] is prohibited from seeking discovery of information regarding any self-petition by [Petitioner] in discovery, or through attempting to elicit such information through direct or cross examination of witnesses during proceedings related to this litigation.

IT IS SO ORDERED this _____ day of _____, 2008.

Date: _____

*[Insert Judge Name
And Jurisdiction]*

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The U-Visa Remedy for Immigrant Victims of Sexual Assault and the Need For Multidimensional Collaboration¹²

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This chapter offers a brief analysis of the dimensions and intersections of collaborations needed to most successfully assist an immigrant survivor with the U visa remedy. Although the U visa remedy is available to immigrant victims of enumerated crimes of violence, the focus of this chapter is on building the types of collaborations that are effective in cases of immigrant victims of sexual assault, sexual violence, and abusive sexual conduct.

The first section presents an overview of needed collaborations to respond to immigrant survivors of sexual assault. The section introduces briefly the notion of involving immigrant communities as leaders in the formation of

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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.

partnerships that respond to the specific needs of survivors. The second section addresses the components of a successful model for collaboration with regard to representation of sexual assault survivors with the U visa.

WORKING WITH IMMIGRANT SURVIVORS OF SEXUAL ASSAULT

The Facts

Sexual assault is a crime that crosses all races, class, religious, and cultural lines. Over 70% of rape and sexual assault victims in 2003 knew their attackers,³ potentially complicating victims' decisions to report the crime. Assuring that victims have information on shelters, sexual assault programs, victim advocates, lawyers, and civil and criminal justice system relief can make a difference as women struggle to decide how to try to recover from sexual assaults. Good coordination and collaboration can provide immigrant victims pursuing U-visas the support they need to explore ways they can address cultural or other remaining concerns and rebuild their lives.

For immigrant women, decisions about whether to report rape or sexual assault are complicated by fear of deportation and lack of knowledge or language access to assistance offered by health care, community based legal services, and justice system programs.⁴ Additionally, immigrant women who are sexual assault victims considering reporting sexual assault have to consider the impact of disclosing the sexual assault can have in her future interactions with her cultural community and family members. Reporting abuse can result in a victim being cut off from and ostracized by her community. It can bring shame on her family, lead her spouse to divorce her, and impact her options for economic survival. Safety planning and collaborative support for immigrant survivors must address these issues and weigh how reporting and the opportunity to gain legal immigration status through the U-visa can address or outweigh some of these concerns by removing fear of deportation and providing opportunities for economic security through legal work authorization. Research among immigrant victims of domestic violence and sexual assault found that advocates play a crucial role in informing victims about and encouraging immigrant victims to pursue legal options.⁵

Obstacles and Intersectionality

For immigrant women, sexual assault issues can be very complex. When seeking legal and economic assistance, an immigrant survivor may face many systemic obstacles, including sexism, racism, religious biases, cultural prejudices, and anti-immigrant attitudes.⁶

If immigrant survivors turn to the different systems for help, they often encounter barriers that go beyond those experienced by women and sexual assault victims generally.⁷ These include, but are not limited to:

- Language barriers in the law enforcement, judicial, social services, and healthcare sectors, particularly when funding for interpreters have not been allocated.
- Cultural barriers when agencies have not hired sufficient numbers of bilingual, biculturally competent staff.⁸
- Lack of immigration status and the fear of being deported if victims expose themselves to the criminal system.
- Lack of access to culturally competent mental health services or counseling to work on trauma issues resulting from the sexual assault
- Lack of information about what help is available through the civil and criminal justice systems for immigrant sexual assault survivors

³ United States Department of Justice, Bureau of Justice Statistics, *National Crime Victimization Survey (2003)*, available at <http://www.ojp.usdoj.gov/bjs/cvict.htm> (last modified July 7, 2005).

⁴ Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass and Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 7 13 UCLA WOMEN'S L.J. 43 (2003)

⁵ Leslye E. Orloff, Mary Ann Dutton and Nawal Ammar, *Use and Outcome of Civilian Protection Orders by Battered Immigrant Women in the US*, PowerPoint Presentation, Montreal, 2009

⁶ Sudha Shetty & Janice Kaguyutan, *Immigrant Victims of Sexual assault: Cultural Challenges and Available Legal Protections* (2002), available at <http://www.vaw.umn.edu/FinalDocuments/vawnet/arimmigrant.asp> (last visited September 2, 2005).

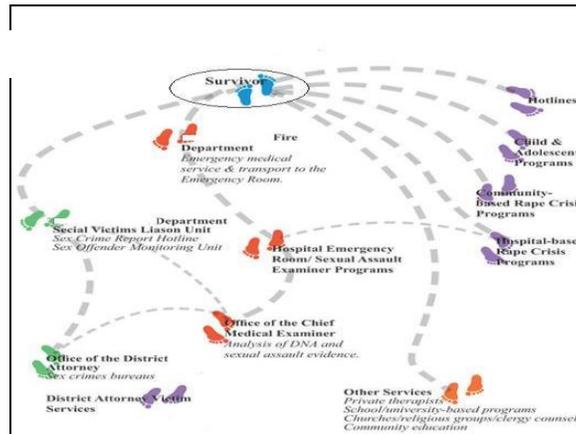
⁷ Sonia Parras Konrad, *Women Empowering Women: An Exciting Journey* (on file with author) (June 2003).

⁸ GAIL PENDLETON, FAMILY VIOLENCE PREVENTION FUND, *BUILDING THE RHYTHM OF CHANGE: DEVELOPING LEADERSHIP AND IMPROVING SERVICES WITHIN THE BATTERED RURAL IMMIGRANT WOMEN'S COMMUNITY*(2000).

- What health care immigrant rape survivors can receive

THE NEED FOR COLLABORATIONS TO RESPOND TO IMMIGRANT SURVIVORS OF SEXUAL ASSAULT

Too often the justice and social service systems leave victims, even those who have advocates, ending up bouncing from professional to professional, from office to office. The following is a brief map of the points of contact with the system a victim experiences in any given sexual assault.⁹



While many service providers identified in this model respond individually to victims of sexual assault, the coordinated response to the survivor among service providers can very be minimal. Furthermore, the connections that may exist do not include the survivor other than in her capacity of victim, recipient of services.

An immigrant survivor of sexual assault has a variety of needs that require a multidisciplinary intervention from service providers. She may experience one or more of the following: distrust from the system, English-speaking service providers who do not communicate with her to be able to provide assistance, not feel safe to share her experience with law enforcement for fear of being deported, trauma resulting from the crime and the need for linguistically competent counseling or psychological treatment. Collaboration among service providers is necessary to provide an immigrant survivor with a full range of the multidisciplinary services that the immigrant survivor is going to require to survive the abuse that one program alone may not otherwise be able to offer.¹⁰

A comprehensive response through collaboration will benefit the survivor by maximizing her opportunities for protection and services, without having to repeatedly describe the assault and the trauma of sharing her experience. Keeping the kind of records discussed above¹¹ and gaining legal permission from clients to share those records with other collaborating professionals working on her case can help ensure that immigrant victims obtain all the assistance they need in a consistent manner without requiring them to repeat painful accounts over and over to many providers.¹² However, a survivor's right to privacy and confidentiality is tantamount in any sharing of information between service providers. Working together, these groups of professionals can help support immigrant survivors.

In general, a coordinated community response in which key service providers work together is critical for all survivors of sexual assault. For immigrant victims, the collaborative team must take additional steps to ensure that their response is effective and inclusive of all necessary players. Immigrant women may need community advocates or the support of other immigrant survivors who understand her culture and assist her to navigate the system. The immigrant survivors will need the assistance of immigration attorneys, immigrant rights advocates, and immigrant community-based organizations knowledgeable about the specifics of immigrant survivors' legal rights and agencies with expertise in working with immigrant populations as well as community grassroots organizations.

⁹ Adapted from New York City Alliance Against Sexual Assault, *Map of Services for Survivors of Sexual Assault in New York City*, at http://www.nycagainstrape.org/resource_map.html (last visited August 29, 2005).

¹⁰ Rachel Rodriguez. Community-based evaluation in a Latina immigrant community in Wisconsin. July 2004.

¹¹ Orloff, Leslye and Rachael Little. 1999. "Somewhere to Turn: Making Domestic Violence Services Accessible to Battered Immigrant Women." *A 'How To' Manual for Battered Women's Advocates and Service Providers*. Ayuda Inc.

¹² Lois H. Kanter, *Beyond Prosecution: Sexual Assault Victim's Rights in Theory and Practice, Symposium: Invisible Clients: Exploring Our Failure to Provide Civil Legal Services to Rape Victims*, 38 SUFFOLK U. L. REV. 253 (2005).

A collaborative, power-sharing model includes sexual assault advocates, health professionals, law enforcement, immigrant advocates, and attorneys – with expertise in both sexual assault and immigration issues – in partnership with the survivor and community organizations to meet her needs.¹³

Involving Immigrant Women and Immigrant Communities in Collaborations

Community ownership of the issue of violence against women is essential to ending violence. Immigrant survivors of sexual assault are in a unique position when ready to lead this endeavor. Survivors can define what safety means for immigrant women in their community. This is paramount to the provision of services. Immigrant women can also guide mainstream organizations by working together with them to enhance their mainstream program responses to immigrant survivors in a culturally appropriate way. Supporting new and emerging leaders by involving them in existing collaborations as equals will be a step forward towards building a system that will reach, support, and provide culturally competent help to immigrant survivors. Without immigrant survivor involvement few immigrant victims will actually use the services that a community offers to assist them.¹⁴

Collaboration with the immigrant community and involvement of immigrant survivors is not outreach. In this context, collaboration is a dynamic and ongoing process that encourages active participation of all members involved. There are some guiding principles to consider when involving immigrant survivors as equal partners:

- Partners need to be willing to share power
- Have a desire to learn from others
- Be open-minded. Immigrant survivors may propose policies and changes that may be different from traditional ways of providing services
- Be open to new alliances. For instance, immigrant women may be working in their community already with young men, the clergy, and immigration advocacy centers etc.

The experiences of successful programs serving immigrant communities around the country base their achievement in involving not only the immigrant community but immigrant survivors themselves. Recruiting new leaders is a challenge in itself as many are not identified by mainstream as “leaders” either because they are not professionals or because they do not work on the field of victim’s services.

Involving immigrant women will result in new and creative ways that services should be provided to immigrant women. For instance, immigrant women may propose meetings in houses of survivors, which may go against traditional safety rules for advocates. The meetings done in this way may be a more effective way of giving information to the community about rights and remedies for victims of crimes of sexual assault. Agencies inviting survivors to collaborate to improve services to the community should be open-minded to different ways of ending violence in the immigrant community. Including immigrant survivors as equals can achieve the following:

- Open the way for other survivors to access to the services that they are entitled to receive.¹⁵
- Provide immigrant women important insight into the intricacies of the various systems with which they may have to work.
- Survivors will be also in a unique position to communicate to service providers the ways in which they can improve service delivery and reduce barriers to full recovery for others facing a variety of challenges based on their identity.¹⁶
- Provide a vehicle for working as equals with institutions and service providers

¹³ For a discussion on survivor inclusion see THE CENTER FOR WOMEN IN GOVERNMENT & CIVIL SOCIETY, POLICY ROUNDTABLE REPORT IMMIGRANT WOMEN: ASSESSING NEEDS, BUILDING ALLIES (Dec. 5, 2001). See also Deanna D. B. Matzanke, *Working with the Enemy: Collaborating in the Implementation of Women’s Human Rights*, 4 YALE H.R. & DEV. L.J. 149 (2001), Christopher Leon Jones, Jr., *The Memphis Strategic Team Against Rape and Sexual Assault: One City’s Struggle to Find a New Way of Doing Business*, 32 U. MEM. L. REV. 349 (2002).

¹⁴ Sonia Parras Konrad, Jennifer Rose, “Reevaluating the Model: Being an Agent of Change.” Family Focus Group, Austin, Texas (June, 2004) (Legal Momentum, Washington, D.C.).

¹⁵ Legal Momentum & ORGANIZACION EN CALIFORNIA DE LIDERES CAMPESINAS, INC., ADVOCACY TO IMPROVE SERVICES FOR BATTERED MIGRANT AND IMMIGRANT WOMEN LIVING IN RURAL COMMUNITIES: A MANUAL 70-77 (2003).

¹⁶ Sonia Parras Konrad, Jennifer Rose, “Reevaluating the Model: Being an Agent of Change.” Family Focus Group, Austin, Texas (June, 2004) (Legal Momentum, Washington, D.C.).

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- Involving immigrant communities not only in guiding the work but also in the provision of services, will ensure that the information on rights and services to survivors gets to the community in general and ultimately to survivors.
- Help immigrant women become involved in events and projects to change policies that harm them.
- Build healthier and stronger families and communities by encouraging active self-confident women leaders.

If your agency is recruiting survivors to be part of a collaborative response team, you may have to make adjustments in times meetings are scheduled, having day care available, assisting with transportation, etc. Several agencies across the nation have successful meetings and working groups that meet on weekends or late in the evening. Adapting to the needs of the community will assist your agency in achieving true and successful collaboration. If your agency is thinking about going beyond collaboration, consider not only recruiting immigrant survivors as volunteers but hiring them as staff members.

Current responses and successful models or collaboration- The Existing Models

3.1 The SART Model of Collaboration

Since the 1980s, many communities have adopted Sexual Assault Response Teams (SART). In the general model, law enforcement, specially trained medical professionals and sexual assault advocates create a formal partnership in which they ensure a coordinated response to sexual assault cases.¹⁷ They often agree that when a hospital calls its forensic examiner for a reported or suspected sexual assault, the hospital will also immediately call the designated advocate.¹⁸ Similarly, police responding to a report of sexual assault contact an advocate who will ensure that the victim receives the necessary medical care and legal assistance.¹⁹

The professional relationships cultivated through these networks can be extremely beneficial to victims of sexual assault. Ideally, each member agency is represented at monthly meetings by a high-level professional who is capable of initiating operational changes in response to issues raised by the SART.²⁰ The SART can enable the various actors to better understand the perspectives of agencies with whom they may not often collaborate, such as advocates and law enforcement.²¹ The SART also provides member agencies with a direct means for holding the other members accountable.²²

Coordinated Community Response

Like SART, the Coordinated Community Response teams (CCR teams) to sexual assault integrates core services for sexual assault victims, medical and mental health providers, law enforcement, rape crisis centers, and civil legal services.²³ Multidisciplinary community collaboration also helps reduce fears or misperceptions immigrant survivors may have towards various governmental and non-governmental institutions. For example, civil attorneys and rape crisis centers can educate law enforcement on the rights of undocumented survivors. With law enforcement, civil attorneys can then assure an immigrant client of her safety, despite immigration status. Building on the sexual assault programs already in place, CCR teams address potential tensions between advocates and attorneys. In general, this model of community collaboration aims to respect the privacy and autonomy of the victim.²⁴ Specifically considering the needs of immigrant victims of sexual assault, CCR teams can be tailored to the various religious, cultural, social, and economic sensitivities of individual communities.²⁵ CCR teams should include places of worship immigrant victims turn to, providing victims a greater sense of security and familiarity. CCR teams enhance an immigrant survivor's ability to secure safety, housing, livelihood, and broad independence. For example, civil attorney coordination with local public education and mental health facilities could prevent a

¹⁷ Pennsylvania Coalition Against Rape, Sexual Assault Response Team Guidelines 14 (2002) available at: http://www.uncfsp.org/projects/userfiles/File/DCE-STOP_NOW/guidelines_final.pdf

¹⁸ Kristen Littel, Sexual Assault Nurse Examiner (SANE) Programs: Improving the Community Response to Sexual Assault Victims 3-7 (U.S. Department of Justice, Office of Justice Programs, Office of Victims of Crime: OVC Bulletin, April 2001) available at: http://new.vawnet.org/Assoc_Files_VAWnet/OVC_SANE0401-186366.pdf

¹⁹ See generally Kimberly A. Lonsway, and Joanne Archambault, "The Earthquake in Sexual Assault Response: Police Leadership Can Increase Victim Reporting to Hold More Perpetrators Accountable" (The Police Chief Magazine, December 2010) available at: http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=2201&issue_id=92010

²⁰ Doug Wilson, Andrew Klein "An Evaluation of the Rhode Island Sexual Assault Response Team" Botec Analysis Corporation, Waltham Massachusetts, 2005. Available on the web at www.ncjrs.gov/pdffiles1/nij/grants/210584.pdf

²¹ Id.

²² Id.

²³ "Integrating Civil Legal Service into a Coordinated Community Response" VRLC First National Advanced Sexual Assault Law Institute: Integrating "Civil Legal Needs" into a Coordinated Community Response to Sexual Assault: *An Advanced Sexual Assault Law Institute for OVW-LAV Practitioners* (January 2007, Santa Monica)

²⁴ Id.

²⁵ "We're on the Same Team, Aren't We?: Tackling the Challenges of Integrating a Civil Attorney into a CCR" VRLC First National Advanced Sexual Assault Law Institute: Integrating "Civil Legal Needs" into a Coordinated Community Response to Sexual Assault: *An Advanced Sexual Assault Law Institute for OVW-LAV Practitioners* (January 2007, Santa Monica)

victim from dropping out of school.²⁶ It is common for a CCR team to include SANE nurses (see below) as well as elements of SART.

Sexual Assault Nurse Examiners

For nearly 20 years, the Sexual Assault Nurse Examiner's (SANE) program has continued to grow as one of the most popular and effective medical-legal cooperative responses to sexual assault.²⁷ Implemented nationally, SANE focuses on providing victim-sensitive medical care to sexual assault victims.²⁸ A SANE is a registered nurse (R.N.) with certified expertise in the clinical and forensic examination of sexual assault victims.²⁹ SANE nurses seek to avoid the retraumatization of sexual assault victims upon their arrival at emergency medical services and during evidence collection.³⁰ A SANE nurse has a deep understanding of victimization and can quickly recognize the physical, psychological, and mental health needs of a victim, reducing the amount of time the victim has to spend in busy and impersonal emergency departments. A SANE nurse is also qualified to detect and help document lack of consent and collect the most complete evidence possible.³¹ SANE has the potential to provide compassion and cultural sensitivity to immigrant victims of sexual assault. A well-trained SANE nurse will understand different elements of shame and denial associated with the victim's experience. Additionally, SANE nurses that are community members can relate to a victim in the victim's language, may be familiar with the victim's culture, and can help identify the victim's cultural concerns that need to be addressed. SANE nurses should be involved in multidisciplinary response models to sexual assault.

SURVIVOR CENTERED COLLABORATIONS IN U VISA CASES; STRENGTHENING THE WORK OF LAW ENFORCEMENT, ADVOCATES AND SERVICE PROVIDERS

Generally, collaboration for purposes of responding to immigrant survivors of crimes of violence is an effort to coordinate services to maximize results in the most effective way possible. This approach is a vertical approach in which services providers across systems coordinate services so that multiple survivors' needs are met by each agency concentrating within its area of expertise on being most effective in responding to the needs of survivors of sexual assault. There is another dimension of collaboration. A horizontal approach to collaboration defines how immigrant communities engage in addressing and preventing sexual assault within communities. It is in the intersection of both approaches that the ideal collaboration lies.



²⁶ "We're on the Same Team, Aren't We?: Tackling the Challenges of Integrating a Civil Attorney into a CCR" VRLC First National Advanced Sexual Assault Law Institute: Integrating "Civil Legal Needs" into a Coordinated Community Response to Sexual Assault: *An Advanced Sexual Assault Law Institute for OVW-LAV Practitioners* (January 2007, Santa Monica)

²⁷ Kristen Littel "Sexual Assault Nurse Examiner (SANE) Programs: Improving the Community Response to Sexual Assault Victims". Office of the Victims of Crime, April 2001. Available on the web at http://www.ovc.gov/publications/bulletins/sane_4_2001/welcome.html

²⁸ Id.

²⁹ http://www.ojp.gov/ovc/publications/bulletins/sane_4_2001/1.html

³⁰ "Victim Benefits" http://www.ojp.gov/ovc/publications/bulletins/sane_4_2001/2.html

³¹ "Victim Benefits" http://www.ojp.gov/ovc/publications/bulletins/sane_4_2001/2.html

The U-Visa Remedy for Immigrant Victims of Sexual Assault and the Need For Multidimensional Collaboration

A model of immigrant survivors centered collaboration must examine the specific needs of each immigrant victim of sexual assault. The victim may need the assistance of the following service providers:

- specialized nurse;
- hospitalization;
- trauma treatment;
- counseling;
- advocacy;
- law enforcement protection and intervention;
- prosecution of the offender, and;
- civil legal remedies (housing, education, civil damages, protection order)

At the same time, in looking at the specific systemic challenges the immigrant survivor faces, the following additional services may be needed:

- interpretation;
- peer support;
- immigration advocate or attorney familiar with special immigration laws created to help immigrant victims of crime;
- family law attorney familiar with immigration law;
- religious leaders;
- advocates with expertise on welfare benefits and access to health for sexual assault survivors

Advocates respond to the specific needs of women so they can survive the crime in the long term. One of the needs of immigrant survivors that are non-citizens is to be able to attain immigration status. Since the U visa remedy makes this possible, advocates and other service providers working together in SART teams or similar models³², should consider this remedy and analyze what their role is in the U visa context. This may translate into adding U-visa related responsibilities to already existing protocols. It may also mean creating new protocols that ensures immigration protections for survivors.

If your agency is already part of a SART or similar group, consider the possibility of reviewing your protocols and policies in light of the U visa remedy. The following table reflects some of the partners that should be part of your team. Consider it as a tool to prepare a strong response to immigrant survivors needs. Gather the key names, contact information and connect with them if you are not doing so already. If you have weekly coordinating meetings with other service providers, consider inviting new allies to the table to enrich your expertise and improve your response to immigrant survivors. No matter what your role is, this preparation work will ensure that you can make the proper referrals and collaborate with agencies in responding to immigrant survivors of sexual assault

Assisting the Survivor in Articulating Her Needs

The majority of sexual assault victims never report the crime to the police for a variety of reasons.³³ To encourage a woman to tell her story, it is helpful to ask questions respectfully and in a way that empowers the survivor to make her own choices, which may or may not be the path a service provider would prefer the survivor take. An effective style of inquiry often includes asking open-ended questions that encourage a survivor to tell her story and express her needs, fears, and concerns from her own cultural perspective, without judgment. When working with survivors of sexual assault it is always a priority to ensure survivors know that the sexual assault is never their fault and that you are there to support her decisions as to what happens next. If she is encouraged, supported, and made to feel safe, an immigrant victim is more likely to tell the advocate, attorney, or worker what she needs³⁴ from within her own cultural context.³⁵ She should be encouraged to tell an advocate or attorney each of the things of which she is afraid and each type of help that she would need or find useful.

The advocate or attorney should work with her to create a list of her needs, wants, and concerns. This list should be developed without regard to, and should not be limited by, what the advocate or the attorney might think that the legal, social service, or health care systems typically offer. The list also should be developed without regard to the advocate or attorney's assumptions about what a particular immigrant client will need, or the course of action she should undertake. Further, it should be developed without being restricted by what the advocate or attorney thinks a victim might ultimately be able to obtain in court, from the advocate's own agency, from other programs, or through public benefits. If an immigrant survivor believes she can only list those services or benefits she might be able to receive from one agency or in court, she may not include critical information that could help her qualify for other forms of relief or assistance.

Advocates and service providers should work with clients jointly to develop creative strategies to effectively address each of the items immigrant survivors include on their lists. Some of these issues may be addressed through traditional medical, legal or social services remedies; others may require advocates or attorneys to use the justice or social services systems more creatively. Still others may prompt immigrant survivors and advocates to work together to identify which of the listed needs or concerns might be addressed using the immigrant community programs, survivor's own resources, or those of community or faith-based organizations.³⁶

³³ Only about 38.5% of rapes and sexual assaults were reported to law enforcement in 2003. The most common reasons given by victims for not reporting these crimes are the belief that it is a private or personal matter and that they fear reprisal from the assailant.] Bureau of Justice Statistics. 2004. Criminal Victimization, 2003. Washington, D.C.: U.S. Department of Justice.)

³⁴ Woodrow Wilson International Center for Scholars, Women's Rights in Theory and Practice: Employment, Violence and Poverty 49-50 (2002); Leslye Orloff, Address Before the American Medical Association, (Mar. 11-13, 1994), in National Conference On Family Violence: Health and Justice (1994).

³⁵ Brittany McCarthy Barnes, *Family Violence Knows No Cultural Boundaries*, 93 J. OF FAM. AND CONSUMER SCI. 1, 11-14 (2001).

³⁶ Leslye Orloff, Address Before the American Medical Association (Mar. 11-13, 1994), in NATIONAL CONFERENCE ON FAMILY VIOLENCE: HEALTH AND JUSTICE (1994).

SURVIVOR CENTERED COLLABORATION --WORKING TABLE

AGENCY	CONTACT/S NAME	ROLE	NEED FOR COLLABORATION
SEXUAL ASSAULT ADVOCATE			
SEXUAL ASSAULT HOTLINE			
SEXUAL ASSAULT REPOSENSE TEAM (SART)			
IF NO SART, POLICE OFFICER OR LOCAL LAW ENFORCEMENT			
CITY COUNCIL REPRESENTATIVE			
PROSECUTOR			
IMMIGRATION ATTORNEY			
LEGAL SERVICES/DOMESTIC VIOLENCE/FAMILY LAW ATTORNEY			
CHILD PROTECTIVE SERVICES			
SEXUAL ASSAULT NURSE EXAMINER (SANE) E.R HEALTH SYSTEM			
PSYCHOLOGIST			
COMMUNITY HEALTH CLININC STAFF			
COMMUNITY ADVOCATE/GRASSROOTS ADVOCATE			
UNITED STATES ATTORNEY'S OFFUCE			
DEPARTMENT OF HOMELAND SECURITY <ul style="list-style-type: none"> • IMMIGRATION CUSTOMS ENFORCEMENT (ICE) • CITIZEN AND IMMIGRATION SERVICES (CIS) 			
COLLEGE COUNSELORS			
INTERPRETERS			
CLERGYCAL STAFF			
IMMIGRANT GRASSROOTS AGENCY WORKING ON WOMEN'S ISSUES			
IMMIGRANT SURVIVORS AND EMERGING LEADERS			
BUSINESS OWNERS			

U VISA REMEDY AND LAW ENFORCEMENT; A NEW ERA OF COLLABORATION

Introduction

In 2000, the Violence Against Women Act³⁷ and the Trafficking Victims Protection Act³⁸ created the U visa and the T visa, two visas for immigrant survivors of certain crimes of violence. Both visas were created to provide legal immigration status to noncitizens that are assisting or are willing to assist the investigation or prosecution of the specific forms of criminal activity that victims were the subject of.

In order to qualify for a U or T visa, applicant must show that they or their immediate family members

- Has suffered substantial physical or mental abuse from criminal activity;
- Has information regarding the criminal activity; that the criminal activity violated US law or occurred in the United States (including Indian country and military installations) or the territories or possession of the United States.
- Are, have been, or are willing to be helpful to government officials in the investigation or prosecution of such criminal activity.

The intent of Congress in creating this new remedy was very deliberate. Congress sought to strengthen the work of law enforcement in investigating crimes of violence in immigrant communities. A second co-equal Congressional goal was to protect immigrant victims from retaliation and the threat of deportation while providing them with support, needed services, and the economic stability to heal. The goal is to ensure that the survivor gets the necessary services to survive the crime, be strong to be able to collaborate with law enforcement and obtain immigration protections she is entitled to. This is important because as you start your collaborations around U visa cases, it is going to become very helpful to explain what the real intent in creating this remedy was.

The U-visa regulations require a U-visa applicant to submit a law enforcement certification with his or her application for a U-visa.³⁹ Most attorneys and advocates begin the U-visa process by approaching a law enforcement agent for a certification. However doing so on a case-by-case basis may not be very productive. With each new case, the advocate or attorney will need to invest time and energy in educating each new law enforcement officer again and again.

In order to ensure that all immigrants, not just those with victim service support, know about the U-visa protections when law enforcement requests their cooperation, U-visa regulations recommend that law enforcement agencies⁴⁰ establish a protocol for providing certifications in U-visa cases⁴¹.

Creating U visa protocols

The recommendation to create protocols for law enforcement agency processing in U visa cases is not mandatory. State or federal government agencies are encouraged by DHS in the U-visa regulations to sign U-visa certifications for immigrant victims. Multiple supervisory staff at an agency can be authorized to sign certifications. Development of a protocol is not required. However, developing a protocol can be beneficial. It can prevent law enforcement or agency staff from being overwhelmed by requests they have not received direction on how to respond to. Protocol can also be helpful in correcting misinformation agency staff may have about U-visa certifications. For example, a law enforcement officer may be wrongly under the impression that by signing a certification they are granting immigration status. By creating a protocol, law enforcement will be prepared to respond consistently based on the facts of the case when victims turn to them for certifications. This is purely a DHS function and a certification is one of many pieces of evidence victims must submit to prove their U-visa eligibility to DHS.

³⁷ Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

³⁸ Victims of Trafficking and Violence Protection Act of 2000 (TVPA), Pub. L. 106-386 (Oct. 28, 2000).

³⁹ Model Police Protocol for U-Visa Certification; New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007). U visa regulations 40

⁴¹ Id.

The U-Visa Remedy for Immigrant Victims of Sexual Assault and the Need For Multidimensional Collaboration

The following are recommendations and steps to consider when working with law enforcement to create a protocol or enhanced an existing one.

Build on existing collaborations

The most important thing is not to create yet one more team or working group but to build on what is already in place and working and expand the advocacy and work of the group.

-
- Your agency may have contacts with law enforcement, judges and prosecutor's office due to your ongoing collaboration, teamwork and referral on sexual assault and domestic violence cases. If you already have those connections, chose the person in your collaboration who is the best messenger that can:
 - Disseminate information on the U visa remedy
 - Invite key decision makers to a meeting or training on U visa remedies
- If you do not have a SART team or other ongoing collaboration team, consider holding a meeting to start one.
 - Recruit your most influential partner or person you work with such as a Police captain, sheriff, judge or prosecutor to invite others to this meeting
 - Be ready to disseminate the information and present a goal for the creation of your team that will benefit collaborate partners you intend to involve
 - Be prepared to answer questions on immigration issues and to dispel myths about the U-visa
 - Provide meeting attendees with copies of the relevant sections of the U-visa statute, congressional findings, and U-visa regulations that explain and encourage certifications⁴²

Gather information from key players before finalizing any proposals

Consider preparing a survey or questionnaire from service providers that will be affected by the protocol. You may also consider hosting some focus groups with critical players to obtain pertinent information and opinion on the best way to collaborate with law enforcement, prosecutors and other government agencies in a U visa protocol.

Some of these players are:

- Sexual assault and domestic violence advocates
- Immigrant Community Based Organizations
- Community Organizers
- Immigrant Rights Advocates
- Immigration attorneys
- Domestic violence/family law attorneys
- Employment attorneys
- Legal services
- Judges
- Police officers
- State Prosecutors
- The State's Attorney general's office
- Federal Prosecutors in your jurisdiction
- EEOC
- DOL
- Child Protective Services

⁴² Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007). U visa regulations 40

Find common grounds in spite of your different roles and interests

Once the appropriate players come together, it is important to understand the dynamics among your collaboration participants. Everyone plays a role and if any one group tries to dominate or take over the group's the agenda, it may create a power imbalance. It is important that law enforcement understand that advocates and community-based groups play a critical role in connecting immigrant crime victims with victims services and legal representation. It is equally important that community-based groups and attorneys also understand that law enforcement's primary duty is to investigate and prosecute crimes and that law enforcement personnel may see victim services as necessary to support victim cooperation in criminal prosecutions and goals of community policing. In the context of U-visas, all participating agencies share key goals. In the end, the U-visa helps crime victims access protection under the law, which in turn allows more immigrant crime victims to help law enforcement investigate and prosecute criminal activity.

In collaborating to develop protocols that further the goals of the Violence Against Women Act, immigration laws, and goals of community policing in immigrant communities by:

- Screening all victims and witnesses for U-visa eligibility⁴³;
- Providing language access both in law enforcement proceedings and in service provision;
- Referring non-citizen crime victims to victim advocates and attorneys who can help them access their right to immigration relief;
- Developing best practices for service providers and justice system referrals;
- Working with medical professionals who may identify crime victims;
- Training collaboration participants on the U visa certification process;
- Providing Cultural Competency Training for law enforcement and victim service providers.

Be sure to include immigrant survivors in your collaboration. They will provide important direction to the group and will assure cultural competency. One way to make this happens is by creating an advisory committee of immigrant survivors of crimes of violence.⁴⁴ For more information on how to support emerging leadership in immigrant communities go to "building the Rhythm of Change."⁴⁵

By working together and creating a comprehensive protocol, you will:

- Maximize community awareness and safety, protection, and response for immigrant survivors of sexual assault.
- Ensure a victim-centered response to violence
- Improve access to community resources
- Hold sex offenders accountable
- Include/represent underserved populations affected by sexual assault that will facilitate immigrant victim access to resources

Create a way to share your resources

The protocol could not only establish ways of collaboration between the different agencies but also create avenues and opportunities for sharing of resources. For instance, in working with immigrant survivors, language access to services can pose a significant challenge for both governmental and non-governmental programs working with victims. Some victims may not speak English or may be better able to communicate emotionally charged events like rape or sexual assault in their native language. The need for an interpreter may be crucial to the criminal investigation for the victim's access to services.

⁴⁵ Gail Pendleton "Building the Rhythm of Change: Developing Leadership and Improving Services Within the Battered Rural Immigrant Women's Community" Family Violence Prevention Fund

The U-Visa Remedy for Immigrant Victims of Sexual Assault and the Need For Multidimensional Collaboration

Although interpreters particularly in languages other than Spanish can seem difficult to obtain, agencies can work together to prepare to respond with and bilingual and bicultural staff to improve response for future cases of sexual assault victims. Agencies can reach out to others in their community with language skills and through collaboration to better serve limited English proficient survivors. An agency can begin by building relationships with service providers working with cultural and linguistic minority communities in the following ways:

- Make a list of organizations that work with linguistic, racial and cultural minority populations.
- Add multi-lingual/multi-cultural professionals who work with organizations and government agencies to the list.
- Add university language programs to the list
- Reach out to local businesses who may employ persons with language skills who could be recruited and trained as interpreters
- Recruit bilingual survivors who can become trained as interpreters
- Examine how all collaborative partners can build funding for interpreters into their budgets
- Invite bilingual individuals and organizational representatives to a meeting to help the agency develop a plan for expanding its services and language access to diverse communities.
- Develop a plan for cross-agency collaboration in serving survivors who are immigrants and/or from diverse cultures.
- Train professionals and staff of other agencies on sexual assault.
- Have agency staff participate in a training conducted by organizations working with diverse populations on specific issues that affect those populations.
- Identify a liaison that will facilitate communication between an organization and other agencies and professionals so that they can collectively coordinate client services in the future.
- Work out the procedures that agencies will use to contact each other to help serve sexual assault victims.
- Work together as a team on sexual assault cases so that women from diverse cultures will have an advocate who is an expert on sexual assault, and one who has a thorough understanding of her cultural needs.
- Invite staff members of organizations serving diverse cultural communities to join a local sexual assault coordinating council.

A key benefit immigrant survivors ideally receive from collaborative networks is coordinated handling of their legal and social service needs by various professionals. Service providers' collaboration can ensure that any steps that various professionals take to help an immigrant victim will not impede any other advocate or attorney's efforts. For example, it is important to know under what circumstances a survivor's immigration case could be harmed by actions taken in a family law case (e.g. divorce). By contacting an immigration attorney, sexual assault victim advocates can learn about the types of immigration relief for which an immigrant victim qualifies. Once a victim's immigration options have been identified, lawyers and advocates can access the victim's story and prepare her initial affidavit for her U-visa case. Advocates may also have pre—existing long-term relationships with law enforcement that can help the victim obtain U-visa certification.

By creating partnerships with an attorney, advocates can learn how to help an immigrant survivor obtain protection orders that can also help her immigration case. When advocates assist attorneys in collecting evidence for U-visa cases, attorneys can offer legal assistance to many more immigrant victims. Advocates often have a closer, more trusting, relationship with victims than lawyers and are often much more effective at learning the details of the story.

Since workers in sexual assault programs are typically among the first to meet with immigrant survivors, they are in a prime position to help immigrant survivors begin gathering documents and information necessary for U-visa applications. In some communities, it may be difficult to identify an immigration attorney with experience representing immigrant victims to represent the immigrant in a U-visa case. In such instances, the victim advocate can provide direct assistance with the immigrant's case. Victim advocates in all cases must first screen for immigration "red flags" that can make an immigration case complex and require an immigration attorney. If there are no "red flags" the advocate can consult with an immigration attorney elsewhere in the state or a national technical assistance provider to assist an immigrant victim in preparing her U-visa application. Even in cases where an immigrant is represented by an immigration attorney, victim advocates can use their expertise on sexual assault to help the immigrant develop her case affidavit and assist the victim in working with the criminal investigation or

prosecution and obtaining the certification required for the U-visa. It is unlikely that justice system officials will be familiar with the U-visa process. Advocates can educate law enforcement prosecutors and judges about the U-visa providing copies of the law, the regulations, and the certification form.

They can help enforcement officers complete the form. Advocates can help victims identify the range of government officials who can provide certification in her case. For example, the district attorney or judge may have seen the extent of the victim's cooperation with an investigation or case and could provide the certification needed for the victim's U-visa application. Advocates and attorneys should keep notes of the dates, names, and substance of the conversations with government officials concerning certification. When problems arise, seek a meeting with supervisory personnel. Turn to collaborative partners for help determining which partner may be the most successful in securing a meeting at which the supervisor can meet with a representative of your collaborative team and learn about the U-visa and initiate an open discussion that could lead to development of procedures and possibly protocols for certification in cases of U-visa victims.⁴⁶

Building Expertise by Training Each Other: Cross Training⁴⁷

One of the most effective forms of assistance a collaborative network can provide is cross-training. Through cross-training advocates and attorneys in every field can expand their knowledge about the issues affecting immigrant survivors. Some of the organizations that should participate in such trainings include:

- Rape Crisis Centers
- Shelters
- Sexual assault hotlines staff
- Police units with sexual assault specialization
- Police units specializing in child sexual assault
- Legal service organizations and experienced sexual assault attorneys
- Immigration lawyers with experience working on sexual assault cases
- Immigrant women's groups
- Immigrant sexual assault survivors
- Immigrant community-based organizations, including immigrants' and refugee rights advocates
- Immigration law bar association members
- Faith-based organizations serving immigrant communities
- Counseling programs
- Sexual assault court programs
- Sexual assault prosecution programs.

Immigrant survivors must be included in community-wide cross trainings as teachers about immigrant victims' experiences with sexual assault and as experts on outreach to immigrant women.⁴⁸ A broad array of professionals – shelter advocates, medical professionals, attorneys, social workers, immigrants' rights organizations' staffs, clergy, and justice system professionals – all need knowledge about immigrant survivors' legal rights.

⁴⁶ Legal Momentum and Organización en California de Líderes Campesinas, Inc. "Advocacy to Improve Services for Battered Migrant and Immigrant Women Living in Rural Communities: A Manual" (2010 Edition) available at: <http://iwpl.legalmomentum.org/reference/additional-materials/cultural-competency/working-with-farmworker-women/Lideres%20Advocacy%20Manual%20-%20English%202010%20Update.pdf/view>

⁴⁷ "Cross Training" is when two or more organizations with different areas of expertise train each other so that staff from each agency expand their skill sets and knowledge base in order to better serve immigrant survivors. For example, staff from a community based organization (CBO) program that serves immigrant women can training legal services attorneys on victim advocacy and cross cultural communication, when working with immigrant survivors, while those attorneys can train the CBO staff on legal options, such as U-visas and VAWA self-petitions, for immigrant survivors.

⁴⁸ LESLYE ORLOFF ET AL., AYUDA SOMEWHERE TO TURN: MAKING SEXUAL ASSAULT SERVICES ACCESSIBLE TO IMMIGRANT SURVIVORS 96-111 (LEGAL MOMENTUM, 1999).

In a community each of these professionals will have critical forms of expertise, but will need training on other issues so that together they can form an effective, coordinated effort to help immigrant survivors. Without cross-trainings, sexual assault advocates learn what documents a woman needs for her immigration case. Similarly, immigration attorneys learn how contact with advocates can improve their cases for survivors of sexual assault. Sexual assault attorneys and advocates might attend trainings on basic immigration law, while immigration attorneys might benefit from a training session on the issues that arise in sexual assault cases. Both attorneys and advocates can benefit from sharing information about the social services and counseling services available to survivors in their area. Since the details of immigration law and public benefits options for immigrant victims are constantly shifting, cross-trainings must be ongoing.

Trainings should also be held with, and, ideally, sponsored or co-sponsored by, local immigrant-service organizations so that those groups may become better prepared to address sexual assault within their immigrant communities. The attendees should be encouraged to serve as faculty in their area of expertise. Sexual assault advocates might explain prevention techniques, while attorneys might clarify local laws against sexual assault, the process for applying for a U-visa,⁴⁹ and other forms of immigration relief and public benefits that may be accessed by immigrant victims. Service providers benefit from trainings run by immigrant communities because trainings expand their cultural knowledge, helping them work with immigrant clients in a more culturally appropriate manner.⁵⁰ Training and collaboration can link service providers with community-based organizations, university-based organizations, and religious organizations that could possibly offer links to potential interpreters.⁵¹

Attendees at cross-trainings should be provided with training materials on a variety of topics. Topics might include:

- Sexual assault
- Immigration options for immigrant survivors
- Social services available to immigrant survivors
- Public benefits options for immigrant survivors and their children
- Demographic information about immigrant communities
- Information about immigrant cultural communities and the needs of immigrant communities in the area
- Needs of immigrant women in your community
- Cultural competency
- Working effectively with qualified interpreters.

Many organizations will already have developed some of the training material listed above,⁵² so it is important to investigate this before you start producing your own materials. In addition to materials, cross-training attendees can be provided with lists of local organizations with which they can collaborate on immigrant cases. They might also receive a list of national organizations that provide state, local, and regional referrals to service providers and

⁴⁹ See *infra* on U Visa Relief for Immigrant Victims of Sexual Assault.

⁵⁰ NANCY K.D. LEMON & PETER JAFFE, FAMILY VIOLENCE PREVENTION FUND, SEXUAL ASSAULT AND CHILDREN: RESOLVING CUSTODY AND VISITATION DISPUTES 165-66 (Janet Carter et al. eds., 1995).

⁵¹ Leslye E. Orloff et al., *Immigrant Survivors' Willingness to Call for Help and Police Response*, 13 UCLA WOMEN'S L.J. 43 (2003).

⁵² If organizations do not already have these materials, they need not invest resources in developing them. These materials can be obtained from national organizations and used locally. To obtain training materials on many of the topics listed above, contact the National Immigrant Women's Advocacy Project, 4910 Massachusetts Ave NW – Suite 16, Lower Level – Washington, DC 20016, (202) 274-4457, niwap@wcl.american.edu, <http://www.wcl.american.edu/niwap/>; or The Family Violence Prevention Fund, 383 Rhode Island St. Suite #304, San Francisco, CA 94103-5133, (415) 252-8900, <http://www.endabuse.org> for more general information.

experts that work with immigrant victims. These organizations can provide technical assistance and links to others working with similar immigrant populations in other parts of the country.⁵³

⁵³ See *infra* Appendix for list of resources.

APPENDIX

COLLABORATION: SELF ASSESSMENT QUESTIONNAIRE FOR AGENCIES SERVING IMMIGRANT SURVIVORS

- What are the demographics of immigrant population(s) in your community and state?⁵⁴
 - What are the countries of origin of the immigrant women in your community?
 - What factors may have caused these immigrant women to move to the United States?
 - Are they fleeing civil war, persecution, or economic despair? Did they come to the United States to reunite with relatives in an established immigrant community?
 - Did they come as wives who met their spouses through international matchmaking organizations, as wives of servicemen, or through arranged marriage to someone living in the United States from their home country?
 - What are the significant immigrant populations in the area, and what language(s) do they speak?
- Do they reside permanently in your community?
 - Do they annually migrate to the community to do seasonal work?
- Where do immigrant populations generally reside in your city, county, or township?
 - Is the immigrant population isolated from the rest of your community?
 - Are immigrant women isolated from the rest of the immigrant community?
 - Are immigrant women isolated from others who speak their language or have the same cultural background?
- Which individuals are considered immigrant women community leaders?
 - Where do immigrant women congregate and organize? (e.g., work, shop, worship, when seeking services,)?
- Is there a community center for immigrants?
- What information about cultural or religious beliefs in the immigrant population might affect the way agencies might try to reach immigrant women?
- What attitude toward sexual assault does the immigrant community hold?
- Where can an agency find statistics or materials, either national or local, on dynamics of sexual assault experienced by this population?
- What services do non-profit or faith-based organizations offer in the immigrant community?
 - Which, if any, organizations are in contact with isolated immigrant women?
 - Do these organizations have any resources that would help educate difficult-to-reach populations?
 - Such organizations might include Family Support Centers on military bases, women's centers at universities, or health clinics in rural communities.⁵⁵

⁵⁴ Demographic and other information about the immigrant communities in a given area can be found at <http://www.census.gov/>.

⁵⁵ LESLYE ORLOFF, ET AL., NOW LEGAL DEFENSE AND EDUCATION FUND, LESLYE ORLOFF ET AL., AYUDA SOMEWHERE TO TURN: MAKING SEXUAL ASSAULT SERVICES ACCESSIBLE TO IMMIGRANT SURVIVORS 96-111 (LEGAL MOMENTUM, 1999). -This publication is available through the Legal Momentum website at <http://www.iwp.legalmomentum.org> (publication number G.I.2.).

BUILDING A SERVICE PROVIDER’S LANGUAGE AND CULTURAL ACCESSIBILITY

To serve immigrant survivors, all those providing services to immigrants need to provide interpreters. Without this, even a well-functioning agency will likely fall short of providing immigrant survivors with the full range of services that they may need. According to Title VI of the Civil Rights Act of 1964 and Executive Order 13166 recipients of federal funding have an obligation to ensure there is equal access to services and that they take reasonable steps to provide limited English proficient (LEP) individuals with meaningful access to their programs and activities.⁵⁶

Recruiting Multi-lingual/Multi-cultural Volunteers

Agencies might keep in mind the following when trying to recruit multi-lingual/multi-cultural volunteers

- Community-based organizations that serve immigrant communities can help recruit volunteers
- Because bilingual/multi-lingual people often read newspapers in both English and another language, placing ads in local non-English newspapers and newsletters will often yield results
- Internship programs often attract multi-lingual/multi-cultural students. Upon graduation, these students often continue to work with women or immigrants, and become a group of trained persons from whom agencies can recruit staff in the future.

Multi-lingual and Multi-cultural Staff

Attaining as much cultural diversity as possible allows an organization to better serve all members of a community and through diversity agencies become better service providers.

- Bilingual/bicultural staff supplement the work of contract employees and volunteers, and offer continuity
- Having a multi-lingual staff improves the quality of interpretation and communication generally, making communication more effective while at the same time lowering the costs of interpretation.
- Some immigrant women fear interacting with members of the majority culture whom they expect to be unfriendly or impatient. They expect to be treated as they have been by others in the community at large
- If interpretation is to be part of a staff member’s job, reduce the other job responsibilities in the contract of a bilingual/bicultural employee to allow time within the normal working day for interpretation. In that way, bilingual/bicultural employees are not penalized for not completing other job responsibilities;

⁵⁶ “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); 28 C.F.R. §42.104 (b)(2) (2003), For an in-depth discussion of LEP and legal requirements, see the Limited English Proficiency chapter of this manual.

- Multi-lingual staff must have the same possibility of promotion as other staff. Successful agencies are willing to replace language skilled staff members who are promoted with new language skilled staff.

To create a more diverse staff:

- Change the way staff members are recruited so that the next time an opening becomes available, hiring a staff member with language and/or cultural skills is a priority
- Mail job announcements to organizations and professionals who serve diverse communities and to university minority student associations
- Develop a list of ethnic language minority newspapers and newsletters in which to advertise
- Mail job announcements to language departments and cultural/race/ethnicity specific departments of universities
- Increase the hiring time-frame in order to create an applicant pool that will contain significant numbers of diverse candidates
- Measure cultural competency and language proficiency as discrete job skills.

Developing the Basic Language Skills of Agency Staff

Agencies can cultivate the language skills of their existing staff members:

- Pay for language-training classes for current staff members
- Bring a language instructor to the agency's office to provide classes during work hours
- Provide paid leave time to staff to take language classes.

Section 1513(a) of the Violence Against Women Act of 2000: U-Visa Legislative Intent, Findings and Purpose⁵⁷

SEC. 1513. PROTECTION FOR CERTAIN CRIME VICTIMS INCLUDING VICTIMS OF CRIMES AGAINST WOMEN.

(a) FINDINGS AND PURPOSE-

(1) FINDINGS- Congress makes the following findings:

(A) Immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnapping, trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained.

(B) All women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.

(2) PURPOSE-

(A) The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.

(B) Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.

(C) Finally, this section gives the Attorney General discretion to convert the status of such nonimmigrants to that of permanent residents when doing so is justified on humanitarian grounds, for family unity, or is otherwise in the public interest.

⁵⁷ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, Div. A, § 1513(a), 114 Stat. 1464, 1533 (Oct.28, 2000).

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5.1

Know Your Rights^{1 2}

By Alicia (Lacy) Carra and Leslye E. Orloff

No One ever deserves to be hurt by domestic violence.

Regardless of your immigration status, you have the right to be safe in your own home. You have the right to leave or have anyone removed from your home who abuses you and/or your children physically, emotionally or sexually. No one has the right to hurt you or your children in any way.

What is domestic violence?

Domestic violence is violence that happens between partners or former partners in a relationship. This can mean between: husbands and wives, boyfriends and girlfriends, same sex partners, relatives, and parents and their

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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.

Know Your Rights

children. Domestic violence can happen anywhere, inside or outside of your home. Domestic violence can happen when you live together, when you are separated, or when you are divorced.

If you are experiencing domestic violence, you are not alone. Domestic violence is very common. Although domestic violence is usually hidden, it exists in every community, in all cultures, and all religious sects.

Domestic violence often gets worse with time. It does not go away on its own. Domestic violence is a crime in the United States. Domestic violence is not your fault. Every person can get help even if they do not have government permission to be in the United States.

Although this booklet will refer to the abuser as "he," we do acknowledge that men can also be victims of domestic violence and that some women are abused by other women.³ VAWA was designed to be gender-neutral.

Domestic Violence can include:

- Hitting, punching, slapping, or kicking you, your children, or your pets
- Threatening to hurt or kill you
- Making you have sex when you do not want to
- Threatening to report you to the Department of Homeland Security (DHS) and have you deported
- Controlling where you go and whom you can see, talk to or write to
- Controlling your access to money, taking your money away from you, or making you say how you have spent money
- Refusing to file immigration papers for you or threatening to withdraw papers
- Withholding or destroying your passport and other personal documents
- Making you feel like a prisoner in your own home

MYTHS AND FACTS ABOUT DOMESTIC VIOLENCE

MYTH: Domestic violence only occurs in American families.

Fact: Violence occurs in families of every culture, nationality, religion, class, race, and socio-economic background.

MYTH: Battering is a family matter.

Fact: Domestic violence is a crime regardless of the relationship between people.

MYTH: I am in the United States without legal permission, so I cannot get help.

Fact: Any woman facing violence, regardless of immigration status, has a right to go to a shelter, get a protection order, to call the police for help, or use any program that helps victims of domestic violence.

MYTH: It is easy for battered women to leave their abusers.

Fact: Leaving an abuser is very hard. Women may fear that they will be severely hurt or killed if they try to leave. They may not be able to support themselves. They may want to keep the family together. They may be afraid of losing friends, family, or contact with their community.

MYTH: If I leave my abuser he will get custody of the children and I will not be able to see them.

Fact: Courts in the United States generally do not give custody of children to abusive parents. This is true even when the father is a citizen and the mother does not have legal immigration status.

³ While not all legal remedies will apply to lesbian and gay relationships, this booklet will still provide some basic information.

Help All Battered Immigrant Women Can Receive

Even if you do not have legal immigration status in the United States, or if your legal status is tied to your abuser's work visa, you can receive all of the following services:

- Services from shelters and other domestic violence programs;
- Civil protection orders from a court;
- Custody and support for children;
- Police assistance;
- Emergency medical care;
- Your abuser can be criminally prosecuted; and
- Your citizen children can receive public benefits.

Police Assistance for Battered Immigrants

Domestic violence is against the law. If you want to leave, then the police can help you and your children get out of the house and often they can drive you to a safe place. The police may arrest your husband/intimate partner if they think that a crime has been committed. If the police officer does not speak your language, find someone to interpret for you or who can help you ask the police to get an interpreter. Most police officers do not enforce immigration laws. However, in some places or situations they do. You can ask a local domestic violence or immigrant community based advocate to find out if the local police enforce immigration law your community.

Immigration options if you are battered, assaulted or the victim of criminal activity

There are twelve ways you or your child may qualify for legal immigration status without your abuser's knowledge, help, or control. The immigration relief you may qualify for, depends on:

- Who abused you
- If you are or were married to your abuser
- If your abuser is your parent, step-parent, or over 21 year old son or daughter
- If your child has been abused
- The immigration status and/or citizenship of your abuser
- If your spouse ever filed immigration papers for you
- If you came to the United States on a fiancé visa

The immigration options for battered immigrants are:

- 1) The self-petition under the Violence Against Women Act;
- 2) The battered spouse waiver;
- 3) Cancellation of Removal under the Violence Against Women Act (only after you have been placed in deportation proceedings)
- 4) The crime victims visa, called a U-visa;
- 5) Gender-based asylum;
- 6) The trafficking visa, called a T-visa
- 7) VAWA NACARA (Nicaraguan Adjustment and Central American Relief Act) of 1997;
- 8) VAWA Haitian Refugee Immigration Fairness Act of 1998 (HRIFA);
- 9) VAWA Cuban Adjustment Act of 1966;
- 10) VAWA Abused Adopted Child Protections;
- 11) Special Immigrant Juvenile Status (includes special protections under VAWA 2005);
- 12) International Marriage Broker Regulation Act Protection and access to information;

1. Self-petitions Under the Violence Against Women Act (VAWA)

VAWA "self-petitioning" is available to women and children whose U.S. citizen or legal permanent resident abusive husbands, U.S. citizen or legal permanent resident parents, or over 21 year old U.S citizen son or daughter. You do not need to rely on an abusive spouse, parent, or over 21-year-old child to file papers for you to get legal immigration status.

Know Your Rights

Unmarried children under the age of 21 who are being abused by a parent who is a U.S. citizen or a lawful permanent resident are also eligible for a self-petition, if they file before age 25.

If your child has been abused by your citizen or lawful permanent resident spouse you may also qualify for a self-petition, even if you have not been abused yourself.

If your husband or parent never filed for your "green card," if he filed and then withdrew the application, or if he filed but you fear he will refuse to help you get your "green card," you may be able to apply for a **VAWA SELF-PETITION**.

You may qualify for self-petitioning IF YOU ARE:

- Married to a U.S. citizen or a lawful permanent resident, **OR**
- Were divorced less than two years ago from a U.S. citizen or lawful permanent resident spouse; **OR**
- The child of a U.S. citizen or lawful permanent resident; **OR**
- The parent of an over 21 U.S. citizen son or daughter

AND

- You are living in the United States; **OR**
- You are living abroad **AND**
 - You were abused in the United States; or
 - Your abusive spouse or parent is an employee of the U.S. government or a member of the U.S. armed forces;

AND

- You or your child were abused or you suffered extreme cruelty from your husband or parent⁴

2. Battered Spouse Waiver

Some battered immigrant women are married to spouses who filed immigration papers for them, but did not finish the process. If your U.S. citizen spouse filed immigration papers for you, but you were married for less than two years on the day you both went to your interview with DHS, what you received is called "conditional temporary residency," which lasts for two years. At the end of two-years, you and your spouse must file a request together for you to receive lawful permanent residency.

If you are or have been abused and your husband will not help you in filing the petition to move from your conditional status to legal permanent residency, you can ask for a **BATTERED SPOUSE WAIVER** to keep your lawful immigration status. You qualify for a battered spouse waiver if:

- 1) You have a conditional "green card" that lasts for two years; **AND**
- 2) You or your child were battered or subjected to extreme cruelty by the citizen spouse; **AND**
- 3) You can prove that your marriage was valid.

You can file for a battered spouse waiver at any time. You do not have to wait two years. Your batterer will not be able to find out that you filed. You can file if you are still living with your abuser, or if you are divorced, or if you are separated.

3. VAWA Cancellation of Removal

Some battered immigrants who qualify for, but do not yet have, VAWA immigration are reported to DHS by abusers or are picked up by DHS. These immigrants can still get legal residency through "cancellation of removal" (formerly suspension of deportation). This is only if you are in, or can be placed into, deportation/removal proceedings. To qualify you must show that you:

⁴ 8 U.S.C. § 1154(a)(1)(A) (2007).

Know Your Rights

- Have lived continuously in the United States for more than three years;
- Are in the United States illegally;
- You or your child have been battered or suffered extreme cruelty;
- The person who subjected you or your child to battering or extreme cruelty was:
 - Your current or former spouse who is a U.S. citizen or lawful permanent resident;
 - Your citizen or lawful permanent resident parent or step parent if you are
 - under the age of 21; OR
 - The citizen or lawful permanent resident other parent of your abused child;
- You must prove that deportation would cause extreme hardship to yourself or your child.

If you qualify, then the court may waive your deportation/removal and grant you legal permanent residency. If you are granted cancellation of removal, then any child of yours under the age of 21, whether living with you in the United States or abroad, can receive humanitarian parole. That means permission to enter the United States and to live with you while you file the papers for them to receive legal immigration status.

If you lose your VAWA cancellation case you can be deported, so make sure you have a qualified immigration attorney.

4. Crime Victim U-visas

The U-visa offers access to legal immigration status to immigrant victims of domestic violence, rape, sexual assault, and some other criminal activity, most of which are violent crimes. Approved U –visa applicants can receive legal work authorization.

The U-visa is especially helpful if you are abused by:

- A boyfriend or girlfriend; or
- A spouse, parent, or child who is not a citizen or lawful permanent resident, or
- A stranger, employer, co-worker, acquaintance, family member, in-law, etc.

Your relationship to the abuser does not matter. The immigration or diplomatic status of the abuser also does not matter.

To qualify for a U-visa you must prove:

- Substantial physical or emotional abuse from criminal activity;
- That you possess information about the criminal activity;
- That the criminal activity occurred in the United States or otherwise violates U.S. law; and
- That you have obtained a certification from a government official stating that you:
 - Have been; OR
 - Are likely to be; OR
 - Are being helpful to an investigation or prosecution of criminal activity; and

Many different government officials can certify to your helpfulness or future helpfulness. Check with your attorney for more information on who can certify.

You must have been the victim of one of the following general categories of criminal activity to apply for a U-visa:

<ul style="list-style-type: none">• Rape,• Torture,• Trafficking in prisons,• Incest,	<ul style="list-style-type: none">• Kidnapping,• Abduction,• Unlawful criminal restraint,• False imprisonment,
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Know Your Rights

<ul style="list-style-type: none">• Domestic violence,• Sexual assault,• Abusive sexual contact,• Prostitution,• Sexual exploitation,• Female genital mutilation,• Being held hostage,• Peonage,• Involuntary servitude,• Slave trade,	<ul style="list-style-type: none">• Blackmail,• Extortion,• Manslaughter,• Murder,• Felonious assault,• Witness tampering,• Obstruction of justice,• Perjury• Attempt, conspiracy or solicitation to commit any of these crimes.
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You must be willing to cooperate in the investigation or prosecution of criminal activity committed against you. You can apply for the U-visa as soon as you can get an official certification and gather the proof of “substantial physical or emotional abuse.”

You can receive the U-visa even if the criminal case has not yet been filed, if prosecutors decide not to file the criminal case, if a case is filed and you are not needed as a witness, if the abuser cannot be prosecuted because he is a diplomat, if the abuser eludes arrest, or if the abuser is not convicted of the crime.

Your children can also receive U-visas if they qualify independently as a victim of criminal activity or if they are your children under immigration law. Some other family members can also receive U-visas that are based on their relationship to the victim of the primary criminal activity.

5. Gender Based Asylum

In some cases battered immigrants may also qualify for a form of immigration called gender based asylum. This is the most difficult form of relief to get and you must seek the assistance of an immigration lawyer with expertise in gender-based asylum.

To qualify for asylum in the U.S., you must establish that s/he is a refugee. To be classified as a refugee, you must prove you have a well founded fear of suffering harm in your home country that legally is called “persecution.” You then must show that the persecution was or will be on account of **Race, Religion, Nationality, Membership in a Particular Social Group, or Political Opinion**. Also, you have to show that the persecution you suffered was committed by a foreign government, or that that government is or was unwilling or unable to protect you from harm. You usually only have one year to apply after coming to the U.S.

Some battered immigrants who qualify for gender-based asylum may also qualify for a U-visa if domestic violence was committed against them in the United States.⁵

6. Trafficking Victims Visas (T-visas)

If you came to the U.S and were recruited, coerced, forced, or deceived into a job that you could not leave, you may be a victim of trafficking. As a victim of trafficking, you may be eligible for the T-visa. For a T-visa trafficking is defined as:

“sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not 18 years of age; or the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.”

In order to qualify for the T-visa, you must satisfy the following four conditions:

- You must be or have been a victim of a severe form of trafficking in persons; and
- You must be physically present in the United States, American Samoa, or the Commonwealth of the

⁵ See 8 U.S.C. §§ 1101(a)(4), 1101(a)(15)(U) (2007).

Know Your Rights

Northern Marina Islands, or at a Port of Entry, on account of trafficking; and

- ❑ You must have helped and/or show willingness to help with any reasonable request for help in the investigation or prosecution of trafficking- or- you must be less than 18 years old;
 - If your physical or psychological trauma makes it difficult to cooperate with law enforcement you may be eligible for a waiver of this requirement
- ❑ You must demonstrate that you would suffer extreme hardship involving unusual and severe harm upon removal

T-visa holders can get legal work authorization and are granted the same access to public benefits as refugees. Spouses, children, parents and siblings of minors who are a T-visa holder may also be able to get immigration relief and accompanying benefits.

7. VAWA NACARA (Nicaraguan Adjustment and Central American Relief Act of 1997)

If your abusive spouse or parent is Nicaraguan or Cuban, you may qualify for VAWA NACARA. This is self-petitioning for Nicaraguan or Cuban battered spouses and children. VAWA NACARA helps victims whose abusers did not file for lawful permanent residency for themselves. The battered spouse or child must have been in the United States when the first application was filed (which must have been before April 1, 2000).

If your abuser is an El Salvadoran, Guatemalan or Eastern European spouse or parent you may also qualify for VAWA NACARA help. VAWA NACARA offers protection from deportation and access to lawful permanent residency for abused spouses and children who were with the abuser at the time the abusive spouse or parent filed for or received suspension of deportation, cancellation of removal, asylum, or temporary protected status. It allows battered spouses, children, and children of the battered spouse temporary protection from removal- even if they are no longer married to the abuser, if they were married when they filed their case.

8. VAWA HRIFA (Haitian Refugee Immigration Fairness Act of 1998)

If your abuser is Haitian you may qualify for VAWA HRIFA. It means that Haitians (natives, citizens, and nationals) can adjust their status to become lawful permanent residents as long as their applications were filed before April 1, 2000 and they met the general requirements for lawful permanent residency. Spouses, children under 21 years, and unmarried sons and daughters of an eligible immigrant can also receive lawful permanent residency under HRIFA- if they are Haitian and in the United States on the date the application is filed. Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Haitian, even if the abusive Haitian spouse or parent never applied for lawful permanent residency.

9. VAWA CUBAN ADJUSTMENT (Cuban Adjustment Act of 1966)

If your abusive spouse or parent is Cuban you may qualify for VAWA Cuban Adjustment, regardless of your own citizenship or place of birth. The Cuban Adjustment Act (CAA) allows for Cubans (both natives and Cuban citizens) to file and change their immigration status to lawful permanent residents as long as they were inspected and admitted or paroled into the United States after January 1, 1959. They must have been physically present in the U.S. for at least one year, and must meet the requirements for lawful permanent residency. Spouses and children can also receive lawful permanent residency through the Cuban Adjustment Act if they live with their spouse or parent Cuban Adjustment Applicant in the U.S. Special relief is available for spouses and children who were battered or subject to extreme cruelty by an eligible Cuban, even if he never applied for lawful permanent residency under the Cuban Adjustment Act. They do not have to currently live with the spouse or parent.

10. VAWA Abused Adopted Child Self-petitioning

Generally, adopted children must live with their adoptive parents for two years before they can gain legal immigration status. VAWA allows abused adopted children to obtain permanent residency regardless of how long they have been in the legal custody of their adoptive parent. They do not have to meet the residency requirement. To qualify for this the child must have been battered or subject to extreme cruelty by the adoptive parent or by a family member of the adoptive parent.

Know Your Rights

11. Special Immigrant Juvenile Status (SIJ)

If you are under 21 years old, are in the United States, and have been abused, neglected, or abandoned, you may qualify as a Special Immigrant Juvenile (SIJ) for immigration status. To qualify you must have been declared a dependent by a juvenile court in the United States or a court must have committed you to the custody of a state agency or department. You also must have been deemed eligible for long-term foster care due to abuse, neglect or abandonment and the court must determine it is not in your best interest to be returned to your country.

When a child has been battered, abused, neglected, or abandoned, a special VAWA provision bars state and federal government officials from requiring the child to communicate with the child's abuser or family member of the abuser at any stage of the SIJ status application process.

12. Women Who Met Their Spouses through International Matchmaking Agencies (International Marriage Broker Regulation Act (IMBRA) of 2005)

Women who met their US citizen or Legal Permanent Resident spouses through an arranged marriage or an international matchmaking agency can legally access protection orders, police assistance, shelter and domestic violence services without regard to how they met their abusive spouse, fiancé or boyfriend. They have the same rights as any other immigrant woman to attain legal permanent residency through their marriage. They also have the right to see his criminal history and any domestic violence protection orders issued against the fiancé or spouse.

If you came to the United States on a fiancé visa to qualify for immigration status you must:

- You must have married the individual who originally arranged for the fiancé visa; and
- You must have been legally married within 90 days of entering the United States on said fiancé visa.

If you entered the United States on a fiancé visa and your fiancé did not marry you, you married another citizen, lawful permanent resident, work visa holder or someone else who is abusing you, or if your fiancé married you after the 90 day period had passed, seek help from an immigration attorney who will help you learn what other immigration options you might have.

Violence Against Women Act (VAWA) Confidentiality

Congress recognized that abusers of immigrant victims and crime perpetrators of both trafficking and sexual assault often threaten victims with deportation. To stop people from using immigration officials to further their abuse or criminal activity, Congress created VAWA Confidentiality. VAWA Confidentiality offers the following protections to victims.

Department of Homeland Security (DHS), Department of State, Department of Justice and Department of Labor employees MAY NOT:

- Rely on information from an abuser or abuser's family member to decide if the victim is eligible for any immigration relief.
- Use or share any information contained in or about the existence of any VAWA self-petitioning, T-visa, or U-visa immigration case. Family or criminal court officers or judges, as well as law enforcement officers also cannot use or disclose the cases.
- Take an enforcement action against an immigrant victim at any of the following locations:
 - A shelter;
 - Rape crisis center;
 - Supervised visitation center;
 - Family justice center;
 - Victim services program or provider;
 - Community based organization;

Know Your Rights

- 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.⁶

If you feel your abuser has contacted immigration or law enforcement with information, tell your advocate or lawyer immediately.

You should consider carrying copies (not originals) of documentation about your VAWA, T or U-visa immigration case (prima facie determinations, approvals) with you so that you can show these papers to an immigration official if you are stopped. If possible, leave copies with a trusted friend, family member, or your lawyer.

If you believe you may qualify for legal immigration status described in this booklet, including a VAWA self-petition, U-visa, or T-visa, you should contact an immigration attorney as soon as possible. This will help protect you if you are contacted by DHS.

Battered Immigrants Rights to Access Shelter and Domestic Violence Programs

There are different services that can help, they include: shelters, hospitals, police, legal aid and other community services. A shelter is a safe secret home, usually free, where you and your children can stay. Shelters provide food, free housing, counseling, and can help you get legal advice. The shelter may also be able to help you find permanent housing, job training, and may be able to help you find out if you or your children qualify for public benefits.

You can find a shelter by calling your local domestic violence program or the National Domestic Violence Hotline - (800) 799-SAFE.

All domestic violence shelters are required to help you, even if you are undocumented.

If you leave your home, do everything you can to take your children with you. Also try to take your important papers. There is a list of suggestions at the end of this booklet.

If your abusive spouse, parent, or over 21 year old son or daughter is a US citizen or lawful permanent resident, before you leave try to find a safe way to write down his or her alien registration number (“A” number). This is the number on his green card, naturalization papers, or other immigration papers he may have filed for you or your children. If he is a citizen, copy down his passport number or try to get a copy of his passport or birth certificate. Having these numbers can greatly help your VAWA immigration case.

Collecting “Any Credible Evidence” For Your Application

If you qualify to file for any of the VAWA immigration relief described above, you will need to collect the evidence for your application, such as:

- your written statement (affidavit/testimony),
- statements from friends, family members, victim advocates, or shelter workers,
- copies of your protection order,
- medical records,
- pictures of your injuries,
- police reports,
- court documents (such as trial transcripts, motions, etc.), or
- news articles.

There is not one particular piece of paper that you must have in order to prove your case. Evidence you provide to DHS for your case cannot be disclosed to your abuser. If you testify in immigration court, you can request that the court provide an interpreter for you.⁷

⁶ 8 U.S.C. § 1367 (2007).

⁷ See U.S.C. § 1229b(b)(2)(D) (2007).

Family Law Protections for Battered Immigrants

Call an immigration lawyer to help you before you get a divorce.

If you are a battered immigrant and your spouse files for divorce, or if you are considering seeking divorce, contact an immigration lawyer. Divorce may prohibit you from access to legal immigration status. The timing of the divorce, marriage, and immigration applications matter, so consult an attorney immediately. You may have to show you were married in good faith, so keep proof of your marriage, such as family pictures or papers.

PROTECTION ORDERS What is a protection order?

A protection order (also called a restraining order, CPO, or PPO) is a document from a court that says the abuser cannot do, or must do, certain things.

What are the requirements to obtain a protection order?

Depending on each state's statute, you must prove that you are a victim of domestic or dating violence. AND You must also have or have had a relationship to your abuser through –

- Marriage (husband, former husband, mother-in-law, father-in-law, child/stepfather relationship);
- Blood lines (your natural mother, father, siblings, cousins, aunts and uncles);
- Adoption;
- Having a child in common;
- Living together;
- A current or former dating relationship.

You can get a protection order based on assault or domestic violence (whether or not there are visible injuries), sexual assault, stalking, harassment, parental kidnapping, or threats. You may file for a protection order where you live, where the abuser lives, or where the violence happened.

You have the right to get a Protection Order **even if you are undocumented**. You do not have to answer questions about your immigration status to get a protection order or to have it enforced.

Can a protection order help with my immigration application?

If you apply for domestic violence related immigration, a protection order will help show you were abused. A protection order can also help if you have it request that:

- The abuser not withdraw any immigration applications filed on your behalf.
- The abuser not act to hurt your immigration case and not contact any government agency, consulate or embassy about you without permission from the protection order judge.
- The abuser give the court, or replace if he has destroyed, your work permit, ID, bankcard, birth certificate, marriage certificate, passport, and any other important documents.
- The abuser give you copies of his documents for your immigration or child support case, such as of his passport, ID card, income tax returns, bills, his birth certificate, his alien registration card (green card), and work permit. He can be ordered to turn over to the court and to you his social security number, passport number and/or "A" number.
- The abuser pays your immigration case fees.
- The abuser fill out a "Freedom of Information Act" (FOIA) request to release information contained in any immigration case, including for you or your children, which he has filed.

Know Your Rights

Can a protection order help if my abuser has threatened to kidnap our children?

Parental kidnapping is a reason to get a protection order in many states. If you fear that your children could be taken away from your community or taken out of the U.S., request in your protection order that:

- ❑ you can request sole custody of your children as well as supervised visitation
- ❑ the abuser not take your children from the county where you live without a court order;
- ❑ that the abuser be ordered not to remove the children from the United States;
- ❑ you, the abuser, and the judge sign a statement preventing the embassy of the abuser's home country from issuing visas to that country for your children without a court order.
- ❑ If the abuser has your children's passports, request that he return those to you or to the court.
 - Send a letter and a copy of your protection order to the U.S. Passport Office to inform them that you or the court have the children's passports and that no new passports should be issued for the children.
 - You can also fill out a form to request notification from the State Department if one parent attempts to get a passport for the child.⁸

Do I have to leave my abuser in order to get a protection order?

No. You can have a protection order issued against someone while you are living together. This order can require your abuser to stop his violent behavior and/or attend a batterer's counseling program.

How do I get a protection order?

You can obtain a protection order by yourself or with the help of an advocate or attorney. You can ask the court to provide an interpreter to do this. Do not use an interpreter who might be biased toward or afraid of your abuser. If you need immediate help, you will be able to see the judge the same day and receive a temporary protection order, which lasts 2 weeks to a month.

To apply for a protection order on your own: go to your local courthouse and fill out a petition for a protection order. In this petition, describe the full history of violence. Start with the most recent incidents and include the way it has impacted you and your children's lives. You may use more pages than provided by the court and then attach them to the form.

After you file the paperwork, if you are seeking a temporary order, you will see a judge that day.

Whether or not you receive a temporary protection order, both you and the abuser will be required to come to court on the day of the full protection order hearing. Do not go to this hearing by yourself. Ask an advocate or a friend to come with you. During the hearing you will have the opportunity to tell the judge about all of the abuse and threats against you and/or your children. Explain how this has affected you and your children. You should also show the judge torn clothing, pictures of injuries, destroyed property, medical reports, and police reports to prove the abuse.

In the U.S. legal system, your spoken testimony has value and is a formal legally accepted form of evidence. A woman's testimony is as valuable as a man's.

You will receive a packet, which includes a copy of the petition you filed, notice of your court date for the full protection order, and a copy of any issued temporary protection order. The abuser will also need to be "served"⁹ with these materials. Depending on your state, the service of materials will be either be the state's responsibility or yours. Check with the court clerk or your advocate to find out the policy for your court. If it is your responsibility to serve the abuser with these papers, you cannot do it yourself. You will need to either hire a process server or

⁸The Children's Passport Issuance Alert Program (CPIAP), summary of the program: http://travel.state.gov/family/abduction/resources/resources_554.html and official form: <http://www.state.gov/documents/organization/80111.pdf>

⁹ Service of Process is a formal method of giving these papers to the abuser so that the court knows he has received them.

Know Your Rights

have a someone not involved in or serving as a witness to the case serve (give the papers to) the abuser and sign a statement to the court verifying delivery.

Do I need a lawyer to obtain a protection order?

No. In most states, you can obtain a protection order without hiring an attorney. However, if possible, obtain an attorney and let the court know if you need an interpreter. If your abuser plans to fight for custody of your children or has filed for a protection order against you, contact an attorney immediately. If you are undocumented and your abuser obtains an attorney, you should not go to court by yourself. Ask your local domestic violence shelter or program to locate a lawyer or legal advocate to help you with your case. There are programs in every state that offer free and low cost legal services to victims of violence against women.

What if I decide to leave the county or state where I got my protection order?

Police officers in the United States are required to recognize and enforce out-of-state protection orders under the Violence Against Women Act. When you move, get a certified copy of your protection order from the courthouse and staple the full faith and credit provisions of the Violence Against Women Act¹⁰ to the back. When you arrive at your new location, call the local domestic violence program to find out how to enforce your order in your new state.

¹¹

Once I have a protection order, can I change parts of it or withdraw it?

Yes. At any time you may file to modify or change it. If you return to your abuser after you get a protection order it is still valid, but in some states you may have to adjust the protection order.

LEGAL INFORMATION FOR BATTERED IMMIGRANT WOMEN WITH CHILDREN

If your children have been abused, they may qualify for immigration relief.

If you have been abused, and your children have not been abused, your children may be able to receive immigration relief from yours.

- If you qualify to file a VAWA self-petition you may include your children in the petition.
 - When your application is approved, both you and your children will receive an agreement that DHS will not deport you (called deferred action status) and your children will receive their green cards at the same time you do.
- If you qualify for VAWA suspension or cancellation, your children will be allowed to stay with you in the United States while you file papers for them to receive their lawful permanent residency.
- If you qualify for a battered spouse waiver, your children will switch from conditional residents to lawful permanent residents along with you.
- If you qualify for a U-visa, then your children should be able to get U-visas with you.
- Mothers and stepmothers of adopted children can also qualify as self-petitioners, for VAWA cancellation of removal, and as U and T-visa applicants, without regard to the immigration status of the abused child or stepchild.

Get a Protection Order

Getting a protection order is the fastest way to obtain temporary custody of your children. If you leave the relationship, ask for custody and child support in your protection order. The order can also establish a visitation schedule between the children and abuser. If there is a no-contact order in your protection order, someone else should help you safely communicate with your abuser about the children. This could be an advocate, a friend, family, or your attorney. Even if you choose not to leave your abuser, you may get a protection order that says that he cannot

¹⁰ Go to www.legalmomentum.org and go to the Immigrant Women Program for a copy of these provisions.

¹¹ 8 U.S.C. § 2265 (2007).

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abuse you or your children.

If you go to a shelter or safe place before filing for a protection order, take your children with you. You should tell your advocates, your attorney and/or the judge if your abuser has threatened that if you try to leave him he will get the children and you will not see them again, or if he has threatened to kidnap the children or remove them from the United States.

Teach your children to use 911 so that they can get help if you or they are injured or if the abuser violates the protection order.

YOU ARE ENTITLED TO CUSTODY AND CHILD SUPPORT REGARDLESS OF YOUR IMMIGRATION STATUS.

File for Permanent Custody of your Children

A protection order can offer you custody of your children while it is in effect, usually between one and three years, depending on the state that issued the civil protection order. To have permanent custody of your children, you will need to file a family court case asking for full legal custody of your children.

Find a lawyer to help you with your custody case if you think that your abuser wants custody, will say that he doesn't want you to have custody, or come to the court with his own lawyer. If your abuser comes to court in a custody or protection order case with a lawyer, you should ask the court for time to find your own lawyer. You should not agree to or sign anything without a lawyer. You can find a family law attorney by calling your local domestic violence program or legal aid office.

The judge should not ask you about your immigration status in family court. If the abuser brings up immigration status, find an attorney with domestic violence, custody, and immigration experience.

In a custody case, the judge will consider the best interests of the children. The judge will look at the criminal and drug abuse histories of both parents. In most states, judges must also take into account whether there has been domestic violence, which person was violent or abusive, and what affect this has had on the children. Most courts do not award custody to abusers. You can seek legal custody of your children even if you are in the US without legal permission.

Ask for a Safe Visitation Schedule

In protection order and custody cases, judges usually grant visitation rights to the abuser unless there are a lot of reasons not to. Tell the judge if you think that you or your children will be in danger during visits with the abuser.

Tell the judge if the abuser drinks or uses drugs in front of the children, has driven drunk or under the influence of drugs, has hurt the children, has emotionally abused the children, has used too much or inappropriate discipline, or has threatened to kidnap the children. Tell the judge if the children have problems as a result of the violence.

Judges can order supervised visitation if they are worried about children's safety. Supervised visitation means the abuser can only visit the children when someone, like a friend, relative, or counselor, is with the children and the abuser during the visit or a specific visitation location.

If your abuser has unsupervised visitation with the children, the court order must clearly state how the children are to be exchanged and the exact dates and times of visitation. You do not have to have contact with the abuser for their visit. If you are worried that the abuser will not return the children or you do not want the abuser to know where your home or the children's school are located, a trusted friend or family member could exchange the children. Speak to your local domestic violence agency for visitation exchange options.

If your abuser fails to attend visitations, ask the court to suspend visitation. If you are worried that the abuser is neglecting your children during visitation, get help from a lawyer. If your abuser does not return the children after visitation is over, **call the police immediately.**

Request Child Support

If you have physical custody of your children or if you receive full or joint custody of your children, your abuser has to pay you money to support the children, usually until they are 18 or 21. You can receive child support through your protection order and/or through a permanent child support case. The amount of support that you receive depends on your earnings, the abuser’s earnings, the number of children he supports, child care costs, and who has physical custody of the children for what proportion of time.

If you receive a child support order, particularly in domestic violence cases, it is best to ask that the child support be taken directly from your abuser’s paycheck and paid to the court. He can be ordered to go to jail until he starts paying and/or pays past due child support.

PUBLIC BENEFITS FOR BATTERED IMMIGRANT WOMEN AND CHILDREN

Benefits Available to All Immigrants

Programs designed to protect life or safety are open to everyone. Your immigration status does NOT matter for these programs. Some of these programs are:

<ul style="list-style-type: none"> • Crisis counseling and intervention programs; • Services and assistance relating to child protection; • Adult protective services; • Violence and abuse prevention; • Victims of domestic violence or other criminal activity; • Treatment of mental illness or substance abuse; • Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children. This includes emergency shelter and transitional housing for up to two years. • Soup kitchens; 	<ul style="list-style-type: none"> ▪ Programs to help individuals during periods of adverse weather conditions; ▪ Community food banks; ▪ Senior nutrition programs and other nutritional programs for persons requiring special assistance; ▪ Medical and public health services and mental health, disability, or substance abuse assistance necessary to protect life and safety; ▪ Activities, designed to protect the life and safety of workers, children and youths, or community residents (such as police, fire, ambulances, etc.); and ▪ Any other programs, services, or assistance necessary for the protection of life or safety.
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If you are a victim of domestic violence, sexual assault, trafficking, or another crime listed in the U-visa discussion, may you qualify to receive free legal services from legal aid programs.

Benefits Only “Qualified Immigrants” Can Access

Some battered immigrants may be able to receive some public benefits if they have a VAWA immigration petition, or a spouse or parent sponsored visa case filed with DHS and can prove a “substantial connection” between the abuse and the need for public assistance. They are called “qualified immigrants.”

Who Are “Qualified Immigrants” Eligible for Public Benefits?

<ul style="list-style-type: none"> <input type="checkbox"/> Lawful permanent residents (including conditional permanent residents); <input type="checkbox"/> Refugees; <input type="checkbox"/> Asylees; 	<ul style="list-style-type: none"> <input type="checkbox"/> Persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, with pending or approved VAWA cases or family-
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<ul style="list-style-type: none"> <input type="checkbox"/> Persons granted withholding of deportation <input type="checkbox"/> Persons granted cancellation of removal; <input type="checkbox"/> Cuban/Haitian entrants; <input type="checkbox"/> Veterans; <input type="checkbox"/> Persons granted conditional entry; <input type="checkbox"/> Amerasians; <input type="checkbox"/> Persons paroled into the United States for a year or more; 	<p style="text-align: center;">based petitions before DHS; and</p> <ul style="list-style-type: none"> <input type="checkbox"/> Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or lawful permanent resident parent, with pending or approved VAWA cases or family-based petitions before DHS.
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When applying for public benefits, the benefits agency should only check on the immigration status of the person applying. U.S. citizen, lawful permanent resident, and “qualified immigrant” children may receive certain public benefits even when their parents cannot. If you are asked questions about your immigration status when you are applying for benefits only for your qualified children, you should tell the agency person that you “are not applying for yourself.”

Qualified Immigrants Can Receive:

<ul style="list-style-type: none"> • Temporary Assistance for Needy Families (TANF) (unless you entered after August 22, 1996 and are subject to the five year bar) • Medicaid and Medicare (unless you entered after August 22, 1996 and are subject to the five year bar) • Food Stamps (all qualified immigrant children can receive food stamps however, qualified immigrant adults must be in qualified status for 5 years). • Social Security Disability Insurance • Administration on Developmental Disabilities (ADD) (direct services only) • Child Care and Development Fund • Independent Living Programs 	<ul style="list-style-type: none"> • Job Opportunities for Low Income Individuals (JOLI) • Low-Income Home Energy Assistance Program (LIHEAP) • Postsecondary Education Loans and Grants • Public Housing • Refugee Assistance Programs • Section 8 Subsidized Housing • State Children’s Health Insurance Program (CHIP) • Title IV Foster Care and Adoption Assistance Payments (if parents are “qualified immigrants”) • Title XX Social Services Block Grant Funds
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Check with an attorney or advocate when applying because some benefits have timing rules for when you are eligible to receive them. Few immigrant victims will qualify for benefits through SSI.

Receiving public benefits will generally not prevent a VAWA self-petitioner from obtaining lawful permanent resident status.

How Battered Immigrants Become Qualified Immigrants

Battered immigrants are "qualified immigrants" if they meet the following requirements:

- The immigrant or the immigrant's child has been abused by their U.S. citizen or lawful permanent resident spouse or parent, or by the spouse's or parent's family member living in the same household and the applicant did not participate in the abuse.

AND

- The battered immigrant has an approved family-based petition or VAWA self-petition; **OR**
- after a petition has been filed, DHS gives permission to receive public benefits (this is called a prima facie determination); **OR**
- the battered immigrant has been granted cancellation of removal by an immigration judge (the deportation process has been stopped and the woman has been given a green card); **OR**
- an immigration judge has decided in an ongoing VAWA cancellation case that the battered immigrant can receive public benefits (also know as a prima facie determination);

AND

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- The applicant does not live with the abuser **or** needs the benefit to leave.

AND

- There is a "substantial connection" between the abuse and the need for the public benefit. For example: when the reason for needing a benefit is connected to escaping abuse.

FEDERAL AND STATE FUNDED BENEFITS

Food

All documented and undocumented immigrants qualify for emergency food assistance from food banks and charitable organizations.

Food Stamps

Federal Programs

There is Food Stamps access for a small number of qualified immigrants. "Qualified immigrants" include refugees, asylees, veterans and their spouses and children, immigrants who have worked for 40 quarters, and some others. See an attorney or advocate to find out if you qualify.

State Food Stamps Program

States can choose to provide state-funded food stamps to immigrants, but only a few do. Each state has specific status or need requirements. A local social worker or attorney can help you apply. For an up-to-date list of state food stamps programs go to: www.NILC.org

Shelter

Public Housing and Housing Vouchers

Shelter programs for the homeless, domestic violence victims, runaways, abandoned children, or abused children are open to all regardless of immigration status. Only "qualified immigrants" can additionally access public housing or federally funded housing vouchers.

Healthcare

Emergency Medicaid Is Open to Both Documented and Undocumented Immigrants

All immigrants are immediately eligible for Emergency Medicaid. Emergency Medicaid covers labor and delivery, as well as treatment for medical conditions "with acute symptoms that could place the patient's health in serious jeopardy, result in impairment of bodily functions, or cause dysfunction of any bodily organ or part." For a chart of the types of health care services immigrants and immigrant victims can access go to: www.legalmomentum.org

Medicaid and SCHIP

Medicaid provides access to health care services for people in need. SCHIP provides health insurance for families with children in need. Generally only "qualified immigrants can receive Medicaid and SCHIP, which includes immigrant women and children who are abused by their U.S. citizen or lawful permanent resident spouses or parents and have an immigration petition filed with, or approved by DHS. They must also show that there is a "substantial connection" between the abuse and the need for the aid.

For state-by-state charts of immigrant victim eligibility for Medicaid and/or Victims of Crime Act Funded prenatal and/or post assault health care go to: www.legalmomentum.org. Some states provide state funded medical assistance to some immigrants; visit www.nilc.org to learn more.

Cash Assistance

TANF

Temporary Assistance for Needy Families (TANF) is a program that provides cash assistance to disadvantaged families. States have the option to give these benefits to some needy immigrant families. **Generally, only "qualified immigrants" can receive TANF.**

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Some State TANF Programs provide cash assistance to some qualified immigrants.
For an up-to-date list of states offering financial assistance to immigrants visit: www.NILC.org

Family Violence Option for Battered Women Receiving TANF

The Family Violence Option (FVO) permits states to grant "good cause waivers" for certain TANF program requirements, including mandatory work requirements and time limits. If you are an immigrant victim eligible for TANF you may be eligible for your state's FVO.

Immigrant Status Reporting Requirements

The Attorney General of the United States has instructed state welfare agencies to only request information on immigration status about the person who applies for benefits. You can apply for benefits only for your children and not answer questions about your own immigration status or social security number. You should bring an advocate or attorney with you if you apply to help guard against unlawful questioning and to help ensure you receive benefits for which you qualify.

EMPLOYMENT AND WORKPLACE RIGHTS¹²

Immigrant workers, documented or undocumented, are protected by federal and state labor laws. If you file a complaint with the Equal Employment Opportunity Commission (EEOC) regarding claims for unpaid wages, worker's compensation or any other employment related problem, it is not necessary to answer questions about your immigration status for your complaint to be processed. However, with regard to state and local laws, claims and practices differ, so consult with an attorney or advocate in your area to help you decide how to enforce your employment rights.

If you are an undocumented immigrant and are or were the victim of criminal activity in the workplace or by a coworker or supervisor, and you are willing to report the activity to law enforcement or the Equal Employment Opportunity Commission (EEOC) or another investigative agency, you may qualify for a U-visa. If you came to the U.S and were recruited, coerced, forced, or deceived into a job that you could not leave, you may be a victim of trafficking. See the earlier trafficking section for more information.

Protections Offered By the Equal Employment Opportunity Commission (EEOC)

Federal employment discrimination laws protect all employees in the United States, including those who do not have work authorization. It is unlawful for an employer to discriminate against you because of your immigration status. It is also unlawful for your employer to report or threaten to report your status to DHS if you oppose unlawful discrimination or participate in a case under the anti-discrimination laws. Even if you are undocumented, if your employer retaliated against you because you sought help with work problems, you are might be entitled to some compensation.

Undocumented workers are also potentially entitled to the some of the same remedies available to all other workers for violations of the laws enforced by the EEOC except when the remedy conflicts with the purpose of immigration law.

What should I know about sex discrimination laws?

Your employer may be violating anti-discrimination laws if it permits domestic abuse, sexual assault, or sexual harassment to occur in the workplace, or if it treats abused women differently than male employees. Your company's sex discrimination and sexual harassment policy (if it has one) may be a basis for you to ask your employer to stop discriminating against you, or to take steps to halt, reduce, or prevent sexual harassment.

Do I have any legal claims if I have been fired or forced to quit because of domestic violence?

You may have a claim for wrongful discharge. Most employees are employees at will. This means they can be fired for any reason. There are some exceptions to this rule. One exception is that an employer cannot fire a person for a discriminatory reason.

Another exception is that in most states an employer cannot fire a worker for a reason that violates public policy. What this means is different in each state, but "against public policy" means generally things a state has decided hurt all people in that state if they are allowed to happen. If you were fired because you were suffering from domestic violence, you may be able to prove that your firing violated public policy.

SAFETY PLANNING FOR IMMIGRANT AND REFUGEE WOMEN

Safety planning is an important first step for all battered women. Safety planning will help protect and empower you against future threats of domestic violence toward you and/or your children. It can also help you prepare should you now or in the future decide to leave your abuser.

The time when you decide to leave your abuser can be the most dangerous for you and your children, because

¹² Adapted from Legal Momentum, EEOC, Asian American Legal Defense and Education Fund, and National Employment Law Project Materials

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violence often escalates when the abuser feels that he is losing control over you. You have options if you want to leave the relationship:

- 1) You can obtain a protection order that removes your abuser from the family home; or
- 2) You can leave the home you share with your abuser taking the children with you.

You should be aware that you can take both legal and other steps towards ending the abuse, whether or not you have legal immigration status in the United States.

EMERGENCY MEASURES

- Contact a local domestic violence hotline to find what laws, shelters, and resources are available in your community, state, or any area in the United States.
- Create a plan for a safe exit from your home. Practice your plan with your children.
- Plan the safest time to get away.
- Have car keys, purse/wallet, identity cards for you and your children and any other essential items in an easily to access place.
- Tell someone what is happening to you. If possible, tell your neighbors about the abuse and tell them to call the police if they hear any suspicious noises coming from your home. You can also arrange a signal with neighbors to let them know you are in danger and need police help– for example flashing lights or a code word.
- Know where you can go for help. Arrange a place where you and your children can stay temporarily, such as with close friends, neighbors, relatives, or at an emergency shelter.
- If you are considering staying at a battered women’s shelter:
 - You should get the telephone number of the shelter.
 - Emergency and short-term shelters and transitional housing programs cannot ask you any questions about your immigration status and all immigrants are entitled to emergency short term shelter programs.
 - If you do not speak English, ask the shelter to provide you with a translator. If you cannot communicate this to the shelter workers, have a trusted friend, family member or co-worker help you communicate with the shelter.
 - You can tell a shelter about any special religious, cultural, or dietary needs you may have.
- In a safe and accessible place, store a suitcase with important items you may need if you need to leave your house, such as: clothes for you and your children; money; important documents that you might need to prove the abuse you have suffered; immigration paperwork, photos and identification.
- If you foresee an outbreak of violence, try to move away from weapons and out of the kitchen where knives or heavy objects could be used as weapons. Move to a low-risk place near an exit to the outside. Avoid bathrooms, kitchens and garages.
- Use your judgment and intuition. You have to do what you can to protect yourself and your children until you are out of danger. If you can, flee rather than attempt to fight back. Avoid using weapons or objects against your abuser if possible.
- Call the police if you are in danger or need help.
- The police will help you if you are a victim of domestic violence or any other crime even if you are undocumented. The police should not ask you any questions about your immigration status. If they do, then you are not required to answer. Tell them you want to speak to a lawyer. If the police do not speak

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your language, try to ask for an interpreter.

- ❑ If you are injured, go to the hospital emergency room or your doctor and report to them what has happened to you. Ask them, before you tell them what happened, whether what you tell them is confidential. If so, tell them what happened and ask that they document your visit and your injuries. If they are required to report domestic violence to the police they must tell you this when you ask and you can decide if you want the police informed. If so, tell them what happened and ask that they document your injuries. If they must report to the police, and you do not want them to, do not tell them what happened; just ask them to document your injuries.
- ❑ If you encounter Department of Homeland Security officials, tell them you are a victim of domestic violence, sexual assault or trafficking and show them copies of any immigration papers, police reports, or protection orders you have.
- ❑ If you are stopped by DHS officials it is also important to tell them you want to call an attorney. As soon as you begin working with an advocate or an attorney ask them for their phone numbers so that you can call your attorney or advocate if you are stopped by DHS officials.
- ❑ If you encounter DHS officials at any of the following locations, find an advocate or attorney to help you tell DHS that their contact with you at this location violates VAWA confidentiality. Also obtain the name and contact information including telephone numbers for any persons who witness DHS contact with you at these “VAWA confidentiality” protected locations.
 - 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.

VAWA confidentiality is a federal law that protects immigrant victims against government release of information regarding their victimization. It also bars government officials from relying on information provided by an abuser to deny a victim immigration benefits or to attempt to remove her from the United States.¹³

¹³ 8 U.S.C. § 1367 (2007).

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SAFETY FOR THE CHILDREN

- ❑ Plan with your children and identify a safe place for them if another domestic violence incident should occur – a room with a safe lock or a neighbor’s house where your children can go for help. Reassure them that their job is to stay safe, not to protect you.
- ❑ Teach your children how to dial 911 in an emergency and where to go if the abuser becomes violent.
- ❑ Plan ahead so that if it is necessary to flee, you will be able to flee with your children.
- ❑ Inform school personnel about who is allowed to pick the children up from school.
- ❑ Provide childcare workers and staff at your children’s school with a copy of your protection order and a list of the only people who may see or pick up your children from their care.
- ❑ In case your abuser abducts your children, create a plan for what your children can do to safely try to prevent this. Teach your children how to call the police and that calling the police is for their safety and the right thing to do. Teach them how to make a collect call to you or a trusted friend, minister or family member if they are kidnapped. Teach them how to call for help if they are abducted from a public place.
- ❑ If you are stopped by DHS and you are the sole caretaker of your children tell DHS this immediately. DHS may allow some sole caretaker parents and breastfeeding mothers to continue caring for their children until their case is decided. If you are stopped by DHS it is important that you contact an immigration attorney immediately.

GENERAL SAFETY TIPS

- ❑ Take photographs of any injuries you sustain. Also take photographs of torn clothing, broken property, and furniture in disarray. Take these photos when it is safe to do so. Leave copies of the photographs and the negatives in a safe place outside of your home and away from your abuser.
- ❑ Keep evidence of the abuse (ripped clothes, photos of injuries and bruises, etc.) even if you are currently not considering separating from your abuser. Should you ever decide to take any legal action to protect yourself and your children, to obtain custody, support, welfare or immigration benefits, you will need this evidence.
- ❑ Always keep a copy of your protection order and referral list with you (if safe to do so) and store another copy in a safe location.
- ❑ Alter your routines so that your abuser cannot find you. Change the times and the routes that you go to and return from work, the times and places you go grocery shopping, the times you pick up and drop off the children from day care and the dates and times you have any other regular appointments.
- ❑ Keep a detailed record of your interactions with the abuser, such as telephone calls, e-mails, or letters. This information may help you to prepare for court. Keep a record of all of his actions that violate your protection order. Get a telephone answering machine and answer all calls through the machine. This can help you record calls that document ongoing harassment. Keep all letters and e-mails that your abuser sends to you.

LEGAL STEPS

Contact the local domestic violence hotline, shelter or legal services program for help. They can inform you of your legal rights and help you access legal relief. They can also help to find interpreters to assist you. To find an advocate or attorney in your community who can help you call the National Domestic Violence Hotline 1-800-799-SAFE or the Rape, Abuse and Incest Network Hotline at 1-800-656-HOPE for referrals. Once you have an advocate or attorney helping you, show them this booklet and ask them to contact the expert resources listed at the end of this

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booklet. The experts listed provide technical assistance to advocates, attorneys and other professionals working with immigrant victims. They DO NOT provide legal representation to victims.

CRIMINAL CASES

- U.S. laws protect all domestic violence victims without regard to immigration status.
- If you call the police for help they are not supposed to ask you any questions about your immigration status.
- Call the police for help if you are being abused (911).
- It is a crime anywhere in the United States to be hit, kicked, punched, threatened, or injured in any way by a family member, even if this occurs in your home.
- Abusers can be prosecuted for their crimes against family members, even if that family member does not have legal status in the United States.
- Cooperating in the criminal prosecution of your abuser may increase your chances of obtaining legal immigration status in the United States.
- Check with a local domestic violence or immigration program about police and DHS practices in your area.

CHECKLIST OF WHAT TO TAKE WITH YOU WHEN YOU LEAVE YOUR ABUSER

- photo identification for yourself and your children
- current photos of your children
- current photos of the abuser
- passports for yourself and your children
- children's birth certificates
- your birth certificate
- your children's social security cards
- your social security card, if you have one
- green cards (alien registration card), for you and your children if you and/or they have one
- money for phone calls, transportation, and expenses
- credit cards, checkbooks, bank books, ATM cards,
- work permits for you and your older children
- welfare identification for you and your children
- keys to the house, office and car and any ownership documents
- drivers license and registration
- necessary medicines, medical records, and insurance papers for yourself and your children
- children's school and vaccination records
- small saleable objects
- clothing for you and the children
- all court documents
- telephone/address books, including victim service providers
- children's favorite toys, books and blankets
- your sentimental and irreplaceable items, such as photographs, jewelry, special gifts from your family

TO PROVE THE ABUSE AND THE EFFECT IT HAS HAD ON YOU AND YOUR CHILDREN

- copies of police reports
- copies of medical records
- hospital records documenting abuse (even if you did not tell anyone the cause of the abuse)
- copies of current and former protection orders (civil, criminal, temporary, emergency)
- photographs of your injuries
- torn clothing or destroyed property
- your diary and/or calendar in which you recorded incidents of abuse or problems

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- names of shelters where you have stayed
- names, addresses and telephone numbers of doctors, nurses, counselors, mental health professionals and social workers whom you or your children have spoken with or received treatment from
- names, addresses and telephone numbers of people who: saw your bruises, heard you scream, witnessed any incident of the abuse, you told about the abuse, you have stayed with for refuge or can describe the effect that the abuse has had on you and your children
- names, addresses and telephone numbers of police officers, prosecutors, judges or other government officials who know about the domestic violence you experienced

TO OBTAIN CHILD SUPPORT

- your husband's or the father of your child's social security number
- a copy of your husband/father of your child's most recent pay stub
- the name, address, phone and fax number of your husband/father of your child's employer
- a copy of your husband/father of your child's tax returns for the past three years
- proof of who is your child's father (children's birth certificates, acknowledgement of paternity, or other proof)

FOR BATTERED IMMIGRANT WOMEN WHO MAY QUALIFY FOR A VIOLENCE AGAINST WOMEN ACT FORM OF RELIEF OR OTHER IMMIGRATION RELIEF:

- work permits, green cards, visa applications, and other immigration papers for you and your children
- copies of any documents filed with DHS
- marriage license and certificate for current marriage
- divorce papers from your previous marriage(s) or your spouse's previous marriage(s)
- birth certificates, adoption, acknowledgement of paternity records for each of your children,
- passports and -94's (record of entry into the US) for you and your children, if you have one
- identification (social security, driver's license, welfare identification)
- copies of your spouse's birth certificate, social security card, green card, passport or certificate of naturalization
- if your spouse was born abroad and is now a citizen or has legal permission from DHS to live and work in the United States write down and take with you his "A" number, the number on his green card, work visa or naturalization certificate.
- court papers filed and court orders related to you, your husband/partner and your children
- photographs of wedding, wedding invitations, love letters from spouse,
- family photographs from vacations, birthdays, family events and trips you have taken,
- personal property or real property deeds leases and rental agreements in both of your names,
- papers that show you lived with your husband in the US (such as copies of the lease agreement, real property deed, utility bills, rent receipts, mortgage payment book, letters addressed to the two of you, letters addressed to you and other letters or magazines addressed to your abuser at the same address during the same time period).
- names, addresses and telephone numbers of persons who knew you as a couple, knew that you and your husband lived together, or who saw any of your injuries or any of the incidents of violence,
- copies of documents related to joint checking or savings accounts
- joint tax returns listing you as a dependant.
- identification with a photograph listing you with your married name,
- life and health insurance policies covering you and your spouse and children
- letter from employer stating that you or your spouse listed the other spouse as an emergency contact

You have just taken the first step toward creating a safe home for yourself and your children by reading this booklet. The next step is to make your own list of local resources, including phone numbers, and record them below.

IMPORTANT PHONE NUMBERS:

Friends:

Local Shelter and or domestic violence advocate:

Local Legal Services:

To locate programs in your area, call:

Know Your Rights

National Domestic Violence Hotline

1-800-799-SAFE (7233)

1-800-787-3224 (TTY)

Interpreters are available in many languages.

Calls cost nothing. Call anytime.

Police - 911

Call the police if you think you or your children are in danger. If the police ask about your immigration status or where you were born, you do not have to answer.

Medical Emergency - 911

The emergency room in any public hospital must give you emergency medical care, even if you are undocumented or do not have insurance.

Once you are working with a battered women's advocate, social worker or attorney, they can call or go to the websites of the following experts from the National Network to End Violence Against Immigrant Women for technical assistance on how they can better help you. The numbers listed below DO NOT provide direct assistance, advocacy, legal representation, or legal advice to victims.

National Immigrant Women's Advocacy Project (202) 274-4457, niwap@wcl.american.edu

ASISTA at www.asistaonline.org

The Family Violence Prevention Fund (415) 252-8900 x 16 Tel., (415) 252-8991 Fax, e-mail leni@endabuse.org

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**National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law**

4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

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Rights and Options for Battered Immigrant, Migrant, and Refugee Women^{1 2}

By Legal Momentum and Organización en California de Lideres Campesinas

Regardless of your immigration status, you have the right to be safe in your own home.

You have the right to leave anyone or have removed from your home anyone who abuses you and/or your children physically, emotionally, or sexually.

YOU HAVE THE RIGHT TO MAKE YOUR OWN DECISIONS
ABOUT YOUR LIFE.

NO ONE HAS THE RIGHT TO HURT YOU OR YOUR CHILDREN IN ANY WAY!

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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.

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DOES YOUR SPOUSE OR PARTNER?

- Hit, punch, slap, or kick you, your children or your pets?
- Threaten to hurt or kill you?
- Make you have sex when you do not want to?
- Threaten to report you to the Department of Homeland Security (DHS) and have you deported?
- Threaten to take your children away?
- Control where you go and whom you can see, talk to or write to?
- Control your access to money, take your money away from you or make you say how you have spent every penny?
- Stop you from getting a job or learning English?
- Refuse to file immigration papers for you or threaten to withdraw these papers?
- Withhold or destroy your passport and other personal documents?
- Make you feel like a prisoner in your own home?
- Make fun of you and insult you in private or in front of others?

If you answered "yes" to any of these questions, you may be a victim of domestic violence.

What is domestic violence?

Domestic violence is violence that happens between partners or former partners in a relationship. This can mean between husbands and wives, boyfriends and girlfriends, same sex partners, relatives, and parents and their children. Domestic violence can occur at home and/or in other locations. Domestic violence can occur when parties live together, when they are separated, or when they are divorced. Domestic violence occurs in an intimate or family relationship when one person is forced to change his or her behavior in response to threats or abuse from an intimate partner or family member. Domestic violence can be physical, or it can involve threats, isolation of one partner from others, intimidation, harassment, emotional mistreatment, forced sex or making threats about reporting you or your children to immigration officials and/or having you deported.

If you are experiencing domestic violence in your home, you are not alone. Domestic violence is very common and it probably affects many people you know. Although domestic violence is usually hidden, it exists in every community.

Domestic violence often gets worse with time and it does not go away on its own. It is important to remember that domestic violence is not your fault. Your abuser chooses to use domestic violence to control you. Domestic violence is a crime in the United States. No matter what your abusive partner tells you he can or cannot do to you, if he hurts you or your children, it is wrong. There are things you can do to protect yourself and people who will help you prevent the cycle of violence. Every person can get help to prevent domestic violence, even if they do not have legal permission from the Department of Homeland Security (DHS) to be in the United States. This booklet will explain how you can safely seek help to prevent the violence without a high risk of you being reported to DHS or deported.

This booklet will refer to the abuser as "he." Some women are abused by other women. While not all legal remedies will apply to lesbian relationships, this booklet will still provide some basic information about things you can do to make yourself safe. While most victims of domestic violence are women, men can also be victims of domestic

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violence. Government statistics published in 1998 and 2001 show that 85% of domestic violence victims are women and 15% are men.² Male victims, particularly those abused by women, are eligible for the same legal protections as women, and may qualify for immigration relief. Although this booklet refers to victims of domestic violence as women, men who are victims are also encouraged to speak to an advocate or an attorney.

DOMESTIC VIOLENCE IS NOT YOUR FAULT!

You are not alone. There are places you can go and things you can do to protect yourself and your children.

MYTHS AND FACTS ABOUT DOMESTIC VIOLENCE

MYTH: Domestic violence only occurs in American families.

Fact: Violence occurs in families of every culture, nationality, religion, class, race, and socio-economic background. Believing myths about domestic violence prevents immigrant women from getting the help they need.

MYTH: Battering is a family matter.

Fact: Domestic violence is a crime regardless of the relationship between the two people. You deserve the same protection and help that any victim of assault, battery, or rape would receive.

MYTH: I am in the United States without legal permission from DHS; therefore, I cannot get help to prevent or flee domestic violence.

Fact: Any battered immigrant woman, even if she is not living in the United States legally, can get help to prevent or flee domestic violence. She has a legal right to get help from any shelter or other program that helps women who have suffered domestic violence. Community-based charitable programs do not ask any questions about immigration status and do not report to DHS people who come to them for help. A battered immigrant woman can obtain a protection order from the courts, call the police for help and receive emergency medical assistance. All of these agencies offer help to battered immigrant women without regard to immigration status.

MYTH: It is easy for battered women to leave their abusers.

Fact: Leaving the abuser is very difficult. Women may have a real fear that they will be killed or severely hurt by their batterer if they leave. They may not be able to support themselves. They may want to keep the family together. They may be afraid of being ostracized from their community, and there may not be culturally sensitive domestic violence resources where they live. All of these things make it difficult for battered women to leave their abusers.

MYTH: Women are responsible for the violence against them.

Fact: Violence is a learned behavior that abusers use to assert their power and control over others. You are not responsible for your abuser's violent behavior and do not deserve to be treated this way. Even though an argument may be what causes your abuser to become angry, what he does with his anger is his responsibility.

MYTH: Violence is caused by alcohol or drug abuse.

Fact: There is a high rate of alcohol/drug abuse among men who batter; however, there is no causal relationship between the two problems. Many men who batter do not drink heavily, and many substance abusers do not beat their wives. Batterers may use alcohol or drug abuse as an excuse for their violence instead of taking responsibility for their behavior.

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MYTH: If I leave my abuser, he will get custody of the children and I will not be able to see them.

Fact: Many immigrant women who are undocumented receive legal custody of their children through protection orders and custody orders because judges believe it is safer and healthier for children to live with the parent who is not an abuser. Courts in the United States generally do not give custody of children to parents who are abusers. This is true even when the abuser is a citizen and the mother is an immigrant who does not have legal immigration status in the United States.

Help All Battered Immigrant Women Can Receive

Even if you do not have legal immigration status in the United States, or if your legal status is tied to your abuser's work visa, you can receive all of the following services:

- Services from shelters and other domestic violence programs;
- Civil protection orders from a court;
- Custody and support for children;
- Police assistance;
- Emergency medical care;
- Your abuser can be criminally prosecuted; and
- Your citizen children can receive public benefits.

Police Assistance for Battered Immigrants

Domestic violence is against the law. If you want to leave, then the police can help you and your children safely get out of the house and often they can also drive you to a safe place. The police may arrest your husband/intimate partner if they think that a crime has been committed. If the police officer does not speak your language, find someone to interpret for you.

Always ask the police to make a report about what happened and get an "incident report number" so that you can get a copy of the report. Ask for and write down the name and badge number of the officer making the report. If your husband/partner is taken into custody, he may be released as quickly as two hours after he is taken into custody. This will give you time to find a safe place to go. The police generally will not turn women reporting domestic violence into the DHS.

In recent years greater resources have been devoted to Department of Homeland Security enforcement of immigration laws. Also, more and more immigrant victims of violence against women who qualify for legal immigration status, including VAWA, U-visas, and T-visas, find themselves being contacted by DHS enforcement officers. This can occur for several reasons. An abuser or crime perpetrator may call DHS to enlist their assistance in having you removed from the United States; this is an attempt to use the U.S. government as a tool of their abuse.

Under federal VAWA confidentiality laws, DHS officials should not rely on information provided by an abuser, a crime perpetrator, or family members of abusers or perpetrators to delay a case the victim has applied for, to arrest or detain a victim, or to otherwise harm victims, including harm through DHS enforcement actions. This is called "VAWA Confidentiality," and is discussed further below. Consulting with an expert on immigration and violence against women can help you determine which forms of immigration relief you may qualify for as a victim. Once you determine that you qualify to attain legal immigration status, filing as soon as possible will help protect you from deportation. We strongly recommend pursuing immigration relief immediately.

You should consider carrying copies (not originals) of documentation about your VAWA, T-visa, or U-visa immigration case (prima facie determinations, approvals) with you so that you can show these papers to immigration officials if you are ever stopped. Showing immigration officials evidence that you are a victim of domestic violence can also be helpful in delaying or suspending your removal. You can obtain documentation that you are a victim of domestic violence or sexual assault by obtaining a protection order (or a stay away order) in any pending criminal case. Copy these important documents and leave a copy with a trusted friend so that they will be accessible when you need them, or if it is not safe to carry the copies with you. Consult with a victim advocate to help you determine

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whether and how to carry documents safely. Some survivors may be concerned about their safety should their abuser find the papers they received from immigration. Call the National Domestic Violence Hotline 1-800-799-SAFE or the Rape Abuse and Incest Network (RAIN) Hotline at 1-800-656-HOPE for referrals to advocates and attorneys in your community who can assist you.

VAWA Confidentiality

What is “VAWA Confidentiality”?

Congress recognized that abusers of immigrant victims and crime perpetrators of both trafficking and sexual assault often threaten victims with deportation. These abusers and perpetrators also sometimes try to discover, interfere with, or undermine a victim’s VAWA immigration case. To stop abusers and crime perpetrators from convincing DHS officials to take actions against immigrant victims, Congress created VAWA Confidentiality. VAWA Confidentiality offers the following protections to victims. Department of Homeland Security, Department of State, Department of Justice and Department of Labor employees MAY NOT:

- Rely on abuser/family member provided information in any case, without regard to whether the victim is eligible for any immigration relief including deportation, detention, removal, or denial of her immigration case.
- Use or disclose any information contained in or about the existence of any VAWA, T-visa or U-visa immigration case. Family or criminal court officers or judges, as well as law enforcement officers, are also prohibited from use or disclosure.
- Undertake any part of an enforcement action against any immigrant victim at any of the following protected locations:
 - 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, or stalking

The immigration judge may dismiss deportation or removal cases involving any of these prohibited activities. The officer committing the VAWA confidentiality violation is subject to disciplinary sanctions and up to a \$5,000 fine for each VAWA confidentiality violation. If you feel your abuser has contacted immigration or law enforcement with information on you, tell your advocate or lawyer immediately. If you do not have a lawyer, obtain a referral to a lawyer by contacting the resources at the end of this booklet.

Battered Immigrants Rights to Access Shelter and Domestic Violence Programs

There are different services that can help you escape the violence in your home, such as: shelters, hospitals, police, legal aid, and other community services. Shelters are usually free and will often have information about other services in your community. A shelter is a safe, secret home where you and your children can stay when you leave an abusive relationship. Shelters provide food, free housing, and counseling, and can help you get legal advice and assistance in obtaining work. The shelter staff may also be able to help you find permanent housing and job training. They may also be able to help you find out if you or your children qualify for public benefits.

You can find a shelter by calling your local domestic violence program or the National Domestic Violence Hotline - (800) 799-SAFE. Shelter services are **FREE**. You do not have to pay money to get these services.

All domestic violence shelters are required to help you, even if you are undocumented. Domestic violence services must be provided without asking any questions about your immigration status. Non-profit charitable organizations that help battered immigrants are not required to ask any questions about a woman’s immigration status. You will not be reported to DHS for seeking these services. Shelters and domestic violence programs cannot discriminate against you because of your country of origin, your immigration status, your ethnic background, or your language ability.

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Battered women's shelters and other services can offer you help even if you do not choose to stay at the shelter. You can receive help if you choose to stay with friends or family members, and even if you decide not to leave your abuser. Shelters provide counseling, legal assistance; help finding housing, and other needed services for battered women whether or not you stay at the shelter. It is also important to know that there are domestic violence programs that have particular experience helping battered immigrant women. To find these services in your area, see the resources listed at the end of this booklet.

If you leave your home, do everything you can to take your children with you. Also try to take your important papers, such as a driver's license, identification, passports, visas and social security cards for you and your children, birth certificates, any public assistance documents, leases, checkbooks, paycheck stubs, marriage license, medical and police reports, copies of your husband's green card, passport, birth certificate, or social security card, photographs of your injuries and any current court orders. If your abuser is a citizen or lawful permanent resident, then before you leave try to find a safe way to write down his alien registration number ("A" number). This is the number on his green card, naturalization papers or any other immigration papers he may have filed. If he is a citizen, then copy down his passport number or try to get a copy of his passport or birth certificate. If you think you may need to leave in the future, pack these items in a bag so you can find them quickly when you leave or take them to a friend's house. Taking these papers is not always possible, however, if you can bring them- you should.

Some Battered Immigrants, Immigrant Victims of Sexual Assault, or Human Trafficking May Qualify to Obtain Legal Immigration Status Without Their Abuser's Help or Knowledge Because of the Abuse

There are twelve ways you or your child might qualify to obtain legal immigration status without your abuser's knowledge, help, or control. Qualifying for legal immigration status because of domestic violence, and which form of immigration relief you may qualify for, depends on:

- 1) Who abused you
- 2) If you are or were married to your abuser
- 3) If your child has been abused
- 4) The immigration status and/or citizenship of your abuser
- 5) If your spouse ever filed immigration papers for you

If you came to the United States on a fiancé visa (then you have a right to receive information about the U.S. citizen spouse or fiancé who brought you here)

If you think you may qualify, seek help from an immigration lawyer or advocate who works with battered immigrant women or a battered women's advocate who has been trained on immigration protections for battered immigrants. These advocates and lawyers can help you determine whether you qualify to attain legal immigration status. You can find such a person in your area by calling the telephone numbers at the end of this booklet.

The immigration options for battered immigrants are:

1. The self-petition under the Violence Against Women Act;
2. The battered spouse waiver;
3. Cancellation of Removal under the Violence Against Women Act (only after you have been placed in deportation proceedings);
4. The crime victims visa, called a U-visa;
5. Gender-based asylum;
6. The trafficking visa, called a T-visa;
7. VAWA NACARA (Nicaraguan Adjustment and Central American Relief Act) of 1997;
8. VAWA HRIFA (Haitian Refugee Immigration Fairness Act) of 1998;
9. VAWA Cuban Adjustment Act of 1966;
10. VAWA Abused Adopted Child Protections;
11. Special Immigrant Juvenile Status (includes special protections under VAWA 2005);
12. International Marriage Broker Regulation Act Protection and access to information.

1. Self-petitions Under the Violence Against Women Act (VAWA)

VAWA creates several ways for women and children to get legal permanent residency. The first is called "self-petitioning". VAWA is available to women and children whose abusive husbands or parents are U.S. citizens or lawful permanent residents. Despite what your husband or someone else may have told you, as an immigrant

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domestic violence victim, you do not need to rely on your abusive spouse or parent to file papers for you to get legal immigration status. The law has special protections called “VAWA Confidentiality” so that your abusive husband or parent cannot interfere with or undermine your immigration case. You should seek assistance from an attorney or advocate who has expertise working with immigrant victims of domestic violence who can help you determine if you qualify and can help you prepare and file your case with the Department of Homeland Security. Many organizations are now able, under changes in law, to provide you with help in your domestic violence, sexual assault, or VAWA case, regardless of your status.

If you are, or were, married and your husband has abused you or your child, you may qualify for help under the Violence Against Women Act (VAWA). Unmarried children under the age of 21 who are being abused by a parent who is a U.S. citizen or a lawful permanent resident are also eligible for VAWA.

Special Note –

Children battered or subjected to extreme cruelty, including sexual abuse and incest, while they are under 21 years of age, must file for VAWA immigration relief based on this abuse before they turn 25 years old.

If your citizen or lawful permanent resident spouse has abused your child, you may also qualify for VAWA, even if you have not been abused yourself. VAWA is also available to parents of adult U.S. citizens who have been abused by their adult U.S. citizen son or daughter. If you do not know your abusive husband or parent’s immigration status, contact an immigration attorney who may be able to help you find out.

IF YOU ARE:

- 1) Married to a U.S. citizen or a lawful permanent resident; or
- 2) Were divorced less than two years ago from a U.S. citizen or lawful permanent resident spouse; or
- 3) The child of a U.S. citizen or lawful permanent resident; or
- 4) The parent of an adult U.S. citizen son or daughter

AND

- 5) You are living in the United States; or
- 6) You are living abroad, and
 - a. You were abused in the United States; or
 - b. Your abusive spouse or parent is either an employee of the U.S. government or a member of the U.S. armed forces;

AND

- 7) You or your child were physically or sexually abused or you suffered extreme cruelty from your husband or parent

You may be able to get a "green card" (permanent residence in the United States) without your abuser's help or knowledge, through the Violence Against Women Act (VAWA).

If your husband or parent has never filed for your "green card," if he filed for your green card and then withdrew the application, or if he has filed but you fear he may not continue to help you get your “green card”, you may be able to apply for a **VAWA SELF-PETITION**.

Abusers who are not citizens of the United States may be deported if convicted of domestic violence or violation of a protection order. If your husband or parent was deported within the last two years, you may still self-petition under VAWA if you can show that his deportation was related to an incident of abuse. See the Flow Chart on eligibility at the end of this booklet.

2. Battered Spouse Waiver

Some battered immigrant women are married to abusive spouses who did file immigration papers for them. If your U.S. citizen spouse filed immigration papers for you and you were married for less than two years on the date you

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went with your spouse to your interview with DHS, what you received from DHS is called “conditional temporary residency.” This conditional residency lasts only for two years. At the end of that two-year period you and your spouse are required to file joint petition requesting that you be granted lawful permanent residency.

If your husband will not help you in filing the petition to move from your conditional status to legal permanent residency, you can ask for a **BATTERED SPOUSE WAIVER** to keep your lawful immigration status. You qualify for a battered spouse waiver if:

- 1) You have a conditional “green card” that lasts for two years;
- 2) You or your child have been battered or subjected to extreme cruelty by the citizen spouse; **AND**
- 3) You can prove that your marriage was valid.

You can file for a battered spouse waiver at any time. You do not need to wait two years. Your batterer will not be able to find out that you filed the battered spouse waiver, and you can file even if you are still living with your abuser, or if your abuser divorced you. Contact an immigration attorney or a nonprofit agency that helps people with immigration for information about the Battered Spouse Waiver.

3. VAWA Cancellation of Removal – Defense Against Deportation for Battered Immigrants

Sometimes battered immigrants who qualify for VAWA immigration relief are reported to DHS by their abusers or are picked up by DHS at their place of employment. These battered immigrants can obtain legal residency through "cancellation of removal" (formerly suspension of deportation). This method is only available to you if you are in, or can be placed into, deportation/removal proceedings. To qualify:

- 1) You must have lived continuously in the United States for more than three years;
- 2) You must be in the United States illegally;
- 3) You or your child must have been battered or suffered extreme cruelty;
- 4) The person who harmed you or your child by battering or extreme cruelty must have been:
 - a) Your current or former spouse who is a U.S. citizen or lawful permanent resident;
 - b) Your citizen or lawful permanent resident parent or step parent if you are under the age of 21; or
 - c) The citizen or lawful permanent resident other parent of your abused child;
- 5) You must have been abused in the United States; **AND**
- 6) You must prove that your deportation would cause extreme hardship to yourself or your child.

If you qualify, then the court may waive your deportation/removal and grant you legal permanent residency. If you are granted cancellation of removal, then any children of yours under the age of 21 whether living with you in the United States or living outside of the United States can receive humanitarian parole. Humanitarian parole gives them legal permission to live with you in the United States while you file applications for your children to receive legal immigration status.

Note: If you lose your VAWA cancellation of removal case, you can be deported. If you are a battered immigrant and you end up in deportation proceedings before an immigration judge, call the numbers at the back of this booklet to obtain the help of an immigration attorney who is knowledgeable about the legal relief available to battered immigrants.

4. Crime Victim U-visas

In October of 2000 Congress created a new immigration remedy, the crime victim visa (U-visa), which may be able to help you if you do not qualify for either the VAWA self-petition or the Battered Spouse Waiver. The U-visa offers access to legal immigration status to immigrants of domestic violence, rape, sexual assault, being held hostage and

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some other criminal activity. The U-visa remains valid for four years. Both U-visa applicants who have provided sufficient evidence to present a valid case and approved U-visa applicants can receive legal work authorization. The grant of the U-visa leads to closure of any removal case pending against you. In order to assure that any pending or prior removal case is dismissed, it is very important that victims with removal orders or cases pending against them seek the assistance of an immigration attorney experienced in working with victims of violence against women.

At the end of three years, you may be able to obtain legal permanent resident status if you can prove humanitarian need to remain in the United States, that remaining in the United States is necessary to promote family unity, or that it is in the public interest for you to remain in the United States. For example, a battered immigrant who receives a U-visa will likely be able to show humanitarian need in cases in which the abuser was deported to the same country that the victim comes from.

This new visa will be especially helpful if you are abused by:

- Your boyfriend or girlfriend; or
- Your spouse, parent, or child who is not a citizen or lawful permanent resident.

The U-visa will also be helpful when your abuser is an employer, a stranger, or a family member other than a spouse, parent, or child. Your relationship to the abuser does not matter. The immigration or diplomatic status of the abuser also does not matter.

To qualify for a U-visa, you must prove:

- 1) Substantial physical or emotional abuse from criminal activity;
- 2) That you possess information about the criminal activity;
- 3) That the criminal activity occurred in the United States or otherwise violates U.S. law; and
- 4) That you have obtained a certification from a government official stating that you:
 - a) Have been; or
 - b) Are likely to be; or
 - c) Are being helpful to an investigation or prosecution of criminal activity; and
- 5) The certification must be made within 6 months of filing for a U-visa by a:
 - a) Police officer
 - b) Prosecutor
 - c) Judge
 - d) DHS official
 - e) Equal Employment Opportunity Commission official
 - f) Department of Labor official
 - g) State child or elder abuse investigator; or
 - h) Any other state or federal government employee with responsibility for detection, investigation, prosecution, conviction or sentencing with regard to criminal activity.

You must have been the victim of one of the following general categories of criminal activity. These include:

<ul style="list-style-type: none">• Rape,• Torture,• Trafficking in persons,• Incest,• Domestic violence,• Sexual assault,• Abusive sexual contact,• Prostitution,	<ul style="list-style-type: none">• Kidnapping,• Abduction,• Unlawful criminal restraint,• False imprisonment,• Blackmail,• Extortion,• Manslaughter,• Murder,
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<ul style="list-style-type: none">• Sexual exploitation,• Female genital mutilation,• Being held hostage,• Peonage,• Involuntary servitude,• Slave trade,	<ul style="list-style-type: none">• Felonious assault,• Witness tampering,• Obstruction of justice,• Perjury• Attempt, conspiracy or solicitation to commit any of these crimes.
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There are a wide variety of state criminal statutes in which criminal activity listed above may have different names under state law. If the nature and elements of the crime are similar to a crime listed above, the victim can be eligible for U-visa protection. The criminal activity that qualifies for U-visa protection may occur during or in addition to the commission of another crime. If police or prosecutors choose to investigate or prosecute only the other non-U-visa listed crime, the victim of the U-visa listed crime can still qualify for a U-visa. For example the police may investigate embezzlement or a drug offense and the perpetrator may also be abusing his wife. The wife can obtain certification as to domestic abuse and attain a U-visa.

To receive a U-visa, you must be willing to cooperate in the investigation or prosecution of the criminal activity. Usually this will require you to make a police report and to be willing to speak with prosecutors. However, you can apply for the U-visa as soon as you can get the needed certification and gather the proof of the substantial physical or emotional abuse you have suffered. Substantial physical or emotional abuse is defined as injury or harm to the victim's physical person or impairment of the emotional or psychological soundness of the victim. DHS decides this on a case-by-case basis using the following factors:

- Nature of the injury inflicted or suffered;
- Severity of the perpetrator's conduct;
- The severity of the harm suffered;
- The duration of the infliction of harm;
- Permanent or serious harm to victim's
 - Appearance,
 - Health,
 - Physical or mental soundness

You can receive the U-visa even if the criminal case has not yet been filed, if prosecutors decide not to file the criminal case, if a case is filed and you are not needed as a witness, if the abuser cannot be prosecuted because he is a diplomat, if the abuser eludes arrest, or if the abuser is not ultimately convicted of the crime.

Your children can also receive U-visas if they qualify independently as a victim of criminal activity or if they are your children under immigration law, meaning they are under the age of 21 and unmarried. Other family members can also receive a version of the U-visa that is dependent on your main U-visa application.

- If you are under the age of 21 your parents, spouse, unmarried children under the age of 21, and unmarried siblings under the age of 18 can receive a U-visa based on your U-visa case.
- If you are over the age of 21 your spouse and unmarried children under the age of 21 can receive a U-visa based on your U-visa.
- U-visa recipients may petition for qualifying derivative applicants residing outside of the United States.

5. Gender-Based Asylum

In some cases battered immigrants may also qualify for a form of relief called gender-based asylum. This will be the most difficult form of relief to obtain, and you must seek the assistance of an immigration lawyer with expertise in gender-based asylum.

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To qualify for asylum in the U.S., an applicant must establish that s/he is a refugee.³ To be classified as a refugee, an applicant must demonstrate that she has a well-founded future fear of suffering, harm in her home country that rises to the level of persecution. An applicant must establish that the persecution was or will be on account of **Race, Religion, Nationality, Membership in a Particular Social Group, or Political Opinion**. Additionally, an applicant must establish that the persecution she suffered was committed by a foreign government, or, that the government of her home country is or was unwilling or unable to protect her from the harm of a non-governmental actor. As a general rule, an individual must apply for asylum within one year of her entry into the United States.

Some battered immigrants who will qualify for gender-based asylum may also qualify for a U-visa if the domestic violence was committed against them in the United States. An example would include domestic violence victims who are abused in the United States by someone who comes from the same country as they do. This is particularly true if the abuser is convicted of domestic violence, a deportable offense. Gender-based asylum cases are difficult immigration cases and require assistance of a skilled immigration lawyer. If you are an immigrant victim of domestic violence, sexual assault, trafficking, child abuse, elder abuse or other U-visa crime you should consult with an immigration attorney to determine which form of immigration relief to pursue.

6. Trafficking Victims (T-visas)

If you came to the U.S and were coerced, forced, or deceived into a job that you could not leave, you may be a victim of trafficking. As a victim of trafficking, you may be eligible for the T-visa, which provides at least four years of immigration relief. For purposes of T-visa eligibility, trafficking is defined as:

“Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not 18 years of age; or the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.”

In order to qualify for the T-visa, you must satisfy the following four conditions:

- You must be or have been a victim of a severe form of trafficking in persons; and
- You must be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a Port of Entry, on account of such trafficking; and
- You must have complied and/or show willingness to assist with any reasonable request for assistance in the investigation or prosecution of acts of trafficking- or- you must be under the age of 18;
 - If your physical or psychological trauma makes it difficult to cooperate with law enforcement you may be eligible for a waiver of this requirement.
- You must demonstrate that you would suffer extreme hardship involving unusual and severe harm upon removal

As a T-visa recipient, you can obtain legal work authorization and are granted the same access to public benefits as refugees. After three years of continuous physical presence in the United States, the T-visa recipient can apply for adjustment of status and become a lawful permanent resident. As a T-visa recipient you can also protect your family members living abroad by applying for them to receive T-visas as well; they do not have to show extreme hardship. Family members eligible to derive benefits through a T-visa include parents and siblings of a T-visa recipient who is under the age of 18 years. Adult T-visa recipients may bring their spouse or children to the U.S.

7. VAWA NACARA (Nicaraguan Adjustment and Central American Relief Act of 1997)

If you are Nicaraguan or Cuban and your abusive spouse or parent is Nicaraguan or Cuban, you may qualify for VAWA NACARA. This allows Nicaraguan or Cuban battered spouses and children who have been subjected to extreme cruelty by Nicaraguan or Cuban abusers to self-petition. VAWA NACARA helps victims who are unable to attain lawful permanent residency due to their abuser's failure to file for lawful permanent residency. The battered

³ See INA § 101(a)(42); 8 U.S.C. § 1101(a)(42)(defining the term “refugee”); Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified at various sections of 8, 22 U.S.C.); United Nations Protocol Relating to the Status of Refugees, art. I § 2, opened for signature Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

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spouse or child must have been physically present in the United States on the date the application was filed (which must have been before April 1, 2000).

If your abuser is an El Salvadoran, Guatemalan or Eastern European spouse or parent, you may also qualify for VAWA NACARA. VAWA NACARA self-petitioning offers protection from deportation and access to lawful permanent residency for abused immigrants who were the spouses and children of El Salvadoran, Guatemalan and Eastern European abusers at the time the abusive spouse or parent filed for or received suspension of deportation, cancellation of removal, asylum, or temporary protected status under NACARA 203. VAWA NACARA Section 203 also allows battered spouses, children, and children of the battered spouse temporary protection from removal even if the spouse is no longer married to the abuser, as long as they were married at the time that the immigrant, or spouse, or child, filed an application to suspend or to cancel the removal.

8. VAWA HRIFA (Haitian Refugee Immigration Fairness Act of 1998)

If you are Haitian and your abuser is Haitian you may qualify for VAWA HRIFA immigration relief. HRIFA provides that Haitians (natives, citizens, and nationals) can adjust their status to become lawful permanent residents as long as their applications were filed before April 1, 2000 and the general requirements for lawful permanent residency are met. Spouses, children under 21 years, and unmarried sons and daughters of an eligible immigrant can also receive lawful permanent residency under HRIFA- if they are Haitian and in the United States on the date the application is filed. HRIFA allows applicants to prove continuous presence even when they were absent from the United States for a time period of up to 180 days. (See “continuous presence”). Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Haitian, even if the abusive Haitian spouse or parent never applied for lawful permanent residency under HRIFA.

9. VAWA CUBAN ADJUSTMENT (Cuban Adjustment Act of 1966)

If your abusive spouse or parent is Cuban, you may qualify for VAWA Cuban Adjustment. The Cuban Adjustment Act (CAA) allows for Cubans (both natives and Cuban citizens) to file and change their immigration status to lawful permanent residents as long as they were inspected and admitted or paroled into the United States after January 1, 1959. They must have been physically present in the U.S. for at least one year, and the general requirements for lawful permanent residency must be met. Spouses and children are also eligible to receive lawful permanent residency through the Cuban Adjustment Act, regardless of their citizenship and/or place of birth, provided that they are residing with their spouse or parent Cuban Adjustment Applicant in the United States. Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Cuban, even if he never applied for lawful permanent residency under the Cuban Adjustment Act. VAWA CAA self-petitioners are not required to show that they are currently residing with the spouse or parent in the United States.

10. VAWA Abused Adopted Child Protections

VAWA protections for abused adopted children removes requirements that place abused adoptive children under the control of abusive adoptive parents. It allows adopted children to obtain permanent residency even if they have not been in the legal custody of their adoptive parent for at least two years. They are additionally exempted from the residency requirement. To qualify for this abused adopted child relief, the child must have been battered or subjected to extreme cruelty by the adoptive parent or by a family member of the adoptive parent.

11. Special Immigrant Juvenile Status

If you are under 21 years old and are in the United States and have been abused, neglected or abandoned you may qualify to attain lawful permanent residency as a Special Immigrant Juvenile. In order to qualify for Special Immigrant Juvenile status you must have been declared dependent on a juvenile court in the United States or a court must have committed you to the custody of a state agency or department, you must have been deemed eligible for long-term foster care due to abuse, neglect or abandonment, the court must have determined it is not in your best interest to be returned to your country of origin.

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When a child has been battered, abused, neglected, or abandoned, a special VAWA provision bars state and federal government officials from requiring the child to communicate with the child's abuser or family member of the abuser at any stage of the Special Immigrant Juvenile Status application process.

12. Special Issues for Women Who Met Their Spouses through International Matchmaking Agencies (International Marriage Broker Regulation Act (IMBRA) of 2005)

Women who met their US citizen or Legal Permanent Resident spouses through an arranged marriage or an international matchmaking agency can legally access protection orders, police assistance, shelter and domestic violence services without regard to how they met their abusive spouse, fiancé or boyfriend. Consult an immigration attorney if you met your spouse or came to the US through an international matchmaking agency. Women who met their U.S. citizen spouses or fiancés through international matchmaking agencies have the same rights as any other immigrant woman to attain legal permanent residency through their marriage. If you met your spouse through an international matchmaking agency and you are abused, you can access VAWA immigration protections. Immigrant fiancés and spouses also have the right to information on the criminal history and domestic violence protection orders issued against your U.S. citizen fiancé or spouse.

If your fiancé or spouse is a U.S. citizen whom you met through an international matchmaking agency, through an arranged marriage, or if you entered the United States on a fiancé visa, there are special immigration rules that you need to know about. If you were brought to the United States on a fiancé visa, to qualify for legal immigration status you must:

- Marry the fiancé who brought you to the United States; **AND**
- You must marry your fiancé within 90 days of entering the United States on a fiancé visa.

If you fail to comply with either of these requirements, then you will not qualify for either the battered spouse waiver or to file a VAWA self-petition. If you entered the United States on a fiancé visa and your fiancé did not marry you, you married another citizen, lawful permanent resident, work visa holder or someone else who is abusing you, or if your fiancé married you after the 90 day period had passed, you must seek help from an immigration attorney who will help you learn what immigration benefits (including the U-visa) may be open to you as a battered immigrant.

Collecting Evidence For Your VAWA Petition, Battered Spouse Waiver or U-visa Case: Collecting “Any Credible Evidence”

If you qualify to file for one of the forms of VAWA immigration relief described above, you will need to work with an advocate or an advocate and an attorney to help you collect the evidence you will need to prove your violence against women related immigration case. DHS and the immigration courts can look at many forms of proof. Examples include:

- your written statement (affidavit/testimony),
- statements from friends, family members, victim advocates or shelter workers,
- copies of your protection order,
- medical records,
- pictures of your injuries,
- police reports,
- trial transcripts,
- court documents,
- news articles, or

There is not one particular piece of paper that you must have in order to prove your case. If you testify in immigration court, you can request that the court provide an interpreter for you. If you are contemplating leaving the home you share with your abuser and you think you may qualify for VAWA or other immigration relief discussed here, see the safety planning section of this booklet for a complete list of items you should take with you when you leave.

YOU HAVE THE RIGHT TO CONSULT WITH AN IMMIGRATION ATTORNEY ABOUT IMMIGRATION OPTIONS THAT ARE AVAILABLE TO YOU.

If you do not understand what your immigration status is, call an immigration attorney. Your conversation with the lawyer will be confidential. Lawyers are generally required to not disclose information provided by a client to them to any person without the client's permission. To find a lawyer who knows about U.S. domestic violence laws, contact the nearest domestic violence shelter or legal services office, or call one of the organizations listed in the referral section of this booklet. Those organizations can help you find advocates and/or a lawyer who can help you for free or at a low cost. If you do not qualify for free or low cost legal services, these programs are the best resources to help you locate a family and/or immigration lawyer who has expertise in the special laws that help domestic violence victims, including immigrant victims.

It is important to ask any attorney you consider working with whether they have experience working on immigration cases for battered immigrants. Most of the lawyers who have this experience work for legal aid, faith-based, or community-based organizations. For immigrant victims who can afford to pay an attorney, it is recommended that they contact one of the resources listed at the end of this manual to receive a referral to an immigration lawyer who is trained in working on domestic violence, sexual assault, or trafficking cases. Many immigration lawyers have not received this training.

Family Law Protections for Battered Immigrants

Call an immigration lawyer before you get a divorce.

If you are an undocumented battered immigrant and your spouse files a divorce case against you, or if you are considering seeking divorce, contact an immigration lawyer before getting a divorce. Divorce may cut you off from access to legal immigration status.

If your abuser is your U.S. citizen or lawful permanent resident spouse or former spouse, you may qualify for VAWA self-petitioning or VAWA cancellation of removal. Divorced women must file their VAWA self-petitions within two years of divorce and they must show that domestic violence occurred prior to divorce. Divorced battered immigrants who have been in the United States for longer than three years can qualify for VAWA cancellation of removal.

If you are getting divorced or separating from your husband, you should keep important papers and items that you may need for your immigration case in a safe place. This would include photographs from your wedding and family occasions that you will need to show DHS that your marriage was real and that you did not get married only to get immigration papers. See the safety planning section of this booklet for a complete list of items you should store in a safe place or take with you when you leave.

PROTECTION ORDERS

What is a protection order?

A protection order is a document written up by the court that can help protect you and your children from future abuse by your spouse, partner, or family member. The other terms that can be used to refer to this type of court order are:

- Civil Protection/Protective/Restraining) order
- CPO or PPO
- Restraining order

What are the requirements to obtain a protection order?

You must prove that you are a victim of domestic or dating violence, AND

You must also have a relationship to your abuser through –

- Marriage (e.g. husband, former husband, mother-in-law, father-in-law, child/stepfather relationship);
- Blood lines (e.g. your natural mother, father, siblings, cousins, aunts and uncles);

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- Adoption;
- Having a child in common;
- Living together;
- A current or former dating relationship.

You can get a protection order based on assault (including pushing, hitting, shoving, slapping, kicking, pulling hair, and choking, whether or not there are visible injuries), sexual assault, rape, stalking, harassment, parental kidnapping, or terrorist-type threatening. You may file for a protection order where you currently live, where the abuser lives, or where the violence took place. There is no specified time after an incident of domestic violence within which you must file for a protection order. A local domestic violence advocate or attorney in your state can help you find out about specific procedures for filing for protection orders in your state.

You have the right to get a Protection Order **even if you are undocumented**. You do not have to answer questions about your immigration status to get a protection order or have it enforced.

How Protection Orders Can Help Battered Immigrants.

If you are a victim of domestic violence, you can obtain a protection or restraining order from your local court that will protect you from ongoing violence, abuse, threats, or harassment from your spouse, boyfriend, or any family member.

Filing for and receiving a protection order will not result in your abuser's deportation. Once you obtain a protection order, and if your abuser violates the order, you will need to decide if you want to act to enforce the protection order. If your abuser is a non-citizen, a conviction or violation of certain provisions of the protection order (those designed to offer you and your children protection from violence) could lead to your abuser's deportation. Protection orders can help prevent violence against you even if you do not choose to have your abuser convicted of violating the protection order. At the time you obtain a protection order you do not have to decide whether you will choose to have it enforced by the courts.

What can I ask for in a protection order?

In most states, you can request:

- That the abuser does not harass, threaten, molest, assault, or physically abuse you or your children.
- That the abuser participates in and completes a certified domestic violence and/or substance abuse program.
- That the abuser stays away from your person, home, your workplace, your car, your children, your children's school, and other places that you frequent.
- That the abuser does not contact you or your children personally, in writing, by telephone, or through third parties.
- That the abuser vacate your home and that the local police be present while the abuser gathers his personal belongings and turns over to you all sets of keys in his possession. If you choose to stay in your home, then your abuser can be ordered to stay away from you and the home you shared with your abuser even if he owns the home or if the rental agreement with the landlord is in the abuser's name.
- That the police accompany you to retrieve your belongings if you wish to leave your home and go to a shelter or stay with family or friends. The abuser can be ordered to stay away from the location where you choose to stay.
- That the abuser turns over all weapons in his possession to the police.
- That the abuser returns your personal property, any joint property, and property awarded to you by the court.

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- That you receive temporary custody of any children you have in common with your abuser even if he has legal immigration status and you do not. This custody lasts for as long as your protection order. You will need to file a separate case in the family courts in most state to receive a permanent child custody order.
- That you receive child support and health coverage for yourself and your children while the protection order is in effect.
- That the abuser turns over your children's passports to you.
- That the abuser turns over your passport to you.
- That the abuser receives visitation rights with the children under circumstances that will not endanger you or the children. This can include exchange through a third party, so that there is no contact between you and your abuser. It can also include a set visitation schedule that the abuser cannot change.
- That the abuser pays for medical expenses and property damage costs that result from the violence.
- That the police help you enforce your protection order and patrol you neighborhood more closely.
- That your abuser turns over documents and information that you may need. This includes, but is not limited to, documents you need to support obtaining a green card (legal permanent residency status) without your abuser's knowledge or help. These documents can be used to support your VAWA self-petition, your U-visa case, or to support any other immigration case you may have or that your abuser may have filed for you.

How will a protection order help me if I qualify for domestic violence immigration relief including relief under the Violence Against Women Act (VAWA)?

If you apply for VAWA, U-visa, or other domestic violence related immigration relief, a protection order will help prove that you were abused. To assist you with your VAWA or other immigration case, request in your protection order that:

- The abuser not withdraw any immigration applications filed on your behalf.
- The abuser not take any action to undermine your immigration case and not contact any government agency, consulate or embassy about you without seeking permission from the protection order judge.
- The abuser turn over your work permit, ID card, bankcard, birth certificate, marriage certificate, passport, and any other documents that would be important for your immigration case. He can be ordered to pay to have these documents replaced if he has destroyed, lost, thrown away, or stolen them, or if he tells the judge he does not have them.
- The abuser give you copies of his documents for your immigration or child support case, such as copies of his passport, ID card, income tax returns, copies of bills, his birth certificate, his alien registration card (green card), and work permit and that he be ordered to turn over to the court and to you his social security number, passport number and/or "A" number.
- The abuser pays your immigration case fees.
- The abuser fill out a "Freedom of Information Act" (FOIA) request to release information contained in any immigration case he may have filed, particularly any family based visa petitions he filed for you or for your children.

If you have questions about your immigration status, consult an immigration attorney immediately. You can locate an immigration attorney or advocate with experience working with immigrant victims by contacting one of the

agencies listed at the end of this booklet for a referral.

How can a protection order help if my abuser has threatened to kidnap our children?

Parental kidnapping is the basis for receiving a protection order in many states. If you fear that your children could be kidnapped and taken away from your community or taken out of the U.S., you can request certain provisions in your protection order, such as:

- ❑ the abuser not remove your children from the county where you reside without a court order;
- ❑ if international child kidnapping is a possibility, ask that the abuser be ordered not to remove the children from the United States;
- ❑ you, your abuser, and the judge sign a statement preventing the embassy of your abuser's home country from issuing visas allowing your children to travel to that country without a court order.
- ❑ If the abuser has your children's passports, request that he return those to you or to the court. Send a letter and a copy of your protection order to the U.S. Passport Office to inform them that you or the court have the children's passports and that no new passports should be issued for the children.

Do I have to leave my abuser in order to file for a protection order?

No. You can have a protection order against someone while living together. This order can simply require your abuser to prevent his violent behavior and/or attend a batterer's counseling program. This helps protect you and your children against further abuse. If the abuser hurts you again, then you can call the police and have your order enforced.

How do I obtain a protection order?

You can obtain a protection order by yourself or with the assistance of a battered women's advocate or domestic violence attorney. If you do not speak English comfortably, or if you speak some English, but are more comfortable speaking about what has happened to you in your native language, then you should seek help from a local domestic violence program and ask them to help you find an interpreter who can help with your case. Do not use as an interpreter anyone who may be biased toward you or your abuser or afraid of your abuser.

To apply for a protection order on your own, go to your local courthouse and fill out a petition for a protection order. In this petition, describe the full history of violence against you. Start with the most recent incidents and then list the full history. Provide as many details about each incident of violence or abuse as possible, including the time, date, and location where the violence took place. Abuse that qualifies for a protection order includes: hits, slaps, punches, pulling hair, scratches, kicks, choking, other forms of assault with or without weapons, being held hostage, threats to harm, threats to kill, forced sexual relations, other forms of violence, and attempts to do any of these things.

After you have filed the necessary paperwork, a hearing before a judge will be scheduled and a copy of the protection order petition will be delivered to your abuser. If you need immediate protection, you will be able to see the judge the same day and receive a temporary protection order. This temporary order lasts between two weeks and one month. After you receive a temporary protection order, the court will send a copy of that temporary order to your abuser along with a notice of your court date for the hearing on your full protection order. In most states a police officer or sheriff will deliver these court papers. In other states, you must arrange for someone to deliver the papers to the abuser. In some states the temporary order becomes final unless you, or your abuser, request a hearing. However, in most states, for your protection order to be final and to last for a period of one year or longer, you must return to the court for a hearing to get your final protection order.

Both you and your abuser will be required to attend the full protection order hearing. It is very important that you do not go to this hearing by yourself. Ask a battered women's advocate and a friend to accompany you and help with court procedures. You do not have to speak with or sit with the abuser at the courthouse. During the hearing for the full protection order, you will have the opportunity to tell the judge about the history of abuse and threats against you and/or your children. Explain how this has affected you and your children. Testify about what you have written in your petition and bring witnesses to court with you who saw the abuse or your injuries. You may also use

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torn clothing, photographs of injuries, destroyed property, medical reports, and police reports to prove that you have been abused.

In the U.S. legal system, your spoken testimony has value and is a formal legally accepted form of evidence. A woman's testimony is as valuable as a man's. The judge cannot be bribed by your abuser to rule against you. If you need an interpreter, ask the court to provide one for you. Once you receive your protection order, both you and your abuser will receive copies. If you are afraid of the abuser following you when you leave the courthouse, ask the judge to have your abuser wait in the courtroom for thirty minutes before he can leave. This will give you an opportunity to leave the courthouse without being followed. You can have the court give you multiple copies of your protection order. Keep a copy with you at all times. Keep another copy at your work and at your home. Give a copy of the order to your children's schools and day care providers so they are on notice that they are not to turn the children over to the abuser.

Do I need a lawyer to obtain a protection order?

No. In most states, you can obtain a protection order without hiring an attorney. However, if your abuser plans to fight for custody of your children or has filed for a protection order against you, contact an attorney immediately. If you are undocumented and your abuser obtains an attorney, you should not go to court by yourself. Many lawyers associated with domestic violence programs will represent you for free if you cannot afford to pay legal fees. Ask your local domestic violence shelter or program to locate a lawyer or legal advocate to help you with your case.

What if I decide to leave the county or state where I got my protection order?

Through the Full Faith and Credit laws in the Violence Against Women Act, police officers are required to recognize and enforce your valid out-of-state protection order. When you move, get a certified copy of your protection order from the courthouse and staple the full faith and credit provisions to the back. When you arrive at your new location, call the local domestic violence program to find out how to enforce your order in your new state.

Once I have a protection order, can I change parts of it or withdraw it?

Yes. At any time while you have a valid protection order, you may file a motion to modify or change this order. This can happen if you need to change your visitation schedule, if you decide to leave your batterer, or if you want to reunite with your batterer. If you choose to return to your abuser after you have received a protection order, then you can still keep your protection order. If you resume living with your abuser, this does not invalidate your protection order. If you do this, in some states, you will be required to return to court to have your protection order modified to order that your abuser continue to prevent his violence, threats and harassment and order him to attend a batterer treatment program.

How effective are protection orders?

Studies have shown that a majority of cases, having a protection order prevents physical violence and helps victims regain a sense of well-being.⁴

LEGAL INFORMATION FOR BATTERED IMMIGRANT WOMEN WITH CHILDREN

Domestic violence is very harmful to children. Children may be intentionally or accidentally hurt when your abuser is violent toward you. They may be hurt when household items are thrown or weapons are used. Even if the children are not physically hurt, witnessing or hearing domestic violence happening to you can psychologically harm them. If you are being abused, there is a good chance that your children are in danger of being abused themselves. This booklet will help you understand how domestic violence affects your children. It will also offer suggestions as to how you can help

⁴ National Institute of Justice Research Preview, Civil Protection Orders: Victims' Views on Effectiveness, FS 00019 (January 1998) (<http://www.ncjrs.gov/pdffiles/fs000191.pdf>).

them by getting help from the courts.

Did You Know:

About 3.3 million children witness violence towards their mothers each year. In general, 70% of men who abuse their female partners also abuse their children. More than 50% of child kidnappings result from domestic violence. Boys who witness violence are ten times more likely to abuse their future female partners.

How Are Children Affected by Domestic Violence?

The following behavioral and cognitive problems have been observed in children who come from violent homes:
OVERACHIEVING.

The child may believe that nothing s/he does is good enough. The child always redoes things, is never happy with the results, and gets involved in too many activities to avoid thinking about family problems.

ACTING OUT.

The child always does things to be noticed, such as hitting, yelling, biting, pushing, name-calling, and destroying toys. The child may lack impulse control.

ROLE REVERSAL.

The child takes on adult responsibilities, always worries that the parent is being abused, tries to solve family problems and tells the parent not to do certain things so that the parent won't get hit. The child may feel guilty about not being able to protect the abused parent or may be angry with the abused parent for not protecting him/her.

CONTROLLING.

The child tries to get his/her way by bullying, never sharing, making threats, making others afraid and using violence to resolve conflicts.

UNDERACHIEVING.

The child acts helpless, won't do anything by him/herself, has low self-esteem, thinks s/he is not valued or loved and is afraid to be alone. The child may start to do badly in school and be unable to complete his/her homework because of the violence. The child may develop learning disabilities and may have lower verbal and quantitative skills, delayed motor skills, and speech difficulties.

WITHDRAWING.

The child often does not want to participate, isolates him/herself from family, friends, or school, gives up easily, and cannot express his/her true feelings.

REGRESSING.

The child acts younger than he/she is by thumb sucking, wetting and soiling, bed-wetting, and nail biting.

ESCAPING.

The child uses unhealthy ways to get away from family problems by using drugs and alcohol, running away, becoming suicidal, joining gangs, and engaging in criminal behavior.

Overall, the child may experience aggression, shame, anxiety, grief, confusion, fear, depression, nightmares, and post-traumatic stress disorder (PTSD). S/he may have physical problems such as ulcers, eating disorders, insomnia, diarrhea, and headaches. Ultimately, children who grow up in violent homes learn that it is okay to use violence to show their frustration, anger, and needs.

If you suspect that your child is suffering from the effects of domestic violence or child abuse, or if you need the assistance of a family law attorney, contact your local shelter or domestic violence program. Special advocates are available to work with your children and assist you with family law matters. Your children's school may also have psychological services that can help your children.

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The immigration section and VAWA flow chart in this booklet will help you and your advocate determine what types of immigration relief you or your child are eligible to receive related to victimization. It is important to note that immigrant women whose children are battered or subjected to extreme cruelty can qualify for VAWA self-petitioning (when they are married to the child's abuser). An immigrant mother or stepmother of a child abuse victim can qualify for VAWA Cancellation of Removal (when the child's abuser is the child's other parent who is a US citizen or lawful permanent resident even, when the immigrant mother is not herself a victim or is not married to the abuser.).

HOW TO HELP YOUR CHILDREN THROUGH THE U.S. LEGAL SYSTEM: YOUR CHILDREN MIGHT QUALIFY FOR IMMIGRATION RELIEF

If your children have been abused, they may qualify to file for immigration relief through VAWA or through a U-visa. If you have been abused, although your children have not been abused, your children may be able to receive immigration relief because of your immigration relief. If you qualify to file a VAWA self-petition you may include any of your children who are undocumented in your VAWA self-petition. When your application is approved, both you and your children will receive an agreement that DHS will not deport you (called deferred action status) and your children will receive their green cards at the same time you do. If you qualify for VAWA suspension or cancellation, your children will be allowed to stay with you in the United States through parole, while you file papers for them to receive their lawful permanent residency. If you qualify for a battered spouse waiver, your children will switch from conditional residents to lawful permanent residents along with you. Finally, if you qualify for a U-visa, then your children should be able to get U-visas along with you. Mothers and stepmothers of adopted children can also qualify as VAWA self-petitioners, for VAWA cancellation of removal, and as U- and T-visa applicants.

OBTAIN A PROTECTION ORDER

Getting a protection order helps prevent further violence against you and your children. It is also the fastest way to obtain temporary custody of your children. When you do leave the relationship, ask for custody and child support in your protection order. Visitation can be ordered at set times and exchange of children can be arranged without contact between you and your abuser. If there is a no-contact order in your protection order, have someone else help you safely communicate with your abuser about the children. This could be an advocate, a friend, a family member or your attorney. Even if you choose not to leave your abuser, you may get a protection order that says that he cannot abuse you or your children.

If you go to a shelter or safe place before filing for a protection order, take your children with you. This will make it easier for you to get custody of the children and will protect them from being kidnapped by the abuser. If your abuser has threatened that if you try to leave him he will get custody of the children and you will not see them again, or if he has threatened to kidnap the children or remove them from the United States, you should tell your advocate, attorney, and/or the judge about these threats. You should ask the protection order judge to order your abuser not to remove the children from your community or from the country (see the discussion in the protection order section about other relief you can ask for that will help prevent this kidnapping). If the children are removed from the country it is often very hard to get them back. This is true even when they are kidnapped to a country with which the United States has agreed to cooperate in the return of kidnapped children. If you believe your abuser may kidnap the children, you should contact a local domestic violence program and seek their help finding a domestic violence lawyer who will help you with your protection order case.

When you plan to leave your abuser, do not tell your children things that may put them in danger. Teach your children to use 911 so that they can get help if you or they are injured or if the abuser violates the protection order.

YOU ARE ENTITLED TO CUSTODY AND CHILD SUPPORT REGARDLESS OF YOUR IMMIGRATION STATUS.

FILE FOR PERMANENT CUSTODY OF YOUR CHILDREN

A protection order can only give you custody of your children while the order is in effect. To have permanent custody of your children, you will need to file a family court case asking the court to give you full legal custody of your children.

Rights and Options for Battered Immigrant, Migrant, and Refugee Women

If you think that your abuser is going to seek custody, oppose your custody request, or come to the court with his own lawyer, find a family law attorney who has experience with domestic violence cases to help you with your custody case. Any time your abuser comes to court in a custody or protection order case with a lawyer, you should ask the court for time to find your own lawyer. You should not agree to or sign anything before you get a domestic violence lawyer to help you. You can find a family law attorney by calling your local domestic violence program or by calling your local legal aid office.

Even if you can afford to pay something for a lawyer, you should contact your local domestic violence program to ask for a referral to a domestic violence lawyer. These are lawyers with the best experience working on domestic violence cases. They will also be more likely to take cases charging domestic violence reduced fees on a sliding scale or may seek to collect payment for their fees from your abuser.

During any family court hearing, the judge should not ask you about your immigration status. If your abuser makes an issue of your immigration status, seek the assistance of an attorney with custody and immigration experience immediately. If the lawyer you find does not have experience working with battered immigrants and/or domestic violence victims, your attorney should contact NIWAP for assistance at 202-274-4457.

In a custody case, the judge will consider the best interests of the children. The judge will look at the criminal and drug abuse histories of both parents. In most states, judges must also take into account whether there has been domestic violence, which person was violent or abusive, and how the abuse affected the children. In most cases, courts do not award custody to abusers. You can seek legal custody of your children even if you are undocumented. The judge should not allow your abuser to raise the issue of your immigration status in the custody case.

ADVOCATE FOR A SAFE VISITATION SCHEDULE

In protection order and custody cases, judges usually grant visitation rights to the abuser unless there are a lot of reasons not to. Be prepared to tell the judge if you think that you or your children will be in danger during child visitations with the abuser.

Tell the judge if the abuser drinks in front of the children, has driven drunk, has physically or sexually assaulted the children, has been emotionally abusive towards the children, has used excessive or inappropriate discipline, or has threatened to kidnap the children. Tell the judge if the children have been acting out or having problems as a result of the violence.

If the safety of the children cannot be guaranteed, the judge can order supervised visitation. Supervised visitation is when the abuser can only visit with the children when someone, like a friend, relative, or counselor, is with the children and the abuser during the visitation session.

If your abuser has unsupervised visitation with the children, the court order must clearly state how the children are to be exchanged and the exact dates and times of visitation. Try to exchange the children in a way that prevents you from coming into contact with the abuser. If you are worried that the abuser will not return the children or you do not want the abuser to know where your home or the children's school are located, a trusted friend or family member could exchange the children or you can drop off and pick up the children at the local police station. Police officers can serve as witnesses if needed.

If your abuser fails to attend visitation sessions, ask that visitation be suspended. If you are worried that the abuser is neglecting your children during visitation, get help from a lawyer. If your abuser does not return the children after visitation is over, **call the police immediately** and report that the children have been kidnapped.

REQUEST CHILD SUPPORT

If you have physical custody of your children, or if you receive full or joint custody of your children, your abuser must pay you child support. You can receive temporary child support through your protection order, and you can also file for a permanent child support case. The abuser usually has to pay support until the children reach age 18 or 21. The

Rights and Options for Battered Immigrant, Migrant, and Refugee Women

amount of support that you receive will usually depend on your earnings, the earnings of the abuser, the number of children that he supports, your child care costs, who has custody, or, if you share custody, who has the children for the most time. The abuser may also be ordered to pay for health insurance for the children.

If you receive a child support order, particularly in domestic violence cases, it is best to ask that the child support be taken directly from your abuser's paycheck and paid to the court. The court will forward the payments to you. If your abuser is self-employed or is being paid in cash, he should be ordered to pay child support payments to the court and not directly to you. In this way the court will have proof that he did or did not make the court ordered payments. If your abuser tries to quit his job so that he can avoid paying child support, the court can order him to find a job. If your abuser fails to make timely child support payments, or if he is ordered to find a job and does not, your state child support office may press charges against him. He can be ordered to go to jail until he starts paying and/or pays past due child support.

PUBLIC BENEFITS ACCESS FOR BATTERED IMMIGRANT WOMEN AND CHILDREN

Eligibility For Documented And Undocumented Immigrants

Benefits Available to All Immigrants

The 1996 Welfare Reform Act authorized the U.S. Attorney General to designate particular programs that are open to all persons without regard to immigration status. To be exempt from immigration restrictions, the programs designated by the U.S. Attorney General must be in-kind services, provided at the community level, necessary to protect life or safety, and not based on the individual's income or resources. These benefits may be particularly useful if you are a domestic violence victim who does not qualify for VAWA or other immigration relief:

<ul style="list-style-type: none">• Crisis counseling and intervention programs;• Services and assistance relating to child protection;• Adult protective services;• Violence and abuse prevention;• Victims of domestic violence or other criminal activity;• Treatment of mental illness or substance abuse;• Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children. This includes emergency shelter and transitional housing for up to two years.• Programs to help individuals during periods of adverse weather conditions;	<ul style="list-style-type: none">▪ Soup kitchens;▪ Community food banks;▪ Senior nutrition programs and other nutritional programs for persons requiring special assistance;▪ Medical and public health services and mental health, disability, or substance abuse assistance necessary to protect life and safety;▪ Activities, designed to protect the life and safety of workers, children and youths or community residents; and▪ Any other programs, services, or assistance necessary for the protection of life or safety.
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State Funded Benefits

In addition to the benefits immigrant victims can receive under federal laws, some states have decided to provide access for some state funded benefits programs to some groups of immigrants. State funded supplemental benefits programs can include:

- Medical Assistance
- Food Stamps
- Temporary Aid to Needy Families (TANF) financial assistance.
- State Child Health Insurance Programs.

For a state-by-state overview of whether your state offers supplemental state funded benefits to immigrants and to see what programs are available in your state go to www.NILC.org.

Rights and Options for Battered Immigrant, Migrant, and Refugee Women

Access to state or federally funded health care can be particularly important for immigrant victims of violence against women, such as domestic violence, sexual assault, and trafficking.

Often, victims lack of access to post assault and abuse-related health care because few advocates, attorneys, social workers, or health care providers have the information they need regarding state and federally subsidized health care immigrant victims are legally authorized to receive. For State-By-State charts on access to post rape and post assault health care, pre natal care, forensic examinations, and emergency Medicaid that immigrant victims are eligible to receive go to www.legalmomentum.org and the Health Care Chapter of Legal Momentum’s manual: Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault.

Benefits Only “Qualified Immigrants” Can Access

Although the law denies public benefits to many immigrants, some immigrants, including some battered immigrants, may still be able to receive certain public benefits as "qualified immigrants." Battered women may require some form of public assistance in order to help them survive economically after they leave their abusers. Some battered immigrants may be able to receive some public benefits if they have a VAWA immigration case or a family-based visa case filed with DHS and can prove a “substantial connection” between the abuse and the need for public assistance. If, after reading the information in this booklet, you think that you or your children may qualify for public benefits, we strongly recommend you contact a battered women’s advocate or legal services attorney who can help you determine whether or not you or your children qualify.

When applying for public benefits, the benefits agency should only check on the immigration status of the person applying. U.S. citizen, lawful permanent resident, and “qualified immigrant” children may receive certain public benefits even when their parents cannot. If you are a battered immigrant who cannot become a "qualified immigrant", you should not go to apply for benefits without a battered women’s advocate or legal services worker accompanying you.

If you are asked questions about your immigration status when you are only applying for benefits for your children, you should tell the public benefits agency that you “are not applying for public benefits for yourself.” This will prevent the benefits worker from obtaining information and turning it over to DHS. Additionally, many benefits workers are not knowledgeable about battered immigrant’s ability to legally access welfare assistance for undocumented battered immigrants with VAWA and family based visa cases pending before DHS. Going to apply for benefits with the assistance of a social worker, lawyer or advocate will help ensure they will take your application and not wrongly turn you away.

Who Are “Qualified Immigrants” Eligible for Public Benefits?

<ul style="list-style-type: none"><input type="checkbox"/> Lawful permanent residents (including conditional permanent residents);<input type="checkbox"/> Refugees;<input type="checkbox"/> Asylees;<input type="checkbox"/> Persons granted withholding of deportation<input type="checkbox"/> Persons granted cancellation of removal;<input type="checkbox"/> Cuban/Haitian entrants;<input type="checkbox"/> Veterans;<input type="checkbox"/> Persons granted conditional entry;<input type="checkbox"/> Amerasians;<input type="checkbox"/> Persons paroled into the United States for a year or more;	<p>Persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, with pending or approved VAWA cases or family-based petitions before DHS; and</p> <ul style="list-style-type: none"><input type="checkbox"/> Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or lawful permanent resident parent, with pending or approved VAWA cases or family-based petitions before DHS.
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Benefits Qualified Immigrants Can Receive

If you are a “qualified immigrant”, your eligibility for certain federal public benefits depends on the date you first entered the United States and what benefits you are seeking. Some benefits are very restricted and will not be available even though you may be a “qualified immigrant.”

Rights and Options for Battered Immigrant, Migrant, and Refugee Women

Immigrants who are or become “qualified immigrants” and who entered the U.S. before August 22, 1996 are generally eligible for the same federal means-tested public benefits, federal public benefits, and federally funded social services available to U.S. citizens, *except for SSI and Food Stamps*.

Immigrants who become “qualified immigrants” and who entered the United States on or after August 22, 1996 are barred from receiving federal means-tested benefits during the first five years after they obtain qualified immigrant status. They may, during this five-year period, receive federal public benefits that are not deemed to be “federal means-tested public benefits.”

A few immigrant groups qualify for an **exemption** from the **five-year bar** if you are a/an: refugee, person granted asylum, Amerasian, Cuban and Haitian entrant, veteran and immigrant on active military duty, immigrant granted cancellation of removal (stops the deportation process), and/or an immigrant without sponsors.

Federal Public benefits that qualified immigrants can receive:

<ul style="list-style-type: none"> <input type="checkbox"/> Temporary Assistance for Needy Families (TANF) (unless you entered after August 22, 1996 and are subject to the five year bar) <input type="checkbox"/> Medicaid and Medicare (unless you entered after August 22, 1996 and are subject to the five year bar) <input type="checkbox"/> Food Stamps (all qualified immigrant children can receive food stamps however, qualified immigrant adults must be in qualified status for 5 years). <input type="checkbox"/> Social Security Disability Insurance <input type="checkbox"/> Administration on Developmental Disabilities (ADD) (direct services only) <input type="checkbox"/> Child Care and Development Fund 	<ul style="list-style-type: none"> <input type="checkbox"/> Independent Living Programs <input type="checkbox"/> Job Opportunities for Low Income Individuals (JOLI) <input type="checkbox"/> Low-Income Home Energy Assistance Program (LIHEAP) <input type="checkbox"/> Postsecondary Education Loans and Grants <input type="checkbox"/> Public Housing <input type="checkbox"/> Refugee Assistance Programs <input type="checkbox"/> Section 8 Subsidized Housing <input type="checkbox"/> State Children’s Health Insurance Program (CHIP) <input type="checkbox"/> Title IV Foster Care and Adoption Assistance Payments (if parents are “qualified immigrants”) <input type="checkbox"/> Title XX Social Services Block Grant Funds
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Access to Supplemental Security Income (SSI) is severely restricted by complex program eligibility requirements in addition to a 5-year bar imposed on immigrants. Few immigrant victims will qualify for benefits through SSI.

Receiving public benefits will not prevent a VAWA self-petitioner from obtaining lawful permanent resident status. In determining whether a battered immigrant should be considered likely to become a public charge and - be denied lawful permanent residency, DHS may not consider public benefits the victim has received for herself or her children that were connected to the surviving, overcoming, or fleeing the abuse. In making public charge decisions DHS, can only consider cash benefits or institutionalization for long-term care. Also, public charge is a forward-looking determination, so dependence in the past is not an automatic disqualification as long as you can show that you will not be dependent in the future.

How Battered Immigrants Become Qualified Immigrants

“Qualified Immigrants” are legally entitled to access a greater range of publicly funded benefits than non-qualified immigrants. Both documented and undocumented battered immigrants are “qualified immigrants” if they meet the following requirements:

The immigrant or the immigrant's child has been abused by their U.S. citizen or lawful permanent resident spouse or parent, or by the spouse or parent's family member living in the same household. (The other immigrant spouse or parent cannot have actively participated in the abuse.)

AND

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The battered immigrant has an approved family-based petition or Violence Against Women Act (VAWA) self-petition;

OR after a petition has been filed, DHS gives the battered immigrant permission to receive public benefits (this is called a prima facie determination);

OR the battered immigrant has been granted cancellation of removal by an immigration judge (the deportation process has been stopped and the woman has been given a green card);

OR an immigration judge has decided in an ongoing VAWA cancellation case that the battered immigrant can receive public benefits (also known as a prima facie determination);

AND

The battered immigrant or child no longer lives with the abuser. (Note that the benefits agency must decide if the battered immigrant is eligible for benefits before she leaves the abuser.)

AND

There is a "substantial connection" between the abuse and the need for the public benefit. The following are considered appropriate conditions for establishing this connection:

- To help the victim of abuse be able to support herself economically without help from the abuser
- To escape the abuser and/or the abuser's community.
- To ensure the safety of the woman and her children.
- To make up for the loss of financial support due to the separation.
- To make up for the loss of a job or income because of the abuse, for safety reasons or because of time spent in domestic violence legal proceedings.
- To make up for the loss of a place to live as a result of the abuse
- To help the victim take care of the children when fear of the abuser interferes with her ability to care for her children.
- To meet nutritional needs resulting from the abuse or separation.
- To provide the victim with medical care or mental health care, or because she has become disabled
- To provide for medical care during a pregnancy that resulted from the abuse.
- To replace medical coverage or health care services were lost because of the separation from the abuser.

Exemptions From Deeming Requirements For Battered Immigrants

When an immigrant's family member sponsors her to receive lawful permanent residency in the United States, the sponsoring family member must sign and file an affidavit of support with the DHS. This affidavit states that the sponsor is willing to be financially responsible for that immigrant. When a sponsored immigrant applies for public benefits, deeming rules require that the benefits agency assume, for the purposes of determining income eligibility for benefits, that the immigrant has full access to the income and assets of her sponsor. It is often the case that these rules render the vast majority of immigrants with sponsor affidavits ineligible to receive public benefits. Previously, battered immigrants who were sponsored by their abusive spouses were often denied public benefits because it was assumed that they had full access to their spouse's income. Some battered immigrants can now be excused from "deeming" requirements for 12 months if there is a connection between the abuse and the need for the benefit. Extensions of the 12-month time period are available to battered immigrants with protection orders or other formal finding of abuse. Immigrants excused from deeming include:

- VAWA self-petitioners
- VAWA cancellation of removal or suspension of deportation applicants
- Battered immigrants whose spouses or parents filed family based visas for them
- Immigrants who obtained green cards through a family-based visa petition and who were battered before and/or after obtaining lawful permanent resident status.

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In addition to victims of domestic violence, the following individuals are also exempt from deeming requirements:

- Those who have become U.S. citizens
- Persons with 40 quarters of work history (which is equivalent to about 10 years of work)
- Spouses or children of U.S. citizens or lawful permanent residents with 40 quarters of work history. (These quarters do not count after divorce).
- Immigrants facing hunger or homelessness
- Immigrants whose sponsor is dead
- Refugees
- Persons granted asylum (i.e. – asylees)

BATTERED IMMIGRANT ACCESS TO MEDICAID AND TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

Medicaid provides access to health care services for people in need. Temporary Assistance for Needy Families (TANF) is a program that provides cash payments, vouchers, social services and other types of assistance to disadvantaged families. Although the law denies public benefits to many immigrants, states have the option to give these benefits to some needy immigrant families. Immigrant women and children who are abused by their U.S. citizen or lawful permanent resident spouses or parents can apply for these benefits if they have an immigration petition filed with, or approved by, the DHS. This is true with most public benefits. Battered immigrants must also show that there is a “substantial connection” between the abuse and the need for Medicaid and/or TANF.

You Must be a “Qualified Immigrant” To Receive Medicaid and TANF

Generally, only “qualified immigrants” can receive Medicaid and TANF. The qualifications for a battered immigrant to be eligible for Medicaid and TANF are the same as for other public benefits. However, an immigrant, including a battered immigrant, who entered the United States after August 22, 1996, will be unable to receive TANF and Medicaid for five years. Immigrants who are exempt from the five-year bar are eligible for these benefits see exemptions above. For state-by-state charts of immigrant victim eligibility for Medicaid and/or Victims of Crime Act Funded prenatal and/or post assault health care go to: www.legalmomentum.org.

Some State TANF Programs Provide Cash Assistance To Qualified Immigrants Who Are Subject to the Federal 5-Year Bar:

Twenty states have created substitute TANF programs that provide benefits during the five-year bar to “qualified immigrants” including qualified battered immigrants. These states are: California, Connecticut, Hawaii, Illinois, Indiana, Iowa (only offers to abused immigrants), Maine, Maryland, Minnesota, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Washington, Wisconsin, and Wyoming. For the most up-to-date list of states offering financial assistance to immigrants visit: www.NILC.org

Emergency Medicaid Is Open To Both Documented and Undocumented Immigrants

Emergency Medicaid is available to all immigrants. Immigrants who are not legally in the U.S. AND those who entered the U.S. after 8/22/96 (who are barred for five years from receiving TANF and Medicaid), can receive emergency Medicaid. All immigrants are immediately eligible for Emergency Medicaid. Emergency Medicaid covers labor and delivery, as well as treatment for medical conditions "with acute symptoms that could place the patient's health in serious jeopardy, result in impairment of bodily functions, or cause dysfunction of any bodily organ or part." For a chart of the types of health care services immigrants and immigrant victims can access through emergency Medicaid go to: www.legalmomentum.org.

Family Violence Option Helps Protect Battered Women Receiving TANF

The Family Violence Option (FVO) included in the Welfare Act of 1996 permits states to grant "good cause waivers" for certain TANF program requirements, including mandatory work requirements and time limits. Under the FVO, states are required to identify victims of violence, conduct individual assessments, and develop temporary safety and

Rights and Options for Battered Immigrant, Migrant, and Refugee Women

service plans in order to protect battered immigrants from: “...immediate dangers, stabilize their living situations and explore avenues for overcoming dependency.” Family violence option waivers are temporary, but the actual length is defined in federal law so that they can last “so long as necessary.” Thirty-five states and the District of Columbia have adopted the Family Violence Option: Alabama, Alaska, Arizona, California, , Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming.⁵ Each state determines which Federal requirements are waived. Most other states have an alternative policy in place for domestic violence victims. Check with battered women’s advocates in your area to see what benefits FVO offers battered women in your state. If you are an immigrant victim of domestic violence eligible for TANF you will also be eligible for your state’s FVO.

TANF Immigrant Status Reporting Requirements

Four times a year, states have to report people who are applying for TANF benefits whom the state knows do not have legal immigration status to DHS. The Attorney General of the United States has instructed state welfare agencies that they may request information on immigration status only about the person who is actually applying for TANF benefits. You can apply for benefits for your children who qualify and you are not required to apply for additional benefits for yourself. When applying only for qualifying children if the state TANF worker asks you questions about your own immigration status you should tell them you will not answer this question because “you are not seeking benefits for yourself.”

The laws regarding access to public benefits for immigrant victims of domestic violence are complicated. Many workers at local public benefits agencies are unfamiliar with these laws and can turn away immigrant victims who qualify for benefits without allowing them to apply. It is therefore strongly recommended that immigrant victims of domestic violence locate an advocate to assist them in applying for benefits for themselves or for their children. Before applying for benefits, seek advice from a trained advocate or attorney to determine what, if any, public benefits you or your children may qualify. This advocate should accompany you when you go to apply for benefits. Having the advocate with you will help you in two ways. First, the advocate can talk to the public benefits provider and make sure that they allow you to file the public benefits application. Second, should there be problems, the advocate can help you document how you were treated by the public benefits agency, including the names of people who handled your case.

⁵, Wilkins, Andrea. “Domestic Violence and Welfare Reform”, National Conference of State Legislatures (<http://www.ncsl.org/statefed/welfare/famvioopt.htm>) (2008).

FOOD STAMPS ACCESS FOR BATTERED IMMIGRANT WOMEN AND CHILDREN

The 1996 welfare reform law eliminated food stamps access for most non-citizens as of August 22, 1996. Subsequent laws have restored Food Stamps access for a small number of qualified immigrants. Like access to TANF and Medicaid, immigrants who entered after 1996 must be “qualified” immigrants for 5 years before accessing Food Stamps.

Immigrants Who Currently Qualify for Food Stamps

- Refugees - eligibility limited to seven years from date of entry.
- Asylees - eligibility limited to seven years from the date asylum was granted.
- Amerasians - eligibility limited to seven years from date of admission as an Amerasian.
- Cuban/Haitian Entrants - eligibility limited to seven years from the date status was granted.
- Veterans, including spouses and dependents.
- Immigrants on active military duty including spouses and dependents.
- Immigrants granted withholding of deportation/removal - eligibility limited to seven years from the date withholding was granted
- Immigrants who have worked 40 qualifying quarters or can be credited with 40 quarters of a spouse or parent.
- Elderly immigrants born before August 22, 1931 who were lawfully residing in the US on August 22, 1996.
- Immigrants who are now less than 18 years of age who were lawfully residing in the US on August 22, 1996.
- Blind and disabled immigrants who are receiving benefits or assistance for their condition and who were lawfully residing in the US on August 22, 1996.
- American Indians born in Canada who possess at least 50 percent of American Indian race to whom the provisions of section 289 of the INA apply or are members of an Indian tribe as defined in section 4(e) of the Indian Self-determination and Education Assistance Act.
- Hmong or Highland Laotian tribe members who assisted the US military during the Vietnam era and who are lawfully residing in the U.S.

40 Quarters of Work Qualification

A qualifying quarter measures how much someone earns during the year. One may earn up to four quarters of credit per year. It is not necessary that you actually work during the four calendar quarters. Instead, qualifying quarters count entirely on the money earned and this figure is adjusted annually for inflation. In 2005, the amount of a qualifying quarter was \$920.00. Battered immigrants children may count work quarters of their U.S. citizen, lawful permanent resident, or “qualified immigrant” parents or spouses (as long as the battered immigrant wife is married to her abuser when applying for Food Stamps). If, after qualification, they are divorced and the battered immigrant does not have 40 quarters of her own work, she will be able to continue receiving benefits only until re-certification. Battered immigrants who are divorced from their abusers will lose Food Stamps at re-certification when they must reapply for this benefit.

The best way for battered immigrants to qualify for food stamp eligibility is to demonstrate that she has worked 40 qualifying quarters or to use the qualifying quarters of a spouse or parent. However, under the Food Stamp Reauthorization Act, qualified immigrants will be eligible for food stamp benefits if they have been in “qualified immigrant status” for five years.

Food Stamp Reauthorization Act

On May 13, 2002 President Bush signed into law the Food Stamp Reauthorization Act.⁶ This law restores Food Stamp benefits to approximately 400,000 qualified immigrants. The Food Stamp Reauthorization Act restores eligibility to three groups of immigrants:

⁶ See Farm Security and Rural Investment Act of 2002, (“Food Stamp Reauthorization Act”), Title IV, Pub. L. No. 107-171 (2002).

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- ❑ Qualified immigrant children under 18, regardless of date of entry.
- ❑ Qualified immigrants receiving a disability benefit, regardless of date of entry.
 - Qualified immigrants who entered the U.S. after August 22, 1996 are not eligible to receive SSI; however qualified immigrants who receive disability-related Medicaid or other disability benefits for their condition would be able to receive food stamps.
- ❑ Qualified immigrants living in the United States for five years under qualified immigrant status.

Recertification

Persons receiving food stamps must attend re-certification interviews with their welfare worker every three, six, or twelve months. At these interviews, the applicant must prove that she is still eligible to receive food stamps. Applicants are usually required to bring proof of residency, household details, and financial information to their re-certification interview.

State Food Stamps Program

States can choose to provide state-funded food stamps to immigrants made ineligible by the welfare reform law. Only seven states have chosen to provide food assistance to immigrants with state funds: California, Connecticut, Maine, Minnesota, Nebraska, New York, Washington, and Wisconsin. Some states have restored the benefits for all immigrants who meet all the requirements for eligibility for Food Stamps, except that they are immigrants with a specific immigration status. Other states have chosen to provide food assistance for specified categories of immigrants (children, elderly, or disabled) or provide benefits to immigrants at a lower benefit level. If you live in one of these states, seek assistance from an advocate or social worker to find out if you qualify.

All documented and undocumented immigrants qualify for emergency food assistance from food banks and charitable organization.

YOUR RIGHTS AS AN IMMIGRANT AND A VICTIM OF DOMESTIC VIOLENCE AT YOUR PLACE OF EMPLOYMENT

(This section has been adapted from materials developed by the Employment Rights for Survivors of Abuse project of Legal Momentum; the U.S. Equal Employment Opportunities Commission; and from “Rights Begin at Home: Protecting Yourself and a Domestic Worker” by the Asian American Legal Defense and Education Fund and the National Employment Law Project)

Federal and state labor laws protect both documented and undocumented immigrant workers. The laws give immigrant workers some protection regardless of their immigration status, even if undocumented workers may not necessarily benefit from the full extent of workers remedies available. Generally, both documented and undocumented workers are protected under wage and hour laws, are protected against abuse, harassment, and discrimination in the workplace. If you file a complaint with the Equal Employment Opportunity Commission, a claim for unpaid wages, for worker’s compensation, or any other employment related problem, it is not necessary to answer questions about your immigration status in order for your complaint to be processed. However, because laws and practices differ from state to state, it is important to consult with an attorney or advocate familiar with employment laws and practices in your area to help you evaluate how they should best enforce your employment rights. The advocate at your local domestic violence program can assist you in locating experts in your community who can help you.

In addition to your rights in the work place, as an immigrant, it is important that you know that domestic violence affects various aspects of your life, including your workplace environment. You have the right to feel safe at your place of employment, and there are legal remedies available if your abuser injures you at work. As a domestic violence survivor, you also have the right to attend court proceedings regarding your domestic violence case.

Can I recover money damages from my employer if my abuser injures me at work?

Rights and Options for Battered Immigrant, Migrant, and Refugee Women

Your employer is not legally responsible for every injury that happens at work. However, in some cases, you may be able to recover money damages from your employer when the abuser injures you on the job. If you are considering seeking damages against your employer for abuse on the job, you should seek the advice of an attorney or advocate in your area who can help you evaluate the best and safest way for you to enforce your employment rights, particularly if you do not have permanent legal immigration status.

What if my abuser is my coworker or supervisor?

When a coworker or supervisor injures you, your employer may be liable for its negligence in hiring the abuser in the first place, for continuing to employ the abuser after it became aware of a problem, or for failing to adequately supervise the abuser. Under certain circumstances, you may have a claim for:

- Negligent hiring
- Negligent retention (continuing to employ)
- Negligent supervision; and/or
- Negligence (such as failure to warn or protect)

In addition, you may have additional claims if the person who injured you is a supervisor or high-level employee. Your employer may be legally responsible for his conduct. If your injuries are covered by your state's Worker's Compensation system, your relief will probably be limited to Worker's Compensation. Depending on the facts of your situation, you may also have a claim for sexual assault or sexual harassment. If you are an undocumented immigrant or if you do not have permanent legal immigration status, and you are a victim of assault, sexual assault, being held hostage or certain other violent crimes committed against you by a coworker or supervisor, and you are willing to report the crime to law enforcement or the Equal Employment Opportunity Commission, you may qualify to receive legal immigration status in the form of a crime victim visa. If you were brought to the U.S by means of fraud, coercion or deceit and were forced to perform sexual acts and/or were forced to work under conditions of bondage, peonage or slavery, you may be eligible for the T-visa.

Protections Offered Immigrant Victims By the U.S. Equal Employment Opportunity Commission

Federal employment discrimination laws protect all employees in the United States, including those who do not have work authorization. It is unlawful for an employer to discriminate against you because of your immigration status. It is also unlawful for your employer to report or threaten to report your status to the DHS if you oppose unlawful discrimination or participate in a proceeding under the anti-discrimination laws. If you are undocumented and your employer retaliates against you, you may be entitled to some compensatory and/or punitive damages without regard to your immigration status.

Undocumented workers are also potentially entitled to some of the same remedies available to all other workers for violations of the laws enforced by the EEOC except for limited situations, including instances where the award would conflict with the purposes of immigration laws. These basic remedies can include reinstatement if you were unlawfully terminated, reinstatement if you were discriminatorily denied a job, back pay and other appropriate injunctive relief, damages, and attorneys' fees.

Federal laws also protect immigrants from sexual harassment at the workplace. If your employer sexual harasses or abuses you at work, you can take legal action against him/her.

What should I know about sex discrimination laws?

Your employer may be violating anti-discrimination laws if he or she permits domestic abuse or sexual harassment to occur in the workplace, or if he or she treats abused women differently than male employees. Your company's sex discrimination and sexual harassment policy (if it has one) may be a basis for you to ask your employer to stop discriminating against you, or to take steps to reduce or prevent sexual harassment by the abuser.

Do I have any other legal claims if I have been fired or forced to quit because of domestic violence?

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You may have a claim for wrongful discharge. Most employees are employees at will. This means they can be fired for any reason. There are some exceptions to this rule. One exception is that an employer cannot fire a person for a discriminatory reason.

Another exception is that in most states an employer cannot fire a worker for a reason that violates public policy. What this means is different in each state, but “against public policy” means generally things that hurt all people in that state if they are allowed to happen. For example, in some states an employer cannot fire someone because she attended jury duty or because she filed a claim for workers compensation. If an employer fires someone for a reason that violates public policy, the employee may have a claim for money damages, which is called a wrongful discharge or wrongful termination claim.

Many advocates believe that it is against public policy to fire an employee because she is a survivor of domestic violence. Since the law in this area is changing and varies from state to state, it is important that you consult with a lawyer to discuss bringing this type of claim.

Finally, if you were fired because you missed time from work to testify in a court proceeding related to the domestic violence, you may have additional claims.

Can I take time from work to testify in criminal court without being fired?

Many states have enacted laws that permit crime victims, including domestic violence victims to take time off from work to testify in **criminal court** without being fired from their jobs. Some states grant time off for a witness to testify as well. If your employer terminates you because you took time off from work to testify against the abuser in a criminal court, you may have other causes of action under which to sue your employer, such as wrongful discharge.

As of January 2001, the following thirty-two states have laws that make it illegal for an employer to fire or otherwise discriminate against a crime victim for taking time off to testify in criminal court: **Alaska, Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, , New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee (applies to state employees only), Utah, , , Wisconsin, and Wyoming** as well as the **Virgin Islands**. **The level of protection extended to the employee varies by state.** Some of these states also allow a domestic violence victim to take time off from work to meet with an attorney to prepare for trial. Other states do not make it illegal for an employer to fire a crime victim for taking time off to testify, but do require that the prosecuting attorney work with the victim to negotiate with the employer for time off to testify.

If you work in one of the states listed above and your employer threatens to fire you or discriminates against you for testifying in criminal court, you may want to notify the prosecuting attorney or judge and ask for assistance. If your employer either threatens to fire you or does fire you for taking time from work to testify in criminal proceedings against the abuser, some of these states allow you to sue your employer so that a court could award you money damages (like lost pay or benefits). Some states could require the employer to rehire you, or could hold the employer in contempt of court for violating the law. Please contact **Legal Momentum** or a local legal aid organization if an employer fires you for exercising your rights under these laws.

Other states provide more limited protections for victims of crime who need to take time from work to participate in criminal proceedings. Some states encourage employers to cooperate with employees who were victimized by crime, but do not require your employer to permit you to take time from work to testify. These states include **Florida, Illinois, Kentucky, Louisiana, Nebraska, New Jersey, New Mexico, North Dakota, Oklahoma, Texas, Washington, and West Virginia**. In these states, your employer still may be able to legally terminate you if you take time off to testify.

Domestic violence victims who work in a state that is not listed here have no job-protected time off to testify in a criminal proceeding at the time of publication of this booklet. However, if your employer terminates you because you took time off from work to testify against the abuser in a criminal court, you may have other causes of action under which to sue your employer, such as wrongful discharge.

Can I take time from work to go to court to get a civil protection order without being fired?

Most states don't have laws preventing employers from firing domestic violence survivors who take time from work to obtain a protective order in civil court. However, a few state and municipal laws provide some protection for domestic violence survivors who take time from work to obtain a civil restraining order or other civil assistance.

Can I collect Workers' Compensation for injuries caused by my abuser at work?

Yes, in some cases. Workers' Compensation is an insurance system that pays for the medical, hospital, and rehabilitation expenses and for a portion of the lost wages of workers who are injured on the job. State law sets the amount of money an injured worker receives. Workers' Compensation is a "no-fault" system. This means that the employee does not have to prove that the employer was at fault in order to get benefits. Workers' Compensation is available in every state. Each state requires certain types of employers to participate in the system and has its own rules concerning who is eligible for benefits. Generally, when you can file for workers compensation, it will not be necessary for you to answer questions about your immigration status. However, if you are undocumented or otherwise working without legal authorization, you should consult a local expert on employment issues and immigration to seek assistance in verifying that you can safely apply under local procedures and practices.

If you are eligible for Workers' Compensation benefits for a particular injury, then Workers' Compensation may be your only remedy for that injury. This means generally that you would not be able to bring other legal claims against your employer for the same injury.

When are injuries at work covered by Compensation?

The law is different in each state. Here are some general principles about what injuries and employees are covered:

- ❑ You will be covered only if your type of employer and your type of job is specifically included in your state's Workers' Compensation system. Federal employees are covered by the federal Worker's Compensation system.
- ❑ Your injury must "**arise out of employment**". This means the injury must be linked to your job. In some states, assaults by coworkers or non-employees are covered. In other states, such assaults are not.
- ❑ Your injury must occur "**in the course of employment**". This usually means the injury must happen while you were performing your job or while you were on your employer's property during working hours (eating lunch in the cafeteria, for example).
- ❑ Your injury must be an "**accident**". Intentional injuries inflicted by your employer are not accidents. However, intentional injuries inflicted by a coworker or a non-employee may count as "accidents" in some states.

How do I apply for Worker's Compensation?

- ❑ Contact your local Worker's Compensation board or an attorney in your state for information on how to apply and about the specific laws in your state.
- ❑ Make sure to ask about deadlines. Most states have a time period during which you must inform your employer about your injury and file your claim.
- ❑ Be sure to tell your employer about your injury within the deadlines.
- ❑ File a claim on time with your state's Worker's Compensation board or the appropriate organization.

- ❑ Remember to ask about how to appeal in case your claim is denied at first.

HOW TO PROTECT YOURSELF AND YOUR CHILDREN FROM DOMESTIC VIOLENCE

SAFETY PLANNING FOR IMMIGRANT AND REFUGEE WOMEN

Safety planning is an important first step for all battered women. It should be done by anyone who has suffered abuse, whether or not you are currently planning to or have already separated from your abuser. Safety planning will help protect and empower you against future threats of imminent domestic violence toward you and/or your children. Safety planning will help you prepare now so that if you do decide to leave your abuser in the future, you will have gathered the information you will need to pursue any future legal actions you may need to take, including: protection orders, immigration cases and family court matters. Safety planning is also important for women who are not now deciding to separate from their abusers. Women who choose to try to stay with their abusers can use safety planning to provide them with more options in case they decide to leave quickly to flee escalating violence in the future.

The time when you decide to leave your abuser can be the most dangerous for you and your children, because violence often escalates when the abuser feels that he is losing control over the family. If and/or when you choose to separate from your abuser, you should know that you have options.

- 1) You can obtain a protection order that removes your abuser from the family home; or
- 2) You can leave the home you share with your abuser taking the children with you.

You should be aware that you can take legal and other steps towards ending the abuse, whether or not you have legal immigration status in the United States.

Further, there are provisions under the Violence Against Women Act (VAWA), that allow many victims of domestic violence, sexual assault, trafficking and many other crimes to file for legal immigration status without their husband's, abuser's, abusive employer's, or trafficker's assistance, knowledge or cooperation. VAWA has special protections for victims of domestic violence, trafficking, and other crimes, to prevent disclosure and use of information in your VAWA case and prevents the use of such abuser-provided information in removal proceedings. These provisions are designed to ensure that your abuser cannot use the immigration system against you. It is illegal for the government to provide your abuser any information about whether you have filed a case, the status of your case or give him any information that you have provided in your case. Immigrant victims of domestic violence, sexual assault, trafficking, and many other crimes that result in substantial physical or emotional harm to the victim, whose abusers are boyfriends, spouses, or even strangers who are not citizens or legal residents, may be eligible for a U-visa.

EMERGENCY MEASURES

- ❑ Contact a local domestic violence hotline to find out about laws, shelters, and resources available.
- ❑ Create a plan for a safe exit from your home. Practice your safety escape plan with your children.
- ❑ Plan the safest time to get away.
- ❑ Have an easily accessible place to keep car keys, purse/wallet, identity cards for you and your children and any other essential items.
- ❑ Tell someone what is happening to you. If possible, tell your neighbors about the abuse and tell them to call the police if they hear any suspicious noises coming from your home. You can also arrange a signal with neighbors to let them know you are in danger and need police help— for example flashing lights or a code word.

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- ❑ Know where you can go for help. Arrange a place where you and your children can stay temporarily, such as with close friends, neighbors, relatives, or at an emergency shelter. If you are considering staying at a battered women's shelter you should know the following:
 - You should get the telephone number of the shelter.
 - Both documented and undocumented battered immigrants are legally entitled to access emergency and short-term shelter programs.
 - Emergency and short-term shelters and transitional housing programs cannot ask you any questions about your immigration status
 - If you do not speak English, ask the shelter to provide you with a translator. If you cannot communicate this to the shelter workers, have a trusted friend, family member or co-worker help you communicate with the shelter.
 - If you will be staying at a shelter tell them about any special foods you eat and ask them to allow you to cook foods that are familiar to you and your children. Discuss with them the kind of sleeping arrangements, religious needs, or a need for an interpreter. Make sure you can take your children to the shelter with you. If you cannot bring your children, ask the shelter to help you find a safe place you can go with your children.
- ❑ In a safe but accessible place, store a suitcase with important survival items you may need for you your children, including: clothes for you and your children, money, and important documents that you might need to prove the abuse you have suffered, to take care of your children, to obtain a protection order or prosecute your abuser, to obtain custody and child support, and for your immigration case.
- ❑ If you could not escape during a recent incident of violence, or if the violence appears to be escalating and you and/or your children are in imminent danger, you should know that you can have your abuser removed from the family home through a temporary protection order which can also require that your abuser not reenter the home, turn over to the police any keys he has to residence and not contact you in any way.
- ❑ If you foresee an outbreak of violence, try to move away from weapons and out of the kitchen where knives or heavy objects could be used as weapons. Move to a low-risk place near an exit to the outside. Avoid bathrooms, kitchens and garages.
- ❑ Use your judgment and intuition. You have to do what you can to protect yourself and your children until you are out of danger.
- ❑ Call the police if you are in danger or need help.
- ❑ The police will help you if you are a victim of domestic violence or any other crime, even if you are undocumented. The police should not ask you any questions about your immigration status. If they do, then you are not required to answer. Tell them you want to speak to a lawyer.
- ❑ If you are injured, go to the hospital emergency room or your doctor and report what happened. Before you tell them what happened, ask them whether the information you give them is confidential. If so, tell them what happened and ask that they document your visit and your injuries. If they are required to report domestic violence to the police, they must tell you this when you ask and you can decide if you want the police informed. If they must report to the police, and you do not want them to, do not tell them what happened; just ask them to document your injuries. If your abuser insists on taking you to the hospital, then try to ask that you be interviewed in private, if you think it is safe to do so.
- ❑ If you encounter Department of Homeland Security officials, tell them you are a victim of domestic violence, sexual assault or trafficking and show them copies of any immigration papers you have. We encourage you, if

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it is safe to do so, to carry with you any paper approving your immigration cases or granting you what they call a “prima facie” determination about your immigration application.

- ❑ If DHS officials stop you, it is also important to tell them you want to call an attorney. As soon as you begin working with an advocate or an attorney ask them for their phone numbers so that you can call your attorney or advocate if DHS officials stop you.
- ❑ If you encounter DHS officials at any of the following locations, find an advocate or attorney to help you tell DHS that their contact with you at this location violates VAWA confidentiality. Also obtain the name and contact information including telephone numbers for any persons who witness DHS contact with you at these “VAWA confidentiality” protected locations.
 - 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.

VAWA confidentiality is a federal law that protects immigrant victims against government release of information regarding their victimization. It also bars government officials from relying on information provided by an abuser to deny a victim her immigration benefits or to attempt to remove her from the United States.

SAFETY FOR THE CHILDREN

- ❑ Plan with your children and identify a safe place for them if another domestic violence incident should occur – a room with a safe lock or a neighbor’s house where they can go for help. Reassure them that their job is to stay safe, not to protect you.
- ❑ Teach your children how to dial 911 in an emergency and where to go if the abuser becomes violent.
- ❑ Plan ahead so that if it is necessary to flee, you will be able to flee with your children. In an emergency escape, you must take your children with you if at all possible. No matter what your abuser has told you about U.S. custody laws, the courts do not like to give custody to abusers, even if he is a citizen and you are not. Further, if you leave your children with your abuser, you are leaving him with a very effective tool he can use to control your life and your children’s lives.
- ❑ Inform school personnel about who is allowed to pick the children up from school.
- ❑ Provide childcare workers and staff at your children’s school with a copy of your protection order and a list of the only people who may see or pick up your children from their care.
- ❑ In case your abuser abducts your children, create a plan for what your children can do to safely try to prevent this. Teach your children how to call the police and that calling the police is for their safety and the right thing to do. Teach them how to make a collect call to you or a trusted friend, minister or family member if they are kidnapped. Teach them how to call for help if they are abducted from a public place.
- ❑ If you are stopped by DHS and you are the sole caretaker of your children, tell DHS this immediately. Then ask to not be detained so that you can care for your children while DHS processes any case they choose to bring against you. DHS may allow sole caretaker parents and breastfeeding mothers to continue caring for their children until their case is decided. If you are stopped by DHS it is important that you contact an immigration attorney immediately. You must tell the immigration attorney about your history of domestic violence, sexual assault, trafficking, or other criminal victimization.

SAFETY AT HOME AFTER YOU SEPARATE FROM YOUR ABUSER

- ❑ Once the abuser is removed from your house, have all the locks changed. If possible, install locks or bars on the windows, a security system, and door wedges. Install rope ladders if you live on an upper story. Install smoke detectors and fire extinguishers. The abuser can be ordered to pay these costs in a protection order.
- ❑ Inform neighbors, close friends, family and co-workers that you are about to separate or have separated from your abuser. Ask that they tell you if they see your abuser around your house, workplace, or car.
- ❑ If you rent, ask your landlord if you can move to another unit or building that the landlord controls. Have the name on the lease changed to your name. Request that the building management notify building employees that your abuser is barred from the building and give them a copy of the protection order for their records. Inform them that they can call the police if they see your abuser in or near the building.
- ❑ If you will be moving out of a residence you share with your abuser, you should try to do this when the abuser is at work or is otherwise not at home.
- ❑ Once you are living on your own, the phone company can give you an unlisted number. If you and your partner owe a large past due phone bill, you will have difficulty getting a new phone number on your own. If you get a domestic violence lawyer they can negotiate with the phone company a payment plan that will allow you to get reconnected as soon as possible. Local charities, churches, and victims of crime assistance programs may be able to help you in paying off these phone bills so that you have a phone at home that you can use to call 911 for police assistance.
- ❑ If you are living at a hidden location, have your mail sent to a post office box address so that your abuser cannot locate you. You can also have your mail sent to the home of a trusted friend, family member, or your lawyer. Give the post office a copy of your protection order and inform them that they are not to provide any information about your forwarding address to your abuser.
- ❑ You may want to consider changing your name to protect yourself.

SAFETY AT WORK

- ❑ Consider telling your employer about the abuse in case you need to take time off to meet an advocate, if you need time off for court proceedings related to the domestic violence, or want to vary your working hours.
- ❑ Inform your employer, supervisor and/or security personnel at your workplace that you are about to separate, or have just separated, from your partner and to block phone calls or his entrance to your workplace.
- ❑ Arrange to have someone screen your calls at work.
- ❑ Advise other employees of suspected danger from your abuser. You should particularly inform receptionists and employees with offices near stairwells, large windows and entry doors to the building. Show them a picture of your abuser and ask them to call security and tell you if they see him in, around, or approaching the building.
- ❑ Get a protection order that requires that your abuser stay away from you and not contact you at your workplace. Give a copy of this order to your employer so that they can see you are taking steps to protect yourself and them from the abuser.
- ❑ Keep a copy of your protection order at work in case of emergency.
- ❑ If you work for an employer with multiple locations, ask to be relocated (where possible) if there is a great

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probability of danger.

ECONOMIC ASSISTANCE

- ❑ Keep cash on hand for emergencies and open your own bank account. This will increase your independence and so that you have access to money if you decide to leave your abuser.
- ❑ Keep change for phone calls.
- ❑ To keep your phone calls confidential you will either have to use coins, a phone card you pay for in advance in cash or you might ask a friend to use their telephone credit card for a limited time.
- ❑ Economic assistance can help you and your children support yourselves apart from your batterer. Assistance may be available from governmental and non-governmental sources.
 - For rent, mortgage and utility bills: Seek emergency funds from local churches, community groups or the Red Cross. These sources can help for a month or two but will not provide monthly ongoing help. For long term assistance, consider getting a roommate, living with a family member, obtaining an order as part of your protection order and/or divorce requiring your abuser to pay rent, spousal support and/or child support.
 - For food: You and your children qualify to receive food from local food banks no matter what your immigration status is. Your citizen children qualify for food stamps and you can file for food stamps on their behalf. You and your children may qualify for child nutrition programs or welfare cash payments including TANF (Temporary Aid to Needy Families). See discussion below on benefits to see if you qualify.
 - Money to change locks, move, and make repairs needed for security: These funds can sometimes be obtained from the Red Cross. If not, your abuser can be ordered to pay these costs in your protection order.
 - Money to pay medical bills: You may be eligible to have your local crime victims' compensation program pay your medical costs. You can also have your abuser pay these costs as part of your protection order or through his health insurance plan.
- ❑ Consider asking for child support, reimbursement for repairs, and payment of certain medical expenses or rent expenses in your civil protection order.
- ❑ Consider applying for long-term economic relief such as child support from your abuser.
- ❑ Consider applying for any public benefits your child qualifies for, or that you may qualify for as a battered immigrant once you have filed your Violence Against Women Act (VAWA) immigration case.

GENERAL SAFETY TIPS

- ❑ Take photographs of any injuries you sustain during the abuse. Also take photographs of torn clothing, broken property, and furniture in disarray. Take these photos when it is safe to do so. Leave copies of the photographs and the negatives in a safe place outside of your home and away from your abuser.
- ❑ Keep evidence of the abuse (ripped clothes, photos of injuries and bruises, etc.) even if you are not now considering separating from your abuser. Should you ever decide to take any legal action to protect yourself and your children, to obtain custody, support, welfare or immigration benefits, you will need this evidence.
- ❑ Always keep a copy of your protection order and referral list with you (if safe to do so).

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- ❑ Alter your routines so that your abuser cannot find you. Change the times and the routes that you use to go to and return from work, the times and places you go grocery shopping, the times you pick up and drop off the children from day care, and the dates and times you have any other regular appointments.
- ❑ Keep a detailed record of your interactions with the abuser, such as telephone calls, e-mails, or letters. This information may help you to prepare for court. Keep a record of all of his actions that violate your protection order. Get a telephone answering machine and answer all calls through the machine. This can help you tape calls that document ongoing harassment. Keep all letters that your abuser sends you.

LEGAL STEPS

Contact the local domestic violence hotline, shelter or legal services program for help. They can inform you of your legal rights and help you access legal relief. They can also help to find interpreters to assist you. To find an advocate or attorney in your community who can help you call the National Domestic Violence Hotline 1-800-799-SAFE or the Rape, Abuse and Incest Network Hotline at 1-800-656-HOPE for referrals. Once you have an advocate or attorney helping you, show them this booklet and ask them to contact the expert resources listed at the end of this booklet. The experts listed provide technical assistance to advocates, attorneys and other professionals working with immigrant victims. They DO NOT provide legal representation to victims.

CIVIL PROTECTION ORDERS

- ❑ You can obtain a protection order whether or not you currently plan to separate from your abuser.
- ❑ Both documented and undocumented battered immigrants can obtain protection orders.
- ❑ Protection orders can help prevent your abuser's violence against you and/or your children.
- ❑ Getting a protection order against your abuser will not affect his immigration status or lead to his deportation.
- ❑ However, since violation of a protection order is a crime, if your abuser is convicted of violating the order of protection, it could lead to his deportation. For this reason, protection orders can work well to prevent violence when the abuser is a non-citizen.
- ❑ You can file for a civil protection order to remove your abuser from your home, to protect you and your children if you move out, and to prevent future violence if you continue living with your abuser.
- ❑ For a complete discussion of the relief you can get through a protection order, including custody, support and stay away provisions see the protection order section of this booklet.
- ❑ Once you receive a protection order, keep a copy of the order with you at all times. Keep extra copies in a safe location with a friend or family member in case your copy is stolen, lost or destroyed.
- ❑ Give a copy of your protection order to:
 - Friends and family members you visit often,
 - Your employer,
 - Your children's schools or day care centers,
 - Your clergy member,
 - Persons whose homes you may stay in when you escape from danger, and
 - The police department in the communities in which you live, work, visit friends or family members, and where your children go to school.
- ❑ You can enforce your protection order by calling the police when the order has been violated. The prosecutor will then ask you to testify in the criminal case. You can also have a domestic violence lawyer help you enforce the order by bringing a contempt case before a judge.
- ❑ Do not initiate contact or communicate with your batterer if he is under a court order to stay away from and

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not contact you. Some judges and police may be less willing to enforce a protection order if you have been willingly communicating with your abuser. If you reunite with your abuser, know that the provisions of your protection order that require no abuse are still in effect. See the protection order section below regarding modifying the order.

- ❑ If you fear continued harassment, you can ask your local police department to place your home on the special attention list. This means that the police in your neighborhood may keep in contact with you to ensure that you are not having any further problems with your abuser. You can ask that the court order the police to pay special attention to your house as part of a protection order.

IMMIGRATION OPTIONS

- ❑ If you qualify to get legal immigration status because of the domestic violence you have suffered, you do not have to separate from your abuser in order to file your immigration case.
- ❑ The procedures for Violence Against Women Act immigration cases, battered spouse waivers and crime victim visa cases (U-visas) all allow you to file the immigration case confidentially without your abuser's knowledge or cooperation. You may file for legal immigration status for yourself and for any undocumented children you may have.
- ❑ In each of these types of cases it is illegal for the government to provide your abuser any information about whether you have filed a case, the status of your case or give him any information that you have provided in your case. VAWA has special protections for victims of domestic violence, trafficking, and other crimes, to prevent disclosure and use of information in your VAWA case and prevents the use of such abuser-provided information in removal proceedings. These provisions are designed to ensure that your abuser cannot use the immigration system against you. For example, VAWA protections prevent your abuser from using DHS to get information about the existence of your VAWA self-petition, interfering with or undermining your immigration case, or encouraging immigration enforcement officers to pursue removal actions against you. It also prevents DHS from making arrests of immigrants at locations where victims seek help including community-based organizations, shelters, rape crisis centers, and courthouses.
- ❑ If are relying on your spouse for legal immigration status, seeking help to prevent domestic violence may also help you obtain legal immigration status without your husband's help, knowledge or consent.
- ❑ You should start gathering the information you may need to prove your domestic violence related immigration case whether or not you have decided to leave your abuser. You should consider filing your immigration case even if you do not plan to leave your abuser, because obtaining legal immigration status will increase your options for self-sufficiency. For a complete list of the evidence you will need to collect for your immigration cases and for other family law cases review the checklist below carefully.

CRIMINAL CASES

- ❑ U.S. laws protect all domestic violence victims without regard to immigration status.
- ❑ Police are not supposed to ask any questions about your immigration status when you call for help.
- ❑ Call the police for help if you are being abused (911).
- ❑ In the United States, it is a crime to hit, kick, punch, threaten, or injure a family member, even if it occurs in the home.
- ❑ Abusers can be prosecuted for their crimes against family members, even if that family member does not have legal status in the United States.
- ❑ Cooperating in the criminal prosecution of your abuser may increase your chances of obtaining legal immigration status in the United States, a legal immigration status that is your own and not connected to your abuser in any way. Cooperating in the criminal prosecution of your abuser should not lead to your deportation.

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- ❑ Check with a local domestic violence or immigration program about police and DHS practices in your area.

CHECKLIST OF WHAT YOU NEED TO TAKE WITH YOU WHEN YOU LEAVE YOUR ABUSER

- photo identification for yourself and your children
- passports for yourself and your children
- children's birth certificates
- your birth certificate
- your children's social security cards
- your social security card, if you have one
- green cards (alien registration card), for you and your children if you and/or they have one
- money for phone calls, transportation, and expenses
- credit cards, checkbooks, bank books, ATM cards
- work permits for you and your older children
- welfare identification for you and your children
- keys to the house, office and car and any ownership documents
- drivers license and registration
- necessary medicines, medical records, and insurance papers for yourself and your children
- children's school and vaccination records
- small saleable objects
- clothing for you and the children
- all court documents
- telephone/address books, including information on victim service providers
- children's favorite toys, books and blankets
- your sentimental and irreplaceable items, such as photographs, jewelry, special gifts from your family

TO PROVE THE ABUSE AND THE EFFECT IT HAS HAD ON YOU AND YOUR CHILDREN

- copies of police reports
- copies of medical records
- hospital records documenting abuse (even if you did not tell anyone the cause of the abuse)
- copies of current and former protection orders (civil, criminal, temporary, emergency)
- photographs of your injuries
- torn clothing or destroyed property
- your diary
- names of shelters you have stayed at
- names, addresses and telephone numbers of doctors, nurses, counselors, mental health professionals and social workers whom you or your children have spoken with or received treatment from
- names, addresses, and telephone numbers of people who: saw your bruises, heard you scream, witnessed any incident of the abuse, you told about the abuse, you have stayed with for refuge, or can describe the effect that the abuse has had on you and your children
- names, addresses, and telephone numbers of police officers, prosecutors, judges or other government officials who know about the domestic violence you experienced

TO OBTAIN CHILD SUPPORT

- your husband's or the father of your child's social security number
- a copy of your husband/father of your child's most recent pay stub
- the name, address, phone and fax number of your husband/father of your child's employer
- a copy of your husband/father of your child's tax returns for the past three years
- proof of who is your child's father (children's birth certificates, acknowledgement of paternity, or other proof)

FOR BATTERED IMMIGRANT WOMEN WHO MAY QUALIFY FOR A VIOLENCE AGAINST WOMEN ACT FORM OF RELIEF OR OTHER IMMIGRATION RELIEF:

- work permits, green cards, visa applications, and other immigration papers for you and your children
- copies of any documents filed with DHS
- marriage license and certificate for current marriage
- divorce papers from your previous marriage(s) or your spouse's previous marriage(s)
- birth certificates, adoption certificates, acknowledgement of paternity records for your children
- passports and I-94s (record of entry into US) for you and your children, if you have one
- identification (social security, driver's license, welfare identification)
- copies of your spouse's birth certificate, social security card, green card, or certificate of naturalization
- if your spouse was born abroad and is now a citizen or has legal permission from DHS to live and work in the United States, write down and take with you his "A" number, the number on his green card, work visa, or naturalization certificate
- court papers filed and court orders related to you, your husband/partner, and your children
- photographs of wedding, wedding invitations, love letters from spouse
- family photographs from vacations, birthdays, family events, and trips you have taken
- personal property or real property deeds, leases, and rental agreements in both of your names
- papers that show that you lived with your husband in the US (such as copies of the lease agreement, real property deed, utility bills, rent receipts, mortgage payment book, letters addressed to the two of you, letters addressed to you, and other letters or magazines addressed to your abuser at the same address during the same time period)
- names, addresses, and telephone numbers of persons who knew you as a couple, knew that you and your husband lived together, or who saw any of your injuries on any of the incidents of violence
- copies of documents related to joint checking or savings accounts
- joint tax returns listing you as a dependant
- identification with a photograph listing you with your married name
- life and health insurance policies covering you, your spouse, and your children
- letter from employer stating that you or your spouse listed the other as an emergency contact

-

letter from employer stating that you or your spouse listed the other spouse as an emergency contact

Congratulations!

By reading this booklet, you have just taken the first step toward creating a safe home for yourself and your children. The next step is to seek the assistance of organizations from the following list of resources, or to make your own list of resources in the important phone numbers area.

Rights and Options for Battered Immigrant, Migrant, and Refugee Women

IMPORTANT PHONE NUMBERS:

Police:

Hotline:

Friends:

Shelter:

FOR HELP CALL:

For help locating a battered women's advocate who has experience working with battered women's advocates in your area or for help finding an immigration lawyer call:

National Domestic Violence Hotline

1-800-799-SAFE (7233)

1-800-787-3224 (TTY)

Interpreters are available in many languages.

Calls cost nothing. Call anytime.

Police - 911

Call the police if you think you or your children are in danger. If the police ask about your immigration status or where you were born, you do not have to answer.

Medical Emergency - 911

The emergency room in any public hospital must give you emergency medical care, even if you are undocumented or do not have insurance.

YOUR LOCAL DOMESTIC VIOLENCE PROGRAM:

YOUR LOCAL LEGAL SERVICES AGENCY:

The National Network on Behalf of Battered Immigrants Provides Technical Assistance to Professionals Working With Battered Immigrants

Attorneys, advocates, health care workers, social services providers, and government employees working with immigrant victims are encouraged to contact the following organizations to receive expert technical assistance to help provide up-to-date and culturally competent assistance to immigrant victims of violence against women. The numbers listed below

Rights and Options for Battered Immigrant, Migrant, and Refugee Women

DO NOT provide direct assistance, advocacy, legal representation or legal advice to victims.

National Immigrant Women's Advocacy Project at (202) 274-4457 Tel., (202) 274-4226 Fax, e-mail niwap@wcl.american.edu

ASISTA at www.asistaonline.org

The Family Violence Prevention Fund at (415) 252-8900 x 16 Tel., (415) 252-8991 Fax, e-mail leni@endabuse.org.

These organizations do not provide representation or direct assistance to individual immigrant victims of domestic violence. They can refer you to help in your local community. Once you are working with a battered women's advocate, social worker or attorney, they can call these experts for technical assistance on how they can better help you.

This booklet developed jointly by:

Immigrant Women Program
Legal Momentum
1101 14th Street, NW Suite 300
Washington, DC 20002
(202) 326-0040

The Iowa Coalition Against Domestic Violence
220 Lafayette, Suite 150
Iowa City, Iowa 52240
(319) 688-2805

Lideres Campesinas
611 South Rebecca Street
Pomona, CA 91766
(909) 868-7174

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National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms¹²

By Leslye E. Orloff, Rebecca Story, Joanne Lin, Carole Angel, and Deborah Birnbaum

Since 1990 there have been dramatic changes in the immigration options available for immigrant³ victims of violence against women. Between 1990 and 2007 a number of legal immigration options were created that helped immigrant victims of domestic violence, sexual assault, trafficking and other criminal activity. Women who were undocumented and had no option to attain legal immigration status became eligible to file for legal immigration status due to her victimization.⁴ In 1994, Congress passed the Violence Against Women Act

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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 For the purposes of this manual, an "immigrant" is defined as an individual born outside of the United States who is now present in the United States with the intention of remaining here indefinitely. Immigrants can be either documented or undocumented. (See glossary of terms).

⁴ For a history of the evolution of legal immigration relief for immigrant victims of violence against women and an explanation of the purpose of the legislation, see Leslye E. Orloff & Janice V. Kaguyutan, *Offering a helping hand: Legal protections for battered immigrant women: A history of legislative responses*. 10 AM. U. J. GENDER SOC. POL'Y & L. 95-183 (2002).

Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

(VAWA), which included specific provisions to help immigrants abused by their U.S. citizen or lawful permanent resident spouses or parents to obtain immigration relief.⁵ This relief was designed to remove dependency on the abusive U.S. citizen or permanent resident for immigration status. The Battered Immigrant Women Protection Act of 2000 (VAWA 2000) created new forms of immigration relief for other immigrant victims of violent crime, including victims of sexual assault or trafficking where the perpetrator was either a family member or a non-family member. The Violence Against Women Act of 2005 (VAWA 2005) then expanded protections to include, among others, some victims of elder abuse.⁶

It is crucial to have a basic understanding of immigration law when assisting immigrant victims of sexual assault. Access to legal immigration status enhances a victim's safety, economic security, and the range of options available to her that can help her survive after abuse. Victims should be informed about every option for immigration relief available to them as early as possible, including violence against women relief they may be entitled to receive. Moreover, failure to identify and address issues affecting a victim's immigration status leaves victims who qualify for immigration relief protection vulnerable to deportation. All victims must be screened for facts that could either make their immigration case more complex or result in their deportation.⁷ (See *Red Flags List* at the end of the chapter).

This chapter will provide a brief overview of the immigration laws and potential immigration options available to immigrant victims of sexual assault.⁸ Other chapters of this manual will discuss specific forms of immigration relief in more detail.

A key goal of this manual is to help advocates and attorneys identify the various forms of immigration relief that may be available to help immigrant victims of sexual assault. Victims of sexual assault may qualify for forms of immigration relief based on their victimization by a family member who is a citizen or lawful permanent resident, they may qualify for other forms of relief based on victimization by a non-family member, and/or they may qualify for other legal immigration status wholly unrelated to the abuse or victimization (e.g. student visas, work visas). Which options they qualify for is a complex determination and the decision to file for relief must include analysis of the risk of deportation resulting from the filing. For these reasons, advocates and attorneys working with immigrant sexual assault victims should consult an immigration legal expert who is experienced in working with immigrant victims and who can help identify complexities that exist in your client's case, as well as the range of immigration relief available to her.⁹ Victims should be informed about every option of immigration relief available to them as early as possible.

There is a range of relief and assistance that immigrant victims are legally entitled to receive whether or not they have or qualify to attain legal immigration status. Both documented and undocumented immigrant victims are for example entitled to access victim services, emergency health care, police protection, protection orders, custody, child support and a range of services necessary to protect their health and safety.¹⁰

⁵ See Violent Crime Control and Law Enforcement Act ("VAWA 1994"), Pub. L. No. 103-322, §§ 40701-40703, 108 Stat. 1796 (1994).

⁶ See Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA 2005"), [Pub. L. No. 109-162](#), Title II, §205, 119 Stat. 2960 (2006).

⁷ The immigration laws are administered and enforced by the Department of Homeland Security (DHS). On March 1, 2003, the agency formerly known as the Immigration and Naturalization Service (INS) was divided into three separate agencies and became part of the DHS. The U.S. Citizenship and Immigration Services (USCIS or CIS) is the agency responsible for affirmative applications including VAWA self-petitions. The two other agencies are U.S. Immigration and Customs and Enforcement (ICE), which handles immigration enforcement, detention, and removal; and U.S. Customs and Border Protection (CBP), which oversees the borders and ports.

⁸ The information in this chapter also applies for immigrant victims of domestic violence, trafficking and other crimes.

⁹ To identify an expert on immigrant victims in your state and to obtain technical assistance on cases of immigrant victims contact: National Immigrant Women's Advocacy Project at niwap@wcl.american.edu or call (202) 274-4457; or ASISTA. Once victims have been screened, if it is determined that she qualifies for a U-Visa or a VAWA self-petition and that no complex (Red Flags) issues exist in her case, the victim can be assisted in her application by an advocate or an attorney who is not an immigration expert using the information in this manual. We recommend that advocates and attorneys helping immigrant victims in VAWA and U-Visa cases identify an immigration attorney in their state experienced in working with immigrant victims who can help screening and who can offer advice and answer questions. The technical assistance providers located above can help you identify these resources.

¹⁰ See also Chapter 16, "Access to Programs and Services That Can Help Immigrant Victims: Public Benefits Access for Immigrant Victims of SA," and Chapter 17, "Critical Issues in Healthcare for Immigrant Victims of Sexual Assault," of this Manual for further information

Overview of Immigration Options for Immigrant Victims of Sexual Assault and Domestic Violence

The following is an introduction to potential immigration options for immigrant women who are victims of sexual assault.¹¹ These brief descriptions are not meant to provide an exhaustive list of all possible immigration options, but rather to serve as an issue-spotting guide for advocates and attorneys working with immigrant sexual assault victims. Each of these options is discussed further in another chapter of this manual. An attorney should weigh all of the above-mentioned remedies in light of specific facts of the client's case to determine the best strategy in the individual victim. Importantly, most of these remedies may be used alone or in combination with one another. For example, an immigrant victim of sexual assault who has also been a trafficking victim who attains a U-Visa may also qualify for and later receive a T-Visa.

Options Related Primarily to Crime Victimization

U-VISA – Crime Victim Visa¹²

The U-visa provides immigration relief for immigrants who suffer substantial physical or mental abuse as a result of criminal activity perpetrated against them.¹³ A U-visa grants victims a temporary four-year visa, employment authorization, and protection against removal from the United States.

The U-visa is an important option available to immigrant victims of domestic violence and sexual assault. A victim's qualification to receive a U visa is not affected by –

- Whether or not the victim has any prior relationship with the perpetrator; or
- The citizenship or immigration status of the perpetrator.

The sexual assault perpetrator may be an intimate partner, non-intimate partner, acquaintance, family member or a stranger. U visas are useful to immigrants who are ineligible to file VAWA self-petitions (described later in this chapter), especially immigrant victims not married to U.S. citizens or lawful permanent residents, because the perpetrator's immigration status and relationship to the victim is irrelevant. Moreover, the U-visa provisions give DHS the discretion to waive many of the grounds of inadmissibility that might otherwise prevent a victim from attaining lawful immigration status (See inadmissibility in the glossary section of this chapter). For example, in U visa cases, DHS has the discretion to grant lawful permanent residency to an immigrant victim who may have plead guilty to a criminal conviction for shoplifting baby food needed to feed her children when she was fleeing abuse or a victim who plead guilty in a domestic violence case when she was acting in self-defense.

In order to qualify for a U visa, the immigrant must be a victim of one of the crimes listed in the statute or of a similar crime. The crimes covered under the U-visa are:

- rape
- torture,
- trafficking
- incest
- domestic violence
- sexual assault
- abusive sexual contact
- prostitution
- sexual exploitation

¹¹ There is a range of relief and assistance to which immigrant victims are legally entitled whether or not they have or qualify to obtain legal immigration status. Both documented and undocumented immigrant victims are for example entitled to access victims' services protections, emergency health care, police protection, protection orders, custody orders, child support and a range of services necessary to protect their health and safety.

¹² See also Chapter 10 of this Manual "U Visa Victims of Criminal Activity "

¹³ INA § 101(a)(15) (U) (i); 8 U.S.C. § 1101(a)(15)(U) (i).

Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

- female genital mutilation
- being held hostage
- peonage
- involuntary servitude
- slave trade
- kidnapping
- abduction
- unlawful criminal restraint
- false imprisonment
- blackmail
- extortion
- manslaughter
- murder
- felonious assault
- witness tampering
- obstruction of justice
- perjury
- attempt, conspiracy, or solicitation to commit any of above mentioned crimes.¹⁴

The criminal activity must have occurred within the United States or must have been in violation of U.S. law.

To apply, the immigrant victim must obtain certification from a law enforcement agency that the victim is being, will be, or is likely to be helpful in criminal investigation and prosecution. Victims are eligible whether or not the perpetrator is convicted, whether or not criminal prosecution is initiated, whether or not the perpetrator is served with a warrant, and whether or not they are called as a witness in the prosecution as long as they are helpful in an investigation. For an immigrant under 21 years of age, the spouse, children, unmarried siblings under 18, and parents can receive U Visas based upon the immigrant crime victim's receipt of U visa. For an immigrant 21 years of age or older, the spouse and children of the immigrant can also receive U-visas.¹⁵

When a U-Visa application is approved by DHS, the victim receives a "U-Visa." The U-Visa grants the victim legal permission to live and work in the United States. It also by operation of law results in the dismissal of any case in immigrant court filed against the immigrant.¹⁶ The U-Visa lasts for four years.¹⁷ A U-Visa grants victims temporary legal immigration status, employment authorization and protection against removal from the United States. A U-visa holder who has been physically present in the U.S. for three years can attain lawful permanent residency if they can prove that remaining in the U.S. is connected to humanitarian need, will promote family unity, or is in the public interest.

The DHS regulations implementing the U-visa program were published on September 17, 2007 and went into effect on October 17, 2007. Prior to the effective date of the regulations, Citizenship and Immigration Services (CIS) was issuing interim relief to victims who qualify to receive U visas. This provided them with some protection until CIS published U visa regulations and could grant victims a U visa. The primary status granted under interim relief was deferred action, which offered protection from deportation and access to employment authorization. U-visa interim relief was valid for one year and had to be renewed annually. As of October 17, 2007, DHS is accepting and adjudicating U-visa petitions.

T VISA ¹⁸

¹⁴ INA § 101(a)(15)(U) (iii); 8 U.S.C. § 1101(a)(15)(U) (iii)

¹⁵ INA § 101(a)(15) (U) (ii)(II); 8 U.S.C. § 1101(a)(15)(U)(ii)(II).

¹⁶ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

¹⁷ The application filed by the immigrant victim can be revoked in limited circumstances including the withdrawal of the certifying official, error in the approval or evidence of fraud in the application. In the case of a family member whose application is dependent on the immigrant victim, the family member's application will be revoked if the family relationship is terminated or immigrant victim's application is revoked. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

¹⁸ See also Chapter 11 of this Manual, "Human Trafficking and the T Visa"

Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

The T visa was created to provide immigration relief to victims of severe forms of trafficking in persons. A “severe form of trafficking” is defined as –

- (1) Sex trafficking in which a commercial sex act is induced by fraud, force, coercion, or in which the victim has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude or slavery.¹⁹

Many trafficking victims are also victims of sexual assault or domestic violence either as a consequence or independent of the incidents of trafficking. Trafficking involves both labor and sex exploitation. Sex trafficking victims are forced to perform commercial sex acts and thus by nature are sexual assault victims. In labor exploitation, victims perform labor under force, fraud, or coercion and the methods of control may include sexual assault.

Immigrants will be eligible for T-visas if they:

- Are a victim of a severe form of trafficking in persons;
- Are physically present in the U.S.²⁰ on account of the trafficking²¹;
- Assist law enforcement officials in the investigation or prosecution of their traffickers (unless they are under the age of 18, in which case they are exempted from this requirement); and
- Can demonstrate that they will suffer extreme hardship involving unusual and severe harm upon removal.

In adjudicating applications for T-visa, DHS is statutorily granted the ability to waive a broad range of factors that would, in an immigration case not involving a trafficking victim, result in denial of lawful immigration status on “inadmissibility” grounds (e.g. health related, public charge)²² (See glossary discussion on inadmissibility). Attaining a DHS waiver of some inadmissibility factors (e.g. criminal grounds) may require proof that the crime was caused by or incident to the trafficking.²³

T-visa recipients are protected from removal and are given work authorization. T visa holders are entitled to apply for T-visa benefits for their spouse and children. T visa holders under the age of 21 may also apply for T-visas for their unmarried siblings under 18 and their parents.

One advantage of applying for a T-visa versus other forms of immigration relief is the expanded access to social service benefits that are available to trafficking victims. *Bona fide* T-visa applicants are statutorily granted access to the same benefits as refugees. These benefits can include cash assistance, food stamps, job training, and a host of other benefits and services. DHS reviews T visa applications and issues a *bona fide* determination when they believe the victim has filed a valid case. Upon determining that a case is *bona fide*, DHS directly notifies the Department of Health and Human Services, Office of Refugee Resettlement (ORR) and ORR sends the applicant a certification letter, which allows access to benefits.

Another advantage of a T-visa over some other forms of immigration relief is that T visa holders are eligible to become lawful permanent residents. They can apply for this status as early as the conclusion to the

¹⁹ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 103, 114 Stat 1464, (2000).

²⁰ This includes presence in American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry. INA §101(a)(15)(T)(i)(II), 8 U.S.C. § 1101(a)(15)(T)(i)(II).

²¹ DHS regulations recognize that some victims are brought into the United States as part of the trafficking scheme and that some individuals are already in the United States when they are victimized. DHS interprets the requirement that the victim be in the United States on account of the trafficking to reach both categories of victims where: (1) the individual is currently being held in some sort of trafficking situation; (2) was recently liberated; or (3) was subject to severe forms of trafficking in persons at some point in the past and remains in the United States for reasons directly related to the trafficking. The regulation cites trauma, injury, lack of resources, and lack of travel documents as the kinds of circumstances that might be attributable to the trafficking. 8 C.F.R. 214.11(g).

²² INA § 245(l)(2), 8 U.S.C. § 1255(l)(2).

²³ INA §212(d)(13)(B)(ii). 8 U.S.C. §1182(d)(13)(B)(ii).

investigation or prosecution and as late as after four years of holding a T visa. In order to be eligible they must:

- be physically present for a three-year continuous period,
- maintain good moral character, and
 - have continued to comply with requests from law enforcement; or
 - demonstrate that they would suffer extreme hardship if they were removed from the United States.²⁴

Continued Presence

In order to provide immediate assistance to trafficking victims, federal law enforcement officers may request that DHS authorize “Continued Presence” for a trafficking victim who is cooperating with their investigation or prosecution. Continued presence is technically not an immigration status, but rather refers to the government’s use of a variety of mechanisms to protect a victim from removal in the short-term. It provides access to deferred action or parole, both of which allow the victim to remain in the United States while they are cooperating with law enforcement. It also allows the victim to receive work authorization during the period they have “Continued Presence”. Like *bona fide* T visa applicants, victims with Continued Presence are eligible for public benefits and other trafficking victim services through certification from the Department of Health and Human Services. As noted above, Continued Presence may only be requested by a federal law enforcement official -- an individual may not apply for continued presence directly. Many victims for whom federal law enforcement has obtained “Continued Presence” go on to later file an application for a T-visa.

VAWA IMMIGRATION RELIEF²⁵ – Battered Spouse Waivers, VAWA Self-petitioning, VAWA Cancellation of Removal

In addition to the legal remedies discussed above that are available for immigrant victims of sexual assault and trafficking who may not have been victimized by a spouse, parent or adult child, individuals whose victimization occurred within the family context may have additional options through which they can attain legal immigration status. In order to understand these options, a brief description of family-based petitioning is helpful.

The most common form of obtaining lawful permanent residence in the U.S. is through sponsorship by certain citizen and permanent resident family members. The citizen or permanent resident relative, also known as the petitioner, files a family-based petition on behalf of the relative (also known as the beneficiary) who wants to immigrate to the U.S.

After the family-based petition is filed and approved, the next step is for the beneficiary to apply for lawful permanent resident status. However, Congress only allows a certain number of family members to apply for lawful permanent resident status in any given year. Beneficiaries who are immediate relatives of U.S. Citizens may apply for lawful permanent resident status immediately.²⁶ Relatives of lawful permanent residents and adult sons and daughters and siblings of U.S. Citizens are assigned a priority date on a waitlist and must wait until an immigrant visa becomes available in order to apply for permanent residence. This can take five years, and for some categories much longer.²⁷

²⁴ INA §245(l), 8 U.S.C. § 1255(l).

²⁵ For an overview on VAWA immigration relief, see Chapter 7 of this Manual “Preparing the VAWA Self-petition and Applying for Residence”. See also Gail Pendleton & Ann Block, “Applications for Immigration Status Under the Violence Against Women Act,” in *Immigration and Nationality Law Handbook* (2001-02 ed.), Vol. 1, American Immigration Lawyers Association, 2001.

²⁶ Immediate relatives include, in general, parents, spouses, and children under 21 of a U.S. Citizen, including step-children. See INA § 201(b)(2)(A)(i); 8 U.S.C. § 1151(b)(2)(A)(i).

²⁷ INA § 203(a); 8 U.S.C. § 1153(a); See Glossary for definition of children; See also United States Department of State’s Visa Bulletin, <http://travel.state.gov/visa/frvi/bulletin/bulletin1360.html> (Click on “Current Bulletin”).

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Under normal circumstances, a citizen or lawful permanent resident petitioner will generally file a family-based petition on behalf of their beneficiaries without delay so that the family members can reside and work in the U.S. as soon as possible. However, some abusive petitioners delay, revoke, or never file these family-based petitions. Because of the petitioner's total control over the family-based petitioning process, many beneficiaries in this situation remain trapped and isolated in violent homes, afraid to turn to anyone for help.

Congress recognized the problems that could result when an abusive spouse has complete control over a victim's immigration status and since 1990 has passed a series of reforms to immigration laws that reflect an evolving understanding of the dangers that domestic violence poses to society as a whole, and to all individual victims -- citizens, and non-citizens alike. This has led to the passage of critical legal immigration protections for a broad array of battered immigrant women and their children who have been or are being abused in the United States.²⁸

Battered Spouse Waiver²⁹

To ensure that lawful permanent resident status is granted only when there is a valid marriage, federal law requires applicants who have been married less than two years at the time DHS grants their application to fulfill a two year conditional residence requirement before being granted full lawful permanent residence.³⁰ In order to convert the conditional status to permanent status, both spouses must file a joint petition with DHS ninety days before the expiration of the two-year conditional resident status, and be prepared to appear for a joint interview with a CIS official.³¹

For immigrant victims of domestic violence, the joint filing requirement proved problematic. Some immigrant victims felt compelled to stay in dangerous and abusive relationships in order to fulfill the joint filing requirement and some abusers refused to sign the joint petition as a means of control. In 1990, Congress enacted the "battered spouse waiver."³² The waiver allows the battered immigrant to file an application for the purpose of removing the conditions on her permanent residence without the assistance of her abusive spouse.

VAWA Self-Petition³³

To qualify for a VAWA self-petition an immigrant victim must have suffered from battery or extreme cruelty, which includes sexual assault, incest, and child abuse, perpetrated by an abusive U.S. citizen or lawful permanent resident spouse, parent, or adult son or daughter. The VAWA self-petition enables an immigrant victim of domestic violence and/or sexual assault to obtain lawful permanent resident status without the cooperation of his or her abusive spouse, parent, or adult son or daughter. The abused immigrant spouse, child or parent must have resided with the abuser at one time to be able to file the self-petition. However, they do not have to currently be residing with the abuser in order to file. Conversely, the VAWA self-petition was designed to not require separation. It allows the immigrant victim to confidentially file the self-petition and attain lawful permanent residency based upon the self-petition, without separating from the abuser. This promotes victim safety by allowing the victim to attain legal immigration status and then to later explore when and whether they can safely leave their abuser.

A VAWA self-petition is available to spouses, former spouses, and intended spouses³⁴ of abusive U.S. citizens or lawful permanent residents. Termination of the marriage (through divorce or annulment) will not hinder an abused spouse's ability to file a VAWA self-petition so long as the termination was related to the abuse. The self-petition, however, must be filed within two years of the termination of the marriage. Moreover, self-petitioners have up to two years to file a self-petition after an abusive U.S. citizen or Lawful Permanent

²⁸ Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95, 99 (2002).

²⁹ See also Chapter 3.5 of the Breaking Barriers Manual, "Additional Remedies Under VAWA: Battered Spouse Waiver"

³⁰ Immigration and Nationality Act (INA) § 216(a), 8 U.S.C. § 1186a(a).

³¹ Immigration and Nationality Act (INA) § 216(c), 8 U.S.C. § 1186a(c).

³² Immigration Act of 1990, Pub. L. No. 101-69, § 701(a)(4), 104 Stat. 4989 (1990) (codified as amended at 8 U.S.C. § 1186a),

³³ See also Chapter 7 of this Manual "Preparing the VAWA Self-petition and Applying for Residence"

³⁴ An intended spouse is someone who believed she was married but was not because of the bigamy of her abuser whom she believed to be her spouse. See INA § 101(a)(50), 8 U.S.C. § 1101(a)(50).

Resident spouse has lost status due to an incident of domestic violence. Children of abused spouses are eligible to receive deferred action and an immigrant visa because they are included in their parent's application, as long as they are under 21 years, regardless of their relationship to the perpetrator.

Children of abusive citizens or lawful permanent residents are also eligible to self-petition. Victims of child abuse, battering or extreme cruelty (including incest) must file their VAWA self-petitions before they turn age 25. Under immigration law a child includes a naturally born child (in or out of wedlock, whether or not legitimated), an adopted child, and a step-child (the child of a person's spouse even when not adopted; marriage to the child's other parent is sufficient).³⁵ Thus a child abuse victim whose perpetrator is their U.S. citizen step-parent (their mother's new husband) can self-petition, but must file their self-petition before the child's mother and their abusive step-father divorce.

An immigrant parent whose citizen or lawful permanent resident spouse abuses the immigrant parent's child may file a self-petition even when the immigrant parent is not themselves abused. The immigrant parent of an abused child may self-petition without regard to the immigration status of the abused child. That child may be a citizen, a lawful permanent resident, may have another form of legal immigration status or may be undocumented. A self-petition may also be filed by an immigrant parent if a step-child is being abused. The goal is to allow the immigrant parent to come forward and help protect the child without risking deportation. If an immigrant parent files a self-petition based on abuse of one of their children, their other immigrant children may be included in the petition.

In addition to proving abuse, a self-petitioner must also prove --

- good faith marriage if the abuser is a spouse or step-parent,
- the spousal, parental, or parent-child relationship;
- the immigration status of the citizen or lawful permanent resident spouse, parent, son or daughter;
- good moral character, and
- that they have resided with the abusive family member.

The adjudicators review applications using the *all credible evidence* standard of proof. This standard is purposely broad and is not limited to specific forms of documentation traditionally required in immigration cases. This standard was designed to preclude DHS or immigration judges from denying a victim's immigration case because she cannot access a particular document or form of proof that may be in an abuser's control. Victims are allowed to provide any form of credible evidence in support of each element of required proof in their VAWA immigration case. This standard improves victim safety by not requiring her to confront her abuser or travel to his city or state to obtain evidence in his possession.

An approved self-petition entitles a person to work authorization, deferred action, and an approved immigrant petition. The approved immigrant petition makes the petitioner eligible to apply for lawful permanent residence status. The timing of when an approved self-petitioner will be able to file for lawful permanent residency varies based on the type of family relationship and the immigration status of the abuser. Spouses and children of citizens may apply immediately. Spouses and children of lawful permanent residents are placed on a waitlist along with spouses and children of lawful permanent residents who were sponsored by a non-abusive family member and have gone through the standard family based petitioning process. This wait can be as long as 7 years.

VAWA Cancellation of Removal and Suspension of Deportation³⁶

VAWA cancellation of removal (prior to 1996 this remedy was called suspension of deportation) is a form of humanitarian immigration relief designed to keep battered immigrants abused by citizen or lawful permanent resident spouse or parents from being deported or removed from the United States. It is a defense that immigrant victims raise in immigration court after they have been placed in removal (deportation) proceedings before an immigration judge. VAWA cancellation of removal and suspension of deportation, if granted, results in lawful permanent resident status for the immigrant victim. If an immigrant victim is granted

³⁵ INA § 101 (b)(1), 8 U.S.C. § 1101(b)(1).

³⁶ See also Chapter 9 of this Manual "VAWA Cancellation of Removal"

cancellation of removal, their children can receive parole into the United States and can ultimately receive lawful permanent residency through their abused parent.

If the immigration judge does not grant cancellation of removal or suspension of deportation and there is no alternative form of relief, the immigrant will be ordered removed (deported) from the United States.

To qualify for VAWA cancellation of removal a victim must prove:³⁷

- That they (or their child) has been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent;
- That they have been physically present in the United States for 3 years (some limited absences are allowed);
- That they are of good moral character;
- That their deportation would cause extreme hardship; and
- That certain specific inadmissibility grounds do not apply to them, or that they qualify for a waiver of inadmissibility.³⁸

VAWA cancellation is an important remedy because it is available to some categories of people who are not eligible to file VAWA self-petitions. In addition to the relationships covered under VAWA self-petition, cancellation provides relief to the following people:

- The parent of a child abused by the child's other lawful permanent resident or U.S. citizen parent where the parents are not married;
- An abused spouse or the stepchild whose marriage from the abuser has been terminated for over two years;
- An abused spouse of a lawful permanent resident or an abused spouse or child of a citizen or lawful permanent resident who has died;
- A spouse or child of an abusive citizen or lawful permanent resident who lost or gave up status over two years before; and
- An abused child who did not live with the abusive citizen or lawful permanent resident parent.

A person who is not eligible to self-petition but is eligible for VAWA cancellation and is not already in removal proceedings, can request to be put in removal proceedings. However, it is important that an expert in VAWA immigration relief be consulted and involved in the case because denial of relief will automatically result in removal from the United States.

VAWA HRIFA, VAWA NACARA, VAWA Cuban Adjustment Act – Self-Petitioners

There are several eligible VAWA self-petition applicant categories. Those who otherwise would have been eligible to attain lawful permanent residency under HRIFA, NACARA and Cuban adjustment, are also eligible to self-petition for that status without the support of their abusive spouse or parent. The end result of a VAWA self-petition is deferred action and an approved immigrant petition creating eligibility to apply for lawful permanent residency.³⁹

VAWA HRIFA

VAWA allows battered spouses and children (or those who have been subjected to extreme cruelty) who would be eligible for lawful permanent residency under the Haitian Refugee Immigration Fairness Act (HRIFA) but have been unable to attain lawful permanent residency due to the abuser's failure or refusal file for lawful permanent residency under HRIFA, to file their own self-petitions. In order to be eligible, the

³⁷ INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2).

³⁸ For more information see Chapter 9 of this Manual "VAWA Cancellation of Removal".

³⁹ Memo from Leslye Orloff, Janice Kaguyutan, Cecilia Olavarria, Legal Momentum, March 2001, *Documentary Requirements for VAWA immigration cases*; http://legalmomentum.org/IWPpubs/PubBank_Immigration/VAWA/wwwVAWADocRequirements.pdf

battered spouse or child must be a Haitian national, and must have been physically present in the United States for a continuous period from before December 1, 1995 up until the date the application is filed. (See Appendix A).

VAWA NACARA⁴⁰

VAWA NACARA 203: Under section 203 of NACARA there are three categories of people who are eligible for NACARA suspension of deportation: (1) Salvadorans who entered the United States before September 20th, 1990, and registered for benefits⁴¹ on or before October 31, 1991 or applied for temporary protected status within the same time period; (2) Guatemalans who entered on or before October 1, 1990 and registered for benefits on or before December 31, 1991; and (3) nationals from certain Eastern European countries⁴² who filed for asylum before December 1991. The spouse or children of such immigrants are also eligible. Unmarried sons or daughters over 21 are eligible as long as they entered the United States before October 2, 1990.

Under VAWA, spouses or children subjected to battering or extreme cruelty by an abusive Guatemalan, El Salvadoran or Eastern European NACARA 203 applicant may directly apply for NACARA 203 benefits. To qualify, the petitioner must be a spouse or child of the NACARA 203 applicant at the time the NACARA 203 applicant –

- was granted suspension of deportation or cancellation of removal;
- filed an application for suspension of deportation or cancellation of removal; or
- registered for benefits under the settlement agreement in *American Baptist Churches, et. al. v. Thornburgh (ABC)*, applied for temporary protected status, or applied for asylum.

VAWA NACARA 203⁴³ provides battered spouses, children, and children of the battered spouse temporary protection from removal even if the spouse is no longer married to the abuser, as long as they were married at the time that the immigrant or the spouse or child filed an application to suspend to cancel the removal. Spouses or children do not have to demonstrate that they are residing with the principle filer to receive temporary protection from removal. Relief is also available under NACARA 203 for battered immigrants who applied for VAWA suspension of deportation and against whom deportation proceedings were initiated before April 1, 1997.

VAWA Cubans

⁴⁰ See Appendix B.

⁴¹ Pursuant to the settlement agreement in *American Baptist Churches, v. Thornburgh (ABC)*, 760 F. Supp. 796 (N.D. Cal. 1991)

⁴² A national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

⁴³ Please not that VAWA NACARA 202 has now expired as a form of relief. The deadline for applying for VAWA NACARA Section 202 has passed; this is only a summary of the past law. Section 202 of NACARA provided for adjustment of status to lawful permanent residency for all Nicaraguans and Cubans who have been in the United States continuously since December 1, 1995 through the date of filing their NACARA application. NACARA 202 applicants were permitted up to 180 days absence from the United States without losing their ability to prove continuous presence. They also had to fulfill the general requirements for lawful permanent residency. Under NACARA, unmarried sons and daughters who were continuously present before December 1, 1995 were also eligible to apply for lawful permanent residency under NACARA if they were Nicaraguan or Cuban and physically present in the United States on the date of the filing. They were also permitted up to 180 days of absence from the United States. Spouses and children are not required to demonstrate continuous presence. Under VAWA, spouses and children subjected to battering or extreme cruelty were eligible to apply for NACARA 202 adjustment if the abuser was eligible for NACARA 202 benefits, even if he never filed for benefits. (See VAWA section at end of this chapter).

VAWA provides relief for spouses and children who have been battered or subjected to extreme cruelty by an abuser who is eligible for relief under the Cuban Adjustment Act of 1966 (CAA). Where the abuser has failed to attain lawful permanent residence, the spouse or children are allowed to file their own petitions for residency directly with DHS. Spouses and children of Cuban abusers can receive protection even when they are not themselves Cuban. The battered spouse or child does not have to be residing in the United States with their abusive Cuban spouse or parent in order to receive lawful permanent residency as VAWA CAA self-petitioners. This allows immigrant victims to separate from, stop residing with and divorce abusers without losing access to Cuban Adjustment Act relief. Where there has been a divorce or the abuser has died, the battered spouse or child must file the petition for permanent residency within two years. (See Appendix C)

Gender-Based Asylum, Withholding of Removal and Convention Against Torture Claims and Withholding of Removal ⁴⁴

Victims of domestic violence, sexual assault, or other gender-based violence may also apply for asylum. Asylum is an immigration remedy that can be granted when the applicant shows a well-founded fear of persecution in their home country. The fear must be on account of race/ethnicity, religion, nationality, political opinion or membership in a particular social group.⁴⁵ Successful asylum applicants may remain in the United States in asylum status and may obtain asylum status and benefits for their spouse and/or children. Asylees are eligible to apply for lawful permanent resident status after one year.

Asylum applicants must file within one year of arriving in the United States unless they can demonstrate extraordinary circumstances causing the filing delay or a change in circumstances creating a basis for filing. Therefore, it is important to determine quickly, whether or not a client may be eligible for asylum.

Gender is not a protected category under asylum law and currently, there are no final regulations on how to interpret gender-based asylum claims in the context of the other protected categories. As such, asylum law is interpreted differently across the U.S, and a claim should not be filed without enlisting the help of an immigration attorney experienced in gender asylum cases. Some courts have granted asylum in cases involving domestic violence, sexual assault, and other forms of violence against women, but others have rejected such asylum claims.

Victims of sexual assault may also file for withholding of removal. Withholding of removal has higher standards of proof than asylum. It requires the petitioner to prove that her “life or freedom would be threatened” on account of membership in the above listed protected categories.⁴⁶ Unlike asylum, there is no one-year filing deadline. This form of relief, however, does not provide an opportunity to apply for lawful permanent residence in the United States.

Where asylum or withholding relief are not a viable options, a second option may be a claim under the Convention Against Torture (CAT). The treaty prohibits a person’s return to a country where there are substantial grounds to believe that person would be in danger of being subjected to torture.⁴⁷ A victim can make a CAT claim along with her asylum claim, but the benefits that can be obtained are different. While an approved asylum claim gives the applicant the opportunity to later apply for lawful permanent resident status in the United States, an approved CAT claim only ensures that the applicant is not returned to the country where the torture would occur.⁴⁸ People whose CAT claims are approved do not become lawful permanent residents. CAT relief may, however, be available to persons who cannot qualify for asylum for various reasons, including the commission of certain crimes or failure to apply within the one-year filing deadline⁴⁹.

⁴⁴ See Chapter 12 of this Manual “Sexual Assault Survivors and Gender Based Asylum”

⁴⁵ See INA § 101(a)(42)(A), 8 U.S.C. §1101(a)(42)(A); INA § 208(b)(1), 8 U.S.C. § 1158(b)(1). 1158(b)(1) 8 C.F.R. § 208.26(b).

⁴⁷ [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85, reprinted in 23 I.L.M. 1027 (1984), modified in 24 I.L.M. 535 (1985) (entered into force June 26, 1987).

⁴⁸ See generally 64 Fed. Reg. 8478 (Feb. 19, 1999).

⁴⁹ Advocates and attorneys should consult with an immigration attorney experienced in violence against women issues. Contact Legal Momentum or ASISTA for assistance and references for your state. An attorney should weigh all of the above-mentioned remedies in the context of specific facts in their client’s case to determine the best strategy. Importantly, most of these remedies may be used alone or in combination with one another.

Special Immigrant Juvenile

Sexual Assault victims may also be eligible to apply for Special Immigrant Juvenile Status. As the term implies, this status is available to those who have been declared to be a dependent in a juvenile court because of abandonment.⁵⁰ In order to qualify, the applicant must have a court finding that it is not in her best interests to be returned to her home country⁵¹. This visa is typically used in situations where the minor is unaccompanied in the United States or the parents have abandoned or abused the minor. Since family members often enter the United States at different times, minors often find themselves in the position of making an unlawful entry across the border alone. Women and girls are vulnerable to sexual assault during unlawful border crossings. As such, Special Immigrant Juvenile applications may be the logical option for minors sexually assaulted while entering the United States.

CONFIDENTIALITY CONCERNS

Advocates for immigrant women should emphasize the confidential nature of the relationship with their clients and work to create a relationship of trust and security. Lack of immigration status often deters many immigrant women who are victims of sexual assault from seeking assistance and support.

Non-profit and charitable organizations are under no legal obligation to inquire about the immigration status of persons who seek their services, nor do they have a legal obligation to report this information to the DHS.⁵² Regardless of their immigration status, immigrant women who are victims of sexual assault, domestic abuse, stalking, dating violence, and trafficking are eligible to receive services and support from rape crisis centers, women's shelters, victim's services programs and to receive assistance in criminal prosecution.⁵³ In addition, service agencies can protect a survivor from being detained or put in removal proceedings by doing immediate screening for immigration issues and by working with an immigration attorney to address the legal needs of a victim. Immigrant victims are also entitled to VAWA confidentiality protections.⁵⁴

DETERMINING A CLIENT'S IMMIGRATION STATUS

Before deciding on which immigration option to pursue, an attorney or advocate should attempt to determine the individual's immigration status. Sometimes the individual will have a Resident Alien Card ("green card"), passport stamp, or other document that clearly establishes her legal immigration status. In other cases, the immigrant victim will not be certain of her status and the advocate or attorney must ask a series of detailed questions and review all available immigration papers, such as filing receipts or copies of applications filed. If your client does not have access to these documents the abuser may be ordered to turn them over to her as part of a protection order or the police can help her retrieve immigration documents during a stand by and exchange of property. The safety of these interventions should be assessed with the victim before they are undertaken as this could provide the abuser with information that she may be pursuing independent immigration status. This could increase the danger of retaliation against her.

It is important to remember that anyone who is not a U.S. citizen or U.S. national may be subject to permanent removal from the United States, including lawful permanent residents. For this reason it is extremely important to screen all immigrant victims to determine any prior immigration history or contact in their case and to specifically identify whether any "red flag" problem issues may make their case more complicated. Filing for a VAWA self-petition, U-Visa, T-Visa or any other form of immigration relief without identifying

⁵⁰ I.N.A. §101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J).

⁵¹ This includes the applicant's or the parent's previous country of nationality or last habitual residence. See I.N.A. §101(a)(27)(J)(ii), 8 U.S.C. 1101(a)(27)(J)(ii).

⁵² See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRAIRA"), § 201(e)(1) Pub. L. No. 104-208, §384, 110 Stat. 3009 (1996) (codified at 8 U.S.C. § 1367 (1996)).

⁵³ AG Order No. 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996).

⁵⁴ For a complete discussion of VAWA confidentiality see Chapter 3 of this Manual "VAWA Confidentiality: History, Purpose and Violations VAWA Confidentiality Protections "

“red flag” issues could trigger removal proceedings against the victim. However, not filing for legal immigration status that a victim is entitled to receive may also lead to detention and removal. This is particularly true if an abuser or crime perpetrator is threatening to have the victim deported. For most victims identifying problematic issues early in the case will allow an immigration attorney the ability to identify and address issues in a manner that will help many immigrant victims access VAWA’s immigration protections.

The following questions can be asked to try to ascertain an individual’s immigration status and eligibility for VAWA relief. An advocate or attorney, though, should always reassure the immigrant victim that the following questions are merely being asked to better understand the situation. Many immigrants may fear disclosing their immigration status, so an advocate or attorney should make every effort to calm those fears.

*Questions to ask to help determine immigration status and next steps after interviewing a client include the following:*⁵⁵

- Where were you born?
- What is your full birth name?
- Have you ever used a different name?
- Why did you leave your country?
- Where did you enter the United States?
- When did you enter the United States?
- How did you enter the United States?
- When you entered the United States, did you speak to or see an immigration official?
- What kind of visa did you come over under? (for example, a tourist visa⁵⁶, student visa⁵⁷, H1-B temporary worker visa⁵⁸)
- Did you receive a small card (Form I-94) when you entered the United States?
- Do you still have the I-94 card (it may be stapled in your passport)?
- Do you know if you or someone else has filed papers on your behalf with the U.S. Citizenship and Immigration Services?
- Have you ever been to an interview at U.S. Citizenship and Immigration Services? Or appeared in Immigration Court in front of a judge?
- Where were your parents born?
- Was either of your parents a U.S. citizen at the time of your birth abroad?
- Did either or both of your parents become U.S. citizens through naturalization prior to your 18th birthday?
- Do you work in the United States?
- If you have a job, do you have a card that you presented when you began your job?
- Are you married?
- If yes, when did you get married?
- Did you come to the United States with your husband?
- What’s your spouse’s immigration status?
- Do you have children?
- If yes, were the children born in the United States?

VAWA Red Flags⁵⁹

⁵⁵ Adapted from: Ann Benson, *Getting Technical Assistance on Immigration Issues* (unpublished manuscript, on file with the Washington Defenders Immigration Project). Not all clients will be able to answer all questions, these are suggested questions to help evaluate an individual’s case.

⁵⁶ See INA § 101(a)(15)(B), 8 U.S.C. § 1101(a)(15)(B).

⁵⁷ See INA § 101(a)(15)(F), 8 U.S.C. § 1101(a)(15)(F).

⁵⁸ See INA § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

⁵⁹ See the VAWA Red Flags Section of this manual for a complete list of grounds for concern and legislative citations.

Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms

Although your client may have a qualifying family relationship to a United States citizen or lawful permanent resident and may further qualify for VAWA relief because of battery or extreme cruelty, the following “red flags” are grounds for concern. Any of the following may be cause for denial of a self-petition, a bar to attaining lawful permanent residency, a ground for removal or a bar to cancellation of removal. Identifying these “red flags” early will also help an immigrant victim who qualifies for a T or U visa who will need to request waivers early in their case for identified issues. If any of the “red flags” apply to your client, consultation with an immigration attorney who is experienced with VAWA immigration relief is very important and strongly recommended.

Questions to ask that may be grounds for concern:

- Have you ever been a stowaway?
- Have you entered as an international exchange visitor (for example, scholars, teachers, professors, leaders in a field, among others, coming to the United States temporarily)?
- Have you ever been in deportation or removal proceedings?
- Have you ever been previously deported or removed?
- Have you committed marriage fraud, possibly by paying a U.S. citizen to marry you?
- Are you evading a draft?
- Are you unlawfully present here?
- Have you committed domestic violence, stalking or have you violated a protection order?
- Do you have any criminal convictions?
- Have you committed prostitution?
- Have you misrepresented your immigration status?
- Have you abused drugs or do you have a drug addiction?
- Has child protective services ever come in and intervened with your childcare?
- Have you ever committed child abuse?
- Have you committed espionage and sabotage?
- Have you ever committed acts of torture, severe violations of religious freedom, or genocide?
- Are you a public charge?
- Have you ever voted unlawfully?
- Do you have a physical or mental disorder?
- Are you habitually drunk?
- Do you have a communicable disease?
- Are you polygamous?
- Have you gambled illegally?
- Do you lack a vaccination record?
- Have you falsely claimed citizenship?
- Have you laundered money?
- Have you ever been a member of the communist party?
- Have you been involved with international child abduction?

Glossary of Terms ⁶⁰

To understand immigration law, it is crucial for an attorney or advocate to understand the most commonly used terminology. The following brief descriptions of terms are relevant to assisting battered immigrants. Terms are organized alphabetically.

Adjustment of Status – An individual with an approved immigrant visa (family, employment, diversity lottery, special immigrant juvenile, special immigrant religious worker), or an approved self-petition under VAWA may, under certain circumstances, file an application (Form I-485) for permanent resident status without leaving the United States. This process is called adjustment of status. In all cases, DHS has discretion whether or not to grant lawful permanent residence. If DHS grants adjustment of status, the individual will then receive a Resident Alien Card (*commonly referred to as a “green card”, see definition below*) and will become a lawful permanent resident.

A-File – This is the immigration case file created by DHS. It contains the immigrant’s “Alien Registration Number.” which is the immigration case file number. This number always starts with the letter “A”. All foreign born persons who have attained legal immigration status, naturalized or ever been detained or placed in immigration court proceedings will have “A” numbers. Finding a safe way to attain or copy down this number can be very helpful when an immigrant victim is abused by an immigrant spouse, parent or family member.

Alien – This is a term that is offensive to some, but should be understood in the context of how the term is used in the Immigration and Nationality Act, other statutes, the code of federal regulations, and the Department of Homeland Security or other government policy memoranda. The Immigration and Nationality Act defines the term ‘alien’ as any person who is not a citizen or national of the United States. Practically speaking, this term covers a broad group of people including but not limited to permanent residents, refugees, asylees, people granted other forms of legal immigration visas, people who enter with visas and then overstay, and people who enter the U.S. without inspection.

Asylum – Asylum is humanitarian immigration relief given to individuals present in the United States who meet the requirements for “refugee” status. (*See “Refugee” definition below.*) In general, asylum seekers must file within one year of first entering the U.S. although an applicant may qualify for an exception to this rule. If an asylum seeker’s application is not approved by DHS, she will automatically be referred to immigration enforcement authorities and placed in removal proceedings where she will have the opportunity to renew her asylum application before an immigration judge. Denial of an asylum application by an immigration judge results in an order of removal from the United States. See Chapter ____ on Asylum.

Attorney General – A reference that may, in fact, actually mean the Secretary of Homeland Security. While the Homeland Security Act of 2002⁶¹ transferred functions of the Immigration and Naturalization Service (INS) from the Department of Justice to the Department of Homeland Security, it did not change every authority-delegation reference in the Immigration and Nationality Act (INA) and other laws. Instead, it included a savings provision⁶² stating that statutory, regulatory, and other references relating to an agency that is transferred to DHS, or delegations of authority that precede such transfer shall be deemed to refer, as appropriate, to DHS (and its officers), or to its corresponding organizational units.

Battered Spouse Waiver – Conditional permanent residents who are victims of abuse may be able to get a waiver to exempt them from needing their spouse’s signature on their petition to remove the conditions on their status and become a lawful permanent resident. The applicant must also prove that their marriage to a United States citizen was entered into in good faith. They must submit an affidavit containing information about their relationship and a declaration regarding the abuse. They should also submit any other evidentiary support for the abuse that they may have.⁶³ [See “Conditional Permanent Residence”].

⁶⁰ Some of the entries on this list were adapted from and reprinted with the permission of the Immigrant Legal Resource Center.

⁶¹ Pub. L. No. 107-296, 116 Stat. 2135 (2002) See INA §245, 8 USC §1255 with respect to bases of eligibility and ineligibility.

⁶² Homeland Security Act at §1512(d)

⁶³ See also Chapter 3.5 of the Breaking Barriers Manual, “Additional Remedies Under VAWA: Battered Spouse Waiver”

Battery or Extreme Cruelty – This is the term used in United States immigration law to define domestic violence. Victims of battery or extreme cruelty can be eligible to receive the special immigration relief available to victims of domestic violence. “*Battery or extreme cruelty*” is a form of abuse inflicted upon another person that includes, but is not limited to, any actions that cause or threaten to cause physical, mental, psychological, or emotional harm, and any actions or inaction that is a part of an overall pattern of abuse, power, or control.⁶⁴ These include acts that destroy the peace of mind and happiness of the injured party or cause distress and humiliation to the injured party. Rape, molestation, forced prostitution, incest, and other forms of sexual abuse are also considered forms of battery.⁶⁵

Bona Fide T-Visa⁶⁶ -- The bona fide determination is a DHS determination that a T-visa application is complete and establishes prima facie eligibility for a T visa. DHS makes this determination early on in the adjudication. Receipt of a bona fide determination allows T visa applicants to obtain certification from HHS which allows them to access public benefits.

Cancellation of Removal – Cancellation of removal is a discretionary form of relief that certain non-citizens in removal proceedings may request.⁶⁷ If granted, cancellation of removal accords the applicant permanent resident status. Under VAWA, certain abused spouses, children, and parents of abused children are eligible for a special form of cancellation of removal when the abuser is a U.S. citizen or a lawful permanent resident.

Child – Under immigration laws the definition of child is different than under many state family law statutes. The immigration law definition of child is important because children can be eligible to receive legal immigration status based upon their relationship to a parent who is a citizen or lawful permanent resident or who received legal immigration status. Under immigration law a person qualifies as a child of someone if they are:

- Under the age of 21;
- Unmarried; and
- Biologically the child, whether legitimated or not;
- A stepchild as long as the marriage creating the step-relationship occurred before the child attained 18 years of age; or
- A child adopted while under the age of 16; or when the child was an orphan.⁶⁸

Civil Protection Order (CPO) – A justice system family court remedy initiated by a victim to protect herself/himself from future abuse. All persons are entitled to this protection regardless of immigration status. It is a particularly valuable remedy for battered immigrant women because it can be crafted to uniquely address and counter abuse, power, and control in her relationship.⁶⁹ Since the victim initiates the process, she need not rely on the criminal courts and may obtain a CPO regardless of whether there is a criminal prosecution of her abuser. Protection orders may contain a wide range of remedies aimed at reducing ongoing abuse, control, and harassment. These may include: granting the victim custody of children and ordering the abuser to pay child support, ordering that the abuser leave the family home, prohibiting the abuser from contacting or harassing the victim’s other family members, directing him to hand over important documents, including immigration documents to the victim, and not interfering with her immigration application. A victim can obtain an emergency or temporary protection order (also called TPO) that typically lasts 14- 30 days, as well as a full protection order that usually lasts 1-3 years and is renewable. (Please note: law differs by state).

Conditional Permanent Residence – When immigrants who are spouses of U.S. citizens are married for less than two years at the time of their interview with DHS to receive permanent residency, DHS grants them

⁶⁴ See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (holding any act of physical abuse constitutes domestic violence while “extreme cruelty” refers to “all other nonphysical manifestations of domestic abuse”)

⁶⁵ See 8 C.F.R. § 204.2(c)(1)(vi) for CIS regulations defining “battery and extreme cruelty”. See also Chapter 3.5 of the Breaking Barriers Manual, “Additional Remedies Under VAWA: Battered Spouse Waiver”

⁶⁶ 8 C.F.R. §214.11

⁶⁷ ICE is the agency charged with the enforcement of immigration laws.

⁶⁸ INA §101(b)(1), 8 U.S.C. §1101(b)(1) Not only are these terms of art as defined in the statute, but there is substantial case law interpretation with respect to these different categories.

⁶⁹ See also Chapter 14 of this Manual “Protection Orders for Immigrant Victims of Sexual Assault.”

conditional permanent residency instead of full, unrestricted lawful permanent residency. This requirement was created to prevent marriage fraud. While most conditional permanent residents immigrate to the U.S. through marriage to a U.S. citizen, some immigrant investors are also given conditional permanent residence and are also subject to the two-year filing requirement.

A conditional permanent resident has all the privileges of a lawful permanent resident, but has only a temporary status for two years. A conditional permanent resident must file a petition to remove conditions two years after becoming a conditional permanent resident. This petition is filed using Form I-751. Generally the petition to remove conditions must be filed jointly with both spouses signing the form. However, if a joint petition is not possible due to divorce, domestic violence, or extreme hardship, the conditional permanent resident may file a request for a waiver of the joint-petition filing requirement.⁷⁰ (See “battered spouse waiver”). Spouses of lawful permanent residents generally do not receive conditional permanent status because by the time their priority date comes up (see definition below), they usually have been married for more than two years, and thus receive full lawful permanent residency.

Continuous Physical Presence – This term refers to the requirement that an immigrant must show that they have continuously lived in the United States, without leaving the country, for a specified period of time in order to qualify for certain forms of relief. Continuous Physical Presence must be proven in order to establish eligibility for various forms of immigration relief, including adjustment of status to a lawful permanent resident based on a T visa, U visa, and cancellation of removal (including VAWA cancellation of removal).

Continued Presence – Continued Presence is a temporary form of protection provided to certain victims of a severe form of trafficking. Continued presence is technically not an immigration status, but rather refers to the government’s use of a variety of mechanisms, such as deferred action and parole, to protect a victim from removal in the short-term. Victims can not directly request Continued Presence, but rather it must be requested by federal law enforcement officials on behalf of the victim. Continued Presence allows the victim to receive work authorization as well as certification through HHS for access to public benefits and social services.

Cuban Adjustment Act of 1966 – The Cuban Adjustment Act (CAA) allows for Cubans (both natives and Cuban citizens) to file and change their immigration status to lawful permanent residents as long as they were inspected and admitted or paroled into the United States after January 1, 1959. They must have been physically present in the U.S. for at least one year, and the general requirements for lawful permanent residency must be met. Spouses and children are also eligible to receive lawful permanent residency through the Cuban Adjustment Act, regardless of their citizenship and/or place of birth provided that they are residing with their spouse or parent who is a Cuban Adjustment Act applicant in the United States. Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Cuban even if he never applied for lawful permanent residency under the Cuban Adjustment Act. VAWA CAA self-petitioners are not required to show that they are currently residing with the spouse or parent in the United States.⁷¹ (See VAWA section at end of this chapter).

Customs and Border Patrol (CPB) – This is the division of the Department of Homeland Security that oversees borders and ports.

Deferred Action Status – Deferred Action Status is an agreement by Department of Homeland Security personnel that they will not take action to remove (deport) an individual from the United States. It is an exercise of prosecutorial discretion making the immigrant’s case a lower priority for removal. Deferred action does not however, give the immigrant victim any form of legal immigration status.⁷² In VAWA self-petitioning cases this status is often granted along with approval of the VAWA self-petition. U visa victims receiving

⁷⁰ INA § 216(c)(4), 8 U.S.C. § 1186(c)(4).

⁷¹ “An alien who was the spouse of any Cuban alien described in this section and has resided with such spouse shall continue to be treated as such a spouse for 2 years after the date on which the Cuban alien dies (or 2 years after the date of enactment of VAWA 2005, whichever is later), or for 2 years after the date of termination of the marriage (or 2 years after the date of enactment of VAWA of 2005, whichever is later) if there is demonstrated a connection between the termination of the marriage and the battering or extreme cruelty by the Cuban alien. VAWA 2005, §823.

⁷² “New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status.” New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

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interim relief are also granted deferred action status. In trafficking cases deferred action is assessed as part of continued presence. Once a victim obtains their U visa, T visa or their lawful permanent residency based on their approved VAWA self-petition, they no longer need deferred action status to avoid deportation and remain legally in the United States. Deferred action status in cases of VAWA, T and U visa victims is granted by the VAWA unit at the Vermont Service Center. (See VAWA Unit).

Department of Homeland Security – Formerly the Immigration and Nationality Service, this agency administers and enforces immigration laws. United States Citizenship and Immigration Service (“USCIS”), a division of DHS, oversees adjudications of immigration benefits. Another division of DHS, called the United States Immigration and Customs Enforcement (“ICE”), handles immigration enforcement, detention, and removal. United States Customs and Border Patrol (“CBP”) is the division that oversees borders and ports.

Derivative – The “derivative” is a term describing specified family members that an applicant for immigration relief can as a matter of law ask DHS to grant legal immigration status as part of the immigrant’s application. These family members are able to obtain lawful immigration status by virtue of the immigrant applicant’s qualification for immigration relief. Each type of immigration benefit specifies in the statute which family relationships, if any, can gain legal immigration status based on the immigration application being filed. Which family members can apply varies depending on the type of immigration benefit or benefits that a victim qualifies to receive. The family relationships that often qualify for immigration benefits as “derivatives” typically include the applicant’s spouse or child. If the applicant is under 21 years old, the family members they most often could include in their applications are their parent and/or their siblings who are under 21 years of age and unmarried. VAWA self-petitioners and T and U visa applicants can help certain family members attain legal immigration status through their immigration case. When victims qualify for multiple forms of immigration benefits, which family members can apply along with the victim can be a factor in the victim’s decision about which immigration benefit to apply for.

Department of Homeland Security (DHS) – This department administers and enforces the immigration laws. There are seventeen components to the department, including Immigration and Customs Enforcement (ICE), Citizen and Immigration Services, (CIS), and Customs and Border Protection (CBP).

Deportation – This term was used prior to 1996 to describe what is now called removal. (*See “removal” explanation below*).

Documented immigrants – They reside in the U.S. pursuant to a valid visa, and either entered the U.S. with valid visas or obtained status after entry. Those entering on immigrant visas are often petitioned for by a family member or an employer. Some obtain visas to become lawful permanent residents. Other examples of documented immigrants⁷³ include individuals holding tourist visas, student visas, exchange visitor visas, or employment visas.

Emergency Medicaid – Emergency Medicaid is available in all cases where a person needs treatment for medical conditions with acute symptoms that could place a patient's health in serious jeopardy, result in serious impairment of bodily functions, or cause dysfunction of any bodily organ or part.⁷⁴ This definition includes all labor and delivery during childbirth. Emergency medical assistance must be provided to all immigrants regardless of their immigrant status.

⁷³ Immigration experts may refer to immigrants with these visas as “non-immigrants.”

⁷⁴ Social Security Act, Title XIX § 103(v)(3), 42 U.S.C. § 1396b(v)(3).

Employment Authorization – All non-U.S. citizens and those who are not lawful permanent residents are required to receive permission from the Department of Homeland Security in order to accept employment. Some temporary forms of legal immigration statuses, such as H-1B visas, T-visas, and U-visas allow the status holder to work. Some other forms of temporary legal immigrant statuses, such as tourist visas and student visas, do not allow for employment. If an immigrant is in a status that allows for work only with a specific employer, he or she will not need anything other than the visa approval notice as evidence of employment authorization. If he or she is in a status that allows for work without restrictions, he or she generally may obtain an employment authorization card by filing a request on a Form I-765. Employment authorization documents are normally valid for one year. Employment authorization is not a “stand alone” benefit. It is only granted to a person who has demonstrated eligibility for some type of temporary or pending immigrant status. There is special employment authorization available for battered spouses of immigrants who come to the United States under specified work related visas – “A” visas (diplomats); “E(ii)” visas (Australian Investor); “G” visas (international organization); or “H” visas (temporary workers).⁷⁵

Employment Based Petitions⁷⁶ – The eligible categories based on employment, as described by USCIS,⁷⁷ are:

EB-1 Priority workers

- Foreign nationals of extraordinary ability in the sciences, arts, education, business or athletics
- Foreign national that are outstanding professors or researchers
- Foreign nationals that are managers and executives subject to international transfer to the United States

EB-2 Professionals with advanced degrees or persons with exceptional ability

- Foreign nationals of exceptional ability in the sciences, arts or business
- Foreign nationals that are advanced degree professionals
- Qualified alien physicians who will practice medicine in an area of the U.S. which is underserved. Read more about this particular program.

EB-3 Skilled or professional workers

- Foreign national professionals with bachelor's degrees (not qualifying for a higher preference category)
- Foreign national skilled workers (minimum two years training and experience)
- Foreign national unskilled workers

EB-4 Special Immigrants

- Foreign national religious workers
- Employees and former employees of the U.S. Government abroad

From the USCIS website “Immigration Through Employment”⁷⁸”

Only a limited number of employment visas can be issued each year. Applicants may therefore have to wait several years between filing the application and the issuance of an employment based visa.

Executive Office for Immigration Review (EOIR) – A branch of the Department of Justice that includes the Board of Immigration Appeals (BIA), Office of the Chief Immigration Judge (and all the immigration judges), and the Office of the Chief Administrative Hearing Office (OCAHO).

Extreme Hardship – Suffering extreme hardship is a requirement to obtain several different types of immigration relief,⁷⁹ such as cancellation of removal under VAWA. These forms of relief require proof of hardship over and above the general economic and social disruptions in an immigrant’s home country. The applicant must show that they would suffer extreme hardship if removed from the United States.⁸⁰

⁷⁵ INA § 106, 8 U.S.C. § 1106.

⁷⁶ INA §101(a)(15)(E), 8 U.S.C. §1101(a)(15)(E) (2008).

⁷⁷ USCIS website: “Immigration through Employment” (last visited August 13, 2008).

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=84096138f898d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD>

⁷⁸ *Id.*

⁷⁹ E.g. hardship waiver of the two-year joint filing requirement INA §216(c)(4), 8 U.S.C. § 1186a(c)(4); See also Chapter 9 of this Manual “VAWA Cancellation of Removal”

⁸⁰ See Chapter 9 of this Manual “VAWA Cancellation of Removal” for more information including the factors that can prove extreme hardship non-VAWA immigration cases.

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Victimization related factors can be used as proof of extreme hardship for immigrant victims.⁸¹ Proof of extreme hardship is needed before an immigration judge will grant cancellation of removal under VAWA.

Family-Based Petition – A U.S. citizen or lawful permanent resident files a family-based visa petition to start the process that will enable his or her family member (spouse, child, parent, adult son or daughter, sibling) to immigrate, or lawfully remain, in the United States and become a lawful permanent resident. Family and employment based immigration applications have long processing times. When an application is filed for an immigrant visa the applicants are assigned a priority date for the immigration case (usually the date they filed). They must wait for their priority date to become current before they can apply for lawful permanent residency.

Fiancé(e)s of U.S. Citizen (K-1 visa) – An immigrant granted a fiancé visa (K-1 visa) is allowed to come to the United States to conclude a valid marriage with a U.S. citizen within 90 days after entry.⁸²

Food Stamps – The Food Stamps program provides vouchers to low-income individuals so that they can use the benefits to buy food. Food Stamps eligibility for most non-citizens was eliminated by PRWORA as of August 22, 1996. Battered immigrants who entered after August 22, 1996 must be in “qualified immigrant” status for five years in order to receive food stamps. All “qualified immigrant” children under 18 are immediately eligible for food stamps regardless of date of entry. It is important to note that for immigrant victim self-petitioners this means that undocumented children included in their mother’s self-petition are eligible to receive food stamps once their mother’s VAWA self-petition has received a prima facie determination.

Freedom of Information Act – The U.S. Freedom of Information Act (FOIA) is a law ensuring public access to U.S. government records. FOIA carries a presumption of disclosure. If the government refuses to disclose information, it has the burden of explaining why that information may not be released. Upon written request, agencies of the United States government are required to disclose those records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in the FOIA. This right of access is ultimately enforceable in federal court. As part of a protection order, a family court case, or a bond order, courts can order an abuser who has filed immigration papers for his spouse, child, or parent to complete a FOIA request that releases information in the immigration case that was filed on the victim’s behalf by the abuser to the victim, her representative or lawyer.

Good Moral Character (GMC) – For many immigration remedies, it is necessary to show that a person has “good moral character” and has not committed certain crimes or engaged in other activities such as prostitution or illegal gambling. Good moral character is not precisely defined in the immigration laws, but Section 101(f) of the Immigration and Nationality Act lists certain acts that preclude someone from establishing good moral character.

Green Card (Lawful Permanent Resident Card) – Popular term for the I-551, the card that shows a person is a lawful permanent resident. Lawful permanent residency cards may be permanent “10-years”. Although these cards on their face state that they end in 10 years, lawful permanent residency does not end at that time. The immigrant with lawful permanent residency needs only to file to receive a new card once every 10 years. The application for a new card needs to be filed before the old card expires. Some immigrant victims seeking

⁸¹ The following list of abuse related factors is provided in the VAWA cancellation regulations. 8 C.F.R. §§ 1240.20(c) and 1240.58(c): The nature and extent of the physical and psychological consequences of abuse ; the impact of the loss of access to the U.S. courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, maintenance, child custody, and visitation); The applicant's or applicant's child's need for social, medical, mental health, or other supportive services, which would not be available or reasonably accessible in the foreign country; The existence of laws and social practices in the home country that would penalize the applicant or applicant's child for having been victims of domestic violence or have taken steps to leave an abusive household; The abuser's ability to travel to the home country, and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's child from future abuse; The likelihood that the abuser's family, friends, or others acting on the abuser's behalf in the home country would physically or psychologically harm the applicant or the applicant's children. Other factors can also contribute to Extreme Hardship (See Cancellation of Removal Chapter) See also INS Memorandum from Paul Virtue, INS General Counsel, *Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children* (October 16, 1998).

⁸² INA §101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i); 8 CFR §214.2(k).

help will have a lawful permanent residency card with an end date two years after the card was issued. These immigrant victims have “conditional permanent residency”, and may qualify for a “battered spouse waiver” and will not need to file a “VAWA self-petition.” See “adjustment of status,” “conditional permanent residency,” “Self-petition,” and “battered spouse waiver.”

Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) – HRIFA provides that Haitians (natives, citizens, and nationals) who were continuously physically present in the United States since before December 1, 1995, can adjust their status to become lawful permanent residents as long as their applications were filed before April 1, 2000 and the general requirements for lawful permanent residency are met. Spouses, children under 21 years, and unmarried sons and daughters of an eligible immigrant can also receive lawful permanent residency under HRIFA if they are Haitian and in the United States on the date the application is filed. HRIFA allows applicants to prove continuous presence even when they were absent from the United States for a time period of up to 180 days. (See “continuous presence”). Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Haitian even if the abusive Haitian spouse or parent never applied for lawful permanent residency under HRIFA. (See VAWA section at end of this chapter).

The Hague Convention on the Civil Aspects of International Child Abduction Convention⁸³ - the “Hague Convention” is a treaty that was created to assist in the prevention of *international* child abduction and the return of abducted children. Currently, at least 54 member countries have signed the Convention.⁸⁴ The treaty only applies between countries when both countries are parties to the Convention. If a country has not formally joined the Hague convention, the treaty does not apply, and a parent must use alternate methods to have the child returned. Parents, rather than governments, must institute legal proceedings on their own to seek the safe return of their children. To invoke the convention, a child must be “wrongfully removed or retained” from his or her “habitual residence”, the abduction must be reported within one year of the abduction, and the child must be below the age of sixteen. The parent must then file an application seeking the return of the child with authorities of the foreign country and seek legal representation in the country where the child has been abducted to pursue legal action through that country’s legal system.

Immediate Relative – For the purposes of a family-based visa petition and a self-petition under VAWA, this term means the children under 21 years, spouse and parent of a U.S. citizen, or the parents of an adult U.S. citizen (21 years and over). Because of their close relationship to U.S. citizens, they are allowed to immediately file for lawful permanent residence once they have an approved immigrant visa, and are exempt from the numerical limitations (that cause waiting lists) imposed on immigration to the United States.

Immigration and Customs Enforcement (ICE) – This is the largest investigative arm of the Department of Homeland Security. Its officers are involved with immigration enforcement, detention, and removal within the interior of the nation. Composed of functions of the former Customs Service, Federal Protective Service, and the investigative and enforcement functions of the former INS (other than those border functions assumed by CUSTOMS AND BORDER PROTECTION (CBP), ICE is a subdivision of the Directorate of BORDER AND TRANSPORTATION SECURITY, the other two being CBP and the Transportation Security Administration. Additionally, trial attorneys who represent DHS in removal proceedings before immigration judges are ICE employees.

Immigrant Visa –An individual born outside of the United States, who is eligible, may apply for an immigrant visa, allowing him or her to legally enter the U.S. and remain here indefinitely as a permanent resident. (See “non-immigrant visa” for legal immigration status to remain temporarily).

⁸³ Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89

⁸⁴ For an up-to-date list, see http://travel.state.gov/family/abduction/hague_issues_1487.html. . Member States include: Argentina, Australia, Austria, Bahamas, Belgium, Belize, Bosnia & Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China (Hong Kong and Macau only), Columbia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Mauritius, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Romania, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Ukraine, United Kingdom (Bermuda, Cayman Islands), United States, Uruguay, Venezuela, and Zimbabwe.

Immigration and Nationality Act (INA) – The primary federal statute that governs the process of immigration and the treatment of immigrants in the United States.

Immigration Judge (IJ) – The person responsible for presiding over immigration court proceedings.⁸⁵ Immigration judges are employed by the Executive Office for Immigration Review (EOIR); a division of the Department of Justice.

Inadmissibility (INA section 212(a)); Grounds of – An individual who seeks admission into the United States or to receive lawful permanent residency must meet certain eligibility requirements to receive a visa and eventually be legally *admitted* into the United States. Grounds for *inadmissibility* include health related grounds, criminal and related grounds, security and related grounds, likelihood of becoming a public charge, not meeting labor certification and qualifications, and illegally entering the country. The Attorney General, through an immigration judge, will make a ruling when admissibility/inadmissibility is a factor in a case that is in immigration court. An immigration officer deciding cases (e.g. visa applications, VAWA self-petitions) for the Department of Homeland Security will make inadmissibility determinations on cases they are adjudicating.

Inspection – The process that all persons must go through when they arrive at the U.S. border, at airports, at seaports and at pre-flight inspection stations. A person is questioned and asked to present proof of his or her right to enter the country. At the end of the process of inspection, a person is either ADMITTED, REMOVED, PAROLED into the country, or allowed to withdraw their application for admission and depart voluntarily.

Lawful Permanent Residency (LPR) – A lawful permanent resident is a foreign-born individual who has the right under U.S. immigration law, to live and work permanently in the United States. Lawful permanent residents can still be put in removal proceedings and deported, particularly if they are convicted of crimes. Naturalization protects against deportation and therefore victims should be encouraged to naturalize as soon as eligible. An individual who has a green card is either a lawful permanent resident or a conditional permanent resident. See “adjustment of status.”

Legacy INS – A reference to the Immigration and Naturalization Service (e.g., “a legacy INS memo”) that acknowledges its status as the predecessor to the DEPARTMENT OF HOMELAND SECURITY.⁸⁶

Medicaid and State Child Health Insurance Program (SCHIP)⁸⁷ – The Medicaid program provides health insurance to low-income individuals. The State Child Health Insurance Program (SCHIP) provides health care to low-income children. Under PRWORA, most individuals who entered the United States after August 22, 1996, are barred from receiving all non-emergency Medicaid for the first five years after they become qualified immigrants.⁸⁸

NACARA (Nicaraguan Adjustment and Central American Relief Act) of 1997⁸⁹

⁸⁵ INA §101(b)(4), 8 U.S.C. § 1101(b)(4); INA § 240, 8 U.S.C. §1229a.

⁸⁶ New Jargon Alert: “Legacy INS” posted on AILA Info-Net. Doc. No. 03060442 (June 4, 2003).

⁸⁷ See 8 U.S.C. § 1641 (2004) for the definition of Qualified Alien, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, A.G. Order No. 2353-2001. 66 Fed. Reg. 3,613 (Jan. 16, 2001) (specifying emergency Medicaid Eligibility)

⁸⁸ Whether an immigrant victim of sexual assault or domestic violence will qualify for Medicaid covered health care services will depend on the victim’s immigration status, when they attained any legal immigration status, their state of residence and date of first entry into the United States. Persons who attained “qualified alien” including legal permanent resident status before August 22, 1996 will have the most access to Medicaid funded health care services. VAWA self-petitioners are an example of persons who may qualify but may have to wait 5 years if they entered the U.S. after 1996. Some states have chosen to offer access to funded health care to “qualified immigrants” who otherwise would have to wait 5 years. Other states offer funded health care to persons “permanently residing in the United States under color of law” which would include immigrant victims of sexual assault who have received interim relief in U visa cases. For further information and state-by-state charts on health care options for immigrant victims, see chapter 17 of this manual “Access to Health Care for Immigrant Victims of Sexual Assault”. For state-by state chart on access to a range of public benefits see NATIONAL IMMIGRATION LAW CENTER, *Temporary Assistance for Needy Families: Welfare Reform and Immigrants*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3E-1 (1998).

⁸⁹ See Appendix B.

VAWA NACARA 202 creates self-petitioning for Nicaraguan or Cuban battered spouses and children who have been subjected to extreme cruelty by Nicaraguan or Cuban abusers who are unable to adjust their status to lawful permanent residency due to their abuser's failure to file for lawful permanent residency for himself. The battered spouse or child must have been physically present in the United States on the date the application is filed (which must have been before July 5, 2007).

VAWA NACARA 203 self-petitioning offers protection from deportation and access to lawful permanent residence for abused immigrants who were the spouses and children of El Salvadoran, Guatemalan and Eastern European abusers at the time the abusive spouse or parent filed for or received suspension of deportation, cancellation of removal, asylum, or temporary protected status under NACARA 203. VAWA NACARA 203 also allows battered spouses, children, and children of the battered spouse temporary protection from removal even if the spouse is no longer married to the abuser, as long as they were married at the time that the immigrant or the spouse or child filed an application to suspend or cancel the removal.

Naturalization – This is the process by which foreign-born persons, including lawful permanent residents, obtain citizenship. Requirements include a period of continuous residence in the U.S. and physical presence in the United States, an ability to read, write, and speak English, and good moral character. Some requirements can be waived depending on the circumstances. Immigrants married to U.S. citizens can apply for Naturalization after 3 years in lawful permanent residency. Other immigrants have to wait 5 years to file for naturalization. Immigrant victims who attain lawful permanent residency through VAWA can file to naturalize after 3 years (3 years only applies to petitioners who had USC abusers and LPR abusers).

Non-immigrant Visas – “Non-immigrant” visas are issued to persons granted permission to remain temporarily (not permanently) in the United States. If an immigrant is granted permission to live permanently in the United States they will receive an “immigrant” visa. (See “immigrant visa.”) Many different classes of non-immigrant visas are available to individuals intending to enter the United States temporarily. (See *examples and explanations below under “visa”*).

Notice to Appear (NTA) – A document issued by the Department of Homeland Security to commence immigration removal proceedings against an immigrant in immigration court.⁹⁰ The Notice to Appear⁹¹ is usually issued by an immigration enforcement official and served on the immigrant who DHS believes is not legally present in the United States. If an immigrant victim has been arrested or detained by immigration officials, the NTA will often be issued and served on the immigrant before the immigrant victim is released from DHS custody. Once the NTA has been issued it has to be filed with the immigration court for removal proceedings to be opened against an immigrant.⁹²

ORR – Department of Health and Human Services Office of Refugee Resettlement (ORR). The Office of Refugee Resettlement oversees refugee resettlement assistance programs and programs for victims of trafficking. This assistance includes, among other things, cash and medical assistance, employment preparation and job placement, skills training, English language training, legal services, social adjustment and aid for victims of torture.⁹³

Parental Kidnapping Prevention Act (PKPA)⁹⁴ – The Parental Kidnapping Protection Act (PKPA) was designed to discourage interstate conflicts, deter interstate abductions, and promote cooperation between states about interstate custody matters. As part of the Violence Against Women Act of 2000, the PKPA's definition of “emergency jurisdiction” was broadened to cover domestic violence cases consistent with the UCCJEA, which is the Uniform Child Custody Jurisdiction and Enforcement Act⁹⁵ (see explanation below under this

⁹⁰ INA §239, 8 U.S.C. § 1229.

⁹¹ The Notice to Appear replaced the Order to Show Cause previously used to initiate deportation cases.

⁹² Notices to Appear that have been issued in violation of VAWA confidentiality statutory protections can be cancelled. See Chapter 3 of this Manual “VAWA Confidentiality: History, Purpose and Violations VAWA Confidentiality Protections “

⁹³ For more information, please see <http://www.acf.hhs.gov/programs/orr/mission/functional.htm>.

⁹⁴ See 28 U.S.C. § 1738A (2000).

⁹⁵ The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is newer legislation enacted in many states to update the prior Uniform Child Custody Jurisdiction Act. As of June 2007, the UCCJEA has been enacted in 46 states, the District of Columbia, and U.S. Virgin Islands. As of June 2007, four states have not yet adopted the UCCJEA: Massachusetts, Missouri, New Hampshire and Vermont. Uniform Family Law Update, June 2007,

term). The PKPA tells courts when to honor and enforce custody determinations issued by courts in other states or Native American tribal jurisdictions. Unlike the UCCJEA, the PKPA does not instruct courts as to when they should exercise jurisdiction over a new custody matter. Instead, the court must follow the PKPA when 1) they are deciding whether to enforce a custody determination made by a court in another state or tribe; 2) they are deciding whether to exercise jurisdiction even though there is a custody proceeding already pending in another jurisdiction, and 3) they are asked to modify an existing custody or visitation order from another jurisdiction.

Parole – Parole is permission by the Department of Homeland Security that allows an immigrant to physically enter the United States temporarily for urgent humanitarian reasons or for significant public benefit. The entry is not a formal admission to the United States.⁹⁶ VAWA victims applying from abroad can receive parole into the United States once their application has been approved. This provision can also be used to help bring their children or other family members who qualify for VAWA relief into the country.

Permanent Resident – See “Lawful Permanent Resident.”

Prima Facie Determination – Battered immigrants filing VAWA self-petitions who can establish a "prima facie" case are considered "qualified aliens" for the purpose of eligibility for public benefits. The VAWA Unit of the Vermont Service Center at the Department of Homeland Security reviews each petition initially to determine whether the self-petitioner has addressed each of the requirements necessary to receive a self-petition. If DHS officials believe she has set forth a valid case they issued an order that is called a prima facie determination. If DHS makes a prima facie determination, the self-petitioner will receive a Notice of Prima Facie Determination. The notice provides evidence of immigration status that may be presented to state and federal agencies that provide public benefits.

Priority Date – The date that the application for an immigrant visa is filed becomes the priority date to establish an immigrant's place in line to wait for a visa and to determine when the person can apply for lawful permanent residency. This means the date on which a person submitted documentation establishing prima facie eligibility for an immigrant visa. For family-based immigrants, a person's priority date is the date on which he or she filed the family-based visa petition.⁹⁷ If the immigrant relative has a priority date on or before the date listed in the Visa Bulletin, then he or she is currently eligible for an immigrant visa. For employment-based cases, it is the date of the filing of the LABOR CERTIFICATION application, or if no labor certification is required, the date the immigrant visa petition is filed.⁹⁸ In VAWA self-petitioning cases immigrant victims can use as their priority date the date that their abusive citizen or lawful permanent resident spouse or parent filed any prior family based visa petition for them, whether or not that case was ever decided and whether or not that case was withdrawn by the abuser. This allows the immigrant victim to resume the place in line they would have had if their abuser had not withdrawn or had followed through on the original family-based visa petition.

PRUCOL⁹⁹ – PRUCOL stands for "permanently residing in the United States under color of law." PRUCOL is a term that generally describes immigrants whom the Department of Homeland Security (DHS) knows are in

<http://nccusl.org/Update/Docs/JEBUFL/Jun%2007%20JEB%20Newsletter.pdf>. These states instead continue to use their prior version of the Uniform Child Custody Jurisdiction Act.

⁹⁶ INA §212(d)(5)(A); 8 USC §1182(d)(5)(A); 8 C.F.R. § 212.5.; New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

⁹⁷ 8 C.F.R. §204.1(c).

⁹⁸ 8 C.F.R. §204.5(d).

⁹⁹“Permanently Residing Under Color Of Law”-Prior to the passage of the Personality Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.) those who were permanently residing in the United States under color of law (PRUCOL's) were eligible to receive federal public benefits. This group consisted of immigrants whom CIS was aware of their presence in the United States. The PRWORA cut off access to federal public benefits for this group of immigrants, but several states have passed laws providing access to state-funded Temporary Assistance for Needy Families (TANF) for PRUCOL's. See NATIONAL IMMIGRATION LAW CENTER, *States Providing Benefits to Immigrants Under 1996 Welfare & Immigration Laws -- State Responses*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 2-1, 14 (1998).

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the United States, but whom the DHS is not taking steps to deport or remove from the country. Some states extend access to health care and some other public benefits to PRUCOL immigrants.¹⁰⁰

PRWORA and IIRAIRA – The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA or Welfare Reform Act)¹⁰¹ and the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA)¹⁰² substantially altered most immigrants' eligibility to receive many public benefits. These laws eliminated eligibility for most immigrants for Supplemental Security Income (SSI)¹⁰³ and Federal Food Stamps, limited access to certain other federal programs (including Medicaid funded health care), and gave states the discretion to determine whether immigrants can qualify for state and local public benefits programs.

Public Charge – This term describes immigrants who at the time of admission are likely to become primarily dependent on the U.S. government for financial support because of their health, education, assets, or family status.¹⁰⁴ If an immigrant is deemed likely to become a public charge they are thereby inadmissible.¹⁰⁵ Immigration officials and immigration judges are barred from considering any public benefits received by immigrant victims who attained immigration relief through VAWA or victims eligible for immigration benefits related to their having been victims of family violence in making public charge determinations.¹⁰⁶ Likewise, DHS does not consider public benefits received by trafficking victims when making public charge determinations.

Qualified Immigrant – Category created by PRWORA solely to assess eligibility for public benefits purposes. Inclusion in this category is determined by immigration status. Qualified immigrants have more access to federal public benefits than many other immigrants, but less access than citizens. Which federal or state funded public benefits they are eligible to receive depends on their: immigration status, state, date of first entry into the United States, and the specific benefit they are seeking. The most difficult benefits to access are federal means tested public benefits that not all qualified immigrants can access – Temporary Aid to Needy Families, Medicaid, State Child Health Insurance Program (SCHIP), Food Stamps and Supplemental Security Income (SSI). Under the statute qualified immigrants are called “qualified aliens.”

Refugee – An individual who is unable or unwilling to return to her country because of past persecution or a well-founded fear of future persecution on account of her race/ethnicity, religion, nationality, membership in a particular social group, or political opinion. An individual who is outside the U.S. and meets this definition can be admitted to the United States as a refugee. An individual already in the United States must apply for and be granted asylum to receive protection as a refugee. (*See “asylum” above*).

Removal – Removal, also known as deportation, is the process through which a non-citizen who is determined to be unlawfully in the U.S. is ordered to leave the United States and is returned to his or her country of origin by U.S. immigration officials. In some cases the person is removed to a third country that agrees to accept them.

Removal Proceedings – Formerly known as deportation proceedings, this is the process by which immigrants are required to appear before an immigration judge. The immigrant has an opportunity to request relief if eligible. The proceedings may result in an immigrant obtaining status or being ordered removed (deported). The judge can make other procedural orders as well.

Second Preference – This refers to the immigrant visa category for family-based petitions of spouses, children, and unmarried sons or daughters of lawful permanent residents.

¹⁰⁰ See chapter 17 of this manual “Access to Health Care for Immigrant Victims of Sexual Assault”.

¹⁰¹ PRWORA see supra note 95.

¹⁰² Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (codified as amended at 8 U.S.C. § 1101 et seq.)

¹⁰³ SSI is a cash benefit program for low-income disabled, blind and elderly individuals.

¹⁰⁴ INA § 212(a)(4)(B), 8 U.S.C. § 1182(a)(4)(B). See also 64 Fed. Reg. 28689-01 (May 26, 1999).

¹⁰⁵ INA § 212(a)(4)(B), 8 U.S.C. § 1182(a)(15)(F). See also 64 Fed. Reg. 28689-01 (May 26, 1999).

¹⁰⁶ INA §212 (p); See also field Guidance on Deportability and Inadmissibility on Public Charge Grounds, INS, 64 Fed. Reg. 28,689 (May 26, 1999).

Section 245(i) – Congress first enacted INA §245(i) in 1994 to allow non-citizens who were present in the United States without lawful immigration status and who were otherwise eligible for permanent residence (through a family or employment-based petition) to apply to adjust their status to that of a lawful permanent resident without requiring them to physically leave the United States.¹⁰⁷ The section imposed a penalty fee (up to \$1,000) in addition to the normal fees for processing the applications from. The provision initially expired in January 1998, but was extended in 2000 and expired again on April 30, 2001. Upon expiration of this provision, most non-citizens who are out of legal immigration status are ineligible to adjust status and must leave the country, unless their immigrant visa petition or application for labor certification was filed prior to April 30, 2001. VAWA self-petitioners, however are eligible to adjust status to that of a lawful permanent resident even if they are undocumented.

Self-Petition – Under the Violence Against Women Act, certain abused spouses, children, or parents or parents of abused children can file their own petitions to obtain lawful permanent resident status confidentially and without the cooperation of an abusive spouse, parent, or son or daughter if the abuser is a U.S. citizen or lawful permanent resident. Victims of elder abuse, battered spouse waiver applicants, VAWA Cuban adjustment applicants, VAWA HRIFA (Haitian), VAWA NACARA (Nicaraguans, Cubans, Salvadorans, Guatemalans, Former Soviet Union nationals) are included in the category of VAWA self-petitioners. Children of the self-petitioner can also obtain legal immigration status by being included in their parent’s self-petition. Undocumented immigrant children included in their parent’s self-petition are called “derivatives” because they derive a benefit from their parent’s application for legal immigration status. (See *VAWA Immigration Relief* at end of chapter).

SSI – Supplemental Security Income (SSI) is a program that provides cash assistance to low-income individuals who are aged, blind, or disabled. After the enactment of PRWORA, an otherwise eligible person could be denied SSI cash assistance solely on the basis of his/her immigration status. The only battered immigrants who are currently eligible to receive SSI are those who were lawful permanent residents and were receiving SSI on August 22, 1996, or those who fit into one of the other categories of eligible immigrants.

State Child Health Insurance Program – See Medicaid

State Parental Kidnapping Statutes – Parental kidnapping statutes are generally designed to ensure parents equal access to their children by criminally sanctioning a parent who hides the child from the other parent. Currently almost every state makes custodial interference by parents or relatives of the child a crime. While these statutes may share similarities in name, purpose, and structure, statutory provisions concerning the definition of lawful custodian, the availability of statutory exceptions or defenses, and the severity of the criminal penalties vary greatly between states. In counseling, a survivor who has already left or wishes to leave that state with her children should carefully consult the state statutes in the client’s home state and the state to which the client is considering moving to best inform the client of the potential legal ramifications of her decision to flee. For immigrant victims it is particularly important to avoid any criminal convictions that can complicate a victim’s ability to attain VAWA or U visa related immigration relief.¹⁰⁸

Stay of Deportation/Stay of Removal – A stay of removal is an administrative decision by the government to stop temporarily the deportation or removal of an immigrant who has been ordered removed or deported from the United States.¹⁰⁹ Victims who were granted U-visa interim relief were granted stays of removal.¹¹⁰

¹⁰⁷Under immigration law, leaving and returning to the United States whether required as part of a visa application or not, often has harsh consequences. Leaving the United States after having been unlawfully in the United States can trigger application of multi-year bars to reentry (e.g. 3, 10 or more years). Immigrants who remain in the United States and have not left or are not required to leave can attain lawful permanent residency without risking separation from children and family members in the United States. For this reason, it is important to advise victims for VAWA immigration benefits against international travel.

¹⁰⁸ See Chapter 6.6 of *Breaking Barriers* “Appendix” for further information and the state criminal parental kidnapping statutes charts.

¹⁰⁹ See 8 §CFR 241.6, 1241.6.

¹¹⁰ “New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status.” New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

Suspension of Deportation – Suspension of deportation is terminology that was used prior to 1996, to refer to what is now called “cancellation of removal” (see above). Some immigrant victims will have old deportation orders, in cases initiated prior to 1992 and will need to file motions to reopen those immigration cases. For this reason post 1996 VAWA related immigration laws continue to refer to, cite to, and make amendments to VAWA suspension of deportation. Citations to Immigration and Naturalization Act Section 244 (a)(3) (“as in effect on March 31, 1997” or “as in effect before the Title III-A effective date of section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996”) are references in statute to VAWA suspension of deportation and NOT “temporary protected status.”¹¹¹

TANF – Temporary Assistance for Needy Families (TANF) provides cash payments, vouchers, social services, and other types of assistance to families in need. PRWORA gives states the option to grant TANF to immigrant families. Most states have decided to provide assistance to qualified immigrants who were in the United States before August 22, 1996, and many are also providing access to TANF for those who entered after August 22, 1996, following the expiration of the five-year bar.¹¹² Other states have decided to offer state-funded TANF to certain categories of immigrants or battered immigrants who would otherwise have no access to benefits, regardless of immigration status. (See “PRUCOL”)

Undocumented – Undocumented immigrants are individuals that do not have lawful immigration status granting them permission to reside in the United States. Some are individuals who entered the United States without being inspected by immigration authorities (i.e. illegally crossed the border). Others entered the U.S. on valid immigration visas but they stayed beyond their period of authorized stay. Some forms of temporary legal immigration status (See “non-immigrant visas.”) also place restrictions on the holder’s activities while in the United States, such as barring them from working in the U.S. or requiring them to attend a particular school or maintain employment with a particular employer. Individuals who fail to comply with the terms of their visa (i.e. working when they are not allowed or failing to attend school when they are required) become undocumented.

Unlawful Entrants – Individuals who entered the U.S. without admission are unlawful entrants and may be inadmissible. Depending on their date of entry and the relief they apply for, applicants, such as victims of domestic violence, may qualify for an exception to this inadmissibility criteria for unlawful entry.¹¹³

U.S. Citizen (USC) – An individual may become a U.S. citizen through several means. An individual born in the United States or in certain U.S. territories such as Guam, U.S. Virgin Islands, and Puerto Rico is automatically a citizen at birth. Additionally, an individual born abroad may acquire or derive U.S. citizenship through a U.S. citizen parent or parents. Many lawful permanent residents apply through the naturalization process to become a U.S. citizen. Finally, certain people serving in active-duty status for the U.S. military may qualify for expedited U.S. citizenship.

United States Citizenship and Immigration Services (CIS) –The division of the Department of Homeland Security (DHS) responsible for adjudicating immigration benefits. CIS adjudicates a range of applications filed for immigrants seeking legal immigration status including: visas, asylum, and naturalization applications. Cases of immigrant victims filing VAWA self-petitions, U and T visa applications, battered spouse waivers and battered spouse work authorizations are all adjudicated by CIS.

Uniform Child Custody Jurisdiction Act (UCCJA)¹¹⁴ – Original state laws governing jurisdictional determinations in interstate custody cases. The UCCJA, or its successor statute the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), discussed next, must be considered anytime a victim is considering moving across state lines with her children.

¹¹¹ Many codifications of the Immigration and Nationality Act are incorrect with regard to this section.

¹¹² NATIONAL IMMIGRATION LAW CENTER, *Temporary Assistance for Needy Families: Welfare Reform and Immigrants*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3E-1 (1998).

¹¹³ INA § 212(a)(6)(A); 8 U.S.C. § 1182(a)(6)(A).

¹¹⁴ Drafted by the National Conference of Commissioners on Uniform State Laws, and by it approved and recommended for enactment in all the states at its conference meeting July 22-Aug. 1, 1968; see also 28 U.S.C. § 1738A(c).

The UCCJA was created to promote common practices among the states with regard to jurisdiction over, and enforcement of child custody determinations. The goal was to foster a uniform approach that would result in fewer conflicting court rulings regarding the same children; minimizing or preventing parental kidnapping, jurisdictional conflicts, and re-litigation of custody decisions issued by courts in other states. The UCCJA's primary purpose is to help determine which court has appropriate jurisdiction over a custody matter by using the four following bases as a guide: home state, significant connection, emergency, and more appropriate forum. The UCCJA was not as effective in achieving these goals as expected and it contained few protections for battered women. As a result many jurisdictions began to replace the UCCJA with improved UCCJEA protections. The versions of the UCCJA or UCCJEA adopted in each state can vary slightly from the model code, but all state family laws include either a UCCJA or UCCJEA.

Uniform Child Custody Uniform and Enforcement Act (UCCJEA)¹¹⁵ This is the successor statute to the UCCJA and is designed to be more helpful in preventing abductions of children. Like the UCCJA, the UCCJEA also utilizes the four jurisdictional bases of home state, significant connection, emergency, and more appropriate forum. However, unlike the UCCJA, the UCCJEA prioritizes home state jurisdiction. It also expands the basis for emergency jurisdiction to more fully include and protect a battered parent's decision to escape from her abuser with her children. While a temporary emergency jurisdiction order that a battered woman receives is still subject to the actual "home" state's issuance of a final custody order, the factors a "home" state must consider in declining jurisdiction offer greater protection for survivors of domestic violence. For example, a court may consider whether domestic violence had occurred, and is likely to continue, and which state could best protect the parties and the child.

Violence Against Women Act (VAWA) – In 1994, Congress enacted the Violence Against Women Act. This was the first piece of federal legislation that articulated the role of the federal government in stopping violence against women. VAWA brought about far-reaching reforms in the criminal and civil justice system's approach to domestic violence, sexual assault, stalking, dating violence and trafficking. VAWA's dual goals were to enhance protection and help for victims and to hold perpetrators accountable for their crimes. VAWA provides grants to governmental and non-governmental programs helping victims, creates federal crimes, enforces state issued protection orders, provides immigration relief and offers confidentiality and privacy protections to victims. VAWA was designed to offer protection to all victims of violence against women, explicitly including underserved victims (e.g. immigrants, women of color, disabled, rural victims). To further this goal and remove control over immigration status and threats of deportation as tools that could be used by abusers, traffickers and crime perpetrators to avoid or undermine criminal investigations and prosecutions, VAWA 1994, 2000 and 2005 each contained immigration relief.

VAWA Unit of the Vermont Service Center – The Citizenship and Immigration Services (CIS) Vermont Service Center, houses the specially trained unit at the Department of Homeland Security that is responsible for adjudicating VAWA cases filed by immigrant victims of violence against women. The VAWA Unit adjudicates a wide range of violence against women related applications including: VAWA self-petitions, T-visas, U-visas, adjustments (lawful permanent residency applications), and employment authorizations related to VAWA cases (VAWA Cuban, VAWA NACARA, VAWA HRIFA petitions, battered spouse waivers, parole of VAWA petitioners and their children, children of victims who have received VAWA cancellation). Spouses who have been battered or subjected to extreme cruelty perpetrated by their non-immigrant A visa holder, E iii visa holder, or G visa holder, or H visa holder spouse, and children of the battered spouses can also receive employment authorization from the VAWA Unit.¹¹⁶

VAWA Confidentiality – VAWA created this provision to prevent batterers and crime perpetrators from accessing VAWA self-petitioners' information through DHS. Under VAWA confidentiality, immigration enforcement agents are also prohibited from using information from an abuser to act against an immigrant victim. Additionally, VAWA confidentiality bars enforcement actions at protected locations including

¹¹⁵ Uniform Child-Custody Jurisdiction and Enforcement Act (1997), 9(1A) U.L.A. 657 (1999); See also 28 U.S.C. § 1738A(c)(2)(C).

¹¹⁶ INA § 106(a); 8 U.S.C. § 1105(a)

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shelters, victim services programs, rape crisis centers, courthouses, family justice centers, supervised visitation centers and community based organizations.¹¹⁷

Visa – The term visa has two meanings. A person who has attained legal immigration status in the United States is colloquially called a “visa” holder. A “visa” is also an official document issued by the U.S. Department of State at an embassy or consulate abroad. A visa grants an individual permission to request entry into the United States at a port of entry. If permission is granted, the applicant is admitted into the United States in a particular status, such as a U-visa. Visas may be *immigrant* visas that allow the individual who qualifies to live and work permanently in the United States – lawful permanent residency. An individual having a residence in a foreign country that he or she has no intention of abandoning, who wishes to enter the United States temporarily, will be issued a temporary visa referred to in immigration law as a *non-immigrant* visa. Nonimmigrant visas include, but are not limited to:

A Visa – This temporary visa is issued to diplomats, ambassadors, public ministers, employees or consular officers who have been accredited by a foreign government that is recognized by the United States and accepted by the President or the secretary of state. The A-visa includes the immigrant’s immediate family. The immigrant’s personal employees, such as nannies, also receive an A-visa.¹¹⁸

B Visa – This temporary visa is issued to tourists (business or pleasure). Tourists are generally admitted to the U.S. for no longer than six months.¹¹⁹

F Visa – This temporary visa is available to bona fide students who are coming to the United States temporarily and who are pursuing a full course of study at an established college, university, or other academic institution. The spouse and minor children of the student also receive F-visas.¹²⁰

G Visa – The G visa is available to representatives and employees of international organizations. The visa is also available to members of the individuals’ immediate family, personal employees of the individual, and the immediate families (e.g. spouses and children) of the personal employees.¹²¹

H Visa – This is the temporary visa available to individuals who come to the United States temporarily to perform services or labor. This also includes a range of workers from technology industry workers to fashion models. The spouse and minor children of the immigrant also receive a specific type of H-Visa.¹²²

J Visa – This temporary visa is issued to exchange visitors and foreign physicians. J visa holders can include scholars, teachers, professors, leaders in a field, among others, coming to the United States temporarily. Some J visa holders are subject to a two-year foreign residency requirement. They are required to leave the United States for two years and are barred from seeking H-Visa status or lawful permanent residency before complying with this requirement. The visa holder’s spouse and minor children can also receive J-Visas.¹²³

T Visa – This visa is available to individuals who are victims of severe forms of trafficking in persons and who are willing to assist in the investigation and prosecution of their traffickers. Severe forms of trafficking include sex trafficking and transporting, harboring, or obtaining a person for labor by force, fraud, or coercion. A T-visa applicant under 21 years of age can apply for T-visas for their spouse, children, parents, and unmarried siblings under 18. T Visa applicants 21 years of age or older can apply for T-visas for their spouse and children.¹²⁴ The T Visa lasts for four years. After three years, T visa

¹¹⁷ For a full discussion of VAWA confidentiality protections See Chapter 3 of this Manual “VAWA Confidentiality: History, Purpose and Violations VAWA Confidentiality Protections “.

¹¹⁸ INA § 101(a)(15)(A), 8 U.S.C. § 1101(a)(15)(A).

¹¹⁹ INA § 101(a)(15)(B), 8 U.S.C. § 1101(a)(15)(B).

¹²⁰ INA § 101(a)(15)(F), 8 U.S.C. § 1101(a)(15)(F).

¹²¹ INA § 101(a)(15)(G), 8 U.S.C. § 1101(a)(15)(G).

¹²² INA § 101(a)(15)(H), 8 U.S.C. § 1101(a)(15)(H).

¹²³ INA § 101(a)(15)(J), 8 U.S.C. § 1101(a)(15)(J).

¹²⁴ INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T).

recipients can apply for lawful permanent residency. If the Attorney General certifies that the investigation has concluded, T visa recipients can apply for lawful permanent residency sooner than three years.

U Visa – This visa is available to individuals who are victims of substantial physical or mental harm as a result of having been a victim of criminal activity. In order to receive a U visa, victims must provide a certification from a federal, state, or local law enforcement official, prosecutor, or judge establishing that the victim has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of criminal activity. Victims are eligible whether or not the perpetrator is convicted, whether or not criminal prosecution is initiated, whether or not the perpetrator is served with a warrant, and whether or not they are called as a witness in the prosecution as long as they are helpful in an investigation. For an immigrant under 21 years of age, the spouse, children, unmarried siblings under 18, and parents can receive U Visas based upon the immigrant crime victim's receipt of U visa. U-Visa applicants 21 years or older can apply for U Visas for their spouse and children.¹²⁵

¹²⁵ INA § 101(a)(15) (U), 8 U.S.C. § 1101(a)(15)(U).

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Preparing the VAWA Self-Petition and Applying for Residence¹²

By Moira Fisher Praeda, Cecilia Olavarria, Janice Kaguyutan, and Alicia (Lacy) Carra

Introduction

This chapter provides practical tips for filing a self-petition under the Violence Against Women Act of 1994 (VAWA) as revised in 2005. Under VAWA 2005, the VAWA self-petitions now cover a broader range of victim applicants. Attorneys and advocates unfamiliar with the complex changes that have occurred with

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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.

Preparing the VAWA Self-Petition and Applying for Residence

VAWA in recent years should seek further assistance before helping victims file a self-petition.³ This chapter is not an exhaustive list of recommendations,⁴ but rather a guide to filing a VAWA self-petition. Before filing a self-petition, review the “VAWA Red-Flags” listed at the beginning of this manual. If your client has any one of the inadmissibility red-flags, contact an immigration attorney or technical assistance provider with significant experience representing immigrant victims in VAWA cases.

This guide provides information on the following VAWA self-petition topics listed below.

- Eligibility Requirements for Filing a Self-Petition
- General Filing Procedures and Practice Pointers
- The Self-Petitioner’s Affidavit
- Affidavits from Witnesses and Advocates
- Checklist of Suggested Evidentiary Documents
- Obtaining Lawful Permanent Residence under VAWA

Collaboration between immigration attorneys and domestic violence/sexual assault advocates is vital to a successful VAWA self-petition.⁵ Advocates can assist victims in collecting and organizing documentation that will help immigration officials understand the type and extent of battery or extreme cruelty that gave rise to the VAWA self-petition.

This chapter is geared towards advocates and attorneys with little or no immigration law experience. Immigration attorneys looking for more information should contact the National Immigrant Women’s Advocacy Project at (202) 274-4457 or Advanced Special Immigrant Survivors Technical Assistance (ASISTA) by phone at (617) 227-9727 or visit their website at www.asistaonline.org.

HISTORY OF THE VIOLENCE AGAINST WOMEN ACT AND SELF-PETITIONING

VAWA, which was enacted as part of the Violent Crime Control Act of 1994, was the first piece of federal legislation in the United States specifically designed to help curb domestic violence.⁶ In enacting VAWA, Congress’ clear, overarching intent was to strengthen the protections available to battered women, as well as to expand collaboration and cooperation between battered women’s support services and the criminal and civil justice systems.

VAWA recognized that immigration laws were being used as tools of power and control over immigrant victims of domestic violence. It also included special protections for immigrants abused by U.S. citizen or lawful permanent resident spouses or parents. In many cases, the legal immigration status of non-citizen victims depends upon their relationships to their U.S. citizen or lawful permanent resident abusers.⁷ Abuse often includes various forms of sexual assault. For example: rape, forced or coerced sexual contact, molestation, child abuse. Abusers use their power over their spouse’s, children’s, or parent’s (of an over 21-year old US citizen) immigration status to control, threaten, isolate, harass, and coerce the immigrant victims. The battered spouse, child, or elderly parent would likely be deterred from taking action to protect herself (such as seeking a civil protection order, filing criminal charges, or calling the police) because of the threat or fear of deportation by the immigration officials.⁸ Sexual assault within a marriage is a crime in every state in

³ Reading the statutes and regulations is not enough. Statues have overturned regulations, some new regulations are still pending, and policy directives fill in important gaps.

⁴ New attorneys and advocates are strongly encouraged to seek additional information on self-petitions from the National Immigrant Women’s Advocacy Project (niwap@wcl.american.edu) or the Advanced Special Immigrant Survivors Technical Assistance (ASISTA) project (questions@asistaonline.org). Expert referrals are available through The Immigrant Women Project at iwp@legalmomentum.org or by calling 202-326-0040.

⁵ Pendleton and Block, *Applications for Immigration Status Under the Violence Against Women Act; from the IMMIGRATION AND NATIONALITY LAW HANDBOOK* (Randy P. Auerbach ed., 2001-02).

⁶ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 40001-702, 108 Stat. 1796, 1902-55 (1994).

⁷ H.R. REP. NO. 103-395 at 26-27 (1993).

⁸ *Id.*

Preparing the VAWA Self-Petition and Applying for Residence

the United States.⁹ Victims of marital sexual assault who come from other countries may not know that this is criminal behavior in the United States.¹⁰ Abusers may play upon this ignorance to isolate, further abuse, and prevent the victim (or her family) from seeking help from the authorities.

VAWA contains provisions that limit the ability of an abuser to misuse United States immigration laws, immigration officials, and law enforcement agencies to threaten and control his or her immigrant spouse or child. Specifically, VAWA remedies this situation by enabling battered immigrants to attain *lawful permanent residence* (a “green card”) without the cooperation of their abusive spouse or parent. In providing for relief, VAWA has provisions by which to obtain lawful permanent residence including VAWA self-petitions and VAWA cancellation of removal (formerly called “suspension of deportation”). These provisions ensure that immigrant victims of domestic violence have access to lawful immigration status without having to depend upon the cooperation or participation of their batterer.

VAWA also has provisions designed to restore and expand access to a variety of legal protections for battered immigrants by addressing immigration law obstacles still standing in the path of battered immigrants seeking to free themselves from abusive relationships after the first VAWA. For example, VAWA self-petitioning includes adults who are abused by their U.S. citizen children.¹¹ Likewise, it ensures that children who were abused do not lose their chance to self-petition as they grow older (they now have until age 25 to file).¹² VAWA 2005 ensures that a survivor who files a VAWA self-petition, or receives any other form of VAWA immigration relief, cannot later file for immigration relief on the abuser’s behalf. It also includes increased confidentiality protections for those who self-petition.¹³ The following section provides a brief overview the VAWA self-petition.¹⁴

VAWA Self-Petitions

Certain immigrants may obtain lawful permanent resident status (a green card) without the participation or cooperation of their United States citizen or legal permanent resident abusive spouse, parent, or over 21 year old U.S. citizen child by filing a VAWA self-petition. Use the VAWA Self-petitioning flow charts (adult and child) in the appendix to this chapter to help you determine your client’s and her children’s eligibility for a self-petition. Self-petitions were created by Congress as an alternate safe route to lawful permanent residence, for victims of violence who were eligible for a green card but would have to rely on an abusive U.S. citizen or lawful permanent resident family member to file the application with DHS. VAWA created a route to lawful permanent residency for victims, which was safe and confidential, that they could pursue without their abusive family member’s knowledge or cooperation. Attaining lawful permanent residency through a VAWA self-petition is a two-step process. First, an eligible applicant must file a VAWA self-petition, which must be approved by the Department of Homeland Security (DHS) formerly known as the Immigration and Naturalization Service (INS). Second, the applicant must apply for lawful permanent residence either through the “adjustment of status” process in the United States or at a consulate abroad.

WHO IS ELIGIBLE TO FILE A VAWA SELF-PETITION?

Under the Violence Against Women Act, certain abused spouses, children, parents abused by their over 21-year old U.S. citizen children, or parents of abused children can file their own petitions to obtain lawful permanent resident status. These victims can file in a way that is confidential and without the abuser’s

⁹ National Clearinghouse on Marital and Date Rape, State Law Chart (2005), http://www.ncmdr.org/state_law_chart.html (last visited Feb. 14, 2008).

¹⁰ United Nations Development Programme, Gender and Legislation in Latin America and the Caribbean (not dated), <http://www.undp.org/rblac/gender/legislation/violence.htm>.

¹¹ Immigration and Nationality Act of 1952 § 204(a)(1)(A)(vii) [hereinafter INA], 8 U.S.C. § 1154(a)(1)(A)(vii) (2000).

¹² INA § 204(a)(1)(D)(v), 8 U.S.C. § 1154(a)(1)(D)(v) (2000).

¹³ 8 U.S.C. § 1367(a)-(d) (2000). The VAWA confidentiality statute is not part of the Immigration and Nationality Act.

¹⁴ For more information on the battered immigrant provisions of VAWA 2000 see LEGAL MOMENTUM, SECTION BY SECTION CHART OF THE BATTERED IMMIGRANT PROVISIONS OF VAWA 2000 (2000). Copies are available from National Immigrant Women’s Advocacy Project at 4910 Massachusetts Ave, NW, Suite 16, Washington, DC 20016. Contact NIWAO by phone at (202) 274-4457, or by email at niwap@wcl.american.edu

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cooperation if the abuser is a U.S. citizen or lawful permanent resident. Examples of individuals covered by VAWA include:

- Abused spouses or former spouses of U.S. citizens or lawful permanent residents may file a VAWA self-petition. They may also include their children, even if the children are not abused or are not related to the U.S. citizen or the lawful permanent resident.¹⁵
- Abused children of a U.S. citizen or lawful permanent resident may file a VAWA self-petition.¹⁶
- Spouses or former spouses (whether abused or not) whose children are abused by their U.S. citizen or lawful permanent resident spouse may apply for themselves.¹⁷
- Parents who are victims of elder abuse by a U.S. citizen son or daughter are eligible.¹⁸
- Battered spouse waiver applicants,
- VAWA Cuban adjustment applicants,¹⁹
- VAWA HRIFA (Haitian) applicants,²⁰ and
- VAWA NACARA applicants (Nicaraguans, Cubans, Salvadorans, Guatemalans, Former Soviet Union nationals) are included in the category of VAWA self-petitioners, under VAWA 2005²¹

WHAT ARE THE REQUIREMENTS FOR ESTABLISHING ELIGIBILITY FOR A VAWA SELF-PETITION?²²

A self-petitioning spouse must satisfy **seven requirements** to establish eligibility for a VAWA self-petition.

1. Relationship to the abuser: Generally, self-petitioning spouses can demonstrate the existence of a marital relationship with a valid marriage certificate. A self-petitioning child must prove that s/he is the natural child, stepchild, or adopted child of a citizen or lawful permanent resident.²³ A self-petitioning parent must prove a parental relationship to their U.S. citizen son or daughter.²⁴

If the self-petitioner is currently not married to the abuser by reason of the abuser's bigamy, death, or divorce, the self-petitioner may still qualify if she can prove that:

- She believed that she has legally married the abuser, but the marriage was invalid due to her abuser's bigamy. Abused spouses who did not know they married a bigamist need to provide evidence that their marriage ceremony was actually performed.²⁵

¹⁵ INA §§ 204(a)(1)(A)(iii) and (B)(ii), 8 U.S.C. §§ 1154(a)(1)(A)(iii) and (B)(ii) (2000). Children included in their parent's VAWA self-petition are known as derivative children. To be included in the parent's self-petition, derivative children must be under twenty one at the time of filing. These children are "derivatives" or "derivative beneficiaries" because they derive a benefit from the parent's application for legal immigration status.

¹⁶ INA §§ 204(a)(1)(A)(iv) and (B)(iii), 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(iii) (2000). A self-petitioning child must prove he or she is the child (natural, step, or adopted) of a citizen or lawful permanent resident. Self-petitioning stepchildren must file while the mother and father are still married.

¹⁷ INA §§ 204(a)(1)(A)(iii) and (B)(ii), 8 U.S.C. §§ 1154(a)(1)(A)(iii) and (B)(ii) (2000).

¹⁸ See "Introduction to Immigration Relief" in this manual for more information.

¹⁹ See "Introduction to Immigration Relief" in this manual for more information.

²⁰ See "Introduction to Immigration Relief" in this manual for more information.

²¹ See "Introduction to Immigration Relief" in this manual for more information.

²² For more information on evidence to prove VAWA cases, please consult the reading, VAWA DOCUMENTARY EVIDENCE MEMO. Copies may be obtained by contacting Legal Momentum at 1522 K St., NW, Suite 550, Washington, DC 20005.

Copies can be requested by phone at (202) 326-0040 or by e-mail at law@legalmomentum.org.

²³ INA §§ 204(a)(1)(A)(iv) and (B)(iii), 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(iii) (2000).

²⁴ INA § 204(a)(1)(A)(vii), 8 U.S.C. § 1154(a)(1)(A)(vii) (2000).

²⁵ H.R. CONF. REP. NO. 106-939, at 112-13 (2000) (Conf. Rep.).

Preparing the VAWA Self-Petition and Applying for Residence

- She was the spouse of a U.S. citizen who died within the past two years. The self-petitioner must prove that she was the spouse of an abusive citizen and that her spouse died within the past two years.
- She was divorced from the abuser within the past two years. The self-petitioner must demonstrate that she was divorced from the abuser within the past two years, and that there was a connection between the divorce and the battery or extreme cruelty by the abusive spouse.²⁶

In the case of a self-petitioning child, the applicant must prove that s/he is the natural child, stepchild, or adopted child of a citizen or lawful permanent resident.²⁷ Further, a self-petitioning parent must prove a parental relationship to their U.S. citizen son or daughter.²⁸

2. The abusive spouse or parent is a U.S. citizen or Lawful Permanent Resident: A self-petitioner must prove that his or her spouse or parent is a U.S. citizen or lawful permanent resident.

- Loss of citizenship or lawful permanent resident status: In cases where the abuser has lost or renounced his immigration or citizenship status within the past two years, the self-petitioner must demonstrate that the loss of status (for example being found deportable under 237(a)(2)(E) or renunciation of citizenship is related to an incident of domestic violence.²⁹

3. Residence within the United States: Generally, self-petitioners must currently reside in the United States at the time of application. Some self-petitioners may file from abroad if they meet one of three requirements:

- The abusive spouse or parent is an employee of the U.S. government;³⁰
- The abusive spouse or parent is a member of the uniformed services;³¹ or
- The abusive spouse or parent has subjected the immigrant spouse to battery or extreme cruelty while physically present in the United States.

4. Residence with the abuser: A self-petitioner does not have to reside with the abuser at the time of filing, but must still prove that she at one time resided with the abuser. Self-petitioners **DO NOT** have to separate from the abuser in order to file a self-petition.³²

5. Battery or extreme cruelty:³³ The Department of Homeland Security will consider any credible evidence, including civil protection orders, police and court records, medical reports, and affidavits of school officials, social workers, and shelter workers. Examples of “battery” or “extreme cruelty” include:

- Any act or threatened act of violence (including forceful detention) which results or threatens to result in physical or mental injury
- Psychological or sexual abuse or exploitation, including rape, molestation incest (if the victim is a minor) or forced prostitution

²⁶ Id. at § 1503(b)(1).

²⁷ INA §§ 204(a)(1)(A)(iv) and (B)(iii), 8 U.S.C. §§ 1154(a)(1)(A)(iv) and (B)(iii) (2000).

²⁸ INA § 204(a)(1)(A)(vii); 8 U.S.C. § 1154(a)(1)(A)(vii) (2000).

²⁹ H.R. CONF. REP. NO. 106-939 § 1503(b)(1) (2000) (Conf. Rep.).

³⁰ The abuse can occur in the United States or abroad.

³¹ The abuse can occur in the United States or abroad.

³² Self-petitioners planning to remain with the abuser should have a safe address not accessible to the abuser where the Department of Homeland Security can reach them.

³³ It is recognized that abuse is a pattern. (8 C.F.R. 204.2(c) (1) (i) (H) (vi); *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003) **Some** portion of the pattern of abuse must have occurred while in one of the following relationships: *In marriage based petitions*: some portion of the abuse must have occurred during the time a couple was married. *In parent to child relationship based petitions*: some portion of the abuse must have occurred during the parental relationship; however, termination of parental rights does not end the relationship for VAWA immigration relief. *In step-parent to child based petitions*: Some portion of the abuse must have occurred while the marriage creating the step-parent relationship existed.

Other abusive actions may also be acts of violence under this rule. For example, individual acts or threatened acts that may not initially appear violent may be part of an overall pattern of violence. 8 C.F.R. § 204.2(c)(1)(vi) (2007).

Preparing the VAWA Self-Petition and Applying for Residence

According to VAWA regulations, **sexual assault is a form of battery and extreme cruelty.**³⁴ The Department of Justice defines sexual assault, including sexual assault in a marriage or family relationship, as any type of non-consensual sexual contact or behavior.³⁵ This includes forced sexual intercourse, sodomy, child molestation, incest, fondling, and attempted rape. Other examples of sexual assault include³⁶:

- Unwanted vaginal, anal, or oral penetration with any object
- Forcing an individual to perform or receive oral sex
- Forcing an individual to masturbate, or to masturbate someone else
- Forcing an individual to look at sexually explicit material or forcing an individual to pose for sexually explicit pictures
- Touching, fondling, kissing, and any other unwanted sexual contact with an individual's body
- Exposure and/or flashing of sexual body parts

The Department of Justice website says that in general, state law presumes there is no consent if a person is forced, threatened, unconscious, drugged, a minor, developmentally disabled, chronically mentally ill, or believes he/she is undergoing a medical procedure.³⁷

The website notes that perpetrators could be anyone - strangers, friends, acquaintances, or family members. Perpetrators commit sexual assault using violence, threats, coercion, manipulation, pressure, or tricks.³⁸ In extreme cases, sexual assault may involve the use of force, including but not limited to³⁹:

- Physical violence
- Use or display of a weapon
- Immobilization of victim

As the Department of Justice notes, sexual assault more often involves psychological coercion – “taking advantage of an individual who is incapacitated or under duress and, therefore, is incapable of making a decision on his or her own.”⁴⁰

6. Good moral character: “Good moral character,” as described below, is a term of art in immigration law. To show good moral character, a self-petitioner should submit a local police clearance or state-issued criminal background check from each locality or state, within or outside the United States, in which she has lived for six or more months during the three years immediately preceding the filing of the self-petition.

7. Marriage in good faith: Self-petitioners, whose petition is based on a marriage relationship,⁴¹ need to demonstrate that they married or intended to marry (in cases of bigamy) in “good faith,” and not for the purpose of evading immigration laws. Note that self-petitioning elder parents do not need to satisfy this requirement to be eligible to receive a VAWA self-petition. Step-children will have to satisfy this requirement.

Divorce & VAWA Self-Petitioners

³⁴ 8 C.F.R. §204.2(c)(1)(vi) (2007).

³⁵ U.S. Dep’t of Justice, <http://www.usdoj.gov/ovw/sexassault.htm> (last visited February 15, 2008).

³⁶ *Id.*

³⁷ *Id.*

³⁸ U.S. Dep’t of Justice, <http://www.usdoj.gov/ovw/sexassault.htm> (last visited February 15, 2008).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ These include those: 1) between a husband and wife in a marriage, 2) between a child and a step-parent, 3) between an intended spouse and a bigamist U.S. citizen or legal permanent resident spouse, where the marriage ceremony was actually performed (INA 204(a)(1)(A)(iii) codified at 8 USC 1154).

Preparing the VAWA Self-Petition and Applying for Residence

Prior to October 2000, battered immigrants who were divorced from their abusers could not file VAWA self-petitions. VAWA 2000 enabled divorced immigrants who had been battered during marriage to file VAWA self-petitions “if the marriage was legally terminated during the two-year period immediately preceding the filing of the self-petition for a reason connected to the battering or extreme mental cruelty.”⁴² This change is effective for all VAWA self-petitions pending or filed on or after October 28, 2000.⁴³

The VAWA applicant must provide evidence that the battering or extreme mental cruelty, which can include sexual assault, led to or caused the divorce. The evidence submitted must demonstrate that the abuse occurred during the marriage, that the abuser was a citizen or permanent resident when the abuse occurred, and that the divorce took place within the two-year period immediately preceding the filing of the VAWA self-petition.⁴⁴ The divorce decree does not have to state specifically that the marriage was terminated due to domestic violence.⁴⁵

When an immigrant victim seeks help after a divorce has become final, the advocate or attorney should gather pre-divorce evidence demonstrating domestic violence. Such evidence may include protection orders, police reports, medical records, and affidavits of advocates, neighbors, family members, shelter workers or social workers who have knowledge about the domestic violence and its connection to the divorce. In some cases, when the immigrant victim flees or goes into hiding, the abuser may obtain a divorce by publication in her absence. In such cases, although the decree will not state that the divorce is domestic violence-related, counsel for the victim can demonstrate that the divorce was part of the ongoing pattern of battery and extreme cruelty.

If a battered immigrant seeks help after the abuser files for divorce but before the divorce decree is final, advocates and attorneys working with the immigrant victim should, if possible, file the VAWA self-petition before the divorce becomes final. This is the safest approach for immigrant victims and eliminates the need to establish that the divorce was causally related to the battery or extreme cruelty. Also, if the divorce action is ongoing, counsel for the victim can use discovery in the divorce case to obtain information and documentation that can be submitted in support of the self-petition.

“Good Moral Character”

At the time of the filing of the initial VAWA self-petition, a petitioner (or a child self-petitioner who is fourteen years of age or older) must demonstrate that she or he is a person of “good moral character.”⁴⁶ The most significant factor that can undermine an immigrant victim’s ability to prove good moral character is a criminal history. Battered immigrant victims can end up as defendants in criminal cases for a variety of reasons. Examples include:

- The police made a dual arrest rather than determining who was the predominant perpetrator;
- The perpetrator spoke English with the police and the police could not or did not communicate with the victim when the police arrived and the abuser convinced the police to arrest her;
- The victim was forced into criminal behavior by her abuser;
- The victim shoplifted essential survival items while escaping abuse.

When a potential VAWA applicant is a defendant in a criminal case that could lead to a finding of bad moral character, consult with an immigration expert immediately. Without appropriate counsel, the

⁴² U.S. DEP’T OF JUSTICE, IMMIGRATION & NATURALIZATION SERV. MEMORANDUM HQADN/70/8, ELIGIBILITY TO SELF-PETITION AS A BATTERED SPOUSE OF A U.S. CITIZEN OR LAWFUL PERMANENT RESIDENT WITHIN TWO YEARS OF DIVORCE (2002), available at http://www.uscis.gov/files/pressrelease/VAWA82102_pub.pdf.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ 8 C.F.R. § 204.2(c)(1)(i)(F) (2007).

victim may plead guilty to charges that will render her ineligible for VAWA relief, and could lead to her deportation.⁴⁷

While there is no statutory definition of good moral character, the Immigration and Naturalization Act (INA) lists actions which presumptively bar an individual from demonstrating good moral character.⁴⁸ It is not always easy to determine whether a specific crime established a lack of good moral character. Convictions for many crimes are statutory bars to good moral character, but other crimes, such as involuntary manslaughter or lesser offenses such as simple possession of a controlled substance, driving under the influence, or petty theft do not always bar a showing of good moral character. A prior removal order, in and of itself, does not constitute a bar to establishing good moral character.⁴⁹

PROVING GOOD MORAL CHARACTER

Moral character is evaluated by the government on a case-by-case basis, taking into consideration the standards to which the average citizen in the community is held. The petitioner must prove that she has maintained good moral character throughout the three-year period immediately preceding the filing of a self-petition.⁵⁰ Prior conduct may also be examined to determine good moral character at the discretion of DHS.⁵¹ Self-petitioners must submit a police clearances letter from any state or locality where they have resided for at six months during the past three years. If they have been arrested during that time, they must submit copies of the arrest records and court dispositions.

Petitioners should always state in their affidavits if they have ever been arrested, and submit records of any previous arrests or convictions, or information concerning any other bad conduct (such as fraud). Before obtaining lawful permanent residence based on the self-petition, battered immigrants with approved self-petitions will need to be fingerprinted and the DHS will use these fingerprints to run a criminal records search. This search will reveal all prior arrests in the United States, regardless of when they occurred. A battered immigrant with a criminal history should consult an immigration lawyer before filing the self-petition to determine whether she is barred from showing good moral character. Keep in mind that the victim may meet the requirements for one of the domestic violence-related exceptions or waivers for criminal convictions or other ineligibility grounds.⁵² It is better to reveal criminal or other behavior at the onset of a VAWA case, rather than to wait for DHS to discover it at a later stage. Failure to disclose an arrest can undermine a person's credibility and may lead to denial of the self-petitioner's application for permanent residence or revocation of the approved self-petition.⁵³ There are DHS officers who may discover a criminal record at a later step in the proceedings even if it is not brought up during the first steps of an application. Regardless, the staff members of the VAWA Unit of the DHS Vermont Service Center are trained in domestic violence and are better able to assess whether there is a connection between the domestic violence and any criminal activity and evaluating conduct within the context of the domestic violence.

STATUTORY BARS TO GOOD MORAL CHARACTER

⁴⁷ Attorneys and advocates with self-petitioners in this situation should contact the National Immigration Project of the National Lawyer's Guild, or the Immigrant Women Program of Legal Momentum. Contact the National Immigration Project by phone at (617) 227-9727 ext. 2, or by email at gail@nationalimmigrationproject.org. Contact the Immigrant Women Program of Legal Momentum by phone at (202) 326-0040 or by email at iwp@legalmomentum.org.

⁴⁸ INA § 101(f), 8 U.S.C. § 1101(f) (2000). The list of acts barring findings of good moral character is discussed later in this chapter.

⁴⁹ INA § 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A) (2000).

⁵⁰ 8 C.F.R. § 204.2(c)(2)(v) (2007).

⁵¹ NAT'L IMMIGRATION PROJECT OF THE NAT'L LAWYERS GUILD, 1 IMMIGR. LAW & DEF. § 8:32 (3d ed. 2004); see also *In re Sanchez-Linn*, 20 I. & N. Dec. 362, 365 (B.I.A. 1991) (holding that past conduct is relevant in determining good moral character).

⁵² A waivable criminal conviction or act under the immigration law will not bar a finding of good moral character for a VAWA self-petitioner if the crime or act is connected to the abuse. INA § 204(a)(1)(C); 8 U.S.C. § 1154(a)(1)(C) (2000). For more information on waivers, read the discussion on obtaining lawful permanent residence later in this section.

⁵³ See INA § 205; 8 U.S.C. § 1155 (2000). See also 8 C.F.R. § 205.2 (2007). An immigration or consular officer may return the petition to the Vermont Service Center for revocation if the petition was mistakenly approved.

Preparing the VAWA Self-Petition and Applying for Residence

If the conduct of the self-petitioner falls under one of the statutory bars listed in INA Section 101(f), the DHS generally is not permitted to waive this mandatory finding of a lack of good moral character.⁵⁴ An exception may exist for VAWA self-petitioners if they can establish a connection between the conduct and the domestic violence.⁵⁵ According to INA section 101(f), a person engaging in any of the acts listed below during the requisite period presumptively lacks good moral character.

- Habitual drunkenness;
- Prostitution within ten years of the date of application for a visa, admission, or adjustment of status;
- Smuggling a person into the United States;
- Polygamy;
- Conviction of or admission to an act constituting a crime relating to a controlled substance (excluding a single offense for simple possession of thirty grams or less of marijuana);⁵⁶
- Conviction of or admission to a crime of moral turpitude (excluding petty or juvenile offenses);
- Conviction of two or more offenses resulting in a total imposed sentence of five or more years;
- Trafficking or assisting with the trafficking of any illicit substance;
- Conviction of two or more gambling offenses or deriving their principal income source from illegal gambling;
- Giving false testimony to obtain immigration benefits;
- Detention in a penal institution for an aggregate period of 180 days or more; or
- Convicted of an aggravated felony.

In many cases there will be a connection between conduct that would preclude the establishment of good moral character and the abusive relationship. For example, a self-petitioner may be found to be a person of good moral character, despite her conviction on numerous counts of petty theft, if it is revealed that she stole food for her children because her spouse would not give her enough food or money. Self-petitioners should also submit character-references and other evidence that may offset such negative factors. Any form of community involvement, such as volunteer work or participation in religious and school activities, can help counter the effects of past criminal behavior and other bad conduct.⁵⁷

“Extreme Cruelty”

VAWA’s immigration provisions define domestic violence more broadly than most state domestic violence statutes.⁵⁸ In addition to physical and sexual abuse, VAWA’s definition includes “extreme cruelty,” defined as:

*being the victim of any act or a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence.*⁵⁹

⁵⁴ CHARLES GORDON ET AL., 6 IMMIGR. LAW & PROC. § 74.07[5][d] at 74-86 n.132 (release 119, 2007) (citing Miller v. INS, 762 F.2d 21, 24 (3d Cir. 1985)).

⁵⁵ INA § 204(a)(1)(C); 8 U.S.C. § 1154(a)(1)(C) (2000).

⁵⁶ Drug offenses are never considered petty offenses under immigration law. See INA § 212(a)(2), 8 U.S.C. § 1182(a)(2) (2000). Any sale, however small, is considered trafficking under the Immigration and Nationality Act. See *id.* While some expunged drug convictions may be erased for immigration purposes, most expungements have no effect. See *Murillo-Espinoza v. INS*, 261 F.3d 771 (9th Cir. 2001); *In re Roldan-Santoyo*, Interim Decision 3377 (B.I.A. 1999), *vacated sub nom.* *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000) (finding *In re Roldan* inapplicable in certain state expungements of first-time drug offenses).

⁵⁷ Please see the VAWA red flags appendix for a complete list.

⁵⁸ Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women*, 10 AM. U. J. GENDER SOC. POL’Y & L. 95, 106 (2002); Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 870 (1993).

⁵⁹ 8 C.F.R. § 204.2(c)(vi) (2007).

Practice Pointer:

Sexual assault (including sexual assault in a marriage or family relationship) is battery, not extreme cruelty. Attorneys should ensure that immigration officials do not confuse acts of battery with acts of extreme cruelty. It is harder to show “extreme cruelty” than it is to show “battery.”

Family law courts have held that many non-physical forms of abuse constitute extreme cruelty against the victim.⁶⁰ Courts have examined whether acts of cruelty are “of such nature and character as to destroy the peace of mind and happiness of the injured party,”⁶¹ and whether the perpetrator intended to distress and humiliate the victim.⁶² The victim’s self-esteem, dependency on the abuser, and ability to communicate are also factors abusers use to inflict and perpetuate extreme cruelty.

THE IMPORTANCE OF DOCUMENTING EXTREME CRUELTY

In preparing a VAWA self-petitioning case, advocates and attorneys should document the existence of each of the above listed factors that constitute or contribute to extreme cruelty. These issues should be addressed whether or not the immigrant victim has also suffered battering. Describing the extreme cruelty in a relationship, in addition to the abuse, gives the adjudicator a more complete description of the abuse the victim has suffered and the impact on the victim and her children. The existence of extreme cruelty, in addition to physical abuse, may also enhance the victim’s credibility and may contribute to an immigrant victim’s success in proving other elements of a VAWA case, including good faith marriage and good moral character. For example, the concept of extreme cruelty may be particularly important for survivors of sexual assault in their self-petitions. While sexual assault is battery for a self-petition, a survivor will want to document all forms of domestic violence, in addition to sexual assault, in filing their petition. In this way a survivor of sexual assault will help those adjudicating the self-petition understand how sexual assault, which may have only occurred once, was part of a larger pattern of domestic violence.

FORMS OF ABUSE

Abusers use many tactics to establish and retain control over their victims. While in some cases only one instance of abuse will be sufficient to establish a case of extreme cruelty, other situations may require a victim to establish that many different acts, when examined collectively over a period of time, constitute extreme cruelty. Extreme cruelty can include the following conduct:

- Intimidation and degradation;
- Economic and employment-related abuse (such as forced labor or unemployment);
- Social Isolation;
- Sexual Abuse, which includes rape as well as other forms of sexual behavior;
- Immigration-related abuse;
- Possessiveness and harassment.

INTIMIDATION AND DEGRADATION

Experts acknowledge that batterers commonly use a variety of tactics beyond violence to keep women in abusive relationships.⁶³ Abusers use threats to enhance a victim’s dependence on him by creating fear, stress,

⁶⁰ See, e.g., Keenan v. Keenan, 105 N.W.2d 54 (Mich. 1960) (holding that husband’s disparaging statements to wife constituted extreme cruelty); Muhammad v. Muhammad, 622 So.2d 1239 (holding that husband’s religiously-motivated harsh treatment of wife constituted extreme cruelty) (Miss. 1993); Ormachea v. Ormachea, 217 P.2d 355 (Nev. 1950) (holding that husband’s indifferent and sometimes hostile treatment of wife constituted extreme cruelty); *but see* Carpenter v. Carpenter, 193 P.2d 196 (Kan. 1948) (holding that wife’s refusal to live with husband did not constitute extreme cruelty).

⁶¹ See Veach v. Veach, 392 P.2d 425, 429 (Idaho 1964); Pfalzgraf v. Pfalzgraf, No. 52-CA-80, 1981 WL 6119 (Ohio Ct. App. Feb. 11, 1981); Conner v. Conner, No. CA-1953, 1981 WL 6290 (Ohio Ct. App. June 4, 1981); Dickson v. Dickson, No. D-98306, 1982 WL 5380 (Ohio Ct. App. May 27, 1982).

⁶² Wolf v. Wolf, 333 A.2d 138, 140 (R.I. 1975).

⁶³ See K.J. WILSON, WHEN VIOLENCE BEGINS AT HOME 17-18 (2d ed. 2005) (listing various forms of economic, sexual, and emotional abuse, as well as the threats, intimidation, and isolation tactics used by batterers); see also JUDITH HERMAN, TRAUMA AND RECOVERY 77 (1997).

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and humiliation, if the victim tries to leave or if she does not comply with his demands. Abusers use different forms of threats including: standing too close to victims, clenching their fists, giving “warning” looks, or displaying weapons to their intimate partners.⁶⁴ In cases where the victim is also an immigrant, abusers often threaten to report them to the immigration authorities.⁶⁵ Threats, intimidation, and degradation trap victims in abusive relationships, and can often form the basis for proving extreme cruelty.

ECONOMIC AND EMPLOYMENT RELATED ABUSE

Lack of access to economic resources is the single largest barrier to a victim who seeks to leave an abusive relationship.⁶⁶ Victims may be prevented from participating in the labor market, or sabotaged at their workplaces.⁶⁷ Abusers are known to stalk or harass victims at work, and to send threatening e-mail or voice-mail messages that may cause the immigrant victim to be fired, or force her to leave her job for safety reasons. Furthermore, many illegal and undocumented immigrant victims are forced by their abusers to work illegally without being allowed to share in the monetary compensation associated with employment.

SOCIAL ISOLATION

Abusers may attempt to isolate their victims by prohibiting them from escaping, seeking help, and developing support systems, or maintaining the victim’s existing support systems.⁶⁸ The abuser may restrict the victim from using the phone,⁶⁹ prohibit her from going to work or school,⁷⁰ make her depend on him for transportation, limit the victim’s contact with family or friends,⁷¹ or prevent her from attending social activities.

Battered immigrants may be even further susceptible to social isolation due to the fact that many are far from any supportive community of family and friends.⁷² To ensure isolation, an abuser might prevent a victim from learning English, or from having contact with people who speak English. A linguistic barrier minimizes a victim’s ability to access health care, social services, domestic violence programs, immigrant rights agencies, law enforcement, and the courts.⁷³ Further, abusers often aggravated this sense of isolation by threatening to have their victims deported if they attempted to avail themselves of outside assistance or support.

SEXUAL ABUSE

⁶⁴ Mary Ann Dutton, *Understanding Woman’s Response to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1206 n.70 (1993).

⁶⁵ LETI VOLPP, WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE 6 (1995).

⁶⁶ Mary Ann Dutton 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, 295-96 (2000); see generally Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 WM. & MARY J. WOMEN & L. 597, 617-21 (2001).

⁶⁷ A study of domestic violence survivors found that seventy four percent of employed battered women were harassed at work by their partner. FAMILY VIOLENCE PREVENTION FUND, THE WORKPLACE GUIDE FOR EMPLOYERS, UNIONS, AND ADVOCATES (1998), available at <http://www.endabuse.org/resources/facts/Workplace.pdf>. According to an earlier study, twenty percent of all employed battered women lose their jobs because of abuser harassment at the workplace. Susan Schechter & Lisa T. Gray, *A Framework for Understanding and Empowering Battered Women*, in ABUSE AND VICTIMIZATION ACROSS THE LIFE SPAN 242 (Martha Straus ed., 1988).

⁶⁸ See, e.g., *People v. Humphrey*, 921 P.2d 1 (Cal. Rptr. 2d 1996); see also Ruth Jones, *Guardianship for Coercively Controlled Battered Women: Breaking the Control of the Abuser*, 88 GEO. L.J. 605 (2000).

⁶⁹ See, e.g., *Harshbarger v. Harshbarger*, No. 92-CA-111, 1993 WL 221269 (Ohio Ct. App. June 11, 1993) (considering husband’s prevention of wife from talking on the phone for more than twenty minutes a factor in finding that he had committed extreme cruelty).

⁷⁰ FAMILY VIOLENCE PREVENTION FUND, DOMESTIC VIOLENCE IN CIVIL COURT CASES 23 (1992).

⁷¹ See CHARLES EWING, BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AND LEGAL JUSTIFICATION 9-10 (1987). Nearly half of the women studied were forbidden by their batterers to have personal friends or have friends in the home. A husband’s refusal to allow his wife to invite her relatives to visit constitutes extreme cruelty. See, e.g., *Gazzillo v. Gazzillo*, 379 A.2d 288 (N.J. 1977); *Harshbarger*, 1993 WL 221269.

⁷² Leslye E. Orloff et al., *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L.Q. 313, 314 (1995).

⁷³ *Id.* at 317.

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Sexual abuse encompasses both the criminal legal definition of sexual assault, requiring elements of lack of consent, force or threat of force, and sexual penetration, as well as a broad range of behavior, including unwanted sexual conduct engendered through more subtle or implicit threats.⁷⁴

Rape, sexual assault, and any unwanted sexual contact are crimes that constitute battery. In some VAWA self-petitioning cases, immigration attorneys, advocates, judges, and DHS adjudicators make the mistake of treating cases of emotional abuse, in which sexual abuse is also present, as extreme cruelty cases and not battery cases. When sexual abuse is present and can be proven through the victim's affidavit and other evidence, the VAWA petition can be based on battery and extreme cruelty.

IMMIGRATION-RELATED ABUSE

When immigration related abuse is present in a relationship it is a key indicator of extreme cruelty.⁷⁵ Abusers of immigrant women often threaten to report their victims to the immigration authorities.⁷⁶ When immigrant women are dependent on their partners for legal immigration status, are undocumented, or have a vulnerable non-permanent immigration status,⁷⁷ the power of immigration related abuse is accentuated.⁷⁸ Immigrant women are placed in the untenable position of having to choose between living with ongoing and escalating abuse or taking action to stop the abuse and risking deportation. Others believe that they will be turned away from help by social services, health care and the justice system because they are non-citizens.⁷⁹

POSSESSIVENESS AND HARASSMENT

Possessiveness and harassment also provide important evidence of extreme cruelty. Possessiveness may or may not be apparent to those around the abuser and/or victim. An abuser may be jealous and possessive of the victim.⁸⁰ The abuser might accuse the victim of infidelity and of attempts to attract other men.⁸¹ Courts have ruled in family law cases that such behaviors can, in certain circumstances, constitute extreme cruelty. An abuser may open the victim's mail;⁸² call the victim frequently at home and at work or drive or loiter around the victim's home, work, or shelter;⁸³ constantly write letters to the victim;⁸⁴ contact the victim's friends, family, or employer;⁸⁵ interrogate children or other family members; stalk the victim or victim's friends, family, and co-workers;⁸⁶ chase the victim's car;⁸⁷ or file frivolous legal actions against the victim.⁸⁸

⁷⁴ Mary Ann Dutton, *The Dynamics of Domestic Violence: Understanding the Response from Battered Women*, 68 FLA. B.J. 24, 25 (1994).

⁷⁵ Giselle Aguilar Hass, Mary Ann Dutton & Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSES 93, 105 (2000); see also Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95, 108 (2002).

⁷⁶ See Leti Volpp, WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE 6 (1995).

⁷⁷ Examples include student visas that can be violated by working, and work visas tied to a particular employer.

⁷⁸ Hass et al., *supra* note 72, at 105.

⁷⁹ *Id.*

⁸⁰ In a survey of 234 physically abused women, seventy-three percent experienced excessive jealousy and possessiveness. Diane R. Follingstad et al., *The Role of Emotional Abuse in Physically Abusive Relationships*, 5 J. FAM. VIOLENCE 101, 113 (1990).

⁸¹ Courts dealing with divorce cases have recognized false accusations of infidelity as extreme cruelty. See, e.g., *Keenan v. Keenan*, 105 N.W.2d 54 (Mich. 1960) (holding that grounds for divorce exist where a husband falsely accuses his wife of adultery); *Mark v. Mark*, 29 N.W. 2d 683 (Mich. 1947).

⁸² *Knuth v. Knuth*, No. C1-92-482, 1992 WL 145387 (Minn. Ct. App. June 30, 1992).

⁸³ See *Boniek v. Boniek*, 443 N.W.2d 196, 198 (Minn. Ct. App. 1989).

⁸⁴ See *State v. Sarlund*, 407 N.W.2d 544, 546 (Wis. 1987).

⁸⁵ *Id.*

⁸⁶ States have recognized stalking as a ground for issuing a civil protection order. See, e.g., N.J. STAT. ANN. §§ 2C:25-19 and 2C:12-10 (West 2005); N.M. STAT. ANN. § 40-13-2-C-9 (LexisNexis Supp. 1993); OKLA. STAT. ANN. TIT. 22, § 60.1 (West 2003); R.I. GEN. LAWS § 11-59-2 (2003). Stalking is generally defined as the intentional commission of more than one act which reasonably causes a victim to fear serious bodily injury. U.S. DEP'T OF JUSTICE OFFICE OF JUSTICE PROGRAMS, STRENGTHENING ANTISTALKING STATUTES, NCJ 189192 (2002), available at <http://www.ovc.gov/publications/bulletins/legalseries/bulletin1/ncj189192.pdf>. Every state has passed an anti-stalking law criminalizing this behavior. *Id.* A 1996 study estimated that over one million women are stalked every year. PATRICIA TJADEN AND NACY THOENNES, STALKING IN AMERICA: NATIONAL VIOLENCE AGAINST WOMEN SURVEY (1998), available at http://www.ncvc.org/src/main.aspx?dbID=DB_NVAW587.

⁸⁷ See *Christenson v. Christenson*, 472 N.W.2d 279, 280 (Iowa 1991).

⁸⁸ See *Johnson v. Cegielski*, 393 N.W.2d 547 (Wis. Ct. App. 1986).

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Like possessiveness, open harassment is destructive to a victim's peace of mind and security. Through open harassment, the abuser publicly demonstrates his control over the victim. Harassment can humiliate a victim by portraying her as weak and subordinate. Public humiliation may also be a culturally based form of extreme cruelty, particularly among cultural groups that highly value privacy.

General Filing Procedures and Practice Pointers

Self-petitioners must complete and file DHS Form I-360 (Petition for Amerasian, Widow or Special Immigrant) and include all supporting documentation. Forms are available at www.uscis.gov, in person at a DHS office, by phone at 1-800-870-3676, or by mail. For sample documents used in filing a VAWA self-petition, see the ASISTA website.⁸⁹

Send self-petitions by certified return receipt mail to:

U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001

Practice Pointer:

While there are no longer any filing fees for VAWA self-petitions, fees are required for work authorization and adjustment of status to lawful permanent residency applications.⁹⁰ Low income victims can apply for waivers of these fees and all fees associated with a VAWA self-petition.⁹¹

Self-petitioners should keep a copy of everything they submit to the DHS, including the application, accompanying documents, and the proof of mailing. **Do not send original birth certificates, legal documents, or photographs with the petition. Send copies.** Within a few weeks after mailing the application and fees, the self-petitioner should receive an acknowledgement or Notice of Receipt.

Practice Pointer:

Battered immigrant women often seek help at shelters. Therefore, shelter workers are in the best position to help battered immigrants begin gathering the necessary documents and information for their self-petition. Immigration attorneys helping clients with VAWA self-petitions should work with shelter workers or a domestic violence advocate. These advocates will help the attorney and client develop the case affidavit and properly document the full history of violence, controlling behavior, and emotional abuse. A shelter worker or domestic violence advocate can also help create a safety plan for your client. The plan may include providing a safe space for the collected information and documents to prevent the papers from being found and destroyed by the abuser.

An attorney working with a self-petitioner should make sure to:

- Collect all necessary details of the client's story by asking open-ended questions through a series of interviews. Advocates can collect this information for the attorney.

⁸⁹ <http://www.asistaonline.org/vawa.asp>.

⁹⁰ U.S. CITIZENSHIP & IMMIGRATION SERVS., USCIS SETS FINAL FEE SCHEDULE TO BUILD AN IMMIGRATION SERVICE FOR THE 21ST CENTURY (2007), <http://www.uscis.gov/files/pressrelease/FinalFeeRulePressRelease052907.pdf> (last visited Feb. 23, 2008).

⁹¹ Section 201(d)(7) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 Public Law 110-457 (December 23, 2008) created fee waivers for all filings related to or arising in connection with a VAWA self-petition, VAWA cancellation, VAWA suspension of deportation, U visa or T visa case from filing through adjustment of status to lawful permanent residency. Removing mandatory non-waivable fees greatly increases access to immigration relief for immigrant victims of violence against women.

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- Obtain the draft affidavit the advocate developed in collaboration with the client and organize it in a format that will be most effective for the adjudicator.
- Collect affidavits and other documents corroborating the existence of domestic violence and a good faith marriage.
- Index and summarize supporting documents by elements of proof so DHS examiners may easily understand which documents support which elements of proof and how.
- Include a cover letter providing a road map through the case, using bullets or a similar technique to maximize reader-friendliness.

The Self-Petitioner's Affidavit

The self-petitioner's personal affidavit is the most important piece of evidence; it is the first document that most VAWA adjudicators review, and should, if done well, support a finding that the applicant is credible.

The affidavit should provide as much detail as possible in the applicant's own words. The affidavit is essentially the story of the client's relationship with her spouse, and should explain why she is entitled to relief pursuant to the seven factors identified above. Likewise, the affidavit should be written in a personal, humanizing manner, thus better eliciting the reader's sympathy. The affidavit should address each element of proof. The attorney can recognize the affidavit and reword certain passages if they are unclear, but should not write the affidavit and should not use legal terminology. Attorneys and advocates should organize the victim's affidavit in chronological order, making it easier for the adjudicator to understand the development of the relationship and the history and patterns of abuse. This can be done while still keeping the story as much as possible in the victim's own words.

In addition to all the eligibility requirements, immigration officials look for consistency in the affidavit. It is important to include dates, places, and detailed descriptions of events only when the petitioner is certain that the information is correct. When inconsistencies arise between the affidavit and supporting documentation, the affidavit should address the inconsistency. For example, a victim might have denied to a hospital worker that her injuries were caused by domestic violence. The affidavit should acknowledge this inconsistency and explain why she did not reveal to the hospital staff the cause of her injuries. Immigration adjudicators are trained in recognizing domestic violence and should understand the legitimate safety-related reasons why a battered woman may not reveal the domestic violence to a health-care provider. However, failure to explain the inconsistency could call her credibility into question.

The affidavit should include:

- The client's full name, place, and date of birth
- Proof of good faith marriage: including details regarding how the client and her spouse met, how the relationship developed, why and when they decided to get married and details about the wedding. It should also provide a description about their daily lives (who paid the bills, who prepared meals, cleaned the house, took care of the children) and information about their social life together.
 - If the marriage was arranged, it should explain how the marriage was consistent with the practices of either the client's or her spouse's culture.
- Residence with the abusive spouse/parent: The affidavit should state when, where, and for how long the petitioner resided with the abuser, and the nature of the relationship while living together.
- Information about the self-petitioner's children: It should also state where and when the client had children, and any plans to have children with her husband, whether she has children from other

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relationships that she wants to include in her self-petition, and when and where these children were born.

- Citizenship or Lawful Permanent Resident status of abusive spouse or parent: It should also include any information she has about her abusive spouse's status, U.S. citizenship, or lawful permanent resident status. This may include a statement that she had seen his passport or green card, or information about his passport or Alien number; or statements made by the abusive spouse or parent to others about his citizenship or resident status.
- A description of how and when the physical and/or psychological abuse began, and the client's fears, hopes, and other feelings about it. Descriptions of the abuser's use of intimidation, economic abuse, isolation, immigration-related abuse, and sexual abuse to exert power and control over her and perpetuate extreme cruelty.
- A description of the incidents in which the spouse harmed the petitioner and/or her children and his tendencies to attempt to control her. Any threats should be described. So should attempts to get help and the results when she did, or her fear to ask for help. Also include observations, reactions, and physical and emotional injuries. Her fear of reporting the abuse to other people or to the police should be explained, including any attempts to seek help both through formal service providers (police, shelter, courts, hospitals, social service agencies) and informal methods (talking to friends, family members, community members, leaders, elders, or clergy).
- It should state the petitioner's relationship with his family and their role (if any) in the abuse, including whether they pressured the client not to report the abuse to the police.
- It should describe the petitioner's fears for her own personal safety, the safety of her children, or that of her family.
- Good Moral Character: A petitioner who has no arrests should clearly state this in her affidavit. She should also discuss her involvement in community, faith-based organizations, her children's school, and support groups. A petitioner with any arrests or convictions should immediately be referred to an immigration attorney with experience working on criminal law and domestic violence issues.
- At the end of the declaration, it is important to include the following phrase:

“I affirm, under penalty of perjury, that all the foregoing statements are true to the best of my knowledge.” (the Petitioner's signature and the date should follow the statement).

Affidavits from Witnesses and Advocates

1) Corroborating witness affidavits: if possible these should be obtained from:

a) Witnesses to the abuse or the effects of the abuse: The applicant should describe incidents where the witness:

- was present during the incident;
- saw or heard an assault, harassment, threat, act of humiliation, or other form of extreme cruelty;
- saw the battered immigrant's bruises or injuries; or
- was told by the battered immigrant about abusive incidents.

b) Domestic Violence Advocates, including shelter workers: Can attest to time spent in the shelter, involvement in programs or receipt of services for domestic violence victims and incidents of abuse disclosed by the woman to the advocate. Affidavits of this nature should include:

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- the advocate’s experience in the area of domestic violence and/or sexual assault (how long, in what capacity, how many clients served);
- what the petitioner told the advocate about the sexual assault/ domestic violence (including acts of psychological abuse);
- an assessment that the victim seemed credible to the advocate given her experience with victims of domestic violence/sexual assault;
- an explanation of why the treatment experienced by the victim amounts to domestic violence/sexual assault;
- any suggestions or recommendations the advocate provided to the petitioner (safety-planning measures, counseling resources, or any other information related to the domestic violence/ sexual assault she had experienced).

c) Psychologists, counselors or mental health workers: (if the applicant attended counseling) Can explain the abuse disclosed by the applicant, and assert that the woman’s behavior follows patterns to be expected of someone who has been abused by a partner. Affidavits of this nature should include:

- the number of years the mental health worker has worked in the field;
- the number of battered women the mental health worker has treated or seen;
- the number of counseling visits by the self-petitioner.

d) Co-workers, religious leaders, neighbors, and friends: Can describe any abuse they witnessed and/or describe their observations about how the abuse has affected the victim and her children. Affidavits of this nature should include:

- the length of time they have known the self-petitioner;
- any knowledge they have about the marital relationship, including documentation of the courtship and/or marriage;
- the fact that the victim and abuser resided together;
- information about any abusive (both physical and emotional) incidents they witnessed;
- a description of any injuries sustained by the self-petitioner or her children that they are aware of as well as any other effects, psychological or emotional, of the abuse on the immigrant victim and her children;
- information about any help they offered the immigrant victim, and
- any concerns/fears for themselves, the victim or her children the witness may have.

e) Affidavits of Children: When children are self-petitioners, or have witnessed abuse, they can file their own affidavit in support of their mother’s self-petition. While these affidavits can be useful to the case, preparing them can traumatize the children. It is therefore recommended that only older children be asked to prepare affidavits. It is further recommended that children who have witnessed or experienced domestic violence be referred to counseling and treatment. Those involved in counseling can be assisted by their mental health treatment providers in preparing their affidavits.

Checklist of Suggested Supporting Documents

The regulations interpreting VAWA recommend the submission of certain types of documents with the self-petition.⁹² However, DHS is required to consider “any credible evidence.”⁹³ The suggested evidentiary documents provided in this section are meant to serve as a guide. These documents are not an exhaustive list of the types of evidence that may be offered to support a petition under VAWA. Petitioners do **NOT** need to

⁹² See 8 C.F.R. § 204.2(c) (2007).

⁹³ See 8 C.F.R. § 204.4 (2007); INA § 204(a)(1)(H), 8 U.S.C. § 1154(a)(1)(H) (2000); see also U.S. CITIZENSHIP & IMMIGRATION SERVS. MEMORANDUM FROM PAUL VIRTUE, EXTREME HARDSHIP AND DOCUMENTARY REQUIREMENTS INVOLVING BATTERED SPOUSES AND CHILDREN (Oct. 16, 1998).

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provide all the documents listed below, these are examples of evidence an applicant may provide.

1) What additional evidence should accompany the application?

In addition to properly completing the self-petition, Form I-360, and preparing the victim's and witness' affidavits, the petitioner should prove each element of her VAWA case through accompanying documentation whenever possible. The types of additional evidence that can be submitted to support a VAWA self-petition include the following items, listed by element of proof:

a) Marriage to the abuser:

The following documents are acceptable as proof of marriage:

- a marriage certificate;
- self-petitioner's affidavit stating the fact of the marriage, when and where the ceremony occurred, and who performed the ceremony; and/or
- affidavits by persons with knowledge of the marriage.

i) The self-petition must be filed within two years of divorce: where the self-petitioner is divorced from the abuser, the petition must be filed within two years of the date the divorce became final. The following should be submitted:

- a divorce order establishing the date the divorce became final;
- an affidavit from the self-petitioner detailing the battery or extreme cruelty and its connection to the divorce;
- other evidence of battery and extreme cruelty, including any protection order issued for her or her children (including any court papers she filed seeking the protection order which outline the abuse in the relationship)⁹⁴ medical records, affidavits from health, mental health or domestic violence service providers documenting domestic violence in the marriage.

ii) Marriage in case of bigamy, divorce or death: If the self-petitioner is not legally married to the abuser because of the abuser's bigamy, she may still qualify if she can prove that she believed she legally married the abuser.⁹⁵ The following forms of evidence may be used:

- marriage certificate;
- marriage license application;
- photographs of the wedding ceremony;
- affidavits from persons attending the wedding ceremony; and/or
- an affidavit from self-petitioner stating facts supporting why she believed she legally married the abuser, and why she believed her marriage was valid.

iii) Widow of a U.S. citizen who died within the past two years: If the self-petitioner was the spouse of an abusive U.S. citizen (not permanent resident) who died within the past two years, the victim can still file a self-petition.⁹⁶ The following documents must be provided:

- marriage certificate;
- death certificate of the U.S. citizen spouse; and
- Proof of U.S. citizenship (including, U.S. passport, birth certificate, or naturalization certificate).

b) Children filing for VAWA:

⁹⁴ Review all official documents submitted in support of the self-petition for consistency with the self-petitioner's affidavit. The self-petitioner should explain any inconsistencies with her affidavit in a cover letter prepared by an attorney.

⁹⁵ INA § 204(a)(1)(A)(iii)(II)(aa)(BB), 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(BB) (2000)(relating to U.S. citizens); INA § 204(a)(1)(B)(ii)(II)(aa)(BB), 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(BB) (2000)(relating to lawful permanent residents).

⁹⁶ INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa), 8 U.S.C. § 1154 (a)(1)(B)(ii)(II)(aa)(BB) (2000).

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i) A child who files a VAWA self-petition must prove that s/he is the natural child, stepchild, or adopted child of a U.S. citizen or permanent resident.⁹⁷ There is no longer a requirement that they reside with their abusive parent for 2 years for abused adopted children.⁹⁸ The relationship may be proven with:

- a birth certificate or other document establishing that the child is under 21 years of age listing the parents' names;
- the parents' marriage certificate;
- if the child was born out of wedlock, documents showing legitimation (legal acknowledgment or other evidence or proof that the country where the child was born does not distinguish between children born in and out of wedlock)⁹⁹
- for adopted children, an adoption decree, or an affidavit of adoption and evidence of the abuser's legal custody.¹⁰⁰

ii) Stepchild of the abuser: In case of an abusive stepparent, the abused child's relationship with the abusive stepparent may be proven by submitting:

- if either the child's natural parent or step-parent were previously married, evidence that prior marriage or marriages have been terminated;
- child's birth certificate proving the child's relationship with his/her natural parent;
- the marriage certificate of the natural parent and the stepparent.

iii) Children included in the self-petition: A self-petitioner who wants to include her child/children in the self-petition must prove her parent/child relationship with the children. The children must also be under the age of 21 to be included in the application. The following documentation must be included for each child:

- child's birth certificate, listing the names of the child's parents along with an English translation, where applicable;
- if the self-petitioner is the child's father:
 - Marriage license or certificate documenting the child's parents were married;
 - Evidence of the child's legitimation; or
 - Evidence of a bona fide parent-child relationship (pictures, letters).

c) Good-faith marriage

A self-petitioner must be able to demonstrate that her marriage to an abusive spouse was entered into in good faith and not as a means to circumvent immigration laws. In addition to the evidence listed in the "Residence with the Abuser" section below, a victim may submit the following:

- description in the self-petitioner's affidavit of courtship, wedding (include pictures), shared residence, and shared experiences (one affidavit describing this and the abuse or other relevant information can be submitted);
- insurance policies listing her spouse, joint leases, jointly filed income tax returns, bank accounts, and other evidence of shared household and financial obligations;

⁹⁷ INA § 204 (a)(1)(A)(iv) and (B)(iii), 8 U.S.C. § 1154(a)(1)(A)(iv) and (B)(iii) (2000).

⁹⁸ This requirement appears in old versions of the Immigration and Nationality Act, but no longer applies. Adopted children can also apply for lawful permanent residency directly.

⁹⁹ These requirements vary depending on the laws of the country where the child was born. See generally INA § 101(b)(1)(C), 8 U.S.C. § 1101(b)(1)(C) (2000); In re Obando, 16 I. & N. Dec. 278 (B.I.A. 1977); In re Cabrera, 21 I. & N. Dec. 589 (B.I.A. 1996); In re Martinez, 21 I. & N. Dec. 1035, 1038 (B.I.A. 1997).

¹⁰⁰ Section 805(d) of the Violence Against Women Act of 2005 most recently modified the requirements for abused adopted children removing the two year custody and residency requirement for abused adopted children. § 101 (b) (1) (E) (i) of the INA; 8 U.S.C. 1101 (b) (1) (E) (i) (2008). PLEASE NOTE that this statutory language overrules the existing section of the Code of Federal Regulations on abused adopted children.

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- birth certificates of their children;
- photographs of the wedding;
- photographs of the self-petitioner with her spouse and other family members, preferably taken on different dates and at different locations;
- letters or cards exchanged with her spouse and between her family members and spouse;
- names, addresses and phone numbers of people who knew the abuser and the applicant as a married couple;
- photo IDs with the applicant's married name;
- letters from her employer or healthcare provider stating that she changed her name or listed the abuser as an emergency contact.

d) Residence with the abuser

A self-petitioner is not required to be residing with the abuser at the time of filing, but she must prove that she resided with the abuser at some point in time during the marriage. No specific length of residency with the abuser is required. Evidence may include:

- self-petitioner's affidavit describing residency with the abuser;
- joint auto, health or life insurance, tax returns or bank accounts, lease agreements, property deeds, or rent receipts with both names on them;
- employment or school records that list the names of both the applicant and the abuser at the same residence;
- letters or cards addressed to both the applicant and the abuser at the same residence;
- utility bills, medical records, credit card bills, magazine subscriptions in both names or to each spouse at the same address;
- an affidavit of the landlord, apartment manager or neighbors at the address where the couple lived attesting to their residence at that location.

e) Evidence demonstrating the abusive spouse or parent is a U.S. citizen or lawful permanent resident:

A self-petitioner must prove that her/his spouse or parent is a U.S. citizen or lawful permanent resident. The following is a list of documents that can be used to prove the abuser's U.S. citizenship or lawful permanent resident status:

- abuser's birth certificate indicating birth in the United States;
- abuser's naturalization certificate, green card, 'A' number, or any DHS document indicating immigration status;
- abuser's U.S. passport or passport number;
- a copy of the I-551 stamp in the abuser's passport, indicating lawful permanent resident status; or
- upon request, DHS will attempt to electronically verify abusers' citizenship or immigration status from their computerized records.¹⁰¹

f) Battery or extreme cruelty during the marriage

One of the most important elements of a VAWA self-petition is proof that battery or extreme cruelty took place. VAWA does not explicitly require any particular quantity of abuse. Proof of one incident of battery or extreme cruelty is legally sufficient.¹⁰² Sexual Assault is battery and extreme cruelty under this

¹⁰¹ 8 C.F.R. § 204.1(g)(3) (2007). This can be useful if the abuser is a naturalized citizen, a lawful permanent resident, or a U.S. born citizen who previously filed an immigration case for the self-petitioner or a child.

¹⁰² VAWA self-petitioners and VAWA cancellation of removal applicants need not prove any specific amount of abuse. In contrast, battered immigrants who can only file for U visas (crime victim visas) must prove that they suffered substantial physical or mental harm as a result of criminal activity. This is a much higher standard. Refer to Chapter 3 of this manual, "Alternative Forms of Relief", for more information on U visas.

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definition.¹⁰³ It is strongly recommended, however, that advocates and attorneys work with immigrant victims to include as much of the history of battery and extreme cruelty in the victim's affidavit as possible. Advocates and attorneys should provide evidence for as many incidents as possible to establish a pattern of violence and extreme cruelty. Types of documentation to obtain are:

i) Affidavit of the battered woman telling her story: It is important to focus on the facts of the violence or cruelty, mentioning each incident separately, and in chronological order, listing when each incident occurred, and describing the applicant's fears and injuries (both physical and psychological), and the effect that each abusive incident had on any children.

The history of power, control, and extreme cruelty should also be described as part of the chronology. The effect that this pattern of power and control had on the self-petitioner and her children should be discussed. The affidavit should establish that the self-petitioner is credible, explain why she is entitled to relief, and elicit the reader's sympathy.

Types of evidence establishing abuse or extreme cruelty have occurred are:

- Restraining orders or civil protection orders that are obtained in any state, along with the pleadings (petition/affidavit) signed by the self-petitioner that were filed with the court in the civil protection order case.
- Police reports, records of phone calls to the police, or police visits to the couple's address. This may include phone calls to the police registering a complaint, a log of police runs made to the couple's address, and copies of all tapes of calls to the police for help.
- Photographs of the sustained injuries that have been taken by the police, family, advocate, victim's attorney, or the victim herself. If possible, for larger injuries, take a photo holding a ruler next to the injury so that the fact-finder can ascertain the size and scale of the injury. Include the woman's face within every photo, or take a full-body photo and then close ups. The local police station may also take photos. Include an affidavit of the person who took the photograph about their observations, including the time and date the photograph was taken, the fact that they took the photograph, and an attestation to the accuracy of the photograph compared to the photographer's in-person observations of the bruises. Take several extra photos to be sure you will end up with one of good quality that will be useful to the case.
- Photographs of damaged property If a batterer has damaged any property during a violent incident, such as ripping clothes, smashing sentimental objects, pulling phone cords out of the wall, etc., if possible. The damaged property should be photographed where it was damaged, and then the object should be collected and retained. The woman's affidavit should state that the applicant still has the object and that it can be inspected by the DHS.
- Corroborating witness affidavits for each incident of abuse where another person was present, or from witnesses who saw or heard an assault or threat, saw the victim with bruises or injuries, or was told by her about abusive incidents close to the time they occurred. Reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel are very helpful.
- Medical records If the account told by the victim to the health professional differs from her true story (e.g. the victim initially reported falling down the stairs rather than revealing the truth that she had been battered), the applicant's affidavit and the cover letter from the attorney or advocates to DHS must address and explain any inconsistencies between the two

¹⁰³ 8 C.F.R. §204.2(c)(1)(vi) (2007).

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stories. Advocates and attorneys should develop a specific HIPPA compliant doctor/patient privilege-waiver form to obtain copies of her medical records and mental health treatment records. Such a waiver should limit the scope of release to obtaining medical documentation for use solely in a victim's VAWA self-petition. VAWA confidentiality provisions, in conjunction with a limited release waiver, protect against the records being used in any family or criminal court proceeding without the victim's consent.

- Criminal court records if a batterer was arrested or convicted for any act of violence or destruction of property relating to the applicant (certified copies if possible); a victim's own statements to police or prosecutors may be released to her by the prosecutor's office for this purpose.
- Domestic violence program or shelter records or affidavits attesting to the time the victim spent in the shelter, and the incidents of abuse disclosed to shelter workers. If the applicant attended counseling sessions, records indicating her attendance should also be added.

g) Good moral character

Convictions for certain crimes, as well as other actions, will bar a self-petitioner from establishing good moral character.¹⁰⁴ To demonstrate good moral character, the petitioner should present:

- information in her affidavit attesting to her own good moral character, lack of a criminal record, and involvement in her community, church, or her children's school;
- local police clearance or state-issued background checks from each locality or state in the United States in which the victim has resided for six months or more during the three years immediately preceding the petition date. A police clearance or "good conduct" letter can be obtained from the local or county police department in each locality where she lives or has lived. If the victim has moved, these letters can be requested in writing, normally with proof of identity and a small fee for the search. Further, it may be necessary to obtain similar clearance letters from foreign countries if the victim lived abroad during the requisite time period;
- an explanation of why police clearances or background checks cannot be safely obtained or are not available, submitted along with other evidence of good moral character with her affidavit;
- affidavits from responsible persons who can knowledgeably attest to her good moral character and lack of criminal record may also be submitted; and/or
- **if the battered immigrant was arrested, accused or has committed a crime, it is absolutely essential to consult with an immigration lawyer prior to filing the self-petition in order to assure that the victim's affidavit and/or documentary submissions adequately address and mitigate the consequences such past criminal activity may have on a finding of good moral character. Failure to do so could place the victim at strong risk of deportation.**

h) Petitioner's residence in the U.S. or abroad:

To file a self-petition, victims must either reside in the United States, have been abused in the United States, or be the abused spouse of a U.S. government employee, or member of the military working or stationed abroad. Self-petitioners residing in the United States may provide proof of current U.S. residence through the following documents:

- employment or school records;

¹⁰⁴ INA § 101(f); 8 U.S.C. § 1101(f) (2000).

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- a property deed with her name on it, rent or mortgage receipts, utility bills, insurance policies, hospital or medical records;
- birth certificates of children born in the United States and children's school records;
- cards or letters addressed to her address, affidavits by her neighbors, landlords, and friends attesting to her residence in the United States; and/or
- the self-petitioner's affidavit stating her residence in the United States. No specific length of the residence in the United States is required as long as the victim resides in the United States at the time of filing.

Some self-petitioners may file from abroad if the abusive spouse or parent falls into one of three categories:

1) Where the abusive spouse or parent is an employee of the U.S. government:¹⁰⁵ Evidence should include:

- spouse's or parent's employment records, pay stubs, employment identification card, and/or
- other documentation of the spouse's or parent's employment with the U.S. government;

2) Where the abusive spouse or parent is a member of the uniformed services¹⁰⁶: Evidence should include:

- Spouse's or parent's military identification card,
- military orders, pay stubs,
- DD-214, or
- documentation that the self-petitioner is a dependent member of the U.S. military of uniformed services;

3) Victims subjected to battery or extreme cruelty in the United States who are currently residing abroad or filing from abroad should submit documentation showing the abuse occurred in the United States.

i) Loss of citizenship or lawful permanent resident status:

In cases where the abuser lost or renounced his immigration or citizenship status within the past two years, the abuse victim can still file the self-petition if she demonstrates that the loss of status or renunciation of citizenship or lawful permanent resident status is related to the domestic violence.¹⁰⁷

j) When an abuser has renounced his citizenship or given up his lawful permanent resident status:

Self-petitioners should submit evidence proving that the domestic violence predated the renunciation. This is particularly important in cases where lawful permanent resident abusers flee the country after the issuance of a protection order or a warrant in a criminal case.

Obtaining Lawful Permanent Residence Under VAWA

Obtaining lawful permanent residence status through VAWA involves two steps. First, DHS must approve the VAWA self-petition. Once approved, the applicant must apply for lawful permanent residence. There are two ways in which an applicant can obtain her green card, which is proof of lawful permanent residence. These are: 1) adjustment of status and 2) consular processing.

¹⁰⁵ The abuse can occur in the United States or abroad.

¹⁰⁶ The abuse can occur in the United States or abroad. Uniformed services include all branches of the United States military, the Coast Guard, and the Public Health Service.

¹⁰⁷ INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb), 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(bbb) (2000) (relating to loss of U.S. citizenship); INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa), 8 U.S.C. § 1154§ 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa)(2000) (relating to loss of lawful permanent resident status).

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“**Adjustment of status**” is the procedure for obtaining a green card for applicants presently in the United States. Applicants submit their application for lawful permanent residence to local DHS District Offices and await an interview with DHS examiners.

“**Consular processing**” is the procedure for obtaining legal permanent resident status for those who are not in the United States, and those who do not qualify to adjust status (obtain lawful permanent residency) within the United States. Applicants who fall into this category must apply for immigrant visas abroad at a U.S. consulate in their home country.

Battered immigrants with approved self-petitions can obtain their green cards through adjustment of status. They are not required to leave the U.S. and apply for immigrant visas at U.S. consulates abroad.¹⁰⁸ Recent legislation enabled a battered immigrant to adjust her status while in the United States, provided that she has an approved self-petition, that she is not inadmissible,¹⁰⁹ and that she has a visa immediately available to her. This chapter provides basic information on adjustment of status as a means of obtaining lawful permanent residence for battered immigrants with approved VAWA self-petitions.

ELIGIBILITY FOR LAWFUL PERMANENT RESIDENCY

Being a permanent resident, also called having a ‘green card,’ means that a person has lawful permission to live and work in the United States. Permanent residents can petition for spouses and children to come to the United States. When someone has an approved VAWA Self-petition and they want to become a permanent resident they must apply to change their immigration status to that of a permanent resident, this is called “adjustment of status.” Not everyone who has an approved self-petition is eligible to obtain lawful permanent resident status immediately following the approval of the petition. However, **VAWA self-petitioners who are married to, or are the minor unmarried children (under age 21) of U.S. citizens, are considered “immediate relatives”** and can file for lawful permanent residency as soon as their VAWA self-petitions are approved.

VAWA self-petitioners who are married to (or the children of) **lawful permanent residents** are subject to a “visa quota” system. VAWA self-petitioners who are married to, or the children of **US citizens** do not fall into the visa quota system. The visa quota system is a limit on the number of people that can apply for and be granted permanent residency. The visa quota system limits the number of visas provided for relatives of lawful permanent residents and in some cases U.S. citizens. Since there are more people each year seeking to become lawful permanent residents than there are available visas, immigrants restricted by the visa quota system must wait for a visa to become available before they can adjust their status and become lawful permanent residents. This process can take up to seven years, and is dependent on the applicant’s country of origin, and when they filed their self-petition with the DHS.¹¹⁰

HOW TO APPLY FOR LAWFUL PERMANENT RESIDENCY

Once a self-petitioner qualifies for to apply to become a lawful permanent resident she must submit the “application for adjustment of status”¹¹¹ and supporting documents, along with the filing fee (listed below) to the local DHS District Office with jurisdiction over the applicant’s residence. The documents can be downloaded on the United States Citizenship and Immigration Services (USCIS) website at <http://www.uscis.gov> (go to Immigration Forms), or can be ordered by calling 1(800) 870-3676. The self-petitioner and any dependents will each need:

- Form I-485, Application for Adjustment of Status

¹⁰⁸ All VAWA self-petitioners may adjust their status in the United States under INA §§ 245(a) and (c) without paying the \$1000 fine. Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1506(a), 114 Stat. 1464, 1527 (2000).

¹⁰⁹ To enter the United States or be granted lawful permanent residence, an applicant must not fall within any of the inadmissibility grounds listed in INA section 212(a). See INA § 212(a), 8 U.S.C. § 1182(a) (2000).

¹¹⁰ If the abusive spouse previously filed a family-based I-130 petition for the immigrant victim, that petition date may be used to shorten the wait time.

¹¹¹ “Adjustment of Status” is the DHS legal phrase that means to apply for and attain legal permanent resident status.

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- the filing fee of \$315 (\$215 if under 14 years of age), or fee waiver request for form I-485 (a sample fee waiver request is included as a appendix to this chapter);
- copy of birth certificate, along with an English translation (**translations of foreign documents must be certified by a competent translator**),¹¹²
- Form G325A, biographic information;
- a copy of the Form I-797, Notice of Action (showing that the VAWA self-petition, Form I-360 was approved);
- Form I-693, Medical Examination of Aliens Seeking Adjustment of Status (plus supplemental vaccination form);
- 2 color photos taken within the last 30 days (see form I-485 instructions for more details);
- Form I-765 Application for Employment Authorization, if the self petitioner doesn't already have a work permit, along with a filing fee of \$175 or fee waiver request;
- \$50 for fingerprints for applicants 14 to 79 years of age;
- proof of entry into the U.S., if applicable (i.e. I-94 card and copy of passport).

Supplementary forms to include (depending on the circumstances) are:

- Form G-28, Notice of Entry as Appearance as Attorney or Accredited Representative, if the victim is represented
- Form I-131, Application for Travel Document, along with the filing fee of \$165, if the petitioner needs to travel outside the United States while the application is processed, **but note that applicants who have been out of immigration status should generally not travel because they will be barred from returning to the United States and adjusting their status.**¹¹³
- Form I-601, Application for Waiver of Grounds of Excludability with filing fee of \$250, if the applicant is inadmissible for one of the reasons described below.

Each form has its own filing fee. The applicant will need to add up the total cost of the fees for each form and submit that total cost with her application package. If the applicant is unable to pay the filing fees, she can submit a fee waiver request along with her residency application. All fees can be waived except for the fingerprinting fee. After the I-485 Application for Adjustment of Status and supporting documents are filed, DHS will alert the applicant of the date, time and location of a personal interview with a DHS examiner. Battered immigrants should be fully prepared for their adjustment of status interviews by having all of the necessary documents available in order to avoid further delaying the adjustment process.¹¹⁴ Items to bring to the interview:

- original birth certificate of each applicant;
- original marriage certificate;
- certified copy of Final Dissolution of Marriage (i.e. divorce decree) for all previous marriages, prior to marriage with the batterer, as well as the divorce decree if she is now divorced from the batterer within two years;
- original passport, if available;
- original I-94 card, if available;
- certified copies of arrest report and final court disposition (if applicable);
- copy of the approved self-petition – I-360;

¹¹² 8 CFR 204.1(f)(3) (2007).

¹¹³ Before any applicant travels outside the United States, she must consult with an immigration attorney regarding the potential consequences. An applicant who has been out of status for more than six months can be barred from receiving any immigration benefits, including lawful permanent residence, for three years. If an applicant has been out of status for over one year, she will be barred from receiving any immigration benefits for ten years. INA § 212(a)(9)(B)(i), 8 U.S.C. 1182 (a)(9)(B)(i) (2000).

¹¹⁴ The battered immigrant may be able to attend the interview without an attorney or other representative if there are no inadmissibility problems or other foreseeable complications. It is preferable, however, to have an attorney or accredited representative attend and help the battered immigrant prepare for the interview.

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- copy of DHS memorandum stating procedures that the local DHS office must follow if they have any questions about the self-petition;¹¹⁵
- evidence of the applicant's income and financial resources – tax returns, pay stubs, letter from employer, proof of receipt of child or spousal support, court orders for child support, etc.

The objective of the adjustment interview is for the DHS examiner to decide if the applicant is admissible as a lawful permanent resident. Whenever possible, the immigrant victim should consult with an immigration attorney before the adjustment interview to identify potential problems or grounds for inadmissibility. To determine admissibility, the immigration official will assess the application and ask the applicant questions relating to the required medical exam, any criminal history, or any grounds of inadmissibility that may apply, such as fraud, “public charge”, or violations of the immigration laws. In addition, the interview serves as an opportunity for the applicant to update information on the application and correct any minor errors on the forms.

If the application for adjustment of status is approved, meaning the applicant is now a legal permanent resident, the Department of Homeland Security will mail a green card to the self-petitioner.

If the application to become a legal permanent resident is denied, the applicant may be placed in removal (deportation) proceedings before an Immigration Judge. The applicant may still be eligible to apply for adjustment of status again before an Immigration Judge.

GROUND OF INADMISSIBILITY

Grounds of inadmissibility are a list of reasons that render an applicant ineligible for permanent residence or admission to the United States (meaning the DHS or an Immigration Judge must generally deny the application for lawful permanent residence).¹¹⁶ Examples of the grounds are listed in Section 212(a) of the Immigration and Nationality Act and include the following:

- Health-related grounds (including HIV and tuberculosis);
- Criminal and related grounds;
- Security and related grounds;
- Public charge grounds;
- Fraud/misrepresentation;
- Aliens previously removed (deported) from the United States
- Other immigration law violations;
- Communist/ totalitarian party membership;
- Terrorist activity.

WHEN IS INADMISSIBILITY DETERMINED?

Identify and assess possible grounds for inadmissibility as early as possible in the VAWA case. Battered immigrants may have committed disqualifying criminal acts or have used unlawful means to obtain immigration benefits in the past, such as entering the country with fraudulent documents or misrepresenting facts in a benefit application. Immigration attorneys working with battered immigrants should determine any questions of inadmissibility prior to filing the self-petition or adjustment of status application.¹¹⁷ A trained immigration attorney or advocate should represent any self-petitioner in this situation. The attorney or advocate should also have experience assisting victims of domestic violence. With proper case development, battered immigrants may be able to obtain waivers for many inadmissibility grounds.

¹¹⁵ A copy of this memo is included in the Appendix to this manual.

¹¹⁶ Inadmissibility and excludability are synonymous. See INA § 212(a), 8 U.S.C. § 1182(a) (2000) (classes of aliens ineligible for visas or admission) for a complete listing of grounds for inadmissibility.

¹¹⁷ If that is not possible, such as in instances where the self-petition must be filed before the abuser divorces the self-petitioner, or the abused immigrant fails to mention details that may make her inadmissible, the immigration attorney should use the time waiting for approval of the self-petition to assess admissibility issues.

SPECIFIC GROUNDS OF INADMISSIBILITY

Immigrants may be inadmissible for a variety of reasons. This section will outline the more typical grounds identify the relevance to cases of battered immigrant women, and discuss in more detail the grounds most likely to affect battered immigrants when they apply for lawful permanent resident status: misrepresentation, health-related, and public charge. **Immigrants with criminal histories are also potentially subject to different criminal grounds of inadmissibility.** There are waivers available for many types of crimes, and VAWA self-petitioners can qualify for special waivers if there is a connection between the crime and the domestic violence. The criminal grounds of inadmissibility and available waivers are discussed separately in detail in Chapter 19 of this manual.

VIOLATIONS OF IMMIGRATION LAWS

Immigrants who have previously been removed or deported from the United States also face inadmissibility problems, and should be referred to an immigration attorney before applying for relief. An applicant who has been deported and then re-entered the United States illegally or who has been unlawfully present in the country for more than 180 days (and has left or now leaves the United States) will be inadmissible and ineligible for lawful permanent residence.¹¹⁸ There are waivers available and exceptions if there is a connection between the immigration violation and the abuse, but a battered immigrant in this situation **should not apply for adjustment of status without first consulting with an attorney.**¹¹⁹ For example, waivers are available for victims of sexual assault, domestic abuse, and trafficking from sanctions for failing to voluntarily depart.¹²⁰ Also, DHS can waive prior removal determinations for immigrant victims to help prevent the summary reinstatement of a prior removal order.¹²¹

MISREPRESENTATION¹²²

When an individual is seeking to obtain an immigration benefit such as permanent residence, any false statements made to an immigration official will have an impact on their immigration status.¹²³ Qualified battered immigrants can be barred from becoming lawful permanent residents due to misrepresentation and can even be removed (deported) from the United States.

Battered immigrants, who have, through fraud or willful misrepresentation made to an immigration official, sought to obtain admission into the United States, a visa, or any benefit under immigration laws, are inadmissible unless they acquire a waiver – referred to as a “212(i) waiver.”¹²⁴ Battered immigrants who falsely represent themselves as U.S. citizens **to any government official** are also inadmissible. There was no waiver for this form of misrepresentation and, in certain circumstances, may be subject to criminal prosecution.¹²⁵ There is a waiver to inadmissibility for misrepresentation by a VAWA self-petitioner based on hardship to US citizen children.¹²⁶

¹¹⁸ An applicant who has been out of status for more than six months and subsequently left the United States can be barred from reentering the United States and receiving any immigration benefits (including lawful permanent resident status), for three years. If an applicant has been out of status for over one year and leaves, she will be barred from receiving any immigration benefits for ten years. INA § 212(a)(9)(B)(i), 8 U.S.C. 1182 (a)(9)(B)(i) (2008).

¹¹⁹ See INA §§ 212(a)(9)(B)(iii)(IV) and (v), 8 U.S.C. § 1182(a)(9)(B)(iii)(IV) and (v) (2000); INA § 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii) (2000).

¹²⁰ INA § 240A(b)(2), 8 U.S.C. 1229b

¹²¹ INA §§ 240A(b)(4) and (5), 8 U.S.C. 1229b

¹²² Adapted from American Bar Ass'n Comm'n on Domestic Violence, CHAPTER SEVEN: OBTAINING LAWFUL PERMANENT RESIDENCY, *in* DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (2000).

¹²³ INA § 212(a)(6)(C) covers two separate but related grounds of inadmissibility for immigrants who make or have made false claims in the past. These are separate from the criminal grounds for removal under INA § 237(a)(3) or the civil penalties for document fraud under INA § 274C. Carefully review all three sections.

¹²⁴ INA § 212(a)(6)(C)(i); 8 U.S.C. § 1182(a)(6)(C)(i) (2000).

¹²⁵ INA § 212(a)(6)(C)(ii); 8 U.S.C. § 1182(a)(6)(C)(ii) (2000).

¹²⁶ 212(a)(6)(C)(iii) authorizes a waiver to this under INA 212(i)(1), which says:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States Citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States would result in extreme hardship to the citizen or lawfully resident

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Adjustment and immigrant visa applications contain questions that the DHS examiner will ask and review at the interview. The questions asked can relate to how the petitioner entered the U.S. and where she lives and works. It is important for immigration attorneys and advocates to discuss any prior misrepresentation of facts with their battered immigrant clients to ensure that prior information has been consistently represented and does not lead to misrepresentations being made at the adjustment or visa interview.

The passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996¹²⁷ (IIRAIRA) created a new ground for inadmissibility, preventing battered immigrants from adjustment of their status if they misrepresented themselves as U.S. citizens. The most common form of misrepresentation is when an immigrant signs an I-9 form for employment and checks a box indicating that he/she is a U.S. citizen. Those immigrants that falsely signed the form before September 30, 1996, are not inadmissible; however, those that signed after September 30, 1996, may be found to be inadmissible.¹²⁸ Advocates and attorneys should warn their clients not sign any forms or make statements that falsely identify themselves as U.S. citizens.

WHAT QUALIFIES AS A MISREPRESENTATION?

Immigration attorneys can best advise battered immigrant clients on whether an action constitutes “misrepresentation” or “fraud” as it has been defined in immigration law. In the context of immigration law, three issues need to be analyzed to determine whether a battered immigrant has committed fraud:

1. Was there misrepresentation?
2. If so, was it “willful?”
3. Did the misrepresentation involve a fact or issue “material” to the application or benefit being sought?

It is important to understand the context of the statements made, including: at what time in the immigration proceeding was the statement made; to whom it was made; under what conditions was the statement made; and was the misrepresentation made under oath. Advocates should work closely with battered immigrants to develop a trusting relationship so that advocates can learn whether battered immigrants have had any prior contact with DHS agents, and, if so, what information was provided at that time. If a battered immigrant has made prior false statements to DHS officials, her VAWA case could be complicated and may require an additional waiver application to be filed at the time of adjustment. Victims in this situation should be referred to an immigration attorney who can work with the advocate in preparing the victim’s self-petition and subsequent adjustment application.

It is important to understand that battered immigrants may not remember making false claims, or may not consider their actions to be misrepresentation. It is, therefore, important for attorneys to ask comprehensive questions with regard to any interactions their client might have had with immigration authorities, and any forms they may have signed, or false documents they may have used. If the attorney has any doubts, the attorney should do a fingerprint check¹²⁹ or Freedom of Information Act (FOIA) Request.¹³⁰

MISREPRESENTATION WAIVER

For battered immigrants, a 212(I) waiver of inadmissibility is available for some misrepresentations of material fact.¹³¹ In order to qualify for this waiver in non-VAWA cases, the applicant must be married to – or be the son or daughter of – a United States citizen or lawful permanent resident. The DHS or State Department official must determine that the decision to refuse admission to the immigrant would cause “extreme hardship”

spouse or parent of such an alien or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the aliens' United States citizen, lawful permanent resident, or qualified alien parent or child.

¹²⁷ Pub. L. No. 104-208 Div. C, 110 Stat. 3009-546 (1996) [hereinafter IIRAIRA].

¹²⁸ This provision was added by IIRAIRA § 344(a) and only applies to misrepresentations made on or after September 20, 1996.

¹²⁹ Fingerprints can be taken at police stations or other accredited locations and sent to FBI CJIS Division, Attn: Special Correspondence Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306.

¹³⁰ To file a FOIA request, the battered immigrant’s attorney should send DHS form G-639 to the local Department of Homeland Security (DHS) office. There is no fee. Go to the DHS website at www.dhs.gov for more information.

¹³¹ See INA § 212(i), 8 U.S.C. § 1182(i) (2000). A false claim to United States citizenship makes an immigrant excludable. There is no waiver for this exclusion. See *id.*

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to the U.S. citizen or lawful permanent resident spouse or parent involved.¹³²

In a VAWA self-petitioning case, however, the petitioner must show that denying the waiver will cause extreme hardship to either the victim or U.S. citizen or lawful permanent resident parent or child. This standard, however, can be extremely difficult to meet.

HEALTH-RELATED GROUNDS

If an immigrant has a communicable disease that is significant to public health, including HIV and tuberculosis, they will not be eligible for admittance to the United States.¹³³ They will also be inadmissible if they do not prove that they received vaccinations for certain diseases.¹³⁴ Those immigrants with certain physical or mental disorders,¹³⁵ and substance abuse problems, can also be inadmissible.¹³⁶ Any immigrants in such a situation should be referred to an immigration attorney before they file any papers with immigration authorities. There is a waiver available for communicable diseases such as HIV and tuberculosis, and VAWA self-petitioners can apply for the waiver and do not need to have a U.S. citizen or permanent resident spouse, child, or parent “qualifying relative” (normally a requirement for waiver applicants).¹³⁷

“PUBLIC CHARGE”¹³⁸

Immigrants, including battered immigrants, are ineligible to become lawful permanent residents of the United States if they are likely to become “public charges.”¹³⁹ Deciding whether an immigrant is likely to become a public charge relies, not on the prior receipt of public benefits, but rather the prospect of future reliance on public benefits if the victim were allowed to remain in the United States.¹⁴⁰

An immigrant who is applying for lawful permanent residency under a family-based visa petition is required to file an affidavit of support from the immigrant’s sponsor.¹⁴¹ Sponsors must financially support the petitioner by maintaining him/her at an annual income of not less than 125 percent of the federal poverty guides. VAWA-approved self-petitioners, on the other hand, are not subject to the requirement of obtaining an affidavit of support. They must, however, demonstrate that they are not likely to become public charges. In order to prove this, **self-petitioners should demonstrate during the adjustment interview that they will be employed and are not receiving benefits and/or have other means to support themselves and their children**. While battered immigrants should be able to demonstrate employment, unlike other applicants for admission, they are not required to prove that their earnings plus any support place them at 125 percent of the poverty line.¹⁴²

IIRAIRA granted access to public benefits to VAWA approved self-petitioners (See Chapter 5 regarding benefits and services available to battered immigrants). Battered immigrants should take advantage of this emergency economic option if needed, but should only rely on benefits for as short a period of time as possible. Once a battered immigrant’s self-petition has been approved, her attorneys or advocate should assist her in obtaining employment authorization. Temporary receipt of public assistance should not result in an approved self-petitioner being denied lawful permanent residence as a public charge. This is particularly true

¹³² See INA § 212(i), 8 U.S.C. § 1182(i) (2000).

¹³³ These diseases include chancroid, granuloma inguinale, gonorrhea, syphilis, human immunodeficiency virus (HIV) infection, leprosy (infectious), lymphogranuloma venereum, and tuberculosis (active). 42 C.F.R. § 34.2-3 (2007).

¹³⁴ These include mumps, measles, rubella, polio, tetanus, diphtheria toxoid, pertussis, influenza type B, and hepatitis B. See INA § 212(a)(1)(ii), 8 U.S.C. § 1182(a)(1)(ii) (2000).

¹³⁵ See INA § 212(a)(1)(iii), 8 U.S.C. § 1182(a)(1)(iii) (2000).

¹³⁶ See INA § 212(a)(1)(iv), 8 U.S.C. § 1182(a)(1)(iv) (2000).

¹³⁷ See INA § 212(g)(1), 8 U.S.C. § 1182(g)(1) (2000).

¹³⁸ INA §212(a) (4) (B); Inadmissibility and Deportability on Public Charge Grounds; Field Guidance on Deportability and Inadmissibility on Public Charge Grounds; Proposed Rules and Notice, 64 Fed. Reg. 28676 (May 26, 1999); USCIS materials linked through:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543fd1a/?vgnextoid=c215c9f3743ff010VgnVCM100000ecd190aRCRD&vgnnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD>

¹³⁹ See INA § 212(a)(4)(A), 8 U.S.C. § 1182(a)(4)(A) (2000).

¹⁴⁰ See INA § 212(a)(4)(A), 8 U.S.C. § 1182(a)(4)(A) (2000).

¹⁴¹ See INA §§ 212(a)(4) and 213A, 8 U.S.C. §§ 1182(a)(4) and 1183A (2000).

¹⁴² INA § 212(a)(4)(C), 8 U.S.C. § 1182(a)(4)(C) (2000).

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when she has obtained work authorization and employment by the time of her scheduled adjustment interview. VAWA 2000 recognized the desperate need for battered immigrants to be able to earn a living and clarified that a VAWA self-petitioner's use of public benefits specifically made available under IIRAIRA did not make the immigrant a public charge, or jeopardize her eligibility to receive lawful permanent residence.¹⁴³

After Becoming a Lawful Permanent Resident

Once the battered immigrant has obtained her green card, or lawful permanent residence card, she has the right to live and work in the United States. A lawful permanent resident is still subject to immigration laws. She should not, for example, stay out of the United States for more than six months, because she may be found to have "abandoned" her permanent resident status and be denied re-entry to the United States.¹⁴⁴ Certain criminal acts can also render a lawful permanent resident deportable. *See Chapter 19 of this manual for a discussion of these crimes.* It should be noted, however, that a lawful permanent resident has substantial due process rights associated with her ability to remain in the United States. For instance, the only person who can take away an individual's lawful permanent resident status is an Immigration Judge after a full and fair hearing. Threats from abusers to have the battered immigrant deported may continue once she has obtained her green card, but the battered immigrant should be informed that the threats carry no weight so long as she does not violate criminal or immigration laws.

Children in the United States who have been listed as dependents on the battered immigrant's I-360 can apply for adjustment to lawful permanent resident status along with their parent. A VAWA-approved lawful permanent resident's children living outside of the United States may file for an immigrant visa through a process referred to as "following to join." This will allow children (under the age of 21) to obtain an immigrant visa (lawful permanent residence) and join the VAWA self-petitioner in the United States.¹⁴⁵ The lawful permanent resident needs to file an I-824 petition with the DHS office that initially adjudicated her adjustment application. The immigration authorities will then contact the U.S. consulate where the children are living and provide the consulate with verification that the battered immigrant self-petitioner's status was adjusted. The lawful permanent resident should contact that consulate and inform them that they will be receiving verification of the adjustment from DHS and that the children will be applying for immigrant visas as "following to join" dependents. The consular officials will most likely grant "following to join" visas based upon proof of the parent-child relationship and should not question, questioner-open or otherwise disturb the underlying VAWA case in any way. The consulate will inform the lawful permanent resident as to what procedures must be followed in order for the children to receive their visas.

Conclusion

- Once DHS approves the VAWA self-petition, the self-petitioner can apply for lawful permanent resident status through adjustment of status and continue living in the United States.¹⁴⁶
- A self-petitioner abused by a U.S. citizen can file immediately for adjustment to lawful permanent resident status.
- Victims abused by lawful permanent resident spouses or parents will have to wait (often up to 5 to 7 years) to adjust their status.
- During their wait for adjustment, battered immigrants with approved self-petitions receive "deferred action status," meaning that ICE agrees not to deport them and DHS provides them with work

¹⁴³ Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1505(f), 114 Stat. 1464, 1526; INA § 212(p), 8 U.S.C. § 1182(p) (2000).

¹⁴⁴ See INA § 101(a)(13)(C), 8 U.S.C. § 1101(a)(13)(C) (2000).

¹⁴⁵ See 8 C.F.R. § 40.1(a)(1) (2007).

¹⁴⁶ See INA §§ 245(a) and (c), 8 U.S.C. §§ 1255(a) and (c) (2000). Unlike other out-of-status immigrants, battered immigrants should not have to rely on INA § 245(i) or pay a \$1000 penalty. *See id.*

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authorization.

- Those waiting for a status adjustment cannot travel abroad.
- It is extremely important to advise immigrants to follow all U.S. laws, including immigration, tax, and criminal laws, while waiting for a status adjustment.
- It is important for battered immigrants to disclose to advocates and attorneys information about previous encounters with ICE/DHS, any arrests or criminal convictions, and any false representations or claims of U.S. citizenship. If any of these issues exist, refer the battered immigrant to an immigration lawyer trained in VAWA immigration cases.¹⁴⁷
- Advocates should collaborate with immigration lawyers, particularly in cases where inadmissibility waivers are needed, to ensure that immigrant victims successfully obtain permanent resident status.

¹⁴⁷ For assistance locating a VAWA-trained immigration attorney, contact the National Immigrant Women's Advocacy Project by phone at (202) 274-4457, or by email at niwap@wcl.american.edu. You may also contact the Advanced Special Immigrant Survivors Technical Assistance (ASISTA) project online at www.asistaonline.org, or by phone at (515) 244-2469.

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National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

Immigration Relief for Child Sexual Assault Survivors¹²

By Joanne Lin and Colleen O'Brien

This chapter provides basic information on various immigration remedies available to child survivors of sexual abuse and/or assault. This chapter will cover: (1) VAWA (“Violence Against Women Act”) self-petitioning; (2) VAWA cancellation of removal and suspension of deportation; (3) Special Immigrant Juvenile status (“SIJ”); (4) U-visas/interim relief; (5) T-visas; and (6) asylum. For purposes of this chapter, a “child” is a person under the age of 21, whether married or unmarried. Please note that this chapter is designed to be a basic primer, and not a comprehensive guide, on immigration relief available to child sexual assault survivors.

VAWA SELF-PETITION: IMMIGRATION RELIEF FOR YOUTH SUBJECTED TO PARENTAL ABUSE OR SPOUSAL ABUSE

VAWA self-petitions are available for children who have been abused by their U.S. citizen or permanent resident parent. The abusive parent³ can be a biological parent, a stepparent so long as the child was less than 18 at the time

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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 INA §101(b)(1), 8 U.S.C. §1101(b)(1).

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of the marriage creating the stepparent-stepchild relationship, or an adoptive parent so long as the child was less than 16 at the time of adoption.⁴ It is immaterial whether the child was born in or out of wedlock.⁵

The Department of Homeland Security (“DHS”) has interpreted abuse broadly, and has recognized sexual abuse, sexual assault, physical abuse, emotional abuse, mental abuse, financial abuse, or cruelty to constitute abuse.⁶ Thus there is no evidentiary requirement of police reports, medical records, or child welfare intervention to demonstrate the abuse. However, while the child’s declaration attesting to the abuse is generally the primary form of evidence, corroborating declarations would strengthen the self-petition.

A child self-petitioner must also demonstrate that he or she lived with the abusive parent.⁷ Shared residence includes any periods of child visitation. There is no requirement regarding the duration of cohabitation, and there is no requirement that the child and parent lived together in the U.S. or that they live together at the time of application.

As a general rule, VAWA self-petitioners must currently reside in the U.S. However, several important exceptions exist for self-petitioners residing outside the U.S. A child living outside the U.S. can self-petition if the abusive U.S. citizen parent is a U.S. government employee, a member of the uniformed services, or abused the child in the U.S.⁸ Thus, for example, a child who was abused by their U.S. citizen parent who is stationed on a U.S. military base abroad would be eligible to self-petition.

The final eligibility requirement is that the child must be a person of “good moral character.”⁹ All children 14 years of age or older must submit a local police clearance or state-issued criminal background check for every area in which he or she has lived for six or more months during the three years immediately preceding the filing of the self-petition.¹⁰ While there is no statutory definition of good moral character, there are actions that presumptively bar an individual from demonstrating good moral character.¹¹ When a child is placed in delinquency proceedings or criminal proceedings, it is imperative that the child’s attorney consults with an immigration expert immediately. Without appropriate counsel, the child victim could admit to allegations that will render him or her ineligible for VAWA and lead to the child’s deportation.

The general rule is that children must submit a self-petition with United States Citizenship and Immigration Service (CIS) before their 21st birthday. However, Congress recently extended the filing deadline to the child’s 25th birthday so long as he or she shows that: (1) he or she was abused by his or her parent prior to turning 21; and (2) the abuse was at least one central reason for the filing delay.¹²

Child abuse survivors are not the only children eligible to self-petition under VAWA. Teens married to an abusive U.S. citizen or permanent resident may be eligible to self-petition. In addition to the eligibility requirements mentioned above, teens petitioning as abused spouses must prove that they entered into a good faith marriage, i.e., they did not marry for the sole purpose of obtaining permanent resident status.¹³ To make this showing, the teen must submit documentary evidence demonstrating cohabitation with the abusive spouse, commingled finances, and/or shared family connections.

In addition, children who were not directly abused by their parent or spouse may qualify to be included in their parent’s self-petition. If the child has a parent who was abused by the child’s other parent (including stepparents) and the abusive parent is a U.S. citizen or permanent resident, then the abused parent can self-petition under VAWA

⁴ Prior to the enactment of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”), children abused by adoptive families had to reside in the adoptive home for at least two years. VAWA 2005 removed this residency requirement, thereby ensuring that children, who are abused by an adoptive parent or by a family member of the adoptive parent residing in the same household, can self-petition under VAWA. See INA 101(b)(1)(E)(i), 8 U.S.C. 1101(b)(1)(E)(i).

⁵ INA §101(b)(1), 8 U.S.C. §1101(b)(1); 8 C.F.R. §204.2(e)(1)(v).

⁶ 8 C.F.R. §204.2(c)(vi).

⁷ INA §204(a)(1)(A)(iv), 8 U.S.C. §1154(a)(1)(A)(iv); 8 C.F.R. §204.2(e)(1)(v).

⁸ INA §204(a)(1)(A)(v)(I), 8 U.S.C. §1154(a)(1)(A)(v)(I).

⁹ Defined at INA §101(f), 8 U.S.C. 1101(f); 8 C.F.R. §204.2(e)(1)(vii).

¹⁰ 8 C.F.R. §204.2(c)(1)(i)(F).

¹¹ INA §101(f), 8 U.S.C. §1101(f); 8 C.F.R. §204.2(e)(2)(v).

¹² INA §204(a)(1)(D)(v), 8 U.S.C. §1143(a)(1)(D)(v).

¹³ INA §204(a)(1)(A)(iii)(II)(aa)(BB), INA §204(a)(1)(B)(iii)(II)(aa)(BB). 8 C.F.R. §204.2(c)(1)(ix).

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and the child derives the same immigration benefit and can also become a VAWA self-petitioner. In order to be included in an abused parent's VAWA self-petition, the child must be under age 21 at the time the abused parent self-petitions.

The approval of the VAWA self-petition is the first step for the child to attain permanent residency. If the abusive parent is a U.S. citizen or was a U.S. citizen and lost the citizenship due to a domestic abuse incident, then the child can immediately apply for permanent residency. If the abusive parent is a permanent resident or was a permanent resident and was deported due to a domestic abuse incident, then the child will be forced to wait, sometimes many years, before applying for permanent residency. Permanent residency allows the child to remain in the U.S. indefinitely unless he or she commits acts that render him or her deportable or abandons his or her residency. Permanent residency also qualifies the child for federal financial aid, in-state tuition, and many federal and state public benefits. Finally, permanent residency allows the child to work for an employer in any job, subject to child labor laws.

VAWA CANCELLATION OF REMOVAL OR SUSPENSION OF DEPORTATION: IMMIGRATION RELIEF FOR CHILDREN SUBJECTED TO PARENTAL ABUSE OR SPOUSAL ABUSE

Children who are placed in immigration removal or immigration deportation proceedings may be eligible for VAWA cancellation of removal (formerly known as suspension of deportation). VAWA cancellation of removal can only be granted by the Executive Office of Immigration Review which includes the immigration courts and the Board of Immigration Appeals. CIS does not have jurisdiction to adjudicate such cases. Therefore, VAWA cancellation is only available to those people whom the DHS has already initiated removal proceedings.

By law, a child placed in removal or deportation proceedings must have been served with a Notice to Appear or Order to Show Cause charging his or her removability or deportability. The child is guaranteed due process which includes the right to be heard by an immigration judge, the right to counsel (albeit no right to paid counsel), the right to testify and present evidence in support of relief from removal or deportation, and the right to appeal (to the Board of Immigration Appeals).

In order to qualify for VAWA cancellation of removal, the child must demonstrate that: (1) he or she has been abused by a U.S. citizen or permanent resident parent or spouse; (2) he or she has been physically present in the U.S. for a continuous period of at least three years immediately preceding the date of the cancellation application¹⁴; (3) he or she has been a person of good moral character¹⁵ during the three-year period; and (4) removal would result in extreme hardship to the child, his or her children, or his or her parent. In addition, the child must not be inadmissible under INA 212(a)(2) or 212(a)(3)¹⁶; not deportable under INA 237(a)(1)(G), 237(a)(2), 237(a)(3), or 237(a)(4),¹⁷ subject to the domestic violence waiver provided under INA 237(a)(7); and must not have an aggravated felony conviction.¹⁸

Like VAWA self-petitioning, VAWA cancellation of removal and suspension of deportation are available to both children abused by their U.S. citizen or permanent resident parent, and to children abused by their U.S. citizen or

¹⁴ A single absence from the United States of 90 days, or aggregate absences over 180 days, breaks continuity of physical presence. However, a VAWA cancellation applicant is not considered to have failed to maintain continuous physical presence if the absences from the U.S. States were connected to the domestic abuse. See INA §240A(b)(2)(B), 8 U.S.C. §1229b(b)(2)(B).

¹⁵ Defined at INA §101(f), 8 U.S.C. §1101(f).

¹⁶ These inadmissibility grounds include, but are not limited to, crimes involving moral turpitude, controlled substance violations, prostitution, commercialized vice, religious freedom violations, human trafficking, money laundering, espionage, sabotage, export violations, terrorist activity, totalitarian party membership, Nazi persecution, genocide, torture, extrajudicial killing, overthrow of U.S. government, and association with terrorist organizations. See INA §212(a)(2), 8 U.S.C. §1182(a)(2); INA §212(a)(3), 8 U.S.C. §1182(a)(3).

¹⁷ These deportability grounds include marriage fraud, crimes of moral turpitude, multiple convictions, high speed flight from immigration checkpoint, controlled substance violations, firearm convictions, espionage, sabotage, treason and sedition, failure to file change of address with immigration agency, falsification of documents, falsely claiming U.S. citizenship, export violations, endangering public safety or national security, overthrow of U.S. government, terrorist activities, Nazi persecution, genocide, torture, extrajudicial killing, religious freedom violations, and certain domestic abuse crimes. See INA §237(a)(2)-(4). There is a waiver for certain domestic abuse survivors. See INA §237(a)(7).

¹⁸ INA §240A(b)(2)(A)(iv), 8 U.S.C. §1229b(b)(2)(A)(iv).

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permanent resident spouse.¹⁹ A VAWA cancellation of removal or suspension of deportation applicant cannot include their child in their VAWA cancellation or suspension application. However, a child whose parent is granted VAWA cancellation or suspension shall be granted humanitarian parole into the U.S.²⁰ Children receiving this VAWA related parole are allowed to remain in the United States while their parent files an application for the child to receive lawful permanent residency through the regular family-based visa system.

Once a child is granted VAWA cancellation of removal or suspension of deportation, he or she becomes a permanent resident and enjoys all the privileges of permanent residency detailed in the previous section.

SPECIAL IMMIGRANT JUVENILE STATUS (“SIJ”): RELIEF FOR CHILDREN ABUSED BY A PARENT

SIJ status is an option for certain children who have been abused by their parents, whether inside or outside the U.S. Congress created SIJ status for undocumented children who have suffered parental abuse, neglect, or abandonment. SIJ status applicants must be under the jurisdiction of a juvenile court. In order to be eligible for SIJ status, a child must be declared a dependent of a juvenile court within the U.S. and be deemed eligible by that court for long-term foster care due to the abuse, neglect or abandonment.²¹ The jurisdiction of juvenile courts varies from state to state, but many states limit jurisdiction to children less than 18 years of age. The mechanisms for acquiring juvenile court jurisdiction depend on whether the DHS is already aware of the child’s presence in the U.S. In cases of children who have already been placed in immigration removal proceedings and are in the custody of the Office of Refugee Resettlement, the child’s attorney must obtain advance consent from DHS to bring the child’s case to juvenile court. This special consent requirement and the mechanism to obtain such consent can be burdensome.

In addition, a SIJ status applicant must have been the subject of administrative or judicial proceedings in which it has been determined that it would not be in the child’s best interest to be returned to his or her parent’s previous country of nationality or country of last habitual residence.²²

Once a child is granted SIJ status, he or she can immediately apply for permanent resident status. The child will, however, be precluded from ever filing a family visa petition on behalf of his or her parents.²³

U-visa: RELIEF FOR CHILD SEXUAL ASSAULT SURVIVORS WILLING TO ASSIST IN CRIMINAL INVESTIGATIONS OR PROSECUTIONS

The U-visa is available to child sexual assault survivors who are willing to assist U.S. law enforcement in a criminal investigation or prosecution.²⁴ The investigation or prosecution can be conducted by a federal, state, or local law enforcement official,²⁵ and there is no requirement that the investigation or prosecution result in a conviction. The child needs to show that he or she suffered substantial physical or mental abuse as a result of having been a crime victim²⁶ and that he or she possesses information concerning the criminal activity.²⁷ If the child is less than 16, the latter requirement can be met by the child’s parent, guardian, or next friend.²⁸

The child must show that he or she was the victim of one of the following crimes, or of attempt, conspiracy, or solicitation to commit one of the following crimes:²⁹

Rape

Kidnapping

¹⁹ INA §240A(b)(2)(A)(i)(II), 8 U.S.C. §1229b(b)(2)(A)(i)(II).

²⁰ INA §240A(b)(4)(A)(i), 8 U.S.C. §1229b(b)(4)(A)(i).

²¹ INA §101(a)(27)(J)(i), 8 U.S.C. §1101(a)(27)(J)(i).

²² INA §101(a)(27)(J)(ii), 8 U.S.C. §1101(a)(27)(J)(ii).

²³ INA §101(a)(27)(J)(iii)(II).

²⁴ INA §101(a)(15)(U)(i)(III), 8 U.S.C. §1101(a)(15)(U)(i)(III). 8 C.F.R. §214.14(b)(2) (2007).

²⁵ INA §101(a)(15)(U)(i)(III), 8 U.S.C. §1101(a)(15)(U)(i)(III). 8 C.F.R. §214.14(c)(2)(i) (2007).

²⁶ INA §101(a)(15)(U)(i)(I), 8 U.S.C. §1101(a)(15)(U)(i)(I). 8 C.F.R. §214.14(b)(1) (2007).

²⁷ INA §101(a)(15)(U)(i)(II), 8 U.S.C. §1101(a)(15)(U)(i)(II). 8 C.F.R. §214.14(b)(2) (2007).

²⁸ INA §101(a)(15)(U)(i)(II), 8 U.S.C. §1101(a)(15)(U)(i)(II). 8 C.F.R. §214.14(b)(3) (2007).

²⁹ INA §101(a)(15)(U)(i)(I); 8 U.S.C. §1101(a)(15)(U)(i)(I).

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Torture	Abduction
Trafficking	Unlawful criminal restraint
Incest	False imprisonment
Domestic violence	Blackmail
Sexual assault	Extortion
Abusive sexual contact	Manslaughter
Prostitution	Murder
Sexual exploitation	Felonious assault
Female genital mutilation	Witness tampering
Being held hostage	Obstruction of justice
Peonage	Perjury
Involuntary servitude	Slave trade

The crime must have occurred in the U.S. (including Indian country and military installations), territories, or possessions.³⁰ Alternatively, the crime must violate U.S. federal, state, or local law. Under the regulations, this means that the crime must be one that a U.S. court has jurisdiction to prosecute.³¹ For example, under federal law a U.S. tourist who violates a federal sex tourism statute by sexually abusing a child in abroad can be prosecuted in U.S. federal courts and, therefore, if there is a victim of that crime, the person, even if abroad may be eligible for a U-visa.

The scope of U-visa crimes extends beyond rape or sexual assault. Thus, a child sexual assault survivor who is also a victim of one of the other crimes listed in the statute, such as involuntary servitude, may qualify for a U-visa if the child is willing to assist U.S. law enforcement in an investigation or prosecution of the other crime of which he or she was a victim.

Unlike VAWA relief and SIJ status, the U-visa is not limited to children who are sexually assaulted by family members. The U-visa is available to all child sexual assault survivors, regardless of whether they were raped by their relatives, babysitters, nannies, child care providers, teachers, coaches, neighbors, clergy, classmates, boyfriends, girlfriends, or strangers, so long as the crime occurred in the U.S. or violated U.S. law.

For many children, the biggest hurdle to overcome in the U-visa application process is in obtaining a certification from a law enforcement official, prosecutor, judge, immigration official, or other federal or state authority attesting that the child is being, has been, or is likely to be helpful to a federal, state, or local criminal investigation or prosecution.³² Having contact with law enforcement can be stressful and traumatic for all victims, but especially for child victims. Furthermore, cooperating in a criminal investigation or prosecution may not be in a child's best interests.

Once a child is granted a U-visa, the child's spouse, children, parents, and unmarried siblings under 18 can join him or her in the U.S.

T-visa FOR VICTIMS TRAFFICKED INTO THE U.S.

The T-visa is similar to the U-visa in that both visas were designed to advance two goals: (1) to provide humanitarian protection to victims of serious crime; and (2) to assist U.S. law enforcement in investigating and prosecuting such crime. The T-visa is available to victims of a severe form of human trafficking, which is defined to cover:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

³⁰ INA §101(a)(15)(U)(i)(IV); 8 U.S.C. §1101(a)(15)(U)(i)(IV). 8 C.F.R. §214.14(b)(4) (2007).

³¹ 8 CFR §214.14(b)(4).

³² INA §214(p)(1), 8 U.S.C. §1184(p)(1). 8 C.F.R. §214.14(c)(2)(i) (2007).

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- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.³³

The “T” visa applicant must also demonstrate that he or she is physically present in the U.S., American Samoa, or the Commonwealth of the Northern Mariana Islands on account of human trafficking.³⁴ Likewise, the child must show that he or she would suffer extreme hardship involving unusual and severe harm if deported from the U.S.³⁵

If the T-visa applicant is 18 or older, he or she must comply with any reasonable request for assistance in the federal, state, or local investigation or prosecution of the trafficking.³⁶ The applicant can also meet this requirement by complying with any reasonable request for assistance in the federal, state, or local investigation of crime where trafficking acts were at least one central reason for the commission of that crime.³⁷ Child applicants less than 18 do not have to meet this requirement.³⁸ If the child is at least 18 and unable to meet this requirement due to psychological or physical trauma, he or she can request that the Secretary of Homeland Security exercise his or her discretion to waive this requirement.³⁹

Once a child is granted a T-visa, the child’s spouse, children, parents, and unmarried siblings less than 18 can join him or her in the U.S.

ASYLUM: RELIEF FOR CHILDREN SEXUALLY ASSAULTED IN THEIR COUNTRIES OF ORIGIN

For a child who suffered sexual abuse or assault in his or her country of origin, asylum or withholding of removal may be an option for relief. Asylum has its roots in international law. The child asylum applicant must demonstrate that he or she is unable or unwilling to return to his or her country of origin due to a well-founded fear of persecution on account of one of five grounds: race/ethnicity, religion, nationality, membership in a political social group, or political opinion.⁴⁰ Many U.S. federal courts have recognized that sexual abuse or assault constitutes persecution.

As a general rule, all asylum applicants need to file their applications within one year of first entering the U.S.⁴¹ Failure to meet this deadline will result in an automatic denial of the asylum claim, unless there have been (1) “extraordinary circumstances related to the delay in filing,” or (2) “changed circumstances” (e.g. in the applicant’s home country or in his or her own membership in a particular social group) that materially affected the application for asylum.⁴²

Unlike VAWA relief and SIJ status, which are available only to children who are abused by family members, asylum is an immigration option available to children sexually assaulted by non-family members. Examples of successful child asylum cases include street children raped by the police, gay or lesbian children raped by homophobic adults, ethnic minority children raped by gangs, and indigenous children raped by the military.

It is not enough for a child to show that he or she was sexually assaulted in his or her country of origin. In order to prevail in an asylum case, the child must show that he or she was persecuted either by the government of his or her country or origin or by others whom the government were unable or unwilling to control. If the child by him or herself did not suffer persecution in the past, the child will need to show that he or she has a well-founded fear of being persecuted in the future if forced to return to his or her country of birth. Examples of persecution involving

³³ 22 USC §7102(8).

³⁴ INA §101(a)(15)(T)(i)(II), 8 U.S.C. §1101(a)(15)(T)(i)(II). 8 C.F.R. §214.11(g).

³⁵ INA §101(a)(15)(T)(i)(IV), 8 U.S.C. §1101(a)(15)(T)(i)(IV). 8 C.F.R. §214.11(i).

³⁶ INA §101(a)(15)(T)(i)(III), 8 U.S.C. §1101(a)(15)(T)(i)(III). 8 C.F.R. §214.11(h).

³⁷ INA §101(a)(15)(T)(i)(III), 8 U.S.C. §1101(a)(15)(T)(i)(III). 8 C.F.R. §214.11(h).

³⁸ INA §101(a)(15)(T)(i)(III)(bb), 8 U.S.C. §1101(a)(15)(T)(i)(III). 8 C.F.R. §214.11(h).

³⁹ INA §101(a)(15)(T)(iii), 8 U.S.C. §1101(a)(15)(T)(iii).

⁴⁰ 8 U.S.C. §1101(a)(2); INA §101(a)(42).

⁴¹ 8 U.S.C. §1158(a)(2)(B); INA §208(a)(2)(B). 8 C.F.R. §208.4(a)(2).

⁴² 8 U.S.C. §1158(a)(2)(D); INA §208(a)(2)(D). 8 C.F.R. §208.4(a)(4).

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direct state actors include police, security forces, or military members. Examples of persecution where the state fails to control the persecutors include incidents where gangs, guerillas, or militia members sexually assault children.

In addition to the state action requirement, the asylum applicant must show that the past persecution or well-founded fear of future persecution is on account of his or her race/ethnicity, religion, nationality, political opinion, or membership in particular social group. It is not enough for a child to show that he or she was sexually assaulted by the police or military; the child likewise must prove that he or she was targeted for persecution because of one of those five grounds. Proving the nexus element (“on account of”) can be difficult for many children as they may not know or understand why they were persecuted.

Similarly, a Russian Jewish child who was sexually assaulted by skinheads could argue that the persecution was on account of her religion or race. A gay child who was raped by homophobic adults could argue that the persecution was on account of his membership in a particular social group (gay children). To prove membership in a particular social group, the child will need to show that he or she possesses some trait or characteristic that he or she cannot change (e.g., disability) or should not be compelled to change (e.g., homosexuality).

The state action requirement and the nexus requirement make asylum a difficult option for children who were raped by family members. Many incest cases never come to the attention of state authorities, and the child thus would have difficulty proving that the state failed to protect him or her from persecution. In addition, incest survivors may be unable to prove that the sexual assault was on account of one of the five grounds. Some federal courts, however, have recognized family to constitute a particular social group; therefore, if any other family members were sexually assaulted, the child could argue that he or she was persecuted on account of membership in a particular social group. It is critical to probe all the details and facts surrounding the incest claim, as the child is often unaware of the motivations and dynamics surrounding the incest. For example, a Roma child was raped by her Bulgarian stepfather, who called her “gypsy” and “whore” as he raped her. She was able to argue that he persecuted her on account of her ethnicity.

Children present unique issues, and it is critical that immigration lawyers collaborate with social workers and youth advocates when handling these cases. Below is a list of resources to aid advocates and attorneys working with child sexual assault survivors.

IMMIGRATION LEGAL RESOURCES AVAILABLE TO ADVOCATES AND ATTORNEYS WORKING WITH CHILD SEXUAL ASSAULT SURVIVORS

- **National Immigrant Women’s Advocacy Project** provides technical assistance on VAWA, asylum, “U” interim relief, and T-visa cases. 202/326-0040
- **ASISTA** provides technical assistance on VAWA, SIJ status, “U” interim relief, and T-visa cases. www.Asistaonline.org
- **Immigrant Legal Resource Center** provides technical assistance on VAWA, SIJ status, “U” interim relief, and T-visa cases. 415/255-9499 and www.ilrc.org.
- **U.S. Committee for Refugees and Immigrants** provides technical assistance on SIJ status cases. 202/797-2105.
- **Center for Gender and Refugee Studies** at the University of California, Hastings College of Law, monitors domestic violence asylum cases; summarizes current domestic and international case law, regulations, and standards particular to gender asylum; lists contact information for gender asylum experts; and provides individual case support. Phone 415-656-4791 <http://www.uchastings.edu/cgrs>
- Request a free **UNHCR Handbook on Procedures and Criteria for Determining Refugee Status** from UNHCR, 1775 K Street, N.W. Suite 300, Washington, DC 20006, email usawa@unhcr.ch or access the *Handbook* on the Internet at <http://www.unhcr.ch>

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

VAWA Cancellation of Removal¹²

By Rebecca Story, Cecilia Olavarria and Moira Fisher Preda

Introduction

Cancellation of removal³ (formerly suspension of deportation⁴) is a type of “waiver” that allows certain immigrants in deportation or removal proceedings to be granted permanent residence if they have established roots in the United States and meet other requirements.⁵ A special form of cancellation of removal for battered immigrants was created as part of the Violence Against Women Act (“VAWA”) and is called VAWA Cancellation of Removal.⁶ Cancellation can only be granted by an immigration judge once a battered immigrant has been placed in removal

¹ “This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.”

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 See INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2).

⁴ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996), (hereinafter IIRIRA) replaced “suspension of deportation” relief with “cancellation of removal,” which is similar to suspension but has stricter eligibility requirements.

⁵ See A.B.A. COMMISSION ON DOMESTIC VIOLENCE AND AYUDA, INC., *Chapter Eight: Cancellation of Removal*, in DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (2000).

⁶ When an applicant is granted VAWA cancellation, her child may be granted parole until the family-based petition filed by the battered parent on the child’s behalf can be approved. INA § 240A(b)(4); 8 U.S.C. § 1229b(b)(4).

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proceedings.⁷ This means that cancellation is not relief for which every battered immigrant woman can apply. She first must be charged by immigration authorities with an immigration violation – usually being unlawfully present in the United States or overstaying a visa – and ordered to appear before an immigration judge.

If an immigration judge grants the battered immigrant's application for cancellation of removal, the immigrant is granted lawful permanent residence. If the judge denies the application, the battered immigrant will be ordered removed from the United States.

Given the potential for deportation associated with applying for cancellation of removal before an immigration judge, it is important that immigrant victims of abuse find legal representation so they may effectively present a claim under VAWA if eligible. Applying for cancellation of removal is a complex process. No one should attempt to file a cancellation application without the assistance of an immigration attorney. In this regard, all immigrant victims of domestic violence and sexual assault placed in removal proceedings after being turned in or discovered by the immigration authorities must secure the assistance of an immigration attorney knowledgeable about VAWA.

This chapter provides basic information on VAWA cancellation of removal, lists the eligibility requirements that must be met by an applicant, and provides some suggested examples of evidence that an attorney or advocate may offer to meet each requirement. This chapter is designed to help advocates and attorneys who are not immigration attorneys identify immigrant victims who may be eligible for cancellation of removal. The information provided will also be useful to immigration attorneys who may not have experience with domestic violence, sexual assault, or incest cases. This chapter will help them to work in collaboration with advocates and other attorneys assisting immigrant victims. The most successful cancellation of removal cases are those in which advocates and civil attorneys support the efforts of the immigration attorney.⁸

Who is eligible for VAWA cancellation of removal?

The following immigrants qualify for VAWA cancellation of removal:

- A person who is an abused spouse, former spouse, or intended spouse⁹ of a U.S. citizen or lawful permanent resident;
- A person who is or was an abused child¹⁰ of a U.S. citizen or lawful permanent resident; and
- A person who is the non-abusive parent of a child who is or was subjected to domestic violence or extreme cruelty by a U.S. citizen or lawful permanent resident parent. The parent herself need not be abused.¹¹

The following are examples of battered immigrants who do not qualify to file a VAWA self-petition but might qualify for VAWA cancellation of removal:

- The parent of an abused child, regardless of the child's U.S. citizenship, who was never married to the child's abusive U.S. citizen or permanent resident parent;
- The abused spouse of a U.S. citizen or permanent resident spouse who has died or any abused children of a U.S. Citizen or permanent resident parent who has died over 2 years ago;
- An abused spouse who was divorced for over 2 years from the U.S. citizen or permanent resident abuser spouse;
- An abused stepchild whose immigrant parent has been divorced from the abusive parent for over 2 years;

⁷ Removal proceedings were called "deportation" proceedings before April 1, 1997. Some individuals who were in deportation proceedings before that date and are still in the U.S. may apply for suspension of deportation under VAWA, which has essentially the same requirements as cancellation of removal.

⁸ For a discussion on the benefits of collaboration, see Chapter 1 of this manual.

⁹ See INA § 101(a)(50); 8 U.S.C. § 1101(a)(50), for definition of "intended spouse." An immigrant victim can qualify for relief under VAWA even if the marriage is invalid due to the bigamy of the abusive spouse, provided the immigrant victim was unaware that her intended spouse was still married.

¹⁰ See INA § 101(b)(1); 8 U.S.C. § 1101(b)(1), for definition of child. A person who is now over the age of 21 yet who was abused before age 21 can also file for cancellation of removal based on the abuse.

¹¹ The abusive parent need not be the natural parent of the abused child and may be a step-parent. Further, the parent of an abused child may file for VAWA cancellation whether or not she was ever married to the child's abusive parent.

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- An abused spouse or child whose citizen or legal permanent resident parent renounced citizenship or lost lawful permanent resident status over 2 years ago;
- Victims of child abuse or incest abused by a U.S. citizen or permanent resident parent while under 21 years of age but who did not file their VAWA self-petition while they were under 21 and who are now over 21 years of age; and
- Victims of child abuse who cannot establish that they have resided with the U.S. citizen or permanent resident abuser parent.

What is the procedure for applying for cancellation of removal?

In order to apply for cancellation of removal, the immigrant survivor must be in removal proceedings before an immigration judge. If she is not, it may be possible in some instances to be placed in removal proceedings in order to apply for VAWA cancellation. To do this, the immigrant must essentially “turn herself in” to the immigration authorities and inform them she is unlawfully present in the United States. This should only be considered when the survivor cannot qualify for a green card in any other way, because if the application for cancellation is ultimately denied, the immigrant will be ordered removed and deported from the United States.

The following is an overview of the different phases of applying for relief in removal proceedings.

REQUESTING ISSUANCE OF A CHARGING DOCUMENT (“NOTICE TO APPEAR”) IF NECESSARY

If an applicant is not already in removal proceedings, she must secure the assistance of an immigration attorney to help her turn herself into Immigration and Customs Enforcement (ICE) of the Department of Homeland Security, (“DHS”, formerly INS) and request that she be put in removal proceedings. Each local DHS office has its own procedures and has discretion to decide whether to initiate removal proceedings. In some jurisdictions, this process may occur rather quickly, while in others it may take several months. In some cases, the DHS office might decide not to place the immigrant in removal proceedings.

The immigrant must currently be **out of lawful immigration status** to be placed in proceedings. If, for example, the battered immigrant entered the U.S. without authorization, overstayed her visa, or worked without DHS authorization while on an otherwise valid non-work visa, she may be found to be in violation of the immigration laws and removable. If she is still in lawful status under a current non-immigrant visa such as a student, tourist, or work-related visa, such as an H-1B visa, she cannot be placed in removal proceedings.

DHS initiates removal proceedings by issuing a charging document called a “Notice to Appear” (“NTA”). This charging document formally alleges that the individual is not a citizen or national of the United States and charges the immigrant with specific violations of immigration law. Examples of the immigration violations with which a potential applicant may be charged are overstaying a tourist visa, unauthorized work while on a student visa, or entering the United States without authorization.¹²

APPEARING BEFORE THE IMMIGRATION COURT AFTER A NOTICE TO APPEAR IS ISSUED BY THE DEPARTMENT OF HOMELAND SECURITY AND FILED WITH THE COURT

Several different units of federal agencies are involved in immigration enforcement proceedings before immigration judges. Immigration enforcement officers working for the Department of Homeland Security (DHS) either for Immigration and Customs Enforcement or for Customs and Border Patrol may issue to an individual a Notice to Appear in immigration court. Immigration judges work for the Executive Office of Immigration Review (EOIR) that is part of the U.S. Department of Justice. The attorneys representing DHS in immigration proceedings seeking removal of an immigrant from the United States is a trial attorney who works for DHS. For removal proceedings to begin, DHS enforcement agents, file the Notice to Appear (NTA) with the immigration court. Upon receiving the NTA, the immigration court will mail a hearing notice to the immigrant informing her of the time, date, and location of the next hearing. **It is very important to give DHS a safe current address where the battered immigrant can**

¹¹ See e.g. INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i); INA § 237(a)(1)(C), 8 U.S.C. § 1227(a)(1)(C).

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receive mail. If she does not receive the hearing notice and/or fails to appear at the hearing, she will be ordered removed in her absence. If this occurs, she will be barred from applying for cancellation of removal, and may potentially be barred from other immigration relief in the future. Likewise, the immigrant may be subject to detention if found by DHS and, ultimately, deported from the United States.¹³

The first hearing will be a preliminary one, called a “master calendar” hearing, where the immigrant must appear and plead to the charges on the NTA. There are normally two or three brief master calendar hearings before the immigrant has a longer individual hearing in which testimony is taken regarding the cancellation application.

PLEADING TO THE CHARGES

As stated above, only immigrants who are currently inadmissible or deportable for violating the immigration laws may be placed in removal proceedings. For any charge of inadmissibility or deportability, DHS has the burden to establish this.¹⁴ In many cases, an immigrant, through her attorney, will concede to the charges in order to move the process more quickly to the point where a cancellation application may be considered.¹⁵ However, it is very important that the attorney not concede a charge such as fraud or one based on a criminal ground if it will render the victim ineligible for cancellation of removal. If the attorney is in doubt, he or she should speak to an expert with knowledge and experience with VAWA cases.

After pleading to the charges, the attorney will state what relief from removal the immigrant (called the “respondent” in removal proceedings) is seeking. At this time, the attorney must state that the respondent will apply for cancellation of removal. If the attorney fails to request cancellation of removal at this time, the immigrant victim will be precluded from applying for cancellation later in the proceedings. It is therefore very important that the attorney meet with the client and explore whether she qualifies for VAWA cancellation or any other type of relief before this master calendar hearing.

The applicant may request additional time to prepare and file the application or may file it at the master calendar hearing if it is ready. Form EOIR-42B (Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents), which can be downloaded from the Executive Office for Immigration Review website (<http://www.usdoj.gov/eoir/formslist.htm>), must be used. This form has instructions that *must be read in detail*. These instructions include all filing requirements concerning fees, fee waivers, photographs, fingerprinting, and accompanying documents. The types of supporting documents that should be submitted with the application are discussed in more detail later in this chapter. After the respondent files the application, she is eligible to apply for employment authorization.¹⁶

THE INDIVIDUAL HEARING ON THE MERITS OF THE APPLICATION

At the immigrant’s master calendar hearing, the judge will schedule a date for the immigrant to return for a longer individual hearing (called a “merits hearing”) where testimony will be taken concerning the cancellation application. The applicant must prove several things to receive cancellation of removal, and these requirements are discussed in detail later in this chapter. She will answer questions about the abuse, about her moral character (including the circumstances of any arrests if she has a criminal record), her work history in the United States, her ties to the community, how she and any of her children would be affected by being deported, and various other matters. She should also bring witnesses to testify about her moral character and ties to the community. She may also submit affidavits in support of the requirements. If the judge decides after hearing the testimony to grant cancellation of removal, the applicant receives lawful permanent resident status and will eventually receive an actual green card in the mail.

The following facts must be established to be granted VAWA cancellation of removal by the immigration judge.

¹³ INA § 240(b)(5)(A) and (7); 8 U.S.C. § 1229a(b)(5)(A) and (7).

¹⁴ See *Murphy v. INS*, 54 F.3d 605, 608-9 (9th Cir. 1995).

¹⁵ *Woodby v. INS*, 385 U.S. 276 (1966) (concerning deportability); *Molina v. Sewell*, 983 F.2d 676, 678 (5th Cir. 1993) (concerning admissibility). See also 8 C.F.R. 240.8(a).

¹⁶ See 8 C.F.R. 274a.12(c)(10).

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Relationship to the abuser: The applicant must submit evidence of her relationship to the batterer. If she is applying as an abused spouse, she should submit a copy of her marriage certificate. If she is an intended spouse, then she must demonstrate that she believed she was the spouse. A battered child applicant must submit his or her birth certificate and, in the case of a stepchild, the marriage certificate of the parent to the abusive stepparent.

Continuous physical presence: The applicant must have lived continuously in the United States for 3 years immediately preceding the filing of the application.¹⁷ A single absence from the United States of 90 days, or aggregate absences over 180 days, breaks continuity of physical presence. However, an applicant is not considered to have failed to maintain continuous physical presence if the absences from the United States were connected to the abuse.¹⁸

Battery or extreme cruelty:¹⁹ The applicant must prove that, while she was in the United States, she was battered or subject to extreme cruelty by the United States citizen or legal permanent resident spouse or parent.²⁰

Good Moral Character:²¹ The applicant must prove that she is of “good moral character,” which is a legal term used in immigration law. The immigration laws do not precisely define good moral character, but preclude a finding of good moral character if the immigrant has certain criminal convictions or for other reasons.²² The applicant must show good moral character during the 3-year period immediately preceding her application. The immigration judge may be permitted to find good moral character even if there is an act or conviction that would otherwise bar such a finding if the action or crime was connected to the abuse.²³

Extreme Hardship: An applicant must prove that she, her child, or the parent of the abused child would suffer “extreme hardship” if deported. The following circumstances on their own will **not** constitute extreme hardship: economic deprivation, loss of employment, or difficulty readjusting to life in the native country.²⁴ The best way for battered immigrants to prove extreme hardship is to show how experiencing the abuse has been harmful to the victims and how deportation would impede any progress that they have made to overcome the effects of the abuse. Battered immigrant applicants can rely on both domestic violence and non-domestic violence related extreme hardship factors to support their cancellation applications. The victim should emphasize how the hardship is related to or exacerbated by the domestic violence, and the steps she needs to take to overcome the effects of the violence.

Extreme hardship is determined based on the facts of each case.²⁵ Demonstrating the following factors will assist in proving the extreme hardship element of the cancellation of removal application:²⁶

- The nature and extent of the physical and psychological consequences of the battering or extreme cruelty;
- The impact of the loss of access to the U.S. courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, alimony, maintenance, child custody, and visitation);
- The applicant's or applicant's child's need for social, medical, mental health, or other supportive services, particularly those related to the abuse or surviving the abuse, which would not be available or reasonably accessible in the foreign country;
- The existence of laws, social practices, or customs in the foreign country that would penalize or ostracize the applicant or applicant's child for leaving an abusive situation, or for taking action to stop the abuse;

¹⁷ Unlike other types of cancellation of removal provided for under immigration law, the serving of a Notice to Appear on an immigrant applying for VAWA Cancellation does not stop continuous presence from accruing. INA § 240A(b)(2)(A)(ii); 8 U.S.C. § 1229b(b)(2)(A)(ii).

¹⁸ INA § 240A(b)(2)(B); 8 U.S.C. § 1229b(b)(2)(B).

¹⁹ For full discussion of battering or extreme cruelty, see the section on self-petitioning under VAWA in Chapter 3 of this manual.

²⁰ INA § 240A(b)(2)(A)(i); 8 U.S.C. § 1229b(b)(2)(A)(i).

²¹ For full discussion of good moral character, see the section on self-petitioning under VAWA in Chapter 3 of this manual.

²² See INA § 101(f); 8 U.S.C. § 1101(f).

²³ INA § 240A(b)(2)(C); 8 U.S.C. § 1229b(b)(2)(C). This exception applies to crimes and actions connected to the battering or extreme cruelty and for which a waiver of inadmissibility is also permitted under the immigration laws.

²⁴ Matter of Anderson, 16 I. & N. Dec. 596 (BIA 1978).

²⁵ Matter of Ige, 20 I. & N. Dec. 880, 882 (BIA 1994); Matter of Chumpitazi, 16 I. & N. Dec. 629 (BIA 1978); Matter of Kim, 15 I. & N. Dec. 88 (BIA 1974); Matter of Sangster, 11 I. & N. Dec. 309 (BIA 1965).

²⁶ 8 C.F.R. §§ 1240.20(c) and 1240.58(c). See also INS Memorandum from Paul Virtue, INS General Counsel, *Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children* (October 16, 1998).

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- The abuser's ability or lack thereof to travel to the foreign country, and the ability, willingness, or lack thereof of foreign government authorities to protect the applicant and/or the applicant's child from future abuse;
- The likelihood that the abuser's family, friends, or others acting on the abuser's behalf in the foreign country would physically or psychologically harm the applicant or the applicant's children if they were deported.

Applicants may also seek to support the extreme hardship element of their cancellation of removal cases by providing evidence of the “traditional” types of extreme hardship typically used in non-VAWA cancellation claims. This type of evidence is most helpful when the applicant can make a strong connection between the particular hardship and the abuse and its consequences. Some “traditional” hardships present in regular cancellation cases, such as economic hardship caused by deportation, can be exacerbated by the abuse. This would be the case, for example, if, because she has left her husband and is believed to have brought shame to the family, an immigrant survivor will be ostracized by her family in her native country and have no economic support.

The following are established factors used to assess extreme hardship:

- Age (youth/old age) of the applicant;
- Ages and number of the applicant's children;
- The children's ability to speak the native language of the foreign country and the children's ability to adjust to life there;
- Serious illness of the person or her child that necessitates medical attention not adequately available in the foreign country;
- A person's inability to obtain adequate employment abroad;
- The person and her children's length of residence in the United States;
- Existence of other family members residing legally in the United States and lack of family in the home country;
- Irreparable harm arising from a disruption of educational opportunities;
- The adverse psychological impact of removal;
- The impact of separation on both mother and children if the mother is removed and the children do not accompany her;
- The extent to which deportation would interfere with court custody, visitation, and child support awards; and
- The extent to which the battered woman is an asset to her community in the United States (i.e., involvement in church/temple/mosque, children's school, community, other service programs).²⁷

The information below outlines how eligibility for VAWA Cancellation can be proven. The applicant has the burden to prove that she meets all requirements for cancellation of removal. Therefore, it is in the applicant's best interest to have as much supporting documentation as possible to help in proving her claim for relief. This documentation should be as complete and as detailed as possible. Advocates and attorneys should help the battered immigrant gather as much evidence as possible to document each aspect of her cancellation claim. The following is a checklist of suggested supporting documents.

STATUS OF THE ABUSER AND RELATIONSHIP TO THE ABUSER

- Evidence that the batterer is a U.S. citizen (such as a U.S. birth certificate or naturalization certificate) or permanent resident (such as a green card or other document with the batterer's alien number)
- If the applicant is applying as a battered spouse, a copy of her marriage certificate; if the applicant was previously married to someone other than the abuser, she must submit proof that her prior marriage was terminated

²⁷Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13,067 (Mar. 29, 1996) (to be codified at 8 C.F.R. pts. 103, 204, 205, and 216).

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- If the applicant is the battered child of a citizen or resident, a birth certificate; in the case of a battered stepchild, the marriage certificate of the parent to the abusive stepparent must also be submitted
- Documents showing that the marriage was entered into in good faith and not to evade the immigration laws

CONTINUOUS PHYSICAL PRESENCE (Some of these documents, such as joint tax returns, lease agreements, or birth certificates of children born to the marriage, will also help prove good faith marriage.)

- Copy of all income tax returns filed by the applicant or the applicant jointly with the spouse; if the returns were not filed, she will have to file back tax returns
- Birth records of children born in the United States
- Driver's license (if obtained lawfully)
- Copy of lease agreements, rental receipts, or mortgage payments
- Employment records (paycheck stubs, tax forms, etc.)
- Bank statements
- Utility bills and copies of credit card statements
- Copy of insurance policies (automotive, health, life insurances)
- School records of the applicant or her children
- Medical records
- Court records, including protection orders and custody and support orders
- *If the applicant does not have other documentation to establish her continuous presence: affidavits from landlords or neighbors and other persons who can attest to her continuous presence in the United States*

BATTERY OR EXTREME CRUELTY

- Police reports
- Restraining/protective orders
- Photos of bruises, cuts, injuries, etc.
- Medical records
- Hospital records documenting the abuse (even if she did not tell anyone at the hospital that her partner caused the abuse and even if she denied that the cause was domestic violence or sexual assault, in which case the battered immigrant should be prepared to explain why)
- Intake forms from domestic violence or sexual assault organizations shelter or women's community center or both
- Letters from counselors, domestic violence case workers, shelter advocates
- Child Protective Services reports describing the abuser's behavior²⁸
- Torn clothing or destroyed property or photographs of these
- Transcript from "911" calls
- Psychological evaluations
- Affidavits from neighbors, friends, or family who witnessed the abuse, witnessed any incident of the abuse, saw the survivor's bruises, heard her scream, or witnessed her abuser's threats against her, her children or her family members

²⁸ Any negative information in these reports submitted with the application must be added in testimony. You should consult with a family law attorney with knowledge and experience with child abuse cases.

GOOD MORAL CHARACTER²⁹

- “Police clearance letter” from each jurisdiction in which the applicant has lived for the past 3 years³⁰
- If the applicant has ever been arrested, an arrest report and court disposition for the arrest and an explanation in her affidavit of the circumstances of the arrest
- Affidavits by friends, community members, children’s teachers, clergy, etc.
- Awards, certificates of appreciation, etc.

EXTREME HARDSHIP VIOLENCE AGAINST WOMEN RELATED FACTORS³¹

- Affidavit from the victim detailing the history of power and control; emotional, physical and sexual abuse; nature and extent of the battering or extreme cruelty; and consequences to her physical and psychological well-being if she’s removed from the United States
- Affidavits from experts, such as battered women’s advocates, social workers, shelter workers, counselors, or psychologists about the impact of the abuse on the victim and her children
- Affidavits from the victim’s family members, friends, and co-workers describing how the physical, sexual, and psychological abuse affects the victim or her children
- Affidavits from teachers, counselors, clergy, or day care providers about the impact of the violence on the victim’s children
- Documentation on the impact of the loss of access to the U.S. courts, both the civil and criminal systems (including, but not limited to, the ability to obtain and enforce protection orders, secure criminal investigations and prosecutions, and receive assistance offered by family law proceedings, including orders regarding child support, alimony, maintenance, child custody, visitation and property division)³²
- Court records (including civil protection orders, custody, child support, and safe visitation orders, as well as copies of the underlying pleadings when useful)³³
- Police records (including police reports and copies of all taped calls)
- “Victim impact statements” provided by the victim for sentencing in a criminal case³⁴
- Documentation demonstrating the victim’s efforts to seek help from the justice system
- For a victim who may not have sought help from the justice system, or a victim who unsuccessfully sought help from the justice system, affidavits from persons who can document the victim’s fears or the abuser’s actions that prevented her from seeking assistance from the courts (or the barriers that the victim faced or encountered when she tried to seek help from the justice system)
- Evidence of the VAWA cancellation applicant’s or her children’s needs for social, medical, mental health, victim, or other supportive services that would not be available or reasonably accessible in the foreign country (It is important to note that a VAWA cancellation applicant must prove that parallel services designed for domestic violence and/or sexual assault victims are lacking in the home country.), including the following:
 - Records of counseling programs in which the applicant or her children have participated and affidavits from the counselors describing the program and the benefit of the program to the applicant;
 - Copies of medical and mental health records that document the abuse;

²⁹ See INA § 101(f); 8 U.S.C. § 1101(f).

³⁰ The applicant should contact the local police for each county or locality where she has lived for six months or more during this period and request a police clearance or “good conduct” letter. For her current jurisdiction, she should make sure to submit a recent police clearance letter.

³¹ Adapted from A.B.A. COMMISSION ON DOMESTIC VIOLENCE INC., *Chapter Six: Proving A Case, in DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT (2000)*.

³² The U.S. State Department issues human rights country reports each year that contain a section on the rights of women. These reports will sometimes provide brief information about lack of police and legal protection for victims of domestic violence and sexual assault. These Country Reports can be found at <http://www.state.gov/g/drl/hr/>.

³³ A protection order that awards custody, safe visitation, and child support can help the victim prove extreme hardship, because deportation will deprive the victim of the protection provided by the court order.

³⁴ Victim impact statements, which are used in criminal cases, provide the crime victim with an opportunity to address the sentencing judge about the effect the crime has had on the victim’s life and the victim’s opinion about the sentence.

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- Affidavits from battered women’s advocates and shelter workers who have worked with the applicant or her children;
- Affidavits from advocates, experts, university professors, or women’s groups and other documentation confirming that services parallel to those she is receiving in the United States are lacking in her home country.
- Documentation on the existence of laws, social practices, or customs in her home country that would penalize or ostracize the applicant or the her children for having been the victim of abuse, for leaving the abusive partner, for getting a divorce, for reporting the abuser’s violence to authorities, or for actions by the victim taken to stop the abuse and protect her children, including the following:
 - Documentation about any laws or the lack of laws in her home country that protect victims of domestic violence from continued abuse and that could hold the abuser accountable for his actions, with particular attention to whether the laws are effective in the particular region of the country to which the victim will return;
 - Documentation of customs and practices in the battered immigrant’s home country that would harm her or make recovery or healing difficult for the VAWA applicant or her children;
 - An affidavit by the victim stating her knowledge of laws, customs, and practices in her home country that harm victims of domestic violence, divorced women, and single mothers.
- Documentation of abuser’s ability to travel to the victim’s home country, and the ability and willingness of foreign authorities to protect the applicant or her children from future abuse, including the following:
 - Documentation of the abuser’s history of travel outside of the United States, his travel in her home country, contacts in her home country, and his access to funds needed for travel;
 - Documentation of the abuser’s history of stalking, escalation of violence, and his behavior following the separation;
 - An affidavit by the victim describing the abuser’s level of contact with friends and family in the country to which the victim would be deported.
- Documentation of the likelihood that the abuser’s family, friends, or others acting on his behalf in her home country would be likely to physically or psychologically harm the applicant or her children, including the following:
 - Affidavits from the victim’s family members and others who have been threatened by the abuser or the abuser’s agents in the home country;
 - Documentation of the abuser’s stalking behavior and his manipulation of third parties to track, harass, and monitor the victim or her children.
- If the abuser is the parent of the VAWA cancellation applicant’s U.S.-born children, evidence of this parent-child relationship should be included. An abuser with parental rights could obtain a court order prohibiting the removal of a citizen child from the United States, effectively cutting off a deported victim permanently from access to her children, causing extreme hardship to the victim and her children. Information should be gathered about parental rights and custody laws in the home country, as an abuser who is the father of the victim’s children could obtain control over the children in the home country and cut the victim and her family members off from all access to her children. This is particularly important to emphasize when the children are U.S. citizens and when U.S. courts have determined that it is in the children’s best interests to be in the applicant’s custody.

TRADITIONAL FACTORS OF EXTREME HARDSHIP³⁵

- Age of the applicant upon entry into the United States and at the time of application for cancellation of removal
 - For age to be a significant factor, the battered immigrant would have entered the United States at an early age or have an entire support system (socially and culturally) tied to the United States. Additionally, an immigrant who has lived in the United States for a long time and who may be older might argue that it will be difficult to re-assimilate to a new culture (that of the home country) or find employment.
- Age and number of the applicant’s children and their ability to speak applicant’s native language and to adjust to life in another country, demonstrated by evidence including but not limited to the following:

³⁵ 8 C.F.R §1240.58(a)

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- Affidavits from the children’s teachers, clergy, and child care providers on the following:
 - The children’s ability to speak, read, or write in English and or a native language
 - The children’s current adjustment to life in the United States;
 - The children’s likely response to moving to a country in which the language and customs are foreign;
 - The effect that the children’s moving to another country would have on their ability to overcome the harmful effects of hearing, witnessing or experiencing domestic violence.
- An affidavit from an expert on how the children’s exposure to the abuse has harmed the child. The expert should assess each child’s needs for counseling services to address harms suffered due to abuse and the additional harm that would arise from removing each child to a foreign country or separating each child from the battered immigrant parent.
- If children are born to an interracial couple or a couple from different ethnic or religious groups, provide information about how this factor might affect each child’s adjustment to the country to which the victim might be deported.
- Medical condition of the survivor or any of her children that requires medical attention not adequately available in the foreign country, demonstrated by evidence including but not limited to the following:
 - Documentation of any serious illness of the victim or her children and, if appropriate, description of how the illness was caused by or exacerbated by the abuse;
 - Description of whether similar medical treatment is available to the victim in the victim’s home country or why alternative healthcare services there are likely to be less effective, particularly if such services do not take into consideration treatment needed because of the abuse; emphasis should be placed on the need for coordinated services to address the illness, the abuse, and the effects of the abuse.
- The immigrant’s inability to obtain adequate employment in the foreign country
- The immigrant and her advocate should address this issue only if the victim’s inability to obtain any employment or to obtain adequate employment was a result of or connected to the abuse. Examples might include (1) the victim’s status as a divorcee precludes employment; (2) the abuser’s level of power and influence in the home country prevent employers from hiring the immigrant victim; or (3) adequate employment sufficient to support the victim is not open to women in her home country.
- The applicant’s and her children’s length of residence in the United States
 - The immigrant and her advocate should raise this issue when the immigrant victim is or was married to a United States citizen or lawful permanent resident spouse for a significant period, and the abuser refused to obtain legal residency for the victim or her children.
 - The immigrant and her advocate should raise this issue also when the battered immigrant applicant was brought to the United States illegally as a child and has lived in the United States for a long time, particularly if the applicant completed high school in the United States.
- Existence of the applicant’s other family members legally residing in the United States or/and lack of family (as support system, for employment contacts) in the home country, demonstrated by evidence including but not limited to the following:
 - A list of each member of the victim’s family who legally resides in the United States, including the family members’ immigration or U.S. citizenship status and length of time in the United States;
 - Affidavits from family members (each family member’s affidavit and the victim’s affidavit should articulate the role each relative has played providing the victim with emotional support, how they helped the victim escape, survive, or heal from the effects of having suffered abuse while living in the United States).

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- Irreparable harm that may arise as a result of disruption of educational opportunities, demonstrated by evidence including but not limited to the following:
 - Affidavits from teachers, special education counselors, and mental health treatment providers can be used to document potential harm from lost educational opportunities for children. When the children's special educational needs are related to having been victims of or having witnessed domestic violence, this should be emphasized;
 - Affidavits should highlight lost opportunities and special job training programs and educational opportunities in which the victim is participating or for which she qualifies through her local domestic violence and/or sexual assault organization.
- The adverse psychological impact of deportation, demonstrated by evidence including but not limited to the following:
 - An affidavit from an expert discussing the adverse psychological impact deportation would cause the abused woman.
 - An affidavit from an expert describing the nexus between the adverse impact of deportation and the specific abuse this victim has suffered.
- The impact of separation on both the victim and her children if the victim is removed, demonstrated by evidence including but not limited to the following:
 - Data on the danger to the child of living with an abuser if the victim is deported. Many abusers commit violence against their children, as well as their spouses. Even if the children are not physically abused, living with an abuser is likely to traumatize the children and affect their emotional development. Include the psychological impact on the children of being permanently separated from their non-abusive parent by deportation and being left in the care of the abusive parent;
 - Description of the extent to which deportation would interfere with court-ordered custody, visitation, and child support awards;
 - Discussion of the harm to the U.S. citizen and lawful permanent resident children of being forced by their mother's deportation to move to their mother's home country with her as the only option other than having to continue living with the abuser.
- The extent to which the battered immigrant woman is an asset to her community in the United States, demonstrated by evidence including but not limited to the following:
 - Information regarding the battered immigrant applicant's involvement in a local religious community, the children's schools, community service programs, or immigrant women's or domestic violence prevention programs;
 - Letters from friends, neighbors, employers, clergy, social workers, and fellow church members attesting to the applicant's strong qualities and contributions to her community;
 - Any acknowledgment of her children's personal involvement, achievements, contributions, awards, scholarships, etc. is important, as they confirm the unique ways each child has established his or her own bonds to their community.

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U-Visas: Victims of Criminal Activity¹²

By Leslye Orloff, Carole Angel and Sally Robinson

Introduction

The U-visa is a form of immigration relief designed to offer access to temporary legal immigration status for immigrant victims of domestic violence, sexual assault, human trafficking and a range of other criminal activities. Victims of domestic violence who qualify for VAWA self-petitioning³ may also qualify to file for a U-visa. U-visas are available for victims of domestic violence who may not qualify for VAWA self-petitioning. A VAWA self-petition is a form of immigration relief available only when the victim's abuser is a U.S. citizen or a lawful permanent resident spouse, former spouse, parent, step-parent or over 21 year old son or daughter. The U-visa was developed to provide the protection of immigration benefits to victims when the abuser is a family member who is not a spouse (e.g. a father-in-law, brother), is a boyfriend, is the father of the victim's child, or is a spouse who is not a citizen or lawful permanent resident. Some victims of sexual assault and other crimes may not qualify for VAWA self-petitioning relief because the sexual assault assailant is a

¹ "This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women." We would like to acknowledge the contributions of Kavitha Sreeharsha, Caitlin Oyler and Ragini Tripathi.

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 For a full discussion of VAWA self-petitioning see Chapter 11 "Preparing the VAWA self-Petition and Applying for Residence" in this manual.

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stranger. Many sexual assault perpetrators are acquainted to the victim through family, school, university or the abusers attempt to have a dating relationship with the victim. The U- visa was created as part of the Violence Against Women Act of 2000 to offer the protection of legal immigration status to a broader range of immigrant domestic violence, sexual assault, and other crime victims.

It is important to note that the U-visa can help several groups of victims of violence against women, including victims of sexual assault and battered immigrants who were not covered by the original VAWA self-petition or cancellation of removal provisions. Immigrants who are abused by a boyfriend or another person who is not a spouse or parent or by a spouse or parent who is not a U.S. citizens or permanent resident can obtain U-visas. The U-visa will also help non-citizen victims of other crimes, including victims of rape or sexual assault who may not know or be related to the perpetrator and domestic workers who are abused or held hostage in the home by their employers.

Qualifying to be granted a U-visa is in some ways more difficult than for self-petitioning under VAWA in that the U-visa requires that a victim must report to law enforcement officials. To qualify, the battered immigrant must suffer substantial physical or emotional abuse and must cooperate with law enforcement. If an immigrant victim has never called the police, never reported the criminal activity or never filed a police report and is afraid or unwilling to do so, it will not be possible to apply for a U-visa. Victims who had not filed a police report prior to seeking help as a crime victim can be assisted by victim advocates in making a police report. This is possible even if the incident occurred in the past and if the local police decide not to pursue an investigation of the criminal activity reported.

The purpose of this chapter is to assist advocates and attorneys in identifying sexual assault, domestic violence, and other crime victims who may be eligible for U-visa immigration status and to provide resources to help advocates and attorneys work together to prepare U-visa applications for immigrant crime victims. If a potential U-visa applicant is identified, she should be referred promptly to an immigration attorney or advocate who has experience filing U-visa cases.⁴ This chapter discusses Department of Homeland Security (DHS) procedures and case processing priorities that are extremely important for advocates and attorneys doing safety planning with immigrant crime victims. The suggested evidentiary documents in this chapter are provided as guidelines and are not an exhaustive description of the types of evidence that may be offered to support an immigrant victim's U-visa application. This chapter concludes with guidance on how to assist immigrant U-visa holders in applying for lawful permanent residency.⁵

The Violence Against Women Act of 2000

The Violence Against Women Act of 2000 (“VAWA 2000”)⁶ created the U-visa for immigrant victims of criminal activity. This visa offers temporary lawful immigration status to victims of certain criminal activity if the victim has suffered substantial physical or mental abuse as a result of the criminal activity.⁷ The victim must have information about the criminal activity and a law enforcement official (*e.g.*, police, prosecutor) or a judge must certify that the victim has been helpful, is being helpful, or is likely to be helpful in detecting, investigating or prosecuting the criminal activity.⁸ Congress made legislative findings describing why U-visa immigration relief was being created. The purpose of this legislation was to:⁹

⁴ To find attorneys and advocates with expertise working with immigrant victims of violence against women advocates and attorneys should contact the technical assistance resources listed at the end of this chapter. To locate resources a state-by-state listing of programs with expertise offering advocacy, legal services and support for immigrant crime victims, see Legal Momentum's Directory, National Resources for Immigrant Women, available at: http://www.legalmomentum.org/help-center/national-resources-for.html#Immigrant_Women_Victims_of_Violence.

⁵ The process of applying for lawful permanent residency in the United States is referred to under immigration law as “adjustment of status.”

⁶ Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

⁷ INA § 101(a)(15)(U)(i); 8 U.S.C. § 1101(a)(15)(U)(i).

⁸ INA § 101(a)(15)(U)(i); 8 U.S.C. § 1101(a)(15)(U)(i).

⁹ Violence Against Women Act of 2000 Section 1513(a), Pub. L. No. 106-386, 114 Stat. 1464. H.R. REP. No. 106-939, at 73 (2000) (Conf. Rep.).

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“[C]reate a new nonimmigrant visa¹⁰ classification that will strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking and other crimes . . . committed against aliens¹¹, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. . . . This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens. . . . Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.”

This form of relief gives the applicant temporary legal immigration status and the possibility of lawful permanent residence. The maximum number of U-visas available in any one year is 10,000 for the crime victim applicants. Spouses and children of U-visa applicants, as well as parents of applicants who are under 16, may also qualify for a U-visa under certain circumstances. There is no limit on the number of visas available for these qualifying relatives.¹²

Adjudication of U- visa Applications

U-visa adjudications have been centralized at the Violence Against Women Act (VAWA) Unit of the DHS Vermont Service Center where all VAWA, T-visa and U-visa cases are adjudicated.¹³ The legislative history of the Violence Against Women Act of 2005 describes the Victims and Trafficking Unit as follows:

“In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created ‘to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants . . .’, to ‘[engender] uniformity in the adjudication of all applications of this type’ and to ‘[enhance] the Service’s ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies.’ . . . T visa and U visa adjudications were also consolidated in the specially trained Victims and Trafficking Unit.”¹⁴

All U-visa applications should be filed with the Victims and Trafficking Unit at the DHS Vermont Service Center.¹⁵ Applications filed by victims outside of the United States must also be filed with the Victims and Trafficking Unit following the same process as all other U-visa applicants. Once an application is approved, the Victims and Trafficking Unit of the Vermont Service Center will notify the applicant and grant employment authorization.

It is important to note that there are no filing fees required by DHS in U-visa cases. Victims must be afforded access to fee waivers for all DHS imposed filing fees and costs from filing through receipt of lawful permanent residency in U-visa cases.¹⁶ This includes fees associated with inadmissibility waivers (I-192) and waivers of

¹⁰ “Non-immigrant” visas are issued to persons granted permission to remain temporarily (not permanently) in the United States. If an immigrant is granted permission to live permanently in the United States they will receive an “immigrant” visa.

¹¹ The Immigration and Nationality Act defines the term ‘alien’ as any person who is not a citizen or national of the United States. Practically speaking, this term covers a broad group of people including but not limited to permanent residents, refugees, asylees, people granted other forms of legal immigration visas, people who enter with visas and then overstay, and people who enter the U.S. without inspection.

¹² INA § 214(o)(3); 8 U.S.C. § 1184(o)(3).

¹³ Memorandum from William R. Yates, Assoc. Dir. Operations, Dep’t of Homeland Sec. to Dir. Vermont Serv. Ctr. re: Centralization of Interim Relief for U Nonimmigrant Status Applicants (October 8, 2003) at 2, available at <http://www.uscis.gov/files/pressrelease/UCntr1100803.pdf>. Forms of temporary status include deferred action, parole and stays of removal.

¹⁴ H.R. REP. NO. 109-233, 116 (2005).

¹⁵ 8 C.F.R. § 214.14(c)(1) (2008).

¹⁶ William Wilberforce Trafficking Victims Protection Act, Section 201(d) Pub. L. 110-457 (2008); INA §245(l)(7).

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passport or visa requirements (I-193) in U-visa cases.¹⁷ All fees associated with work authorization¹⁸ and filing for lawful permanent residency as a U-visa holder are also waivable (form I-485¹⁹, form I-765²⁰, biometrics²¹, I-601²²).

Although the U-visa was created in 2000, the DHS regulations implementing U-visa protections were not published until September 17, 2007. The regulations went into effect October 17, 2007. During the period between 2000 and 2007, Department of Homeland Security (“DHS”) created a temporary application process called interim relief that gave U-visa eligible immigrants access to legal work authorization and protection from deportation (*deferred action*)²³. On October 18, 2007 DHS stopped providing interim relief and began processing U-visas. However, the backlog of cases that had not been adjudicated led to significant delays in U-visa victims’ ability to obtain access to work authorization and protection from deportation.²⁴ As of December of 2010, the waiting time from filing to receipt of work authorization for U-visa victims can often be longer than 6 months.

DHS OFFERS PROTECTION FROM DEPORTATION FOR IMMIGRANTS WITH FILED IMMIGRATION APPLICATIONS: A SAFETY PLANNING OPPORTUNITY

Early screening of immigrant victims of domestic violence and sexual assault for U-visa or VAWA self-petitioning eligibility speeds an immigrant victims’ access to both legal work authorization and protection from deportation. The enhanced victim safety that can be achieved by early identification and filing of U-visa applications and VAWA self-petitions was clarified in August of 2010 when DHS issued a policy guidance.²⁵ The policy guidance instructed DHS trial attorneys and DHS enforcement officers to exercise prosecutorial discretion:

- Should not initiate immigration enforcement actions against immigrants with pending applications for legal immigration status that DHS deems valid;
- Should not detain immigrants with valid pending applications for immigration benefits; and
- To dismiss deportation and removal actions against immigrants with valid pending cases.

Immigration officials adjudicating applications for legal immigration status, under these policies, will decide pending cases:

- Within 30 days if the immigrant who has filed the application is detained; and
- Within 45 days in cases of non-detained immigrants.

All victims seeking immigration benefits designed to help immigrant victims of domestic violence, sexual assault, human trafficking, and other crimes covered by the U-visa will benefit from these protections.²⁶ However, these protections against deportation will not benefit immigrant victims unless they have a case that have been filed and is pending with DHS. It is therefore extremely important from a victim safety planning perspective to identify immigrant victims who qualify for U-visa relief as early in the process of working with

¹⁷ 8 C.F.R. § 103.7(c) (2008).

¹⁸ INA §245(l)(7).

¹⁹ 8 C.F.R. § 103.7(c)(5)(ii) (2008) (Adjustment of Status).

²⁰ 8 C.F.R. § 103.7(c)(5)(i) (2008) (Application for Employment Authorization).

²¹ 8 C.F.R. § 103.7(c)(5)(i) (2008).

²² 8 C.F.R. § 103.7(c)(5)(ii) (2008) (Form I-601 Application for Waiver of Inadmissibility Grounds).

²³ See generally Memorandum from Michael D. Cronin, Acting Executive Assoc. Comm’r, Office of Programs, INS to Michael A. Pearson re: VTTPA Policy (Aug. 30, 2001) (on file with Legal Momentum and the National Immigration Project of the National Lawyer’s Guild) (hereinafter “Interim Guidance”).

²⁴ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

²⁵ John Morton, Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions, 1 (DHS, U.S. Immigration and Customs Enforcement, August 20, 2010).

²⁶ *Id.* at 1. These policies cover only the types of Immigration cases that DHS has the ability to adjudicate once deportation (removal) proceedings have been initiated. In addition to crime victim related immigration protections, these provisions extend to many family based visa petitions.

an immigrant victim as possible. Advocates and attorneys working with immigrant victims are strongly urged to help eligible victims file for U-visa or other VAWA related immigration relief²⁷ before pursuing other legal protections that could trigger an abuser or crime perpetrator reporting the victim to DHS enforcement officials. Once a case is pending with DHS, retaliatory steps the perpetrator may take to have the victim deported will be less effective.

This approach also informs DHS that an immigrant is a crime victim eligible for VAWA confidentiality protections. VAWA confidentiality was designed to stop DHS enforcement officials and DHS trial attorneys from relying on or seeking perpetrator provided information to harm an immigrant victim. By filing a VAWA confidentiality protected immigration case, DHS is provided information that the undocumented immigrant is a victim. DHS also receives information regarding the identity of the victim's perpetrator. This strengthens the probability VAWA confidentiality protections will be more effective in the victim's case. A final reason early filing of immigration cases for eligible victims is important has to do with how some DHS officials view U-visa and VAWA cases filed after a DHS enforcement action has been initiated. In some cases DHS enforcement officials have been suspicious about the validity of U-visa and VAWA cases filed after DHS has begun an enforcement action against an immigrant. Once the case is filed, not only are many DHS enforcement officials more willing to believe that the victim is credible, but DHS officers who attempt to take enforcement actions against victims can be held accountable for violation of VAWA confidentiality statutes.

I. Applying For A Nonimmigrant U-Visa

Benefits of the U-visa

The U-visa provides legal immigration status for qualifying immigrant crime victims. This status offers protection from deportation. The U-visa is of limited duration, 4 years, and is not intended to offer permanent legal immigration status.²⁸ Congress also created a separate provision through which some U-visa holders²⁹ may qualify for lawful permanent residency (a green card), allowing an immigrant victim to remain permanently in the United States.³⁰

U-visa holders are lawfully permitted to accept employment in the United States.³¹ Once the U-visa is granted victims are simultaneously provided employment authorization. Legal work authorization is crucial to helping immigrant victims provide for themselves and their children. It also enhances victim safety by severing economic dependence on an abusive family member or employer.

U-visa applicants may include their family members in their U-visa application. This provides U-visas for families members allowing them to remain together in the United States rather than being separated while the crime victim participates in the criminal investigation process. U-visa applicants may also obtain U-visas for family members living abroad. Beyond family reunification, U-visas for family members can be extremely helpful in providing emotional and financial support for the U-visa victim. Family members can assist with the

²⁷ See the Introduction to Immigration Relief Chapter of this manual for an overview of the range of immigration relief available to help immigrant victims as well as the individual chapters of this manual devoted to specific forms of immigration benefits including the VAWA self-petition, the Battered Spouse Waiver, the T-Visa and VAWA Cancellation of Removal.

²⁸ TVPRA 2008, section 201(c) allows DHS to extend the U-visa and employment authorization for U victims beyond four years when either 1) there has been a delay in issuance of adjustment regulations or 2) an adjustment of status application is pending. As of January 16, 2009, there are no rules implemented or pending for these statutory provisions.

²⁹ In order to be eligible for lawful permanent residence, a U-visa holder must prove that she was lawfully admitted to the U.S. as a U nonimmigrant, continues to hold that status (and it has not been revoked), is not inadmissible under INA 212(a)(3)(E) (Participated in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing), has been physically present for three years, has cooperated in an investigation of the criminal activity upon which the U-visa was granted, and that her presence is justified "on humanitarian grounds, to ensure family unity, or is in the public interest." INA § 245(m); 8 U.S.C. § 1255(m). 8 C.F.R. §§ 245.23, 245.24 (2008).

³⁰ Immigrant crime victim eligibility for lawful permanent residency will be discussed fully in a later section of this chapter.

³¹ 8 C.F.R. § 214.14(c)(7) (2008).

victim child care and other issues. U-visa protection for family members may also be an urgent safety precaution as it protects the victim's family members from threats and retaliation in their home country if the victim cooperates with law enforcement officials in the United States.

U-visa applicants can simultaneously file applications for other forms of immigration relief with DHS.³² However, DHS will grant the applicant only one form of immigration relief. The application that is first granted is the form of immigration relief that the immigrant victim applicant will receive and all other pending applications will be denied.³³

Who is Eligible to Apply for the Nonimmigrant U-Visa?

In order to be eligible for U-visa status, the immigrant victim must:

1. Have suffered substantial physical or mental abuse as a result of having been a victim of the one or more of the criminal activities listed under INA § 101(a)(15)(U)(iii);³⁴
2. Possess information concerning the criminal activity;³⁵
3. Obtain a certification from a law enforcement official, prosecutor, judge, immigration official, or other federal, state, or local authority that the victim is being, has been, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the perpetrator of one or more listed criminal activities;
4. The criminal activity violated the laws of or occurred in the United States.³⁶

What Constitutes Substantial Physical or Mental Abuse?

In order to be eligible for U-visa status, an applicant must have suffered substantial physical or mental abuse as a result of being a victim of the criminal activity.³⁷ Mental abuse is defined as an impairment of emotional or psychological soundness.³⁸ In determining whether the abuse is *substantial*, DHS will consider:

- The nature of the injury;
- The severity of the perpetrator's conduct;
- The severity of the harm suffered;
- The duration of the infliction of harm;
- Permanent or serious harm to the appearance, health, or physical or mental soundness of the victim.³⁹

DHS will take into account any or all of these factors. No single factor is required, nor does the existence of any single factor automatically establish that the abuse was substantial.⁴⁰ It is important to note that a series of actions taken together can cumulatively establish substantial abuse, even where no single act would alone rise to that level.⁴¹ Moreover, DHS has discretion to consider both the aggravation of pre-existing conditions, as well as the severity of the perpetrator's conduct -- even if the actual impact on the victim may have been less than intended by the perpetrator.⁴² Under the Violence Against Women Act's any credible evidence rules victims are allowed to present any credible evidence to prove that they suffered substantial physical or mental

³² 214(p)(5), 8 U.S.C.1184(p)(5).

³³ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53023 (September 17, 2007).

³⁴ INA § 101(a)(15)(U)(i)(I); 8 U.S.C. § 1101(a)(15)(U)(i)(I).

³⁵ INA § 101(a)(15)(U)(i)(II); 8 U.S.C. § 1101(a)(15)(U)(i)(II).

³⁶ INA § 101(a)(15)(U)(i)(IV); 8 U.S.C. § 1101(a)(15)(U)(i)(IV).

³⁷ INA § 101(a)(15)(U)(i)(I); 8 U.S.C. § 1101(a)(15)(U)(i)(I).

³⁸ 8 C.F.R. 214.14(a)(8) (2008).

³⁹ 8 C.F.R. § 214.14(b)(1) (2008).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53018 (September 17, 2007).

abuse.⁴³ Advocates and caseworkers can play a critical role in assisting victims in collecting documentation and evidence that supports a DHS finding that the victim suffered substantial physical or mental abuse.

What are the Types of Criminal Activity That Lead to U-visa Eligibility?

Congress created an extensive list of criminal activities a U-visa eligible victim may have suffered.⁴⁴

Crimes Covered:

Rape	Kidnapping
Torture	Abduction
Trafficking	Unlawful criminal restraint
Incest	False imprisonment
Domestic violence	Blackmail
Sexual assault	Extortion
Abusive sexual contact	Manslaughter
Prostitution	Murder
Sexual exploitation	Felonious assault
Female genital mutilation	Witness tampering
Being held hostage	Obstruction of justice
Peonage	Perjury
Involuntary servitude	Slave trade

This enumerated list provides guidelines on the types of federal, state, or local crimes that make immigrant victims eligible for U-visa immigration relief. When federal, state or local officials believe that criminal activity occurred and that the victim is a potential U-visa applicant, officials should provide victims with certification and referrals to local advocates and attorneys who can assist the victim in filing for U-visa immigration protection.⁴⁵

The listed crimes are broadly described in the statute in order to capture the diversity of state and federal criminal activities that an immigrant victim may suffer that are similar to the listed crimes. The U-visa list is not an exclusive list and the statute and the DHS regulations provide access to U-visa protections for criminal activities that are substantially similar to the listed criminal activities.⁴⁶ DHS U-visa regulations explain that attempts, conspiracy and solicitation to commit a criminal activity covered by the U-visa is sufficient for the victim to U-visa eligible.⁴⁷ The rule provides that:⁴⁸

“[T]he criminal activity listed is stated in broad terms. The rule’s definition of “any similar activity” takes into account the wide variety of state criminal statutes in which criminal activity may be named differently than criminal activity found on the statutory list, while the nature and elements of both criminal activities are comparable.”

On some occasions and for varying reasons a listed criminal activity has occurred but the case that law enforcement is pursuing for prosecution is for a crime that is not contained in the U-visa list. This can occur for example, when law enforcement officials are investigating narcotics offenses and they obtain a warrant to search the home of an alleged drug dealer. When they enter the home on a warrant the drug dealer’s girlfriend has a black eye. Upon interviewing her they learn that she has been battered by the drug dealer. Under this scenario, police can sign a U-visa certification for the domestic violence victim based on her report of domestic violence, although the drug offense, not the domestic violence, case, will be prosecuted.

⁴³ 8 C.F.R. § 214.14(c)(4) (2008).

⁴⁴ INA § 101(a)(15)(U)(3).

⁴⁵ See, Legal Momentum and the Vera Institute, Toolkit for Law Enforcement Use of the U-Visa (August 2010) available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/Law%20Enforcement%20Toolkit%20U-Visa.pdf>.

⁴⁶ 8 C.F.R. § 214.14(a)(9) (2008).

⁴⁷ *Id.*

⁴⁸ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53018 (September 17, 2007).

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The U-visa offers protection to victims of “criminal activity” as opposed to “crimes” because the U-visa was developed to help federal, state or local government officials in the *detection*, investigation or prosecution of criminal activity. Both Congress and DHS agree that U-visas are available to help victims who help with crime detection.⁴⁹ Assistance with detection of criminal activity may include: filing a police report, calling the police for help and talking to police at the crime scene, or seeking a protection order based on criminal activities.

Immigration relief offered through the U-visa was structured to ensure that immigrant victims who came forward to report their victimization by criminal activity would be able to obtain the protection of legal immigration status for 4 years. Victims are able to access this relief without regard to how the criminal justice system decides to proceed with the case.

Who is a “Victim” Eligible to Apply for a U-visa?

Direct Victims

The regulations incorporate a broad framework for how a victim can satisfy the requirement that she has been a victim of an enumerated criminal activity. In order to establish eligibility, the rule generally requires an applicant to show that she was *directly and proximately*⁵⁰ harmed by qualifying criminal activity. Petitioners who have another form of temporary legal immigration status may apply for and change their status to a U visa.⁵¹

Indirect Victims

DHS sets out several instances under which indirect victims may establish U-visa eligibility.⁵² Family members filing their own U-visa application must meet all of the same eligibility requirements as any other U-visa victim including substantial harm and helpfulness.⁵³ The categories of indirect victims authorized to apply for U-visas are:

- Bystanders: Under limited circumstances bystanders may qualify as U-visa victims. When a bystander has suffered an unusually direct injury as the result of a qualifying crime (i.e., suffering a miscarriage after witnessing a criminal activity), the bystander may be eligible for a U-visa. DHS will exercise its discretion to grant U-visas to bystanders on a case-by-case basis.⁵⁴
- Victims of Perjury, Obstruction of Justice, Witness Tampering: A victim of witness tampering, perjury or obstruction of justice, or witness tampering is an immigrant who is directly or proximately harmed by the perpetrator of one of these three crimes, where there are reasonable grounds to

⁴⁹ Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 §1513(a)(2)(A) (U visa purpose is to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes...”); New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53020 (September 17, 2007) (DHS)

“is defining the term to include the detection of qualifying criminal activity because the detection of criminal activity is within the scope of a law enforcement officer’s investigative duties.... such inclusion is necessary to give effect to section 214(p)(1) of the INA, 8 U.S.C.1184(p)(1), which permits judges to sign certifications on behalf of U nonimmigrant status applications....Judges neither investigate crimes nor prosecute perpetrators.”

Judges may certify U-visas because when they issue a ruling in a protection order case they detect the existence of criminal activity. They may also appropriately certify when they are involved in conviction or sentencing of a perpetrator. 72 Fed. Reg. 53020.

⁵⁰ A victim is proximately harmed by a criminal activity if the harm would not have occurred had the criminal activity been not been perpetrated.

⁵¹ INA Section 248(b).

⁵² 8 C.F.R. § 214.14(a)(14) (2008).

⁵³ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53017. (September 17, 2007).

⁵⁴ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016. (September 17, 2007).

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conclude that the perpetrator committed the offense in an effort to frustrate, undermine or avoid a criminal investigation, arrest or prosecution and when the perpetrator uses the legal system to exploit, manipulate or control the victim.⁵⁵

- Victim is deceased: In a murder or manslaughter case the actual victim is deceased. In these cases DHS regulations allow the spouse and under 21 year old children of the deceased victim to file a U-visa petition on their own behalf as indirect victims. If the deceased victim was under 21 years of age their parents and under 18 year old siblings could be indirect victims.⁵⁶
- Victim is incompetent, incapacitated or under age 16: In a case in which the direct victim of criminal activity is incompetent or incapacitated DHS regulations allow the spouse and under 21 year old children of the direct victim to file a U-visa as an indirect victim. When the direct victim is under the age of 16, indirect victims may be their parent and/or their parents or their unmarried siblings under the age of 18.⁵⁷

With regard to the last two categories, DHS explains that:

“ Family members of murder, manslaughter, incompetent, or incapacitated victims frequently have valuable information regarding the criminal activity that would not otherwise be available to law enforcement officials because the direct victim is deceased, incapacitated, or incompetent. By extending the victim definition to include certain family members of deceased, incapacitated, or incompetent victims, the rule encourages these family members to fully participate in the investigation or prosecution.”⁵⁸

Finally, it is important to note that family members included in the list of indirect victims may apply for U-visa immigration relief in their own right. They are not however required to do so.⁵⁹ If a mother and her two teen age under 21 year old children all qualify to file for U-visas as indirect victims, but the mother wants to avoid the trauma of one or more of her children having to cooperate with law enforcement or prosecution officials to that same extent as would be required if the child filed their own U-visa application, the mother can file as an indirect victim and can include her children in her U-visa application. This way the mother’s children receive U-visas through the mother’s application and cooperation.

Victims May Not Be Culpable in the Qualifying Criminal Activity

Victims must also show that they are not culpable of the criminal activity upon which the U-visa is based.⁶⁰ Some U-visa applicants may have criminal convictions.⁶¹ In such cases, the applicant will not be prevented from qualifying as a victim if the convictions are unrelated to the qualifying criminal activity that caused the victimization.⁶² However, where the victim was a culpable participant in the underlying criminal activity upon which the U application is based, she is precluded from establishing U-visa victimization. Additionally, a U-visa applicant cannot seek U-visas for culpable family members.⁶³

What Is Required To Satisfy “Possession of Information”?

The U-visa was enacted to encourage victims of criminal activity to feel safe in reporting crimes against them without adverse immigration consequences. U-visa applicants must prove that they possess information about

⁵⁵ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53017. (September 17, 2007).

⁵⁶ *Id.*; 8 C.F.R. § 214.14(a)(14)(i) (2008).

⁵⁷ 8 C.F.R. § 214.14(a)(14)(i) (2008).

⁵⁸ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53017. (September 17, 2007).

⁵⁹ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53017. (September 17, 2007).

⁶⁰ 8 C.F.R. § 214.14(a)(14)(iii) (2008).

⁶¹ *Id.*

⁶² Although unrelated criminal activity on the part of the applicant will not prevent her from qualifying as a victim for U-visa purposes, that criminal activity may make her inadmissible to the United States. There are waivers available to U-visa applicants for some grounds of inadmissibility. Please see the section later in this chapter discussing inadmissibility and waivers.

⁶³ 8 C.F.R. § 214.14(a)(14)(iii) (2008).

the criminal activity.⁶⁴ Their knowledge of the criminal activity against them is a critical component of the U-visa application. Applicants who were under 16 when the criminal activity occurred and victims who lack capacity or competence do not have to prove that they possess information if a parent, guardian, or next friend possesses that information.⁶⁵ The *next friend* is a person who acts in a legal proceeding on behalf of an individual who is under the age of 16 or incompetent or incapacitated.⁶⁶

What Is Required To Obtain A U-Visa Certification Of Helpfulness?

Ongoing Helpfulness or Willingness to be Helpful

The requirement that an applicant “has been helpful, is being helpful or is likely to be helpful”⁶⁷ includes past, present, and future helpfulness. Congress adopted this approach to ensure that certifications were not limited only to cases in which prosecutions were underway or completed. The choice of the term “criminal activity” reflects an understanding that victims do not control the process of criminal investigations or prosecutions. This choice was based on the history and development of the protection orders that were needed to provide domestic violence victims a form of civil legal relief that the victim could initiate and make decisions about how to proceed with an eye predominantly toward victim safety. Whereas criminal domestic violence prosecutions were brought by the state and the victim had little, if any, control over the process, the proceedings or the outcome.

Movement of a case through the criminal justice system is a complex matter. In some cases an investigation is initiated, but stalls when a perpetrator cannot be identified or located. In other cases a perpetrator is arrested, charged, and tried, but a conviction is not obtained. A key congressional goal of the U-visa legislation was to encourage victims to come forward and report crimes and to secure their assistance in criminal investigations, not just in successful prosecutions. For this reason, victims were granted the opportunity to access U-visa protection early in the criminal justice process, and eligibility is not contingent upon a case going to trial or upon obtaining a conviction. Rather, the U-visa is available to an individual crime victim who is “helpful, or will be helpful” in the detection, in an investigation **or** in the prosecution of the criminal activity. The criminal justice process in each case will be different, and different levels of assistance may be required from each victim. For instance, in one case a victim’s testimony at trial might be needed, whereas in another case the prosecutor may have ten other witnesses who can testify and, therefore, the victim will not have to testify in order to establish eligibility as long as she was available to assist as necessary.

In assessing how helpful an applicant must be, advocates and attorneys note that the U-visa was designed to help immigrant crime victims willing to be helpful in detection, investigation or prosecution of criminal activity. Victims of qualifying criminal activities continue to qualify for a U-visa who have been helpful or are willing to be helpful without regard to whether or not.⁶⁸

- ▶ A criminal case is initiated against the perpetrator;
- ▶ The criminal activity results in a prosecution;
- ▶ A warrant is issued for the arrest of the perpetrator
- ▶ The warrant issued but cannot be served because the perpetrator absconded after a warrant was issued for the perpetrator’s arrest.
- ▶ The perpetrator was detained and removed from the United States by DHS and cannot be served with the warrant in the criminal case.
- ▶ The perpetrator is charged and prosecuted for a crime that is not a U-visa qualifying crime (e.g. a drug offense so as long as a qualifying crime was at the least detected and reported.
- ▶ The case is dismissed because the police mishandled evidence; conducted an unlawful search or other similar issues.

⁶⁴ INA § 101(a)(15)(U)(i)(II); 8 U.S.C. § 1101(a)(15)(U)(i)(II).

⁶⁵ 8 C.F.R. § 214.14(b)(2) (2008).

⁶⁶ 8 C.F.R. § 214.14(a)(7) (2008).

⁶⁷ INA § 101(a)(15)(U)(i)(III); 8 U.S.C. § 1101(a)(15)(U)(i)(III).

⁶⁸ The following examples are illustrative of the range of issues that can arise criminal investigations and prosecutions and do not reflect a complete or full list.

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- ▶ The perpetrator is ultimately convicted of any criminal activity.

Victim Does Not Unreasonably Refuse to Cooperate

It is critical for victims who are reporting criminal activity to understand that although they can obtain U-visa status based on reporting criminal activity, their helpfulness does not end with the initial report of the criminal activity. Though it is not required that the case be carried through and prosecuted, DHS requires the applicant to continue to cooperate as needed throughout the duration of the U-visa status.⁶⁹ This cooperation requirement is modified however, when the victim's refusal to cooperate is reasonable. For U-visa holders to obtain lawful permanent residency, victims must prove either cooperation or that their refusal to cooperate was not unreasonable.⁷⁰ When the victim's ongoing cooperation in the criminal investigation may jeopardize the victim's safety or the safety of her family members in the U.S. or abroad the victim's failure to cooperate is not unreasonable. In a domestic violence case in which the victim continues to live with the abuser, has children with the abuser or is economically dependent on the abuser, her refusal to cooperate would also not be unreasonable. If the victim has not continued to be helpful in the investigation or prosecution, the victim risks that the certifying official will deem her non-cooperation unreasonable and will contact DHS to provide information about the victim's non-cooperation, raising the potential that DHS may act on this information and initiate a process for revoking the U-visa.

It is therefore important for advocates and attorneys working with U-visa victims to ensure that law enforcement and prosecution officials are aware of the immigrant victim's safety concerns that led to her decision to not continue cooperation. Law enforcement and prosecution officials who understand the victim's difficulties and safety concerns and understand that immigrant victims, like many other victims of domestic violence or sexual assault may reasonably choose not to continue to be involved the criminal case against the perpetrator. It is also helpful to inform police and prosecutors non-cooperating victims will be unable to attain lawful permanent residency through the U-visa unless they prove to DHS that their failure to offer ongoing cooperation was not unreasonable.

Certification From a Federal, State or Local Official is Mandatory

DHS mandates that all U-visa applications include a certification from a state, local, or federal agency as part of the crime victim's application. A crime victim applicant must include a U-visa certification from a government official who completes a U-visa certification (Form I-918 Supplement B).⁷¹ The U-visa statute authorizes certifying agencies to sign certifications--⁷²

- for victims who cooperated in the past on a case that is now closed or completed (has been helpful)
- for victims currently or recently providing information for ongoing investigations or prosecutions (is being helpful); and
- for victims who are willing to cooperate should an investigation or prosecution take place in the future (likely to be helpful).

The statute and regulations are clear that there is no time limitation and certifications can be signed any time after the criminal activity occurred. Once a victim receives a certification, the victim must file her completed U-visa application within 6 months of the date the certification was signed. If the victim is unable to complete evidence collection and filing within 6 months, the victim will need to obtain a new certification.

The form requires the law enforcement official, judge, prosecutor, or other authorized state, local, or federal employee to certify the following:

- What criminal activity occurred
- Identify the immigrant applicant as the victim of the qualifying criminal activity;
- That the applicant has been, is being, or is likely to be helpful in the investigation or prosecution;
- Note any injuries observed in the police report
- List any family members that may be implicated in commission of the crime.

⁶⁹ 8 C.F.R. § 214.14(b)(3) (2008).

⁷⁰ 8 C.F.R. § 245.24(b)(4) (2008).

⁷¹ 8 C.F.R. § 214.14(c)(2)(i) (2008).

⁷² INA § 214(o), 8 U.S.C. 1184(o).

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Congress specified a range of federal, state and local governmental agencies that are authorized to sign U-visa certification. The goal was that certification could be completed by a number of government officials with the authority to detect, investigate or prosecute criminal activities.⁷³ Agencies authorized to certify include traditional criminal justice system law enforcement agencies (e.g. police, prosecutors, sheriffs). Other federal, state, and local governmental agencies also have investigative jurisdiction over matters that include criminal activities and have been included among authorized certifying agencies. Agencies and officials who can sign U-visa certifications include but are not limited to:⁷⁴:

- ▶ Federal, state, and local law enforcement agencies (e.g., police, sheriffs, assistant U.S. attorneys, federal marshals, FBI)
- ▶ Federal, state, and local prosecutors
- ▶ Federal, state, and local judges
- ▶ Child Protective Services
- ▶ Adult Protective Services
- ▶ Equal Employment Opportunity Commission
- ▶ Department of Labor
- ▶ Immigration officials
- ▶ Other federal, state, and local investigative agencies

The certification must be signed by the head of the certifying agency or designated supervisors.⁷⁵ The DHS regulations anticipate that many agencies will have multiple designated supervisors.⁷⁶ Judges are government officials statutorily authorized by statute to sign U-visa certifications.⁷⁷ DHS does not impose the head of agency or supervisor requirement on judges.⁷⁸

Although DHS encourages certifying agencies to develop certification policies and procedures,⁷⁹ as of 2010 certifying agencies in many jurisdictions have yet to do so. Advocates and attorneys working with immigrant crime victims in jurisdictions that do not have established U-visa certification policies and procedures should provide certifying agencies with the tools they need to begin doing U-visa certifications. It is important to note that certifying agencies are not required to have U-visa protocols in place to begin signing U-visa certifications. However, having a protocol in place promotes efficiency, consistency, and predictability in the U-visa certification process. This benefits both the U-visa victim and the certifying agency improving police-immigrant community relations, fostering better community policing and enhancing crime detection, investigation and prosecution needed to promote community safety.⁸⁰

.It is important for advocates and attorneys to work with law enforcement, prosecutors, judges and other government agencies (e.g., EEOC, labor or child abuse investigators) to build a better understanding of the role of the certification, how it benefits the certifying agency (e.g. by improving community policing) and help certifying agencies establish procedures and protocols that encourage signing of certifications.

If A Crime That Violated U.S. Law Occurred Abroad, Will It Qualify For U-Visa Purposes?

⁷³ 8 C.F.R. § 214.14(a)(2) (2008).

⁷⁴ 8 C.F.R. § 214.14(a)(2) (2008).

⁷⁵ 8 C.F.R. § 214.14(a)(3) (2008).

⁷⁶ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53023. (September 17, 2007); 8 C.F.R. § 214.14(a)(3) (2008).

⁷⁷ 101(a)(15)(U)(i)(III).

⁷⁸ A U-visa certification toolkit for judges is available at: <http://iwp.legalmomentum.org/immigration/u-visa/tools/judges>.

⁷⁹ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53023. (September 17, 2007).

⁸⁰ Sample protocols and tool-kits on the U-visa that are being used in jurisdictions across the country are available at:

http://iwp.legalmomentum.org/immigration/u-visa/tools/police-prosecutors/IMM_UVISA_Sample_Cert_Protocol_OVW1.12.10.pdf/view?searchterm=protocol ;
http://iwp.legalmomentum.org/immigration/u-visa/tools/police-prosecutors/IMM_UVISA_Sample_Cert_Protocol_OVW1.12.10.pdf/view?searchterm=protocol.

U-Visas: Victims of Criminal Activity

The final U-visa requirement is that the criminal activity must either occur in the United States or violate U.S. laws.⁸¹ Crimes are considered by DHS to have occurred in the United States if the crime was committed in any of the following locations:

- ▶ Indian land including any Indian reservation within United States jurisdiction, dependant Indian communities, and Indian allotments⁸²
- ▶ Military installations including transportation (vessels, aircrafts) under Department of Defense jurisdiction or military control or lease⁸³
- ▶ United States territories including American Samoa, Swain Islands, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Northern Mariana Islands, Palmyra atoll, Seranilla Bank, and Wake Atoll⁸⁴
- ▶ Guam, Puerto Rico, and the U.S. Virgin Islands⁸⁵

For U-visa purposes, criminal activity occurring outside of the United States to be considered qualifying criminal activity there must be a U.S. federal statute that creates extraterritorial jurisdiction that allows for prosecution of that crime in a U.S. court. For example, violation of the federal statute that allows prosecution of U.S. citizens and nationals who engage in illicit sexual conduct outside the United States, such as sexual abuse of a minor, would be considered a violation of U.S. law for U-visa purposes.⁸⁶

While the criminal activity must have occurred in the U.S. or must have been in violation of a U.S. federal statute which extends extraterritorial jurisdiction, it is important to note that the victim need not be in the United States in order to apply for a U-visa.⁸⁷ Victims may file U-visa applications from abroad in the same manner as all U.S. based victims. Applications are filed directly with the Victims and Trafficking Unit of the DHS Vermont Service Center. Victims may file from abroad for a number of reasons. For some, the qualifying criminal activity may have occurred abroad. Other victims may be filing for U-visa protection from abroad because their abuser took her abroad and then stranded her there with no means to reenter the United States.

Which Family Members of U-Visa Holders Are Eligible To Receive A U-Visa?

Certain family members of U-visa applicants are also eligible to receive U-visas. A U-visa victim may include U-visa petitions for her family members along with the victim's own U-visa application. The victim may also submit U-visa applications for her family members at a later time. Victims may wait until after they are awarded a U-visa to file U-visa petitions for family members, particularly those family members residing abroad. While there is a numerical cap of 10,000 U-visas per year on the number of U-visas awarded immigrant crime victims, there is no numerical cap on the number of U-visas that can be issued to the spouses, children, parents, or siblings of U-visa recipients.⁸⁸

Family members include the U-visa victim's spouse and children (under 21).⁸⁹ Victims under the age of 21, may also request U-visas for their parents and unmarried siblings (under age 18).⁹⁰ A sibling's age is determined as of the date when the sibling's U-visa application is filed.⁹¹ Children who are born after the application is approved are also considered qualifying family members as long as an additional application is filed on their behalf.⁹² Perpetrators of battery or extreme cruelty or human trafficking who are family

⁸¹ INA § 101(a)(15)(U)(i)(IV); 8 U.S.C. § 1101(a)(15)(U)(i)(IV).

⁸² 8 C.F.R. § 214.14(a)(4) (2008).

⁸³ 8 C.F.R. § 214.14(a)(6) (2008).

⁸⁴ 8 C.F.R. § 214.14(a)(11) (2008).

⁸⁵ INA § 101(a)(38); 8 U.S.C. § 1101(a)(38).

⁸⁶ 8 C.F.R. § 214.14(b)(4) (2008).

⁸⁷ 8 C.F.R. §§ 214.14(c)(5)(i)(A)-(B) (2008).

⁸⁸ INA § 214(o); 8 U.S.C. § 1184(o).

⁸⁹ INA § 101(a)(15)(U)(ii); 8 U.S.C. § 1101(a)(15)(U)(ii).

⁹⁰ INA § 101(a)(15)(U)(ii); 8 U.S.C. § 1101(a)(15)(U)(ii).

⁹¹ 8 C.F.R. § 214.14(f)(4) (2008).

⁹² 8 C.F.R. § 214.14(f)(4)(i) (2008).

members of the U-visa petitioners are not eligible to gain U-visa status as a dependent family member of the U-visa victim.⁹³

Removal Proceedings

Victims Currently in Removal Proceedings

Victims who are currently in removal proceedings may file U-visa applications with DHS. Immediately following the victim's filing of a U-visa case, counsel for the victim should notify the DHS, Immigration and Customs Enforcement Office of Chief Counsel (OCC) and the trial attorney and the immigration court of the fact that the U-visa case has been filed. Under policies issued by DHS on August 20, 2010⁹⁴ and on September 24, 2009⁹⁵ the upon receiving notification that a U-visa application has been filed with DHS the Office of Chief Counsel will be required to:

- notify the Victims and Trafficking Unit at the Vermont Service Center of the filing,
- request expedited adjudication of the U-visa case
- immediately transfer the immigrant victim's case file (A-file) to the Victims and Trafficking Unit at the Vermont Service Center,
- when the victim has been detained, make the victim available for any interview that the Vermont Service Center may be require.⁹⁶
- upon receipt of a copy of the U-visa filing from the crime victim's attorney, review the filing to determine if as a matter of law the immigrant victim is eligible for relief from removal (e.g. it appears likely that the victim will be granted a U-visa), the Office of Chief Counsel should—⁹⁷
 - promptly move to dismiss the immigration court case without prejudice⁹⁸ and
 - if the victim is detained, secure the victim's release from detention . --

Upon receiving a U-visa filing and the transfer of the applicant's case file (A-file) from Office of Chief Counsel the **Victims and Trafficking Unit** will endeavor to adjudicate cases referred by DHS in this manner within 30 days when the immigrant victim is detained. If the victim is not detained, but is involved in removal proceedings the **Victims and Trafficking Unit** will endeavor to adjudicate the immigrant crime victim's case within 45 days of receiving the applicant's case file (A-file).

Although DHS policy places the responsibility for requesting that the **Victims and Trafficking Unit** expedite adjudication of the U-visa case on DHS trial attorneys and the Office of Chief Counsel and not on the victim's attorney or the immigration judge,⁹⁹ it is important that attorneys representing immigrant victims take all steps needed to assure that the request is both made and received by the **Victims and Trafficking Unit**. Attorneys representing U-visa victims should take all steps necessary to ensure that the U-visa case filed is complete and contains all available evidence. Attorneys must respond quickly to any requests for further evidence from the Victims and Trafficking Unit. It is recommended that attorneys for U-visa applicants with cases before the immigration court also communicate through the **Victims and Trafficking Unit** hotline¹⁰⁰ or e-mail¹⁰¹ with

⁹³ 8 C.F.R. § 214.14(f)(1) (2008)..

⁹⁴ John Morton, Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions, 2 (DHS, U.S. Immigration and Customs Enforcement, August 20, 2010).

⁹⁵ Davie Venturella, Guidance Adjudicating Stay Requests Filed By U Nonimmigrant Status (U-Visa) Applicants (DHS, Immigration and Customs Enforcement, September 24, 2009).

⁹⁶ As of December 2010, the Vermont Service Center has not been requiring interviews with victims in connection with the adjudication of U-visa cases.

⁹⁷ John Morton, Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions, 2-3 (DHS, U.S. Immigration and Customs Enforcement, August 20, 2010).

⁹⁸ This new process should significantly reduce the need for attorneys representing immigrant victims to seek agreement from the DHS trial attorney to file a joint motion to terminate removal proceedings under 8 C.F.R. §§ 214.14(c)(1)(i), 214.14(f)(2)(i) (2008).

⁹⁹ John Morton, Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions, 3 (DHS, U.S. Immigration and Customs Enforcement, August 20, 2010). ("No obligation for such requests shall be placed on the alien's attorney, accredited representative, or the immigration judge.") This policy applies to pending applications for immigration relief including VAWA, T and U visa cases.

¹⁰⁰ The Vermont Service Center VAWA Hotline is 1-802-527-4888.

¹⁰¹ Attorneys representing immigrant victims should elect to communicate with Victims and Trafficking Unit supervisors by either telephone or e-mail – Not Both. The e-mail is: hotlinefollowup18914.vsc@dhs.gov

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VAWA Supervisors to also request expedited review of the case and to learn about any additional evidentiary needs of adjudicators and provide requested information swiftly.¹⁰²

Family members who are eligible to apply for U-visas are also eligible to have their immigration case dismissed without prejudice or terminated.¹⁰³ If the proceedings are terminated and subsequently the U-visa is denied, the applicant may be reissued a *Notice to Appear* and once again placed in removal proceedings.¹⁰⁴ If the victim received a stay of removal from either the immigration court or DHS if the U-visa application is denied the order to stay the removal will be terminated effective the date of the denial.¹⁰⁵

Victims With Prior Orders of Removal

Victims who already have a final removal order remain eligible to file a U-visa application with DHS.¹⁰⁶ Filing the U-visa application will not in and of itself prevent the applicant's removal.¹⁰⁷ To protect victims who are in the United States against the victim's removal before being granted a U-visa, an application for a discretionary stay of removal must be filed on the victim's behalf with DHS.¹⁰⁸ A stay of deportation or removal is an administrative decision by DHS to stop temporarily the deportation or removal of an alien who has been ordered deported or removed from the United States.¹⁰⁹ This will stay their removal pending a decision on their U-visa application.¹¹⁰ If the U-visa is granted, any order of removal, exclusion, or deportation issued by DHS will be cancelled by operation of law effective on the date the U-visa is approved.¹¹¹

In cases where an order of exclusion, deportation, or removal against the victim was issued by an immigration judge or the Board of Immigration Appeals, the alien may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings.¹¹² For victims granted U-visas who have exceeded either or both time and numerical limitations for the filing motions to reopen, the victim's attorney will need to seek agreement from the DHS trial attorney to join in the U-visa holder victim's motion to reopen.¹¹³ The DHS policy directives issued in August of 2010 should potentially improve the ease with which DHS trial counsel should agree to join in these motions, as each of these cases will be cases in which the victim as a matter of law as a U-visa holder is entitled to relief from removal.¹¹⁴

Confidentiality and Credible Evidence Standard

Confidentiality: As with other types of cases under the Violence Against Women Act, DHS is required to keep all information about U-visa applications confidential.¹¹⁵ They cannot release information about the existence

¹⁰² For technical assistance in cases of victims in proceedings before an immigration judge contact: Immigration Technical Assistance for Survivors (ASISTA) at (515) 244-2469, questions@asistahelp.org, www.asistahelp.org; or National Immigrant Women Advocacy Project, niwap@wcl.american.edu, (202) 274-4457, <http://www.wcl.american.edu/niwap/>

¹⁰³ 8 C.F.R. §§ 214.14(c)(1)(i), (f)(2)(i) (2008).

¹⁰⁴ 8 C.F.R. §§ 214.14(c)(5)(ii), (f)(6)(iii) (2008).

¹⁰⁵ The TVPRA 2008, Section 204, for which there is currently no rule, provides that DHS has the authority to grant stays of removal to persons with pending T- and U-visa applications that will last through granting of the T- or U-visa and if the case is denied will last through the exhaustion of administrative appeals. Applicants granted stays shall not be removed from the United States. A denial of a stay under this provision does not preclude an individual from applying for a stay, deferred action, or a continuance under other immigration provisions. This provision does not preclude DHS or DOJ from granting stays of removal or deportation under other immigration provisions.

¹⁰⁶ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53022, 53037 (September 17, 2007); 8 C.F.R. §§ 214.14(a)(3), (c)(1)(ii), (f)(2)(ii) (2008).

¹⁰⁷ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53022 (September 17, 2007).

¹⁰⁸ To receive a stay of removal immigrant victims must file Form I-246, "Application for Stay of Removal," 8 C.F.R. §§ 241.6(a), 1241.6(a) (2008).

¹⁰⁹ See 8 C.F.R. §§ 241.6, 1241.6 (2008); New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (September 17, 2007).

¹¹⁰ 8 C.F.R. §§ 214.14(c)(1)(ii), (f)(2)(ii) (2008).

¹¹¹ 8 C.F.R. §§ 214.14(c)(5)(i), (f)(6) (2008).

¹¹² New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53023 (September 17, 2007).

¹¹³ *Id.* 8 C.F.R. §§ 1003.2, 1003.23 (2008).

¹¹⁴ John Morton, Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions, 3-4 (DHS, U.S. Immigration and Customs Enforcement, August 20, 2010)

¹¹⁵ Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRAIRA") § 384, Pub. L. No. 104-208, 110 Stat. 3009-652 (2001); 8 U.S.C. § 1367.

of a case to any person who is not authorized to access that information for a legitimate law enforcement purpose or other statutorily prescribed purpose.¹¹⁶ If the perpetrator of the crime or any of his or her family members provides information to DHS about the crime victim, DHS cannot rely solely upon that information to make an adverse decision on any other case the victim may be involved in (e.g. removal action). Further, DHS is precluded from relying on information provided solely by the abuser or his family members to initiate or take any part of an enforcement action against the victim.¹¹⁷ Additionally, DHS policies urge DHS enforcement officials to exercise prosecutorial discretion to avoid initiating enforcement actions against immigrant crime victims.¹¹⁸

Credible Evidence Standard:¹¹⁹ DHS is required to consider “any credible evidence” when deciding U-visa cases and U-visa holder’s applications for lawful permanent residency.¹²⁰ With regard to proof of eligibility for a U-visa and for any decision DHS makes regarding a U-visa victim’s case from initial filing to the filing for lawful permanent residency DHS is prohibited from requiring any specific type of evidence in support of the application and must accept “any credible evidence” submitted to support each requirement. The credible evidence standard was first created by the Violence Against Women Act in the context of VAWA self-petitions and other protections for women and children who are battered or subjected to extreme cruelty by a U.S. Citizen or Lawful Permanent Resident spouse or parent. It was developed with an understanding that victims of domestic violence and other violent crimes may have difficulty obtaining certain types of evidence.¹²¹ The U-visa certification (Form I-918, Supplement B) is the only exception to this rule. A victim must file a U-visa certification as part of her U-visa or the application will be rejected as incomplete.

Waiver of Inadmissibility¹²²

There are several issues that can make an applicant for lawful immigration status inadmissible into the United States. For instance, applicants for admission to the U.S. who are in the United States unlawfully, have certain criminal convictions, or suffer from certain health conditions are deemed inadmissible by statute. However, Congress recognized that many U-visa applicants will be inadmissible for one or more reasons and provided various waivers for these inadmissibility factors. For most grounds of inadmissibility, including for unlawful entry into the U.S., a waiver is available if DHS determines that granting the victim a waiver is in the public or national interest. Waivers are not available for applicants who have committed Nazi persecution, genocide, or an act of torture or extra judicial killing.¹²³ U-visa victims who have committed violent or dangerous crimes and security-related crimes¹²⁴ will only be granted waivers upon a showing of extraordinary circumstances.¹²⁵

It is extremely important that all victims who may qualify for a U-visa or another form of immigration relief be screened as early as possible to identify difficult issues or “red flags¹²⁶ that could complicate the victim’s immigration case. It is critical that advocates and attorneys working with immigrant victims fully review the

¹¹⁶ *Id.*

¹¹⁷ For further information about the confidentiality protections, see the chapter in this manual entitled “VAWA Confidentiality: History, Purpose and Violations.”

¹¹⁸ John P. Torres, Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005 2-3 (January 22, 2007).

¹¹⁹ For a full discussion of VAWA’s any credible evidence rules, see Leslye E. Orloff, Kathryn C. Isom, And Edmundo Saballos, Mandatory U-Visa Certification Unnecessarily Undermines The Purpose Of The Violence Against Women Act’s Immigration Protections And Its “Any Credible Evidence” Rules— A Call For Consistency, Vol. XI Georgetown Journal of Gender and the Law 619-647 (2010).

¹²⁰ 8 C.F.R. §§ 214.14(c)(4), (f)(5) (2008).

¹²¹ As defined by INA 212(a)(3)(E). See INA § 204(a)(1)(J); 8 U.S.C. § 1154(a)(1)(J).

¹²² Grounds of Inadmissibility (INA section 212(a)) – An individual who seeks admission into the United States or to receive lawful permanent residency must meet certain eligibility requirements to receive a visa and eventually be legally *admitted* into the United States. Grounds for *inadmissibility* include health related grounds, criminal and related grounds, security and related grounds, likelihood of becoming a public charge, not meeting labor certification and qualifications, and illegally entering the country. An immigration officer deciding cases including T- and U-visa applications for the Department of Homeland Security will make inadmissibility determinations on cases they are adjudicating.

¹²³ INA § 212(d)(14); 8 U.S.C. § 1182(d)(14).

¹²⁴ Described in INA §§ (212)(a)(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii) or (3)(C).

¹²⁵ 8 C.F.R. § 212.17(b)(2) (2008).

¹²⁶ For a full list of inadmissibility grounds see INA § 212. See also VAWA Red Flags available at:

http://iwp.legalmomentum.org/immigration/vawa-self-petition-and-cancellation/tools/VAWA_Red%20Flags.pdf/view?searchterm=red+flag.

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list of potentially adverse factors in the victim's case including inadmissibility factors. When a victim has adverse factors in her background it is essential that she have an immigration attorney with U-visa expertise representing her. The attorney will review adverse factors and develop the U-visa victim's application so as to mitigate the effect any adverse factors may have on the victim's case. The goal will be to convince DHS adjudicators that they must balance any adverse factors against the social and humane considerations presented in the victim's case and decide to waive adverse factors by finding that granting the victim a waiver is in the public or national interest.¹²⁷

Approval and Duration

U-visas approved for an immigrant victim and the victim's family members who applied together with the victim will have a 4-year duration. U-visa victim can apply for an extension of her U-visa status only if the immigrant's presence in the United States is needed to assist in the investigation or prosecution of qualifying criminal activity.¹²⁸

When a U-visa victim applies for her family members at a later date than the victim filed his or her own application, the family members will receive U-visas that have the same termination date as the U-visa victim. Family members who file for U-visas from overseas could have their U-visas expire before they have been in the United States for the three years needed to qualify to apply for lawful permanent residence. When this occurs DHS regulations allow the U-visa family member to file for an U-visa extension.¹²⁹

The DHS **Victims and Trafficking Unit** adjudicates U-visa cases in the order that they are received. Only 10,000 U-visas may be awarded each fiscal year. Once the cap of 10,000 per year is reached DHS will continue to review cases but cannot issue U-visas. Victims will be placed on waitlist in the order the cases were received. Though there are no caps for family members, DHS will not approve a family member until the primary victim U visa petitioner's petition is approved. Family members' U-visa applications will be adjudicated based on the U-visa victim's place in line. U-visa victims and their family members placed on the waiting list will be issued deferred action.

Documentary Evidence for U-visa Applications

- ❑ “A Cover Letter: *“The letter should explain how the applicant meets the requirements for the U-Visa. The letter should provide a roadmap to the exhibits filed in support of each U-visa requirement. The cover letter should also provide identification information, including applicant’s full name and date and place of birth. If the applicant’s spouse, child, or, parent, will also be seeking U-visas, the cover letter should state this and should list information such as the family members’ names, dates of birth, and relationship to the U-visa victim applicant.*
- ❑ Signed statement from the applicant: *A detailed declaration should describe the criminal activity and how the applicant meets each U-Visa requirement*
- ❑ The Applicant’s Personal Identification Information
- ❑ Form I-918 *Application for U Nonimmigrant Status*
- ❑ Form I-918 Supplement B *U Nonimmigrant Status Certification*
- ❑ Additional evidence to support each U-visa requirement
- ❑ Form I-918 Supplement A *Petition for Qualifying Family Member of a U-1 Recipient* for each family member included with the victim’s application. (The victim may add applications for family members at a later date)
- ❑ Form I-765 *Application for Work Authorization* is not required for the U-visa victim applicant but is required for all family members who want employment authorization with accompanying fee or a fee waiver request.

¹²⁷ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53021. (September 17, 2007)..

¹²⁸ New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53028 (September 17, 2007). 8 C.F.R. § 214.14(g) (2008). The application for extension of status must be filed using DHS Form I-539.

¹²⁹ 8 C.F.R. § 214.14(g)(2)(i) (2008).

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- ❑ Form I-192 *Application for Advance Permission to Enter as a Non-Immigrant* if the applicant is inadmissible with accompanying fee or fee waiver request.¹³⁰
- ❑ A copy of the applicant's passport or Form I-193 *Application for Waiver for Passport and/or Visa* with accompanying fee or fee waiver request
- ❑ Biometrics (fingerprinting) fee or fee waiver request
- ❑ Fees: There are no filing fees associated with filing a U-visa (Form I-918). All fees associated with a U-visa application from filing through receipt of lawful permanent residency are by statute required to be waivable for U-visa applicants.¹³¹

The following is a list of suggested documents that may be submitted to prove each element of a U-visa case. This list is meant to serve as a guide, and additional types of evidence may also be submitted in support of the application. Not all documents listed below will be available in every case.

In addition to a signed U-visa application, the victim's affidavit and the signed certification from a federal, state or local government official, an application for U non-immigrant status may include evidence of each of the following, if available:

Evidence of Substantial Physical and Mental Abuse as a Result of the Criminal Activity:

- ❑ Records from a health care provider documenting the diagnosis and treatment of physical injuries or a psychological condition resulting from the criminal activity
- ❑ Affidavits from victim advocates, shelter workers, counselors, or mental health professionals, detailing any physical and mental abuse or harm that the applicant has experienced and the effect that the abuse has had on the applicant, the applicant's children and the applicant's family
- ❑ Affidavit of the applicant detailing the substantial physical and mental abuse or harm suffered as a result of the criminal activity
- ❑ Copies of any police/ incident reports on domestic violence, sexual assault, trafficking or listed other criminal activity
- ❑ Copies of any protection orders/ restraining orders against the perpetrator
- ❑ Copies of any family, criminal or other court findings or rulings documenting the criminal activity
- ❑ Affidavits and certifications from neighbors, landlords, friends, or family who witnessed the criminal activity or the resulting harm or injuries
- ❑ Affidavits from police officers or prosecutors describing the violence or abuse that the applicant has experienced
- ❑ Photographs showing injuries and any other damage from the criminal activity (e.g. torn clothing, broken door, etc.)
- ❑ Records of any 911 calls

Evidence that the Victim Possesses Information Concerning the Criminal Activity:

- ❑ Affidavits and certifications from police officers, prosecutors, EEOC investigators, judges, child abuse investigators, adult protective services investigators, Department of Labor investigators detailing the

¹³⁰ The TVPRA 2008, Section 201(d), for which there is currently no rule, assures permanent access to fee waivers of all costs and fees associate with filing an application through final adjudication of the adjustment of status in VAWA self-petition, T-visa, U-visa, VAWA cancellation of removal, and VAWA suspension of deportation cases and for the cases of nonimmigrant derivative victims of domestic violence.

¹³¹ 8 C.F.R. § 103.7(c)(5)(i) (2008).

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applicant's knowledge of the criminal activity

- Copies of any police reports or statements that the applicant has made to a law enforcement agency
- Copies of claims for Victims of Crime Act ("VOCA") assistance filed as a result of the criminal activity
- Copies of reports filed with state child abuse investigators
- Copies of reports filed by state adult protective services investigators
- Transcripts of testimony that the applicant has given to a state, local, or federal law enforcement agency or court
- Affidavits from witnesses that may place the applicant at the scene of the criminal activity or attest to the applicant's knowledge of the criminal activity
- Copies of medical records documenting physical injuries occurring as the result of the criminal activity
- Copies of reports made to sexual assault health professionals and law enforcement with regard to evidence collection in rape cases.

Evidence That the Crime Victim Has Been Helpful, Is Helpful, or Is Likely to Be Helpful to a Federal, State, or Local Investigation or Prosecution:

- Copies of any police reports, statements or complaints that the applicant made to law enforcement officials (these be at the time of the incident or statements taken by police at a later date).
- Certifications and affidavits from police officers and prosecutors detailing the applicant's helpfulness
- Copies of reports filed with state child abuse investigators
- Transcripts of testimony that the applicant has given to a state, local, or federal law enforcement agency or court
- Copies of reports made to law enforcement with regard to evidence collection in rape cases.

Evidence That Criminal Activity Violated the Laws of the United States or Occurred in the United States or its Territories:

- Copies of any police reports or statements that the applicant has made to a law enforcement agency, particularly those citing criminal code sections violated
- Copies of claims for Victims of Crime Act ("VOCA") assistance filed as a result of the criminal activity
- Copies of reports filed with state child abuse investigators
- Copies of reports filed by adult protective services investigators
- Transcripts of testimony that the applicant has given to a law enforcement agency

- Copies of any arrest warrants, police reports, or domestic violence incident report
- Copies of records from a hospital or health care professional in the United States close in time to the occurrence of the criminal activity

II. U-Visa Holder's Applications for Lawful Permanent Residency¹³²

To be eligible to attain lawful permanent residency, a U-visa holder and any family member granted a U-visa applicant must:

- Have been lawfully admitted to the United States as a U-visa holder;¹³³
- Have current U-visa status;¹³⁴
- Have had 3 years continuous physical presence in the U.S. since the date of admission as a U-visa holder (exempting any individual absence of 90 days or less or an aggregate of 180 days or less)¹³⁵;
- Not be inadmissible as a perpetrator of Nazi persecution, genocide, or an act of torture or extra-judicial killing (INA 212(a)(3)(E))
- Since being granted a U-visa has not unreasonably refused to provide assistance to an official investigating the qualifying criminal activity; and
- Establish that his or her presence in the United States is justified:¹³⁶
 - on humanitarian grounds;
 - to ensure family unity; or
 - is in the public interest.
- Offer evidence to support a favorable factors demonstrating why DHS should exercise its discretion to grant the applicant lawful permanent residency¹³⁷

U-visa holder victims and their U-visa holder family members who have been physically present in the United States for three years are eligible to apply for lawful permanent residency.¹³⁸ U-visa lawful permanent residency applications are adjudicated the DHS **Victims and Trafficking Unit** in the order that the applications are received.¹³⁹ There is no cap on the total number lawful permanency applications that can be granted to U-visa victims and eligible family members in any year.¹⁴⁰ DHS is the sole agency authorized to grant lawful permanent residency to U-visa victims.¹⁴¹

Once the U-visa applicant's case has been adjudicated, DHS will issue a written notice of approval and the notice will instruct the applicant on how to obtain temporary lawful permanent residency documentation.¹⁴² The U-visa victim's date of admission to the United States will be the date the victim's application for lawful

¹³² This section on lawful permanent residency for U-visa holders was derived from the National Network to End Violence Against Immigrant Women, "Summary of U Adjustment Regulations," (2009), available at www.immigrantwomennetwork.org.

¹³³ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75540, 75546 (December 1, 2008).

¹³⁴ *Id.*

¹³⁵ 8 C.F.R. § 245.24(a)(1) (2008); see INA § 245(m)(2); 8 U.S.C. 1255(m)(2); Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75546 (December 1, 2008).

¹³⁶ INA § 254(m); 8 C.F.R. § 245.24(d) (2008).

¹³⁷ 8 C.F.R. § 245.24(d)(11) (2008); Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75549 (December 1, 2008).

¹³⁸ 8 C.F.R. § 245.24(b)(3) (2008); see INA § 245(m)(1)(A); 8 U.S.C. 1255(m)(1)(A) (2008). Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75546 (December 1, 2008).

¹³⁹ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75555 (December 1, 2008).

¹⁴⁰ *Id.*

¹⁴¹ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75549 (December 1, 2008). Immigration judges do not have legal authority rule on lawful permanent residency for U-visa victims.

¹⁴² *Id.*; 8 C.F.R. § 245.24(f) (2008).

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permanent residency was approved by DHS.¹⁴³ Applicants must complete a form from which DHS will produce a green card (Form I-89).¹⁴⁴

If the U-visa victim's application for lawful permanent residency is denied, the victim may file an appeal with the DHS Administrative Appeals Office.¹⁴⁵ The denial by a U-visa holder's application for lawful permanent residency cannot be renewed or filed before the immigration judge in removal proceedings since immigration judges cannot grant lawful permanent residency for U-visa victims.¹⁴⁶ Should a victim's appeal be denied by the Administrative Appeals Office, the victim is not precluded from filing a new U-visa application that is well documented and more fully addresses any issues raised in the victim's previous U-visa case.

Admission and Current Status as a U-Visa Holder

Immigration and Nationality Act Section 245(m) provides that crime victims lawfully admitted to the United States as U-visa holders must apply for lawful permanent residency while they are still in U-visa status.¹⁴⁷ U-visas are granted for up to four years. After three years, U-visa holders are eligible to apply for lawful permanent residency.¹⁴⁸ Victims with U-interim relief approved for U-visas will be granted U-visa status retroactive to the date on which the U-visa holder was originally granted U-interim relief.¹⁴⁹ Those who timely apply for lawful permanent residency retain U-visa status until DHS adjudicates their application for lawful permanent residence.¹⁵⁰ Applicants whose U-visas have been revoked are not eligible to apply for lawful permanent residence as U-visa holders.¹⁵¹

Continuous Physical Presence for 3 Years

Applicants for lawful permanent residence must have maintained and must establish continuous physical presence in the United States for at least three-years. To show this, the U-visa holder should demonstrate:

- That they have remained in the United States from the time they received U-interim relief and their U-visa through the time of application for lawful permanent residency;¹⁵² or
- That they did not travel outside of the United States for a single period of 90 days or more than for an aggregate period of 180 days or more;¹⁵³ or
- That any absence in excess of the 90/180 day maximums was necessary for the purposes of assisting in an investigation or prosecution of the qualifying criminal activity or if an official involved with investigation or prosecution certifies that the absence was otherwise justified.¹⁵⁴

The applicant must submit an affidavit attesting to her continuous physical presence along with any other evidence which shows the requisite continuous time period has been met. Documents submitted to prove continuous presence should be sufficiently detailed to establish continuity of presence for three years. Proof of

¹⁴³ 8 C.F.R. § 245.24(f)(1) (2008); see INA § 245(m)(4); 8 U.S.C. 1255(m)(4).

¹⁴⁴ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75549 (December 1, 2008).

¹⁴⁵ 8 C.F.R. § 245.24(f)(2) (2008).

¹⁴⁶ 8 C.F.R. § 245.24(k) (2008).

¹⁴⁷ 8 C.F.R. § 245.24(b)(2) (2008); Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75546 (December 1, 2008).

¹⁴⁸ 8 C.F.R. § 245.24(b)(3) (2008); see INA § 245(m)(1)(A); 8 U.S.C. 1255(m)(1)(A).

¹⁴⁹ 8 C.F.R. § 245.24(b)(2)(ii) (2008) creates a transition rule for U-visa victims who had received U-interim relief for more than three years prior to January 12, 2009 may combine their physically presence in the United States during both U-interim relief with U-visa status and immediately apply for lawful permanent residency. INA § 214(p)(6). However, victims who initially had U-interim relief are required to first file for a U-visa and then once approved file for lawful permanent residency. The deadline set in the regulations for victims with U-interim relief to file for U-visas has passed.

¹⁵⁰ INA § 245(l)(1)(A); 8 U.S.C. § 1255(l)(1)(A).

¹⁵¹ 8 C.F.R. § 245.24(c) (2008).

¹⁵² 8 C.F.R. § 245.24(b)(3) (2008); see INA § 245(m)(1)(A); 8 U.S.C. 1255(m)(1)(A).

¹⁵³ 8 C.F.R. § 245.24(a)(1) (2008); see INA § 245(m)(2); 8 U.S.C. 1255(m)(2). Absences of less than 90 or 180 days will not be deducted when counting 3 years continuous presence.

¹⁵⁴ 8 C.F.R. § 245.24(a)(1) (2008); see INA § 245(m)(2); 8 U.S.C. 1255(m)(2).

presence on every single day is not required.¹⁵⁵ However, there should be no significant chronological gaps in documentation.¹⁵⁶ All government-issued documents submitted should include a seal or other authenticating instrument if such a seal or indicia would normally be on the agency's documents.¹⁵⁷ In addition to documents from official government agencies, the petitioner may also submit non-governmental documents including college transcripts, employment records, state or federal tax returns showing school attendance or employment, or installment period documents like rent receipts, bank statements, or utility bills covering the full 3 year period.¹⁵⁸ If these types of documents are not available, the applicant should submit any credible evidence proving continuous presence including supporting affidavits from others who can attest to the applicant's continuous physical presence.¹⁵⁹

Documents that are already in the applicant's DHS file do not need to be resubmitted. However, the lawful permanent residency application should describe each document in the DHS file upon which the victim is relying as evidence supporting their application. A list describing each document by type and date of the document should be included.¹⁶⁰ These documents could include the written copy of a sworn statement to a DHS officer, law enforcement agency documents, hearing transcripts, or other evidence originally submitted as part of the U-visa application.¹⁶¹ Evidence of continuous presence must also include a copy of the victim's passport and/or alternative travel documents showing entries into and departures from the United States.¹⁶² When the victim has left and reentered the United States, a signed statement by the applicant as the only evidence submitted will not be sufficient proof.¹⁶³

Convincing DHS to Exercise Discretion in Favor of Granting U-Visa Holder Lawful Permanent Residence

U-visa holders applying for lawful permanent residency must prove that they are not inadmissible under 212(a)(3)(E) as Nazis, or perpetrators of genocide, torture or extrajudicial killing.¹⁶⁴ Although U-visa holders seeking lawful permanent residency are not required to establish admissibility,¹⁶⁵ in deciding whether to exercise discretion to grant lawful permanent residency to an immigrant crime victim, DHS will weigh both favorable and adverse factors in the victim's case.¹⁶⁶ The victim has the burden of showing that discretion should be exercised in their favor.¹⁶⁷ Any inadmissibility factors present in the victims case that arose after the victim received U-interim relief and a U-visa are likely to be considered by DHS in adjudicating the victims application for lawful permanent residency.¹⁶⁸ However, inadmissibility factors that DHS waived in awarding the victim a U-visa cannot be re-adjudicated in the victim's application for lawful permanent residency and should also not be considered by DHS in their exercise of discretion.¹⁶⁹

To prove that DSH should exercise its discretion to grant lawful permanent residency to a U-visa holder the applicant may provide any credible evidence. There is no set number or type of documents that can be presented. Evidence of family ties, hardship, and length of residence in the United States are factors which

¹⁵⁵ 73 Fed. Reg. 75,548 (2008-12-12).

¹⁵⁶ *Id.*

¹⁵⁷ See generally 8 C.F.R. § 245.22 (2008).

¹⁵⁸ 8 C.F.R. § 245.22 (2008).

¹⁵⁹ 8 C.F.R. §§ 245(d)(5), (6) (2008).

¹⁶⁰ 73 Fed. Reg. 75,548 (2008-12-12).

¹⁶¹ 73 Fed. Reg. 75,548 (2008-12-12).

¹⁶² 8 C.F.R. §§ 245.24(d)(5), (6) (2008).

¹⁶³ 8 C.F.R. §§ 245.24(d)(5), (6) (2008). Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75549 (December 1, 2008).

¹⁶⁴ INA § 212(a)(3)(E), 8 U.S.C. 1182(a)(3)(E); INA § 245(m)(1), 8 U.S.C. 1255(m)(1).

¹⁶⁵ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75549 (December 1, 2008).

¹⁶⁶ *Id.*

¹⁶⁷ 8 C.F.R. § 245.24(d)(11) (2008).

¹⁶⁸ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75549 (December 1, 2008). For more on inadmissibility grounds see the chapter "Human Trafficking and the T Visa" at 21-22 in this manual.

¹⁶⁹ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75549 (December 1, 2008).

could weigh decisively in favor of DHS making a discretionary grant of lawful permanent residency.¹⁷⁰ Adverse factors, such as those that would otherwise render the applicant inadmissible, may be considered in DHS's discretion. For a U-visa holder to overcome the prejudicial weight of these adverse factors, he or she must offset adverse factors with mitigating factors. The victim may be required to show clearly that denial of the adjustment would result in exceptional and extremely unusual hardship.¹⁷¹ These mitigating factors may not be sufficient, absent the "most compelling positive factors,"¹⁷² to offset adverse factors if the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse of a child, multiple drug-related crimes or where there are security- or terrorism-related concerns.¹⁷³

Proving Applicant Has Not Unreasonably Refused to Assist in Investigation Or Prosecution

Victims granted U-visas have an ongoing obligation not to unreasonably refuse to provide assistance in the investigation or prosecution of qualifying criminal activity.¹⁷⁴ Both the victim and any family members¹⁷⁵ who receive U-visas who apply for lawful permanent residency should¹⁷⁶ provide proof including:

- Whether they were asked to offer assistance, by whom; and how they responded¹⁷⁷ and
- That they offered assistance; or
- Evidence explaining that their refusal to offer assistance was not unreasonable.
- Evidence on their efforts to offer assistance may also be submitted.

DHS regulations define "refusal to provide assistance" as refusal to provide assistance *after* the victim was granted U-visa status.¹⁷⁸ The determination of whether a victim's refusal to provide was unreasonable is a DHS decision.¹⁷⁹ The DHS regulations provide U-visa holders with an option of submitting a document signed by a government official that had responsibility for the investigation or prosecution of criminal activity. The document should affirm that the victim complied with requests for assistance or did not unreasonably refuse to comply with reasonable requests for assistance.¹⁸⁰ This need not be the same official who signed the U-visa certification. Alternately, applicants for lawful permanent residency may prove assistance by submitting a newly executed U-visa certification containing additional information about the assistance offered by the victim.¹⁸¹

DHS will take into account the totality of the circumstances.¹⁸² Factors¹⁸³ that may be considered in this

¹⁷⁰ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75549 (December 1, 2008).

¹⁷¹ 8 C.F.R. § 245.24(d)(11) (2008). (The application for lawful permanent residency is called "adjustment of status" under immigration law)

¹⁷² Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75549 (December 1, 2008).

¹⁷³ 8 C.F.R. § 245.24(d)(11) (2008).

¹⁷⁴ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75547 (December 1, 2008).

¹⁷⁵ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75547 (December 1, 2008). (If a family member with a U-visa possesses information about the underlying criminal activity AND was asked to assist in the investigation or prosecution the family member with the U-visa has a responsibility to not unreasonably refuse to provide assistance).

¹⁷⁶ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75547 (December 1, 2008). ("The applicant is not required to establish the reasonableness of any refusals to comply with such requests for assistance, as it is a matter for the [DHS] Attorney General to determine whether any refusal was unreasonable.") See INA § 245(m)(5) (Establishing that DHS makes the determination of reasonableness and may do so in cases involving federal prosecutors in consultation with the U.S. Department of Justice).

¹⁷⁷ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75547 (December 1, 2008). 8 C.F.R. §§ 245.24(d)(8), 245.24(e) (2008).

¹⁷⁸ 8 C.F.R. § 245.24(a)(5).

¹⁷⁹ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75547 (December 1, 2008).

¹⁸⁰ 8 C.F.R. § 245.24(e)(1) (2008).

¹⁸¹ 8 C.F.R. § 245.24(e)(3) (2008).

¹⁸² 8 C.F.R. § 245.24(a)(5) (2008).

¹⁸³ A list of evidence that could be submitted to prove that the U-visa victim did not unreasonably refuse to comply with requests for assistance is included later in this chapter.

determination are:¹⁸⁴

- General law enforcement, prosecutorial and judicial practices;
- The kinds of assistance asked of victims of other crimes involving force, coercion, or fraud;
- The type of request for assistance and how the request for the assistance may have been made;
- The nature of the applicant's victimization;
- Preexisting guidelines for victim and witness assistance;
- Circumstances specific to the applicant such as:
 - Fear
 - Safety of the victim and the victim's family members
 - Severe physical and/or mental trauma
 - The applicant's age
 - The applicant's maturity.

A determination that an applicant unreasonably refused to provide assistance may only be made by DHS based on affirmative evidence in the record suggesting that a U-visa recipient “*may have* unreasonably refused to provide assistance to the investigation or prosecution of persons in connection with the qualifying criminal activity.”¹⁸⁵ Evidence of that a victim's refusal to assist with an investigation or prosecution was unreasonable may be provided by the U-visa certifying official to DHS and DHS is authorized under the regulations to seek such information from federal or state law enforcement or prosecutorial entities.¹⁸⁶

Documentary Evidence for U-Visa Holders Applying for Lawful Permanent Residency

Applications for lawful permanent residency filed by U-visa holders and their U-visa holder or U-visa eligible family members are to be submitted to the **Victims and Trafficking Unit** of the DHS Vermont Service Center. The **Victims and Trafficking Unit** will adjudicate lawful permanent residency applications for U-visa holders.¹⁸⁷

Documents required for U-Visa Lawful Permanent Residency Applications¹⁸⁸ include:

- Form I-485, Application to Register Permanent Residence or Adjust Status;
- Form I-485 Supplement E which is essentially additional instructions for U visa holders;
- Form I-485 filing fee or a fee waiver request;¹⁸⁹
- Biometric services fee or a fee waiver request;
- Photocopy of the applicant's U-visa approval notice;
- Photocopy of all pages of all the applicant's passports valid from the time the U-visa holder received U-interim relief and/or a U-visa for the required three year period¹⁹⁰ and documentation showing the following:
 - The date of any departure from the United States during the period that the applicant was in U-visa status;

¹⁸⁴ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75547 (December 1, 2008).

¹⁸⁵ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75548 (December 1, 2008). (Such evidence may have been submitted to DHS by the federal or state government official.)

¹⁸⁶ 8 C.F.R. § 245.24(e)(3) (2008); Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75547 (December 1, 2008). The U visa certification form provides information to U-visa certifiers regarding how to communicate with and provide information to DHS the official determines that a U-visa recipient's refusal to assist with a request from the official was unreasonable.

¹⁸⁷ The Victims and Trafficking Unit has the authority to request that the U-visa victim applying for lawful permanent residency be interviewed at a local DHS District Office, however, as of December 2010 this has not been a frequent or regular procedure.

¹⁸⁸ 8 C.F.R. § 245.24(d) (2008).

¹⁸⁹ 8 C.F.R. § 103.7(c)(5)(ii) (2008).

¹⁹⁰ The applicant may alternately provide an equivalent travel document or a valid explanation of why the applicant does not have a passport.

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- The date, manner, and place of each return to the United States during the period that the applicant was in U-visa status; and
 - If the applicant has been absent from the United States for any period in excess of 90 days or for any periods in the aggregate of 180 days or more, a certification from the investigating or prosecuting agency that the absences were necessary to assist in the investigation or prosecution of the criminal activity or were otherwise justified.
 - Applicants who do not have passports are required to provide a valid explanation of why the applicant does not have a passport.¹⁹¹
- Copy of the applicant's Form I-94, Arrival-Departure Record;
 - Evidence that the applicant was lawfully admitted in U-visa status and continues to hold such status at the time of the application;
 - Evidence pertaining to any request made to the applicant by an official or law enforcement agency for assistance in the criminal investigation or prosecution, and the applicant's response to such request;¹⁹²
 - Evidence, including an affidavit from the applicant that he or she has continuous physical presence the full period of at least three years .
 - This should include a signed statement from the applicant attesting to continuous physical presence—although that alone generally may not be sufficient to meet this eligibility requirement;
 - Documentation of continuous presence including:
 - college transcripts,
 - employment records,
 - state or federal tax returns,
 - documents showing school attendance,
 - documents showing employment,
 - installment period documents like rent receipts, bank statements, or utility bills, covering the full three year period,
 - Affidavits of persons with first-hand knowledge who can attest to the applicant's continuous physical presence supported in the affidavit by specific facts
 - Evidence establishing that approval of lawful permanent residency by DHS is warranted as a matter of discretion:
 - Evidence of favorable factors
 - Evidence of mitigation of adverse
 - Evidence that the U-visa holder qualifies for lawful permanent residency on one or more of the following grounds:
 - Humanitarian need;
 - Family unity;
 - Public interest
 - NOTE: Form I-601 "Application for Waiver of Inadmissibility Grounds" will *not* be submitted. This is because the only applicable inadmissibility ground, the INA 212(a)(3)(E), cannot be waived.

Documentation That the Victim Did Not Unreasonably Refuse to Provide Assistance in the Investigation or Prosecution¹⁹³

¹⁹¹ 8 C.F.R. § 245.24(d)(5)(2008).

¹⁹² See more details about documentation of this below.

¹⁹³ The TVPRA 2008, Section 201(e), shifted adjudicatory authority from the Department of Justice (DOJ) to the Department of Homeland Security (DHS) for all U-visa related adjudications including applications for lawful permanent residency. DHS shall

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U-visa holders may submit evidence of cooperation or that the victim did not unreasonably refuse to provide assistance in the investigation or prosecution the qualifying criminal activity in one of the following two ways:

- *Option One:* Submit a document signed by an official or law enforcement agency that had responsibility in connection with the investigation or prosecution of the qualifying criminal activity.¹⁹⁴ The document should affirm that the applicant complied with and did not unreasonably refuse to comply with reasonable requests for assistance in the investigation or prosecution during the requisite period.¹⁹⁵ This may be done by:
 - Submitting a statement from a government official involved in the investigation or prosecution of qualifying criminal activity or;
 - Submitting a newly executed U-visa certification Form I-918, Supplement B, “U Nonimmigrant Status Certification.”¹⁹⁶
- *Option Two:* Since in some cases it may be difficult for an applicant to obtain the newly executed U-visa certification on Form I-918, the regulations allow the applicant to instead submit an affidavit describing:
 - the applicant’s efforts to obtain a newly executed U-visa certification Form I-918 Supp B;
 - Evidence about requests for assistance that the victim received may include:¹⁹⁷
 - What assistance was requested
 - Who requested the assistance (e.g. name, agency, title)
 - When the request was made (before or after the victim had a U-visa)
 - Details of how and when the request was made
 - The victim’s response to the request(s)
 - Applicants should also include, when possible:
 - Identifying information about the law enforcement personnel involved in the case
 - Any information of which the applicant is aware about the status of the criminal investigation or prosecution
 - Information about the outcome of any criminal proceedings, or
 - Whether the investigation or prosecution was dropped and the reasons¹⁹⁸
 - Depending on the circumstances, evidence might include:
 - Court documents
 - Police reports
 - News articles
 - Copies of reimbursement forms for travel to and from court, or
 - Affidavits of other witnesses or officials¹⁹⁹

Petitioning For Family Members to Attain Lawful Permanent Residency Who Did Not Have U-visas²⁰⁰

A U-visa holder may file an application for lawful permanent residency on behalf of the U-visa victim’s family member who did not previously apply for or receive a U-visa. Qualifying family members’ applications for lawful permanent residency may be submitted along with the victim’s application for lawful permanent residency.²⁰¹

consult with DOJ as appropriate regarding affirmative evidence demonstrating that a victim unreasonably refused to cooperate in a Federal investigation or prosecution.

¹⁹⁴ 8 C.F.R. § 245.24(e)(1) (2008).

¹⁹⁵ *Id.*

¹⁹⁶ 8 C.F.R. § 245.24(e)(2) (2008).

¹⁹⁷ 8 C.F.R. §§ 245.24(d)(8), 245.24(e) (2008). See generally Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75547 (December 1, 2008).

¹⁹⁸ *Id.*

¹⁹⁹ Preamble at 27.

²⁰⁰ INA § 245(m); 8 U.S.C. 1255(m).

²⁰¹ 8 C.F.R. § 245.23(b)(1) (2008). Family members’ applications for lawful permanent residency may not be filed before the T-visa victim’s application has been filed.

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To qualify for lawful permanent residency the family member must meet the following criteria:

- The family member was never awarded U-visa status and never held a U-visa;
- A qualifying family relationship exists at the time that the U-visa victim was granted lawful permanent residency and that family relationship continues to exist through the adjudication of the qualifying family members application for and the issuance of lawful permanent residency to the family member. Relationships include:
 - The adult U-visa victim's spouse and children (under 21).²⁰²
 - Victims under the age of 21 their spouse, children, parents and unmarried siblings (under age 18).²⁰³
 - A U-visa victim's children who are born after the application is approved.²⁰⁴
 - Perpetrators of battery or extreme cruelty or human trafficking who are family members of the U-visa victims are not qualifying family members.
- Extreme hardship would result for either the U-visa holder or the qualifying family member if the family member is not allowed to remain in or join their family member in the United States; and
- The U-visa victim has:²⁰⁵
 - Been granted lawful permanent residency;
 - Has a pending application for lawful permanent residency; or
 - Is concurrently filing an application for lawful permanent residency.

Qualifying family members of U-visa victims must file an application for an immigrant visa on DHS Form I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant. If the family members are, at the time of filing, outside the United States, they will be eligible to obtain an immigrant visa from a U.S Consulate abroad.²⁰⁶ The family member must include the filing fee²⁰⁷ or request a fee waiver²⁰⁸ for the visa and for all costs or fees associated with the family member's application for lawful permanent residency. Filing for lawful permanent residency for qualifying family members who did not receive U-visas is a two-step process:

Step One:

The victim who is a U-visa holder files an immigration petition on behalf of the qualifying family member.²⁰⁹ The victim files Form I-929, with a fee, or a fee waiver request²¹⁰ at the **Victims and Trafficking Unit** of the DHS Vermont Service Center. The application should include evidence establishing the U-visa holder's relationship to the family member.²¹¹

- Preferred evidence of the family relationship includes:
 - Birth certificates; or
 - Marriage certificates
- Secondary evidence may be submitted where primary evidence is not available.²¹² The applicant may prove the relationship by providing any other credible evidence.

The Form I-929 for a family member may be filed concurrently with the U-visa holder's application for lawful

²⁰² INA § 101(a)(15)(U)(ii); 8 U.S.C. § 1101(a)(15)(U)(ii).

²⁰³ INA § 101(a)(15)(U)(ii); 8 U.S.C. § 1101(a)(15)(U)(ii).

²⁰⁴ 8 C.F.R. § 214.14(f)(4)(i) (2008).

²⁰⁵ 8 C.F.R. § 245.24(g) (2008).

²⁰⁶ INA § 245(m)(3); 8 U.S.C. § 1255(m)(3).

²⁰⁷ 8 C.F.R. § 103.7(b)(1) (2008).

²⁰⁸ 8 C.F.R. § 103.7(c)(5)(i) (2008).

²⁰⁹ 8 C.F.R. § 245.24(h) (2008).

²¹⁰ 8 C.F.R. §§ 245.24(h)(1)(ii), (i)(l)(iii), (iv) (2008).

²¹¹ 8 C.F.R. § 245.24(h)(1)(iii) (2008).

²¹² 8 C.F.R. § 103.3(b)(2) (2008).

permanent residency or may be filed later after the U-visa holder has been granted lawful permanent residency. The family members' application will not be approved until the U-visa holder's application for lawful permanent residency is adjudicated.

In determining whether the extreme hardship requirement has been satisfied, the burden is on the applicant to provide sufficient supporting evidence that the qualifying family member or the U-visa holder would suffer extreme hardship should the family member not be allowed to remain in the U.S.²¹³ Applications will be reviewed on a case-by-case basis, and the USCIS will consider all credible evidence and adjudicate as a matter of discretion. If the immigrant visa petition (I-929) for any family member is denied, DHS will notify the applicant in writing. The denial can be appealed to the Administrative Appeals Office.²¹⁴

Step Two:

Once the family member's visa petition (I-929) is approved, the family member who is in the United States will file their application for lawful permanent residency at the **Victims and Trafficking Unit** of the Vermont Service Center where their application for lawful permanent residency will be adjudicated. Once a family member in the United States has filed their application for lawful permanent residency (Form I-485) the applicant will be eligible to be granted work authorization.²¹⁵

Family members residing abroad whose I-929 visa petitions are approved will need to go to the U.S. consulate or embassy to receive their immigrant visa.²¹⁶ DHS will forward the approval notice to the National Visa Center for consular processing or to a Port Of Entry.²¹⁷ Family members who are outside of the United States will be required to show admissibility to be granted entry into the United States.²¹⁸

Documentation for Family Member's Immigrant Visa Applications²¹⁹

- Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant;
- I-929 filing fee or fee waiver request;
- Evidence of the relationship, such as birth or marriage certificate. If primary evidence is unavailable, secondary evidence or affidavits may be submitted;
- Evidence establishing that either the qualifying family member or the U-visa holder would suffer extreme hardship if the qualifying family member is not allowed to remain in or join the U-visa holder in United States.

Documentation for Family Member's Application for Lawful Permanent Residency

- Form I-485, Application to Register Permanent Residence or Adjust Status;
- Form I-485 filing fee or a fee waiver request;²²⁰
- Biometric services fee or a fee waiver request;
- Evidence of admissibility for family members living abroad.

Limitations on Travelling Outside of the United States On A U-Visa

²¹³ 8 C.F.R. § 245.24(h)(1)(iv) (2008). For examples of the types of evidence that can be used to prove extreme hardship in cases involving immigrant crime victims see Chapter 11 Human Trafficking and the T-Visa and Chapter 9 VAWA Cancellation of Removal in this manual.

²¹⁴ 8 C.F.R. § 245.24(h)(2)(ii) (2008).

²¹⁵ 8 C.F.R. § 274a.12(c)(9) (2008).

²¹⁶ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Federal Register 75549-50 (December 1, 2008).

²¹⁷ 8 C.F.R. § 245.24(h)(2)(i)(A) (2008).

²¹⁸ INA § 212(a); For further information about admissibility see the discussion of admissibility earlier in this chapter.

²¹⁹ 8 C.F.R. § 245.24(g) (2008).

²²⁰ 8 C.F.R. § 103.7(c)(5)(ii) (2008).

U-Visas: Victims of Criminal Activity

A U-visa holder may travel outside of the United States once the victim has been awarded a U-visa. This ability to travel is limited in two ways if the victim wishes to apply for lawful permanent residency. First, should the victim travel abroad, the victim must be able to demonstrate that no trip abroad lasted for 90 days or longer and that the number of days of travel abroad did not amount to 180 days or longer.²²¹ If a crime victim travels out of the United States for durations in excess of these limits, the victim loses their ability to file for lawful permanent residency unless the victim shows that the excess absence was necessary to assist in the investigation or prosecution criminal activity or unless the prosecutor certifies that the absence was otherwise justified.²²²

The second limitation on a U-visa victim's ability to travel occurs on the date that the U-visa victim applies for lawful permanent residency. Generally, U-visa victims who have filed applications for lawful permanent residency cannot travel abroad unless they obtain from DHS legal permission to travel.²²³ The permission granted is called "advance parole." Advance parole must be received before a U-visa victim with a pending application for lawful permanent residency can travel abroad. If a victim with a pending lawful permanent residency application travels abroad without receiving advance parole, DHS deems the victim to have abandoned his or her application for lawful permanent residency as of the date the victim departed the United States²²⁴ and their lawful permanent residency application will be denied.²²⁵

Anyone who travels, including a U-visa with advance parole,²²⁶ will have to show admissibility every time they re-enter the United States.²²⁷ Even U-visa holders whose prior acts were waived when their U-visa was granted may be challenged at a port of entry. A crime victim who travels abroad can be barred from reentry into the United States by any inadmissibility factors resulting from past circumstances. Remaining in the United States and not traveling abroad until after the U-visa holder victim obtains lawful permanent residency may be the safest option for many crime victims. DHS officials at U.S. borders or ports of entry have no authority to grant waivers of admissibility. Such waivers may only be granted by DHS officials during the adjudication of a U-visa application filed by a U-visa holder. U-visa victims whose travel strands them abroad without the ability to reenter the United States, jeopardize both their U-visa status and the U-visa status of their family members.²²⁸ Applicants should consult with an immigration attorney with U-visa experience before traveling outside of the United States. If after consultation the victim determines they can safely travel without triggering bars to reentry into the United States who seek advance parole should file an Application for Travel Document (Form I-131) and obtain advance parole before departing the U.S.²²⁹

Resources for Crime Victims on U-Visa Cases

Technical Assistance for Advocates and Attorneys Working With Immigrant Victims of Domestic Violence, Sexual Assault, Human Trafficking and other U-Visa Crimes

National Immigrant Women's Advocacy Project –
National Immigrant Women's Advocacy Project
Telephone: (202) 274-4457 fax: (202) 274-4226
E mail: niwap@wcl.american.edu

²²¹ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75546 (December 12, 2008); 8 C.F.R. § 245.24(a)(1) (2008); see INA § 245(m)(2), 8 U.S.C. 1255(m)(2).

²²² *Id.*

²²³ 8 C.F.R. § 245.2(a)(4)(ii)(B) (2008); Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75551 (December 12, 2008).

²²⁴ 8 C.F.R. §§ 245.24(j), 245.2(a)(4)(ii)(A) (2008). These requirements also apply to U-visa holders applying for lawful permanent residency in removal, deportation or exclusion proceedings before an immigration judge. If the victim has an open case in immigration court leaving the United States will result in a DHS determination that the victim's lawful permanent residency application has been abandoned, unless the victim obtains advance parole.

²²⁵ 8 C.F.R. §§ 245.24(j), 245.2(a)(4)(ii)(A) (2008). Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75551 (December 12, 2008); 8 C.F.R. §§ 245.23(j), 245.2(a)(4)(ii)(B) (2008).

²²⁶ 8 C.F.R. § § 245.23(j) (2008).

²²⁷ 8 C.F.R. § 245.23(j) (2008).

²²⁸ 8 C.F.R. §§ 245.24(j), 245.2(a)(4)(ii)(A) (2008).

²²⁹ 8 C.F.R. § 245.23(j) (2008). The filing fee for the advance parole petition may be waived for victims of U-visa holders. INA § 245(l)(1)(A)(7) (overruling form instructions and DHS practice prior to December 23, 2008).

U-Visas: Victims of Criminal Activity

Address: 4910 Massachusetts Ave NW – Suite 16, Lower Level – Washington, DC 20016
<http://www.wcl.american.edu/niwap/>

ASISTA

Telephone: (515) 244-2469

E mail: questions@asistahelp.org

Address: 3101 Ingersoll Ave. • Ste 210 • Des Moines, IA 50312

www.asistahelp.org

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

Human Trafficking and the T-Visa¹²

By Carole Angel and Leslye Orloff

Introduction³

Human trafficking is a relatively new name for an age-old human rights violation. The term trafficking encompasses labor and civil rights violations that are a modern day form of slavery. Because the modern form of trafficking has been regulated for less than a decade, the concepts are still poorly understood. The resources for trafficked people, while growing, remain limited and trafficking victims are among the most isolated types of victims. While sexual assault victims and trafficking victims share some of the same vulnerabilities, there are distinct differences in their experiences, as well as in the immigration protections and social services available to them. Despite the differences in experience, trafficking victims may not identify themselves as trafficking victims and could present as victims of sexual assault. This may occur not only because the crime of trafficking is not broadly understood, but because many trafficking victims come from circumstances in their home countries where they have already been exploited without legal or community protections. They are therefore unable to articulate the

1 "This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women." We would like to acknowledge the contributions of Maria Jose Fletcher, Ana I. Vallejo, Kavitha Sreeharsha, Amanda Baran, and Sally Robinson to this chapter.

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 introduction is excerpted from a letter to the former INS on recommendations for T-visa implementation submitted by the National Network on Behalf of Battered Immigrant Women and the Freedom Network (USA) to Empower Trafficked and Enslaved Persons submitted April 2001.

Human Trafficking and the T-Visa

exploitation they have suffered because they have become accustomed to it. It is crucial that victim advocates learn to identify when a victim of sexual assault is also a trafficking victim because immigrant trafficking victims are able to access additional protections and benefits. Trafficking victims may also need different types of services than those most familiar to domestic violence and sexual assault victim advocates.

Human trafficking is a phenomenon of global magnitude that violates the human rights of millions of women and children. Victims of human trafficking are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. In particular, an individual's status in terms of race, class, ethnicity and/or gender in their home country may make them more vulnerable to traffickers. The selling of young women into sexual bondage is an issue about which awareness has grown considerably over the past two decades. It is a serious violation of their rights and threat to their health.

The total disregard for the basic human rights accorded to all persons is a key part of the international criminal industry in trafficking of human beings. The U.S. government estimates that 14,500-17,500 people are trafficked into the United States each year.⁴ Victims of trafficking are recruited, transported, or sold into all forms of forced labor and servitude, including prostitution, sweatshop labor, domestic labor, and farming. In many cases, the exploitation of the trafficking victims is progressive: a victim trafficked into one form of slavery may be further abused in another. Victims are frequently bought and sold many times over. In addition, they are often the victims of sexual assault by their traffickers or others exploiting their situation.

The Victims of Trafficking and Violence Protection Act

The centerpiece of the U.S. government's efforts to combat trafficking is the Trafficking Victims Protection Act (TVPA), which was signed into law in 2000.⁵ It enhanced three aspects of federal government activity to combat trafficking in persons: protection, prosecution, and prevention.⁶ The TVPA provided for a range of new protections and assistance for victims of trafficking in persons. In addition, the TVPA expanded the crimes and the penalties available to federal investigators and prosecutors pursuing traffickers, and expanded U.S. international efforts to prevent victims from being trafficked.⁷ Congress reauthorized the Trafficking Victims Protection Act (TVPA) in 2003,⁸ in 2005,⁹ and again in 2008.¹⁰ In particular, the TVPA and its reauthorizations:

- Created the T-visa as a new form of immigration relief available to trafficking victims who suffer severe forms of human trafficking;¹¹
- Included victims of human trafficking among immigrant crime victims eligible for the U-visa.¹²
- Created stronger criminal penalties and enhanced sentencing for traffickers;¹³

⁴ Trafficking in Persons Report 2004, Released by the Office to Monitor and Combat Trafficking in Persons, U.S. Department of State (2004).

⁵ Victims of Trafficking and Violence Protection Act of 2000 (TVPA), Pub. L. 106-386 (Oct. 28, 2000).

⁶ Trafficking in Persons Report 2005, Released by the Office to Monitor and Combat Trafficking in Persons, U.S. Department of State (2005).

⁷ Trafficking in Persons Report 2005, Released by the Office to Monitor and Combat Trafficking in Persons, U.S. Department of State (2005).

⁸ Trafficking Victims Reauthorization Act of 2003 ("TVPRA 2003"), Pub. L. 108-193, 117 Stat. 2875 (2003) (codified as amended in scattered sections of the U.S.C.).

⁹ Trafficking Victims Reauthorization Act of 2005 ("TVPRA 2005"), Pub. L. 109-164, §§ 101, 201, 119 Stat. 3558, 3560, 3567 (2005) (codified as amended in scattered sections of the U.S.C.).

¹⁰ William Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457 (2008). (It is important that those working with trafficking victims provide assistance to victims based upon the most up to date version of the statute and be aware that there exist some inconsistencies between the statute and regulations issued prior to the 2008 amendments. This is particularly true of the T and U visa regulations governing access to lawful permanent residency for T and U visa holders. 73 Fed. Reg. 75,550 (December 12, 2008). NIWAP offers technical assistance to advocates and attorneys working with trafficking victims and can provide up to date information. (202) 274-4457; <mailto:niwap@wcl.american.edu>

¹¹ Victims of Trafficking and Violence Protection Act of 2000 ("TVPA") § 107(e)(1); 8 USC §1101(a)(15)(T)(2000).

¹² Violence Against Women Act of 2000, Pub. L. No. 106-386 (2000) §1513. For further information on immigrant victim eligibility for the U-visa and application procedures see the U-visa chapter of this manual. The U-visa helps immigrant trafficking victims who may have difficulty proving that the acts of human trafficking they suffered can meet the definition of "severe forms of human trafficking" as well as trafficking victims who have difficulty proving that removal to their home country will cause extreme hardship involving severe and unusual harm.

¹³ Victims of Trafficking and Violence Protection Act of 2000 ("TVPA") § 112; 22 USC §7109(2000).

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- Extended T-visa immigration relief to trafficking victims assisting in either state or federal criminal investigations and prosecutions of human traffickers; 14
- Created a new civil action that allows trafficking victims to sue their traffickers in federal district court; 15
- Expanded U.S. criminal jurisdiction for felony offenses committed by U.S. government personnel and contractors abroad to ensure that any involved in human trafficking activities will be held accountable for their crimes; 16
- Addressed the needs of vulnerable populations in post-conflict settings, as well as domestic trafficking by preventing the trafficking of U.S. citizens and nationals; 17 And
- Ensured that trafficking victims could seek fee waivers with regard to any fees associated with the victim's T-visa case from filing through receipt of lawful permanent residency.

The T-Visa

The TVPA created the trafficking “T-visa” that allows victims of severe forms of trafficking to live, receive services and work legally in the United States for up to four years . T-visa recipients may apply for lawful permanent residency if they meet eligibility requirements. The T-visa provides a path to permanent residence to trafficking victims who cooperate with the federal and/or state authorities and the criminal justice system. 18 The first section of this chapter provides basic information on T-visa eligibility, and lists the requirements that must be met by an applicant. The second section discusses T-visa victim eligibility to apply for lawful permanent residency. The chapter concludes with an overview the option for victim repatriation to his/her home country and a list of additional resources for trafficking victims.

Eligibility Requirements:

To be eligible for a T-visa, a non-citizen trafficking victim must show that he or she:

- Is or has been a victim of a severe form of trafficking (as defined by the TVPA); 19
- Is physically present in the United States²⁰, American Samoa, or the Mariana Islands or at a port of entry on account of trafficking; 21
- Has complied with any reasonable request for assistance in investigating or prosecuting trafficking (if 18 or older), 22 and;
- Would suffer extreme hardship involving unusual and severe harm upon removal. 23

The following section will address and discuss each eligibility requirement in depth.

14 Trafficking Victims Protection and Reauthorization act of 2003 (TVPA 2003) § 4(a)(3); TVPA § 107(b)(1)(E)(iv); (22 U.S.C. 7105(b)(1)(E)); TVPRA 2003 §4(b)(2); INA 214(n)(6); 8 U.S.C. 1184(n)(6).

15 *Id.*

16 Trafficking Victims Reauthorization Act of 2005 (“TVPRA 2005”) §103; 18 USC §3271(2005).

17 Trafficking Victims Reauthorization Act of 2005 (“TVPRA 2005”) §101; 22 USC §7104(2005).

18 INA §245(l); 8 U.S.C. §1255(l).

19 INA §101(a)(15)(T)(I); 8 U.S.C. §1101(a)(15)(T)(I) (2000).

20 The Victims of Trafficking and Violence Protection Act of 2000 defines the United States as including “the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Mariana Islands, and the territories and possessions of the United States.” Victims of Trafficking and Violence Protection Act of 2000 § 103(12); 22 U.S.C §7102(12) (2000).

21 INA §101(a)(15)(T)(II) ; 8 U.S.C. §1101(a)(15)(T)(II) (2000).

22 INA §101(a)(15)(T)(III) ; 8 U.S.C. §1101(a)(15)(T)(III) (2000)..

23 INA §101(a)(15)(T)(IV); 8 U.S.C. §1101(a)(15)(T)(IV) (2000).; 8 CFR §214.11(b) (T-visa regulations effective on March 4, 2002). Those who DHS has “substantial reason to believe” have committed acts of severe forms of trafficking are ineligible. 8 CFR §214.11(c) (2002).

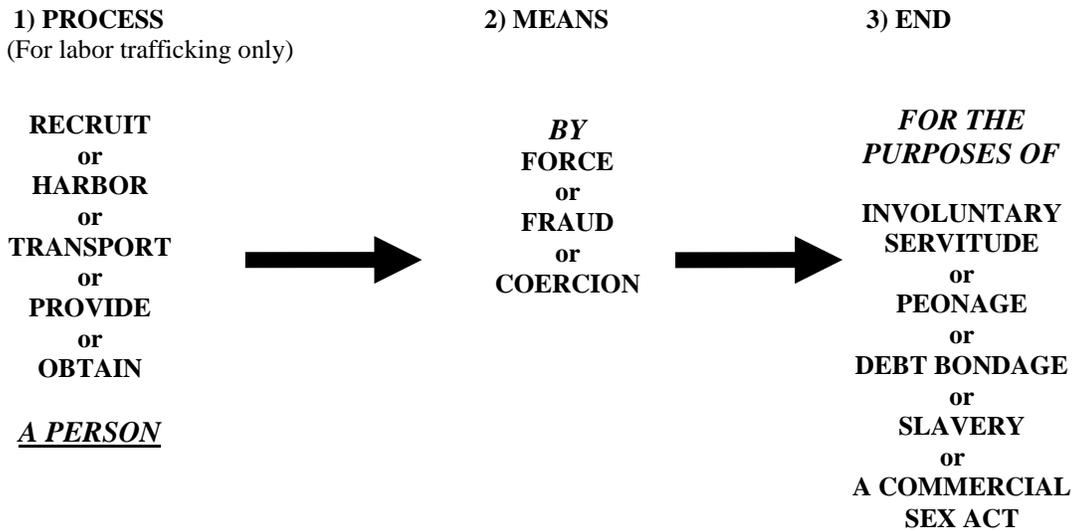
1. Victim of a Severe Form of Trafficking

The TVPA defines a “severe form of trafficking” as:

- (A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or
- (B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery²⁴.

In order to constitute a “severe form of trafficking” in persons, three elements must be present in cases involving labor or services. First, there is the *process* through which the labor is attained: by recruiting, harboring, transporting, providing, or obtaining a person for labor. Second, is the *means* used to procure the labor: was force, fraud, or coercion used in the procurement? Third, the labor has to be procured for a certain *end* purpose: involuntary servitude, peonage, debt bondage, or slavery. For cases involving sex trafficking, it is only necessary to establish that the commercial sex act (the *end*) was induced through force, fraud, or coercion (the *means*). Moreover, where the victim of sex trafficking is under the age of 18, no force, fraud, or coercion is required for it to be classified as a severe form of trafficking. These elements of proof must be established before a victim can qualify as a victim of severe form of trafficking under the law.²⁵

THREE PRONGS OF “A SEVERE FORM OF TRAFFICKING IN PERSONS”²⁶



Defining Force, Fraud, and Coercion

To meet the "means" requirement a victim must show that her labor, services or participation in a commercial sex act was procured through the use of force, fraud or coercion. While the meaning of the terms “force” and “fraud” is fairly self-evident, the term coercion is more ambiguous and was, therefore, defined in the statute. Psychological

²⁴ Victims of Trafficking and Violence Protection Act of 2000 (“TVPA”) § 103(8); 22 USC §7102(8) (2000).

²⁵ As an alternative, some trafficking victims may not fulfill the T-visa requirements but may still qualify to be granted a U-visa for crime victims. Trafficking was explicitly listed among the forms of criminal activity for which U-visas are available to provide an alternate form of immigration relief for trafficking victims. Trafficking victims may file for and receive a U-visa and later file for, receive, and switch to T-visa status if they later become eligible for a T-visa.. INA § 248(b), 8 USC § 1258 (2006).

²⁶ This diagram is an adaptation of a chart developed by the Freedom Network Training Institute whose membership of experts who have been leaders in the field of human trafficking. The work of the Freedom Network Training Institute in developing a nationally recognized human trafficking curriculum served as a foundation for many aspects of the approach adapted in writing this chapter. The authors and Legal Momentum are grateful for their leadership in training and service provision for human trafficking victims, particularly those eligible for immigration benefits and other supportive services in the United States.

Human Trafficking and the T-Visa

coercion is included as a form of coercion under the TVPA and T-visa regulations. The statutory definition of coercion includes:

- (a) Threats of serious harm to or physical restraint against any person,
- (b) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against the person, and
- (c) The abuse or threatened abuse of the legal process.²⁷

Exploring the ways in which a trafficker exerted control over his or her victim is an important step in collecting the evidence necessary to establish that there was force, fraud, or coercion. Was the victim kept locked in a factory, prevented from leaving the house alone, or in some other way physically bound to the trafficker? All would be examples of physical restraint that could be used to establish the means element. Likewise, threats of beatings or other physical harm to the victim or their family members or another person would also be persuasive evidence. While some traffickers do in fact use or threaten the use of physical restraint in order to control their victims, many traffickers are careful not to create evidence of physical force or coercion and instead employ more subtle forms of psychological coercion, often preying upon the particular vulnerabilities of the victim.

Psychological coercion includes any patterns or schemes that would make a person feel like they may suffer harm.²⁸ It is very important to carefully explore with a victim exactly what the trafficker did to make her afraid and why that created fear for her. The explanation of why the victim was afraid is often equally important as what the trafficker did in establishing that psychological coercion took place. For instance, a victim may report that the trafficker controlled her by cutting her hair. Alone, this does not establish a powerful picture of psychological coercion. However, if it is revealed that the victim believes that possession of a piece of hair gives the possessor certain powers over the owner of the hair, the act of cutting the victim's hair takes on a new meaning and could paint a picture of psychological coercion.

Distinguishing Trafficking vs. Smuggling

It is important to note that while many people use the terms trafficking and smuggling interchangeably, there are distinct differences. Smuggling is the process whereby an individual contracts with a transporter to be brought into the United States illegally. It is essentially a business transaction in which the immigrant pays the transporter to facilitate her illegal entry. Trafficking is about control --one person exerting control over another to extract labor or commercial sex acts. The preamble to the T-visa interim regulations issued on July 24, 2001 discusses the difference between being smuggled and being trafficked.²⁹ It recognizes that many victims may agree initially to be smuggled into the United States, but end up being trafficked through force, fraud or coercion. Under the T-visa regulations, victims who voluntarily entered the country unlawfully, but are subsequently victimized are not penalized for that unlawful entry in that they are still eligible to apply for T-visa relief.³⁰

Trafficking³¹

- Crime or violation against a person
- May or may not include an unauthorized border crossing
- Subsequent exploitation after entry and/or Forced labor requiring force, fraud, or Coercion³²
- Trafficked persons seen as **victims** by the law

Smuggling

- Unauthorized border crossing
- No subsequent exploitation
- Facilitated illegal entry of person from one country to another
- Smuggled persons seen as **criminals** by the law

²⁷Victims of Trafficking and Violence Protection Act of 2000 ("TVPA") § 103(2)(C); 22 USC §7102(2)(C) (2000).

²⁸ 8 C.F.R. §214.11(a) (2002).

²⁹ Protection and Assistance for Victims of Trafficking, 66 Fed. Reg. 38514 (July 24, 2001).

³⁰ See INA §212(d)(13); 8 U.S.C. § 1182(d)(13). (2000)

³¹ These two charts are adapted from training materials and a curriculum developed by the Freedom Network Training Institute whose membership of experts who have been leaders in the field of human trafficking.

³² Victims of Trafficking and Violence Protection Act of 2000 ("TVPA") § 103(8); 22 USC §7102(8) (2000).

Practice Pointers

Victims often are under such duress during their trafficking experience that they may suffer severe post-traumatic stress disorder or other forms of psychological trauma. Furthermore, victims have been instructed by their trafficker not to trust anyone and it may be difficult for an advocate to immediately elicit the information needed to determine whether a person is a trafficking victim. Advocates should be prepared to be patient and expect to develop trust slowly over time.

Human trafficking is still a relatively misunderstood term. Victims are unlikely to self-identify both because they may be unfamiliar with the terminology and because they may not understand that human trafficking is a criminal act in the United States. Therefore advocates and attorneys working on behalf of victims are in a position to make a primary assessment that a person has been trafficked. As such, advocates should explore whether their clients are victims of severe forms of trafficking as defined under the law³³ by examining the following issues:

Process: Was the victim recruited, harbored, moved, provided or obtained?

- Physical movement or control of an individual
- Movement across the border is not necessary to qualify as trafficking
- Can qualify even if the victim initiated contact with a broker
- Can qualify even if voluntarily crossed the border illegally if then victimized
- The entry may have been be under a lawful visa

Means: Was the labor or the commercial sex act procured through the use of force, fraud, or coercion?

- Was the victim --
 - Physically restrained?
 - Abducted?
 - Locked into a location?
 - Prevented from leaving the house or worksite alone?
 - Under video surveillance?
- Was physical force used to make the victim work?
 - Beatings?
 - Sexual assault?
- Was the victim threatened if she did not participate?
 - Threats of harm against the victim?
 - Threats of harm against family members?
 - Threats of harm against others, such as fellow victims?
- Did a recruiter or agent promise different work conditions than actually existed?
- Was the victim or her family members threatened with legal action as a means of control?
 - With deportation?
 - With arrest?
- What are the victim's particular vulnerabilities?
 - Age?
 - Mental status?
 - Cultural beliefs and taboos?
 - How was the victim exploited?
- Were the victim's identity documents taken from her?
- What other means of control were exerted?
 - Was food withheld?
 - Was health care withheld?

³³ *Id.*

Human Trafficking and the T-Visa

- Were there implied threats of violence e.g. making an example of someone else?

End: Was the victimization for the purpose of procuring labor under conditions of involuntary servitude³⁴, debt bondage³⁵, peonage³⁶, or slavery or for commercial sex³⁷?

- Were the perpetrator's actions designed to make the victim believe that she had no choice but to perform the labor or commercial sex act or she or another person would suffer harm or adverse legal action?
- What other means of control were exerted?
- Was the victim deeply in debt with the perpetrator (perhaps for a smuggling debt or other debt)?
 - Was she working to pay off that debt?
 - Was she being paid a fair wage?
 - Was that wage being assessed against the debt?
 - How large was the debt?
 - How long would she have to work for the perpetrator to pay off the debt?

Each application must include a statement from the victim describing the facts of the victimization. In addition, each application must include additional corroborating evidence. The Department of Homeland Security (DHS) considers the following two documents to be primary evidence of victimization.

- The Law Enforcement Agency endorsement (DHS Form I-914B); or
- Proof of Continued Presence³⁸

All victims filing for immigration relief under the Trafficking Victims Protection Act and the Violence Against Women Act are allowed under the law to prove eligibility for the T-visa by submitting any credible evidence they can muster to support their claim.³⁹ An applicant who cannot provide primary evidence may submit any credible secondary evidence. This secondary evidence must include an explanation as to why the applicant is not submitting a law enforcement endorsement and what efforts were made to obtain an endorsement. In addition, the applicant should submit any additional available evidence.⁴⁰

2. Physically Present On Account of Trafficking

³⁴ The regulations define involuntary servitude as a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process. 8 CFR §214.11(a) (2002).

³⁵ Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined. 8 §CFR 214.11(a) (2002).

³⁶ Peonage means a status or condition of involuntary servitude based upon real or alleged indebtedness.

³⁷ A commercial sex act means any sex act on account of which anything of value is given to or received by any person. 8 §CFR 214.11(a) (2002).

³⁹ Federal law enforcement officers may request that DHS authorize "Continued Presence" for a trafficking victim who is cooperating with their investigation or prosecution. Continued presence protects trafficking victims from deportation, allows them to remain in the U.S., and includes work authorization and access to public benefits. It is not a form of permanent immigration status. Trafficking and Violence Prevention Act of 2000 §107(c)(3), 22 U.S.C. §7105(c)(3) (2000) Continued Presence will be fully discussed later on page 18 of this chapter

³⁹ See generally, Leslye E. Orloff, Kathryn C. Isom, and Edmundo Saballos, *Mandatory U-Visa Certification Unnecessarily Undermines The Purpose Of The Violence Against Women Act's Immigration Protections And Its "Any Credible Evidence" Rules—A Call For Consistency*, XI Georgetown Journal of Gender and the Law 619, 641 (2010).

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³⁹ See generally, Leslye E. Orloff, Kathryn C. Isom, and Edmundo Saballos, *Mandatory U-Visa Certification Unnecessarily Undermines The Purpose Of The Violence Against Women Act's Immigration Protections And Its "Any Credible Evidence" Rules—A Call For Consistency*, XI Georgetown Journal of Gender and the Law 619, 641 (2010).

⁴⁰ 8 CFR § 214.11(h)(2) (2002).

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A victim must demonstrate physical presence in the United States on account of the trafficking.⁴¹ It is important to note that an individual need not have been trafficked into the United States (i.e. crossed the border as part of the trafficking scheme) in order to fulfill this requirement. Federal law recognizes that some trafficking victims are trafficked into the United States, some trafficking victims illegally enter the U.S. and then are victimized, and some victims enter the country legally and then are victimized. When a victim is physically present in the U.S. for the purposes of participating in an investigation or prosecution of trafficking, the victim is considered under the statute to be present on account of trafficking.⁴² Therefore, rather than focusing on the manner of entry into the country when analyzing whether presence is on account of the trafficking, federal law requires applicants for T-visas to establish that he or she:

- Is being subjected to trafficking now;
- Was recently liberated from such trafficking; or
- Is here because of past trafficking and his or her current presence in the United States is directly related to the original trafficking incident.⁴³

Victims who escape their traffickers without federal law enforcement assistance, must demonstrate that they did not have a clear chance to leave the United States in the time between escaping their traffickers and coming in contact with a law enforcement agency.⁴⁴

When the applicant's trafficking experience did not recently occur, proving physical presence also requires a including proof of "trauma, injury, lack of resources, or travel documents that have been seized by the traffickers"⁴⁵ to demonstrate that the applicant did not have an opportunity to depart. The T-visa application Form I-914⁴⁶ poses questions such as "what have you been doing since you were separated from the traffickers?" and "Why were you unable to leave the United States after you were separated from the traffickers?" to help applicants respond to this requirement. Though regulations do not differentiate between primary and secondary evidence, possible evidence includes explanations regarding trauma, financial resources, and lack of travel documents connected to the incident of trafficking.⁴⁷

3. Complied with Reasonable Requests for Assistance with Investigations or Prosecutions

Each T-visa applicant must also show that he or she has complied with any reasonable request for assistance made by law enforcement officials with regard to the investigation or prosecution of the trafficking act. DHS interprets a reasonable request for assistance as one made to a victim of a severe form of trafficking in persons to assist law enforcement authorities in the investigation or prosecution of acts of trafficking. DHS assesses the reasonableness of the request based on the totality of the circumstances in light of general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe trauma (both mental and physical) and the age and maturity of young victims.⁴⁸

One of the ways that Congress placed limits on law enforcement agencies' ability to influence a victim's ability to obtain a T-visa was by imposing reasonableness limitations on the cooperation requirement. Limiting the victims' obligation to comply only with "reasonable requests for assistance" accomplished two equally important goals. It encourages trafficking victims to come forward by offering victims protection from deportation while also creating limits to protect victims. It also balances law enforcement interests against the danger of re-victimization that might

41 INA § 101(a)(15)(T)(i)(II); 8 U.S.C. § 101(a)(15)(T)(i)(II).

42 William Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457, § 201(a)(2008). Law enforcement officials should be encouraged to request continued presence for trafficking victims present in the United States to participate in trafficking investigations and prosecutions. This will provide victims access to benefits and work authorization while their applications for T-visas are pending.

43 8 CFR §214.11(g) (2002).

44 8 CFR §214.11(g)(2) (2002).

45 8 CFR §214.11(g)(2) (2002).

46 Applicants for T-visa status must apply using the Form I-914. 8 CFR §214.11(d) (2002).

47 8 CFR §214.11(g)(2) (2002).

48 See 8 CFR §214.11(a) (2002) for definition of "reasonable request for assistance".

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occur from the victim's cooperation. DHS has clarified that evidence of cooperation may include, but does not require a statement from the investigating or prosecuting law enforcement agency.⁴⁹

There are two general exceptions to the compliance requirement. First, children under age eighteen⁵⁰ need not prove compliance with reasonable requests for cooperation, but must prove their age. Primary evidence of the victim's age is a certified copy of their birth certificate, passport or certified medical opinion.⁵¹ Secondary evidence may include church or school records, two sworn affidavits or other credible evidence.⁵²

Second, assistance is not required where the victim can establish that physical or psychological trauma impedes their ability to cooperate with law enforcement.⁵³ Possible evidence of physical trauma suffered includes photographs of bruises and injuries, police reports, medical reports and affidavits by witnesses. Evidence of psychological trauma suffered may include affidavits for victim advocates, a statement from a mental health treatment provider, medical records, affidavits by medical personnel, expert witness affidavits, forensic examinations of the victim, or other credible evidence of psychological trauma.

For ease of application, DHS has created the Law Enforcement Agency⁵⁴ endorsement form (DHS Form I-914B) which the applicant may submit as primary evidence of cooperation.⁵⁵ The law enforcement agency endorsement is not, however, a mandatory part of the T-visa application, although its submission will most easily satisfy the evidentiary requirements. If the applicant does not provide a law enforcement endorsement, secondary evidence may be submitted. Such evidence must include an affidavit explaining why the primary evidence is not available and outlining a good faith attempt to obtain an endorsement from a law enforcement agency.⁵⁶ It should also include any other witness statements that are available. To be eligible for the T-visa, the regulations require that an applicant have had some contact with a law enforcement agency regarding the acts of severe forms of trafficking in persons. At a minimum reporting the crime the victim must file a police report regarding crimes related to the act(s) of trafficking.⁵⁷ If a law enforcement endorsement is furnished as part of the T-visa application, but for some reason DHS questions the endorsement and believes an applicant has not complied with a reasonable request, DHS must contact the law enforcement agency and attempt to resolve the matter.⁵⁸

There are various scenarios in which a victim may be unable to provide a law enforcement endorsement, including but not limited to the law enforcement agency:

- Has not responded to a victim's report of a trafficking incident
- Has not been able to complete interviews needed for law enforcement agency to determine that the victim is a trafficking victim
- Has a policy not to provide endorsements or certifications
- Has significant delays in the timing if their provision of certifications or endorsements
- Does not have the resources to initiate a trafficking investigation

⁴⁹ 8 CFR §214.11(h) (2002).

⁵⁰ Under the TVPA as originally enacted, the exception to the compliance requirement applied only to children under the age of fifteen. The exception was expanded to include children under the age of eighteen by the TVPRA of 2003. See Trafficking Victims Reauthorization Act of 2003 ("TVPRA 2003"), §4(b)(1)(A) (amending INA § 101(a)(15)(T), 8 U.S.C.1101(a)(15)(T)(i)); U.S. Citizenship and Immigration Services, *Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status* (June 29, 2010) Available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=a53dc7f5ab548210VgnVCM10000082ca60aRCRD&vgnnextchannel=02ed3e4d77d73210VgnVCM10000082ca60aRCRD>

⁵¹ 8 CFR §214.11(g)(3) (2002).

⁵² 8 CFR §214.11 (9) (3); 8 CFR §103.2(b)(2)(i) (2002).

⁵³ See INA § 101(a)(15)(T)(iii); 8 U.S.C. § 1101(a)(15)(T)(iii). This provision was added by VAWA 2005, and provides that such determinations of unreasonableness must be made by DHS in consultation with the Attorney General. However, DHS has not yet published regulations indicating how this provision will be implemented.

⁵⁴ A Law Enforcement Agency ("LEA") is defined as a Federal law enforcement agency charged with detection, investigation or prosecution of trafficking cases. LEAs include U.S. Attorney's Offices, Department of Justice's Criminal and Civil Rights Divisions, the Federal Bureau of Investigation (FBI), Investigations and Customs Enforcement of the Department of Homeland Security, the United States Marshals Service, and the Department of State's Diplomatic Security Service. 8 CFR §214.11(a)

⁵⁵ 8 CFR §214.11(h)(1) (2002).

⁵⁶ 8 CFR §214.11(h)(2) (2002).

⁵⁷ 8 CFR §214.11(h)(2) (2002).

⁵⁸ 8 CFR §214.11(h)(1) (2002).

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- Chooses not to prioritize the investigation because the trafficker (this may occur where the trafficker is known to have fled the country or is no longer alive).

Many trafficking victims who qualify for T-visa immigration relief, are unable to provide law enforcement endorsements to support their T-visa applications. This should not deter victims from applying. In such cases, however, it is important to document that the trafficking offense was reported to a law enforcement agency, any ongoing communication with the law enforcement agency regarding the victim, efforts to obtain an endorsement, and to provide and any other credible evidence documenting the victims efforts to obtain the endorsement.⁵⁹

4. Extreme Hardship Involving Unusual and Severe Harm

An applicant for a T-visa must also show extreme hardship to herself if she were to return to her home country.”⁶⁰ The hardship need not be related to the trafficking. However, DHS will consider both factors associated with the trafficking, as well as more traditional extreme hardship factors. Hardship to people other than the applicant such as family members the victim has included in the T-visa application will not be considered. ⁶¹ “Nor will current or future economic detriment, or the lack of, or disruption to, social or economic opportunities” be sufficient to establish extreme hardship involving unusual and severe harm.⁶² No particular factor guarantees a finding of extreme hardship but regulations do not differentiate between primary or secondary evidence.⁶³ Applicants are encouraged to fully document all sources of hardship. The regulations include the following non-exhaustive list of hardship factors that can be considered in cases of trafficking victims⁶⁴:

- The age and personal circumstances of the applicant;
- Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country;
- The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;
- The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of severe forms of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;
- The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant could be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;
- The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant; and
- The likelihood that the applicant’s individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under section 244 of the Act, or the granting of other relevant protections.

Applicants may also seek to support the extreme hardship by providing evidence of the “traditional” and “VAWA related” types of extreme hardship typically used in VAWA suspension of deportation and VAWA cancellation of removal cases.⁶⁵ This type of evidence is most helpful when the applicant can make a strong connection between the particular hardship and the human trafficking and its consequences. The following is a list of traditional and VAWA related factors used to assess extreme hardship:⁶⁶

Traditional:

⁵⁹ 8 CFR §214.11(h)(2) (2002).

⁶⁰ 8 CFR §214.11(i)(1) (2002).

⁶¹ 8 CFR §214.11(i)(2) (2002).

⁶² 8 CFR §214.11(i)(1) (2002).

⁶³ 8 CFR §214.11(i)(2) (2002).

⁶⁴ 8 CFR §214.11(i)(1) (2002).

⁶⁵ New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status; Final Rule, 67 Fed. Reg. 4799 (January 31, 2002); Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed.Reg. 75,543 (December 12, 2008).

⁶⁶ Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13,067 (Mar. 29, 1996)

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- Age (youth/old age) of the applicant;
- Ages and number of the applicant's children;
- The children's ability to speak the native language of the foreign country and the children's ability to adjust to life in another country;
- Serious illness of the person or her child that necessitates medical attention not adequately available in the foreign country;
- A person's inability to obtain adequate employment in the home country;
- The person and her children's length of residence in the United States;
- Existence of other family members residing legally in the United States (including lack of family in the home country);
- Irreparable harm arising from a disruption of educational opportunities;
- The adverse psychological impact of removal;
- The extent to which deportation would interfere with court custody, visitation, and child support awards;
- The extent to which the battered woman is an asset to her community in the United States (i.e., involvement in church/temple/mosque, children's school, community, other service programs); and
- Impact of separation on both mother and children if the mother is removed and the children do not accompany her.

VAWA

- The nature and extent of the physical and psychological consequences of the battering or extreme cruelty;
- the impact of the loss of access to the U.S. courts and criminal justice system (including, not limited to, the ability to obtain and enforce: orders of protection; criminal investigations and prosecutions: **and** family law proceedings or court orders regarding child support, maintenance, child custody and visitation);
- the applicant and/or the applicant's child's need for social, medical, mental health, or other supportive services which would not be available or reasonably accessible in the foreign country;
- the existence of laws, social practices, or customs in the foreign country that would penalize or ostracize the applicant or the applicant's child for having been the victim of abuse, for leaving the abusive situation, or for actions taken to stop the abuse;
- the abuser's ability to travel to the foreign country and the ability and willingness of foreign authorities to protect the applicant and/or the applicant's child from further abuse; and
- the likelihood that the abuser's family, friends, or others acting on behalf of the abuser in the foreign country would physically or psychologically harm the applicant and/or the applicant's child.

As with its consideration of VAWA extreme hardship in the context of VAWA cancellation, DHS will evaluate each case individually and consider all credible evidence submitted, including relevant country condition reports and any other public or private sources of information.⁶⁷

Referrals to Immigration Attorneys and Advocates With Expertise Working With Human Trafficking Victims and the Importance of Local Collaborations

An application for a T-visa should only be undertaken with the assistance of an immigration attorney well verse on the topic. Not all immigration lawyers have the training, experience and expertise to effectively represent victims of human trafficking. If you have identified a potential trafficking victim, make a prompt referral to an attorney with expertise on trafficking cases.⁶⁸ **It is crucial that a referral to an attorney specializing in human trafficking laws be made as early as possible after the person has been identified as a potential victim of trafficking. Her ability to cooperate with law enforcement and prosecution officials will be enhanced when she is already working with an anti-trafficking attorney or victim advocate at the time her trafficking case is referred to government officials.**

Successful representation of trafficking victims requires collaboration and cooperation between different government agencies (including DHS, DOJ, and HHS), victims, advocates, and federal, state and local law

⁶⁷ 8 CFR §214.11(i)(3) (2002).

⁶⁸ A list of organizations with experience representing immigrant human trafficking victims is included at the end of this chapter.

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enforcement and prosecutors. Effective communication between government agencies, community members, direct service providers, shelters, and other advocates is essential to ensure that victims are protected and traffickers are brought to justice. A trafficking victim must be properly informed about the process that is involved in the criminal investigation and prosecution of human traffickers so that the victim can make an informed choice about whether and how she will cooperate and what protections she will need for her safety. Nongovernmental Organizations (NGOs) are in an ideal position to receive referrals from the community, screen immigrants for trafficking victim eligibility and provide services, assistance, and care for trafficking victims. NGOs can assure that victims understand the law and their rights, and provide the social and emotional support needed to help victims be more effective witnesses cooperating with law enforcement and prosecution officials in the investigation and prosecution of traffickers under federal and state anti-trafficking laws and other criminal statutes. Many NGOs with anti-trafficking expertise have ongoing relationships with trafficking units of local government agencies through their participation in local anti-trafficking taskforces and/or collaborative community response teams working on issues of violence against women in their communities. These NGOs are familiar with referral and case protocols that should be used to protect victim safety and enhance access to immigration relief and other forms of legal protections and services that human trafficking victims need and are eligible to receive.

Faith-based organizations, health care workers, shelters, detention facilities, community leaders, business owners and subcontractors, and concerned community members, may be the first to interact and identify a trafficking victim. Advocates are encouraged to educate these and other community-based a wide range of groups in the community to help identify victims of human trafficking and refer victims to service providers.

Filing the T-Visa Application:

A victim of human trafficking may apply for a T-visa by filing a DHS Form I-914.⁶⁹ *Application for T Nonimmigrant Status*⁷⁰ and supporting documents with the Vermont Service Center.⁷¹

Application packages should be marked “T-visa unit” in red pen on the outside of the envelope and sent to:

U.S. Citizenship and Immigration Services
Victims and Trafficking Unit

Vermont Service Center
75 Lower Welden St.
Saint Albans, Vermont 05479-0001

T-visa applicants should keep a copy of everything they submit to DHS including the application, accompanying documents, and the proof of mailing. Copies, not original documents (such as birth certificates, legal documents, and photographs) should be sent with the petition. Within a few weeks after mailing the application and fees, the T-visa applicant should receive an acknowledgement or Notice of Receipt.

Fee waivers are available for all fees associated with the filing of a trafficking victim T-visa holder’s application for lawful permanent residency.⁷² Victims may request that DHS grant fee waivers of the costs associated with any matter or form related to the adjudication of the T-visa.⁷³

Note that under the T-visa regulations, applicants whose victimization occurred before October 28, 2000 were required to file by January 31, 2003.⁷⁴ Those who were trafficked as children must have filed by January 31, 2003

⁶⁹ The form is available at http://www.uscis.gov/graphics/formsfee/forms/i_914.htm or by contacting the DHS forms request line at 1-800-870-3676.

⁷⁰ “Non-immigrant” visas are issued to persons granted permission to remain temporarily (not permanently) in the United States. If an immigrant is granted permission to live permanently in the United States they will receive an “immigrant” visa.

⁷¹ The Vermont Service Center has a special T-visa unit where adjudicators are specially trained on issues of human trafficking. In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit. The VAWA unit staff has been trained to adjudicate VAWA self-petitions T-visa and U-visa applications for those who claim to be victims of battery, extreme cruelty, sexual assault and trafficking or other U-visa listed crime.

⁷² INA §245(l)(7).

⁷³ 8 CFR §103.7(c) (2008). All fees associated with any of the forms described below on the list of documents a T-visa victim may file in support of their lawful permanent residency application may be waived by DHS in trafficking victim's cases. INA §245(l)(7).

or within a year after their twenty-first birthday, whichever occurs later.⁷⁵ However, an exception is available for applicants who can demonstrate that exceptional circumstances prevented them from filing by the deadline.⁷⁶

Applying for Family Members of the Trafficking Victim:

T-visa applicants may request immigration benefits for themselves and certain family members whether they are residing in the United States or in another country. Immigration attorneys and DHS officials often refer to T-visa eligible family members included in an application as derivative beneficiaries. T-visa status can be given to spouses and children of T-visa adult victim applicants. Child trafficking victims under the age of 21 may also request T-visa status for their parents and their siblings under the age of 18. All that is necessary to establish eligibility for eligible family members is a showing of the requisite family relationship -- family members do not have to show extreme hardship.⁷⁷ Additionally, parents and siblings who are under the age of 18 may receive T-visa immigration benefits if the family member is in danger of a trafficker's retaliation as a result of the victim's cooperation with law enforcement.⁷⁸⁷⁹

The trafficking victim applying for a T-visa may also apply to receive a T-visa for a family member using a Form I-914 Supplement A (Form I-914A). A separate form must be filed for each family member being sponsored for a T-visa. The Form I-914A may be filed concurrently with the applicant's T-visa application, or at a later date. If the family member is physically present in the United States that family member must sign the I-914 Supplement A;

Trafficking victims who receive T-visas also receive employment authorization. T-visa eligible family members may also apply for employment authorization at the same time that they file their T-visa application if the applicant is in that United States⁸⁰ at the time of filing. To apply for work authorization each family member must submit:

- an Application for Employment Authorization, (Form I-765) ;
- two passport photos, and
- the Employment Authorization filing fee or fee waiver application..

Family members receiving T-visas while abroad, may apply for work authorization after entering the United States with T-visa status by filing the documents listed above along with a copy of his/her passport, and a copy of the Form I-94 evidencing entry into the U.S. in T-visa status..

T-visa regulations do not allow for petitioning by victims for family members who are traffickers. A T-visa holder may not file an application on behalf of a family member who committed the trafficking that created the individual's original T-visa eligibility.⁸¹

T-Visa Application Package

T-visa application packages should contain the following:

- A Cover Letter: The letter should explain how the applicant meets the requirements for the T-visa. The letter should be a roadmap to the exhibits filed in support of the application requirements. It should also provide identification information, including applicant's full name and date and place of birth. If the applicant's spouse, child, sibling, or parent, will also be seeking T-visa status, the cover letter should state this and should list information including each family members' name, date of birth, and relationship to the applicant.
- A signed statement from the applicant: A detailed declaration should describe the crime victimization and how the applicant meets each T-visa requirement.
- Form I-914 Application for T Nonimmigrant status

⁷⁴ 8 CFR §214.11(d)(4) (2002).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Prior to the enactment of VAWA 2005, it was necessary for derivatives to show extreme hardship in order to establish eligibility for T status. VAWA 2005 eliminated that requirement, although as of the publication date of this manual, DHS regulations had not yet been updated to reflect this change in law.

⁷⁸ William Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457, § 201(a)(2008).

⁸⁰ 8 CFR §214.11(o)(10) (2002).

⁸¹ INA § 214(o)(1); 8 U.S.C. § 1184(o)(1) (2000).

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- Form I-914 Supplement A *Application for Immediate Family Member of T-1 Recipient* for any family members included (may be added later)
- Form I-765 *Application for Work Authorization* is not required for the applicant but is required for all family members present in the U.S. who desire work authorization
- Form I-192 *Application for Advance Permission to Enter as a Non-Immigrant if the applicant is inadmissible*⁸²
- A copy of the applicant's passport or Form I-193 Application for Waiver for Passport and/or Visa with accompanying fee or fee waiver request⁸³
- Fees: There are no filing fees associated with the Form I-914. However, a biometrics (fingerprinting) fee is required, but applicants may qualify for a fee waiver. In addition, the Form I-765 and Form I-192 require filing fees. ⁸⁴
- Any additional evidence to support the applicant's eligibility

The following is a list of suggested documents that may be submitted to prove each element of a T-visa case. This list is meant to serve as a guide, and additional types of evidence may also be submitted in support of the application. Furthermore, not all documents listed below will be available in every case.

In addition to a signed statement, an application for a T-visa should include evidence of the following:

Evidence of victimization:

- Primary Evidence:
 - Form I-914B *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons*
 - Evidence the applicant was authorized Continued Presence as a trafficking victim
- Secondary Evidence:
 - Statement by applicant describing the victimization, what has been done to report the crime to law enforcement, and what records for the time and place of the crime are available. This statement is a required piece of evidence if the applicant does not submit primary evidence of victimization.
 - Trial transcripts
 - Court documents
 - Police Reports
 - News articles
 - Reimbursement forms for travel to and from court
 - Witness Affidavits

Evidence of Physical Presence on Account of the Trafficking

- Evidence of the date, place, manner and purpose for which the applicant entered the country
 - Applicant statement
 - Form I-914B *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons*
 - Evidence applicant was authorized for Continued Presence as a trafficking victim
- Evidence victim is now present on account of the trafficking
- Records from a health care provider documenting physical or psychological trauma making them unable to leave the country

⁸² Grounds of **Inadmissibility (INA section 212(a))** – An individual who seeks admission into the United States or to receive lawful permanent residency must meet certain eligibility requirements to receive a visa and eventually be legally *admitted* into the United States. Grounds for *inadmissibility* include health related grounds, criminal and related grounds, security and related grounds, likelihood of becoming a public charge, not meeting labor certification and qualifications, and illegally entering the country. An immigration officer deciding cases including T and U-visa applications for the Department of Homeland Security will make inadmissibility determinations on cases they are adjudicating.

⁸³ Fee waivers are available for all fees associated with a T-visa case from filing through the victim's receipt of lawful permanent residency. William Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457, § 201(d)(2008).

⁸⁴ *Id.*

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- Affidavits from victim advocates, shelter workers, counselors, or mental health professionals detailing any physical or psychological trauma and the effect it had on the applicant's ability to leave the country
- Affidavits from friends, neighbors, social service providers, etc, about the applicant's financial inability to travel.
- Information showing that the applicant's travel documents were seized by the traffickers, such as affidavits from the victim, other victims, or other witnesses

Evidence of Cooperation for Applicants Age 18 and Older:

- Primary Evidence: Form I-914B *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons*
- Secondary Evidence:
 - Statement by applicant explaining why the law enforcement endorsement is not available and outlining good faith efforts to obtain an endorsement. The statement show that the victim reported the crime and has complied with all reasonable requests for assistance. This statement is a required piece of evidence if the applicant does not submit a Form I-914B LEA endorsement.
 - Trial transcripts
 - Court documents
 - Police Reports
 - News articles
 - Reimbursement forms for travel to and from court
 - Witness Affidavits

Evidence of Extreme Hardship

- Affidavit from the victim detailing the victimization, including the nature of the emotional, physical and sexual abuse and the consequences to her physical and psychological well-being if she's removed from the United States;
- Affidavits from experts, such as social workers, shelter workers, counselors, or psychologists about the impact of the trafficking on the victim and her children;
- Documentation on the impact of the loss of access to the U.S. courts, both the civil and criminal systems (including, but not limited to, the ability to secure criminal investigations and prosecutions, bring civil suits, obtain restitution, and secure protection);
- Court records;
- Police records (including police reports and copies of all call tapes);
- "Victim impact statements" provided by the victim for sentencing in a criminal case;⁸⁵
- Evidence of the applicant's needs for social, medical, mental health, victim, or other supportive services that would not be available or reasonably accessible in the foreign, including the following:
 - Records of counseling programs in which the VAWA applicant or her children have participated and affidavits from the counselors describing the program and the benefit of the program to the applicant;
 - Copies of medical and mental health records that document the abuse;
 - Affidavits from battered women's advocates and shelter workers who have worked with the VAWA applicant or her children;
 - Affidavits from advocates, experts, university professors, or women's groups and other documentation confirming that services parallel to those she is receiving in the United States are lacking in her home country;
- Documentation on the existence of laws, social practices, or customs in her home country that would penalize or ostracize the applicant for having been the victim of sexual assault, including the following:
 - Documentation of customs and practices in the victim's home country that would harm her or make recovery or healing difficult;

⁸⁵ Victim impact statements, which are used in criminal cases, provide the crime victim with an opportunity to address the sentencing judge about the effect the crime has had on the victim's life and the victim's opinion about the sentence.

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- Documentation of the trafficker or his associate's ability to travel to the victim's home country and the ability and willingness of foreign authorities to protect the applicant or her from future harm,
- Affidavits from the victim's family members and others who have been threatened by the trafficker or the trafficker's agents in the home country;
- Documentation of any serious illness of the victim or and, if appropriate, description of how the illness was caused by or exacerbated by the abuse;
- Description of whether similar medical treatment is available to the victim in the victim's home country or why alternative healthcare services there are likely to be less effective;
- Documentation of the victim's inability to obtain adequate employment in the foreign country if the victim's inability to obtain any employment or to obtain adequate employment was a result of or connected to the trafficking. Examples might include:
 - (1) the victim's status as a survivor of sexual assault precludes employment;
 - (2) the trafficker's level of power and influence in the home country prevent employers from hiring the immigrant victim; or
 - (3) adequate employment sufficient to support the victim is not open to women in her home country.

Practice Pointers for Preparing the Application Package:

When working with a T-visa applicant, trafficking victims may not necessarily initially trust their attorneys and advocates. They also may struggle to self-identify and articulate their experiences in a way that fits the requirements of a T-visa. Though the benefits are critical, take time to develop that trust. Meet with the victim several times to review the facts of the declaration and application. When you meet with her, use open-ended questions and collecting affidavits and documents corroborating the elements of proof. Anti-trafficking service providers are experts and their affidavits will be considered as critical supporting evidence. These affidavits are extremely valuable when the victim is submitting an application without a law enforcement endorsement..

The victim's affidavit is one of the most important pieces of evidence in the T-visa application. It is important to make sure the T-visa applicant's affidavit provides as much detail as possible *in the applicant's own words*. It may be organized according to element of proof, but legal jargon implies the attorney wrote the affidavit, undermining its value to the adjudicators and triggering fraud concerns in some cases. The affidavit should address the omission of any "primary" evidence.⁸⁶ The affidavit's credibility is enhanced when the affidavit is detailed, contains objective factual information, and includes a description of the victim's actual experiences and feelings. . A victim should clearly articulate her fears. The crime of human trafficking has both subjective and objective elements that need to be covered in the victim's affidavit. It is important that they reader of the affidavit understand that how a person in the same position and circumstances as the victim would feel compelled to work.

The cover letter or brief should organize supporting documents by element of proof so adjudicators may easily find these documents. Each exhibit should be briefly described with an explanation of why the document supports a particular element. It is also helpful to highlight the relevant portion of each document so that adjudicators may easily navigate the document... Send the application by certified mail and mark the outside envelope and your cover page in big red letters with "T-visa Unit." This helps ensure it is routed to the right unit and assures that the application is handled as required by VAWA confidentiality.

Number of T-Visas Available, Visa Duration and Lawful Permanent Residency For T-visa recipients

The maximum number of T-visas available in any one-year is 5,000 for the primary trafficking victim applicants⁸⁷. There is no limit on the number of visas available for qualifying spouses, children or parents of T-visa applicants.

⁸⁶ Refer to the documentary requirements described under each T-visa requirement for a list of primary evidence satisfying each requirement.

⁸⁷ INA § 214(o)(2); 8 U.S.C. § 1184(o)(2) (2000).

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If the annual cap is reached, a wait list will be created and the applicants' T-visa status will be granted once a visa becomes available.⁸⁸

T-visas are statutorily granted for up to four years. After three years of T-visa status, or at the conclusion of the criminal case against the human trafficker, T-visa holders are eligible to apply for lawful permanent residency.⁸⁹ T-visa holders should apply for lawful permanent residency within the 90 days immediately preceding the date their T-visa status expires.⁹⁰ Pursuant to statute, if the Attorney General determines that the investigation or prosecution is complete, the T-visa holder may apply for lawful permanent residency sooner than three years.⁹¹ Those who apply for lawful permanent residency retain T-visa status until DHS adjudicates their application for lawful permanent residence.⁹²

An applicant must meet the following requirements to receive lawful permanent residency as T-visa victims:

- (1) physical presence for a continuous period of three years or during the course of the investigation or prosecution;⁹³ and
- (2) good moral character;⁹⁴ and
- (3-A) continued compliance with any reasonable request for assistance in investigating or prosecuting traffickers; or
- (3-B) the victim must show that she would suffer extreme hardship involving unusual and severe harm if removed.⁹⁵

As with the T-visa, there is a 5,000 annual cap on T-based applications for lawful permanent residency, but the cap only applies to T-visa victims not to their derivatives.⁹⁶

Benefits for Victims of Trafficking

In addition to providing victims the protection of immigration relief, the TVPA makes available certain services and benefits to victims of trafficking.⁹⁷ The Office of Refugee and Resettlement ("ORR") at the Department of Health and Human Services issues certification letters to victims of trafficking. Upon receipt of HHS Certification trafficking victims are eligible to receive the same range and level of federal and state public benefits and social and legal services as refugees.

In order to be eligible, one must be certified as a victim of trafficking. There are two ways to be certified as a trafficking victim. Any person to whom continued presence is granted will automatically receive certification from ORR. The other way to receive certification is through the T-visa application process. A T-visa applicant who has established basic eligibility for a T-visa will receive a bona fide letter.⁹⁸ Once an applicant receives a bona fide letter from Vermont Service Center, ORR will receive notice of and will issue a certification letter.

⁸⁸ 8 CFR §214.11(m)(2) (2002).

⁸⁹ 8 CFR §214.11(p)(1) (2002).

⁹⁰ 8 CFR §214.11(p)(2) (2002).

⁹¹ INA § 245(l)(1)(A); 8 U.S.C. § 1255(l)(1)(A) (2000). The provision allowing T status holders to apply for lawful permanent residence prior to the completion of 3 years in T status in cases where the Attorney General determines the investigation or prosecution is complete was added by VAWA 2005. DHS has not yet updated regulations to implement this provision.

⁹² INA § 245(l)(1)(A); 8 U.S.C. § 1255(l)(1)(A) (2000).

⁹³ INA § 245(l)(1)(A); 8 U.S.C. § 1255(l)(1)(A) (2000). Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75544 (December 12, 2008)

⁹⁴ INA § 245(l)(1)(B); 8 U.S.C. § 1255(l)(1)(B) (2000).

⁹⁵ INA § 245(l)(1)(C); 8 U.S.C. § 1255(l)(1)(C) (2000).

⁹⁶ INA § 245(l)(4)(B); 8 U.S.C. § 1255(l)(4)(B) (2000).

⁹⁷ Trafficking victims with prima facie determinations in T-visa cases are qualified immigrants eligible to receive federal public benefits. William Wilberforce Trafficking Victims Protection Act, Pub. L. 110-457, § 211(a) (2008). These benefits are in addition to the benefits trafficking victims receive to the same extent as refugees under TVPA 2000 § 107(b)(1)(A); 22 U.S.C. 1705(b)(1)(A).

⁹⁸ ORR State Letter #01-13. A Bona fide application is one in which DHS determines to be complete, include a law enforcement certification or other credible secondary evidence, includes fingerprints and backgrounds checks, appears to be absent fraud, and meets basic eligibility requirements. 8 C.F.R. § 214.11(a) (2002).

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Certified trafficking victims and their eligible family members, are entitled to the same benefits as refugees.⁹⁹ They are eligible for cash benefits as well as food stamps for a period of 6-8 months after being certified. In addition, certified victims receive Medicaid-funded medical coverage under state medical programs. These benefits are all administered through refugee benefit programs. These programs also include job training classes and ESL.

Continued Presence

The TVPA created the special status of *continued presence*¹⁰⁰ to provide trafficking victims with immediate protection while victims are waiting for their T-visa applications to be filed and adjudicated. It allows a trafficking victim to remain in the United States to facilitate a victim's participation in an investigation or prosecution of trafficking including when the victim is a potential witness.¹⁰¹ Continued presence is not a long-term option and does not lead to any type of permanent legal immigration status. Victims who wish to remain in the United States will have to pursue some other form of lawful immigration status which for trafficking victims includes the T-visa or the U-visa. A trafficking victim cannot apply for lawful permanent residence unless she has a T-visa and meets other requirements to apply for lawful permanent residence.

There has been an increase in state and local law enforcement efforts to address human trafficking. Thirty-eight states currently have anti-trafficking statutes.¹⁰² The Bureau of Justice Assistance (BJA) at the Department of Justice has funded 42 local taskforces across the country with the goal of forging alliances between local law enforcement, federal law enforcement, and nongovernmental organization (NGO).¹⁰³ As a result state and local law enforcement are playing a larger role in investigating and prosecuting human traffickers. However, state and local law enforcement cannot provide victims with continued presence. Only federal law enforcement or prosecutors may make requests of DHS to grant victims continued presence.¹⁰⁴ State and local law enforcement officials must secure the assistance of federal law enforcement to file requests for continued presence for human trafficking victims involved in state prosecutions of traffickers.¹⁰⁵ In adjudicating the continued presence request filed by federal officials, DHS may grant a victim continued presence and/or may grant an alternative form of temporary immigration remedy for the victim which may include¹⁰⁶:

- Deferred Action¹⁰⁷
- Parole¹⁰⁸
- Voluntary departure¹⁰⁹
- Stay of removal¹¹⁰

Most of these forms of temporary immigration relief will allow the victim to also receive work authorization.

DHS has the authority upon written request by a law enforcement official to parole certain family members of trafficking victims granted continued presence into the United States.¹¹¹ For under 21 year old victims receiving continued presence, qualifying relatives may include a spouse, child, parent, or unmarried sibling under the age of 18. For victims receiving continued presence over 21, qualifying relatives may be a spouse or child of the victim.

⁹⁹Trafficking and Violence Prevention Act of 2000 §107(b)(1)(A); 22 USC §7105(b)(1)(A) (2000).

¹⁰⁰Trafficking and Violence Prevention Act of 2000 §107(c)(3), 22 U.S.C. §7105(c)(3) (2000).

¹⁰¹Trafficking and Violence Prevention Act of 2000 §107(b)(1)(E)(i)(II)(bb) (2000); §107(c)(3)(2008).

¹⁰²Fact Sheet on State Anti-Trafficking Laws from US PACT [Policy Advocacy to Combat Trafficking], Center for Women Policy Studies, December 2008.

¹⁰³www.ojp.usdoj.gov/BJA/grant/06HTTFmap.ppt

¹⁰⁴28 C.F.R. §1100.35 (2002).

¹⁰⁵www.ojp.usdoj.gov/BJA/grant/06HTTFmap.ppt

¹⁰⁶28 CFR §1100.35(b) (2002).

¹⁰⁷Deferred action is not an immigration status but a designation that assigns those in this designation a lower priority for removal from the United States. 8 CFR §274a.12(c)(14) (1987).

¹⁰⁸8 C.F.R. §212.5 (1982). Parole is a mechanism for bringing people into the United States from another country without evaluating or granting *admission*, for which individuals would have to overcome an extensive list of grounds of inadmissibility.

¹⁰⁹8 C.F.R. §240.25 (1997). Voluntary departure is an order that may be requested from an individual who are in removal (deportation) proceedings in order to facilitate return to her country of origin.

¹¹⁰8 C.F.R. §241.6 (2000). A Stay of removal is an order issued by an immigration judge to an individual who has a final order of removal from the United States. The stay allows the individual to remain in the United States temporarily and prevents authorities from requiring the removal of the individual from the United States,

¹¹¹The qualifying family relationship must have existed at the time the trafficking victim was granted continued presence.

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For all trafficking victims, irrespective of age, qualifying relatives may also include parents or siblings who are in present danger of retaliation as a result of the trafficking victim's escape or cooperation with law enforcement. DHS may extend parole until the latest date that one of the following occurs:

- final adjudication date of a T-visa application;
- the expiration of the victim's continued presence; or
- the date on which a civil action filed by the trafficking victim is concluded.

Relatives of trafficking victims granted parole into the United States will have parole revoked if the trafficking victim fails to exercise due diligence in promptly filing a T-visa petition for the victim's qualifying relatives. DHS will deny parole to a relative if DHS or DOJ determines that the relative is complicit in the trafficking or is inadmissible or deportable on criminal or security grounds.¹¹²

In addition to these short-term immigration benefits that provide protection from removal and work authorization, victims granted continued presence are also eligible to receive HHS certification as victims of human trafficking.¹¹³ The Office of Refugee and Resettlement is notified of the grant of continued presence status and issues a certification letter. With this certification letter, a victim is able to obtain access to public benefits including cash assistance, food stamps, health coverage, English as a Second Language (ESL) classes, and job training.

T-Visa Recipients Applications for Lawful Permanent Residency¹¹⁴

To be eligible to attain lawful permanent residency, an applicant must:

- have been admitted to the United States;
- have current T-visa status;
- have maintained continuous physical presence for 3 years (may be less if an investigation or prosecution is complete) exempting any individual absence of 90 days or less or an aggregate of 180 days or less¹¹⁵;
- be admissible at the time of application (this provision may be waived)¹¹⁶;
- have good moral character during his or her continuous physical presence¹¹⁷;
- have complied with any reasonable request for assistance during continuous presence¹¹⁸ or show extreme hardship upon removal¹¹⁹; and
- offer evidence to support a favorable grant¹²⁰

Family members' applications for lawful permanent residency may be submitted along with the victim's application for lawful permanent residency.¹²¹ There is a 5,000 annual cap on T-visa based applications for lawful permanent residency, but the cap only applies to T-visa victims and not to their spouses, children, or siblings who may also apply to receive lawful permanent residency along with the T-visa victim.¹²²

Admission and Current Status as a T-Visa Holder

Immigration and Nationality Act Section 245(l) provides that trafficking victims lawfully admitted to the United States as T-visa holders must apply for lawful permanent residency while they are still in T-visa status.¹²³ T-visas are granted for up to four years. After three years, T-visa holders are eligible to apply for lawful permanent

¹¹² William Wilberforce Trafficking Victims Protection Act, Pub. L. No. 110-457, §205(b) (2008).

¹¹³ Trafficking and Violence Prevention Act of 2000 §107(b)(1)(E)(i)(II)(bb), 22 U.S.C. §7105(b)(1)(E)(i)(II)(bb) (2000).

¹¹⁴ INA §245(l) governs applications for lawful permanent residency filed by T-visa holders. This provision is separate and distinct from other forms of access to lawful permanent residency that may be available under other provisions of INA section 245.

¹¹⁵ 8 CFR § 235.23(a)(3) (2008).

¹¹⁶ 8 CFR § 245(1)(4), (b)(4), (c)(2) and (3) (2008).

¹¹⁷ 8 CFR §245.23(g) (2008).

¹¹⁸ 8 CFR § 245.23(d), § 245.23(f)(1) (2008).

¹¹⁹ 8 CFR § 245.23(d), § 245.23(f)(2) (2008).

¹²⁰ 8 CFR § 245.23(e)(3) (2008).

¹²¹ 8 CFR § 245.23(b)(1) (2008)(Family members' applications for lawful permanent residency may not be filed before the T-visa victim's application has been filed).

¹²² INA § 245(l)(4)(B); 8 U.S.C. § 1255(l)(4)(B).

¹²³ 8 CFR § 245.23(a)(2), 8 CFR § 245.23(b)(2) (2008).

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residency.¹²⁴ T-visa holders should apply for lawful permanent residency within the 90 days immediately preceding the date that their T-visa expires.¹²⁵ Those with T-visas that expired prior to the promulgation of the T-visa lawful permanent residency (“adjustment of status”) rule,¹²⁶ were given until March 2009 to file lawful permanent residency applications.¹²⁷ T-visa holders can apply for lawful permanent residency without having to wait three years if the Attorney General or their designee (e.g. a federal prosecutor) provides information and DHS determines that the investigation or prosecution is complete.¹²⁸ Those who timely apply for lawful permanent residency retain T-visa status until DHS adjudicates their application for lawful permanent residence.¹²⁹

Continuous Physical Presence For 3 Years

All T-visa recipients who apply for lawful permanent residency must prove either:

- that they have had continuous physical presence in the United States for 3 years; or
- that the investigation or prosecution of the qualifying trafficking violation is complete.¹³⁰

If the applicant files for lawful permanent residency with less than three years physical presence based on a completed investigation or prosecution, the applicant must submit a request in writing to an authorized designee of the Attorney General.¹³¹

For applicants applying based upon 3 years continuous presence, the applicant will not qualify if the applicant left the United States for a single period of 90 days or more or for an aggregate period of 180 days¹³² or more, unless the victim’s leaving the United States was for the purposes of assisting in an investigation or prosecution.¹³³ The “entry” date used to calculate continuous presence will be the date of admission to the U.S. as a T-visa holder.¹³⁴ When a T-visa holder travels abroad the date of their reentry to the U.S. (date on form I-94) will be used as evidence of the duration of their absence from the U.S. and will not be used to restart the counting of continuous presence.¹³⁵

Documents submitted to prove continuous presence should be sufficiently detailed to establish continuity of presence. Proof of presence on every single day is not required.¹³⁶ All government-issued documents submitted should include a seal or other authenticating instrument if such a seal or indicia would normally be on the agency’s documents.¹³⁷ In addition to documents from official government agencies, the petitioner may also submit non-governmental documents including college transcripts, employment records, state or federal tax returns showing school attendance or employment, or installment period documents like rent receipts, bank statements, or utility bills.¹³⁸

Documents that are already in the applicant's DHS file do not need to be resubmitted. However, the lawful permanent residency application should describe each document in the DHS file upon which the victim is relying as evidence supporting their application. A list describing each document by type and date of the document should be included.¹³⁹ These documents could include the written copy of a sworn statement to a DHS officer, law

¹²⁴ 8 CFR §214.11(p)(1) (2008).

¹²⁵ 8 CFR §214.11(p)(2) (2008).

¹²⁶ Effective January 12, 2009.

¹²⁷ 8 CFR § 245.23(a)(2)(ii) (2008).

¹²⁸ INA § 245(l)(1)(A); 8 U.S.C. § 1255(l)(1)(A); 8 CFR 245.23(e)(2)(i)(B).

¹²⁹ INA § 245(l)(1)(A); 8 U.S.C. § 1255(l)(1)(A).

¹³⁰ INA § 245(l)(1)(A); 8 U.S.C. § 1255(l)(1)(A); 8 CFR 245.23(e)(2)(i)(B).

¹³¹ As of December 2010 the designees is the Civil Rights Division of the U.S. Department of Justice, Criminal Section, Human Trafficking Offenses.

¹³² Section 201(d), allows absences from the U.S. for longer than 90 days or in aggregate 180 days if the absence was to assist with an investigation or prosecution or is otherwise justified by an investigatory or prosecutorial agent. William Wilberforce Trafficking Victims Protection Act, Pub. L. No.110-457, §201(d) (2008).

¹³³ INA §245(l); 8 CFR § 235.23(a)(3)). The exception was created by TVPRA 2008 and guidance is not yet available. William Wilberforce Trafficking Victims Protection Act, Pub. L. No.110-457, §201(d) (2008).

¹³⁴ 8 CFR 245.23(a)(3).

¹³⁵ 8 CFR § 235.23(a)(3), § 235.23(e)(2)(i) (2008). This is true even when there is an annotation on the victims form I-94

¹³⁶ 73 Fed. Reg. 75,543 (2008-12-12).

¹³⁷ 8 CFR § 245.23(e)(2)(i) (2008).

¹³⁸ 8 CFR § 245.22 (2008).

¹³⁹ 73 Fed. Reg. 75,544 (2008-12-12).

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enforcement agency documents, hearing transcripts, or other evidence originally submitted as part of the T-visa application.¹⁴⁰ Evidence of continuous presence must also include a copy of the victim's passport and/or alternative travel documents showing entries into and departures from the United States.¹⁴¹ When the victim has left and reentered the United States, a signed statement by the applicant as the only evidence submitted will not be sufficient proof.¹⁴² If documentation is not available, applicants can submit an affidavit explaining why documentation is not available and applicants should also submit affidavits of persons who can attest to the physical presence of the trafficking victim in the United States.¹⁴³

Admissible to the United States or Unless Victim Receives a Waiver

To receive lawful permanent residency a T-visa holder must be "admissible" to the United States at the time of their interview with DHS.¹⁴⁴ When a victim has one of more of the following grounds for *inadmissibility*, they will be required to file for a waiver of inadmissibility. Grounds include: a communicable disease¹⁴⁵, many types of criminal convictions,¹⁴⁶ security related grounds¹⁴⁷, likelihood of becoming a public charge,¹⁴⁸ violating the terms of a visitor or student visa by unlawfully working or staying beyond the time authorized by the visa,¹⁴⁹ illegally entering the country,¹⁵⁰ or other grounds.¹⁵¹ An immigration officer who is adjudicating a T-visa applicant's case has the authority to make inadmissibility determinations and the discretion to grant waivers.

Applicants who are inadmissible must file an Application for a Waiver of Grounds of Inadmissibility (Form I-601). This application requires payment of a fee or a fee waiver.¹⁵² Any inadmissibility grounds that were waived during adjudication of the victim's T-visa application will not be addressed again in the T-visa victim's lawful permanent residency application. Thus, DHS does not require that a second waiver application for the same inadmissibility charges be filed. However, waivers must be filed if any new inadmissibility charges arose after the victim received his or her T-visa. Denials of requests for waivers of inadmissibility may be appealed to the DHS Administrative Appeals Office.¹⁵³ DHS maintains the authority to revoke its approval of a waiver of inadmissibility.¹⁵⁴

One possible ground for inadmissibility is the likelihood of the applicant will become a public charge. Immigrants can be denied lawful permanent residency based on public charge when DHS believes that an immigrant at the time of admission is likely to become primarily dependent on the U.S. government for subsistence because of their health, education, assets, or family status.¹⁵⁵ DHS regulations state further that the best evidence that an immigrant is primarily dependent on the government for subsistence is either receipt of cash assistance for income maintenance or long term institutionalization at government expense.¹⁵⁶ It should be noted that a T-visa holder's receipt of refugee benefits as a certified trafficking victim is not conclusive proof of the likelihood of becoming a public charge. Receipt of refugee benefits is not sufficient proof of public charge under the public charge regulations. Thus, DHS does not require filing of a waiver of inadmissibility if the victim's only inadmissibility ground is the T-visa victims who received certification and benefits. Similarly, unlawful presence does not require a waiver if caused by or incident to trafficking.¹⁵⁷

¹⁴⁰ 73 Fed. Reg. 75,543 (2008-12-12).

¹⁴¹ 8 CFR § 245.23(e)(2)(i) (2008).

¹⁴² 8 CFR § 245.23(e)(2)(i) (2008).

¹⁴³ 8 CFR § 245.23(e)(2)(i) (2008).

¹⁴⁴ 8 CFR § 245(1)(4), (b)(4), (c)(2) and (3) (2008).

¹⁴⁵ INA § 212(a)(1)(A)(i)

¹⁴⁶ INA § 212(a)(2).

¹⁴⁷ INA § 212(a)(3).

¹⁴⁸ INA § 212(a)(4).

¹⁴⁹ INA § 212(a)(9)(B).

¹⁵⁰ INA § 212(a)(6)(A).

¹⁵¹ For a full list of inadmissibility grounds see INA § 212. See also VAWA Red Flags available at:

http://iwp.legalmomentum.org/immigration/vawa-self-petition-and-cancellation/tools/VAWA_Red%20Flags.pdf/view?searchterm=red+flag

¹⁵² 8 CFR § 212.18(a), 8 CFR 103.7(1), 8 CFR 103.7(b)(1) (2008).

¹⁵³ 8 CFR 245.23(i).

¹⁵⁴ 8 CFR § 103.5 (2008).

¹⁵⁵ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (March 26, 1999)

¹⁵⁶ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,692 (March 26, 1999)

¹⁵⁷ 8 CFR § 245.23(c)(3) (2008).

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Certain grounds for inadmissibility can't be waived. The non-waivable inadmissibility grounds include security-related grounds, international child abduction, and renouncing citizenship to avoid taxation.¹⁵⁸ Health-related and public charge grounds are waivable if in the national interest.¹⁵⁹ All of the remaining inadmissibility grounds are waivable if in the national interest and the inadmissible activities were caused by, or were incident to, the victimization.¹⁶⁰

The unlawful presence ground does not apply if the T-visa victim establishes that trafficking was at least one central reason for his or her unlawful presence. Trafficking need not be the sole reason but the nexus between trafficking and unlawful presence must be more than tangential, incidental, or superficial. Victims who include in their application for lawful permanent residency information about the relationship between trafficking and their unlawful presence are not required to file a request for waiver of inadmissibility based on unlawful presence with DHS.¹⁶¹ If the victim's unlawful presence was unrelated to trafficking, the victim will be required to file a request for waiver of inadmissibility. Family members who are T-visa holders may also seek waivers of inadmissibility in their applications for lawful permanent residency. To receive a waiver the family member just demonstrate that their inadmissibility was caused by or incident to the trafficked family member's victimization and that the waiver is in the national interest.¹⁶²

Good moral character during continuous presence¹⁶³

An applicant must have good moral character from the date on which the victim received their T-visa, through the date of the victim's lawful permanent residency is granted.¹⁶⁴ The Immigration and Nationality Act¹⁶⁶ enumerates categories of actions that preclude a finding of good moral character. However, this list is not exclusive and an act falling outside the enumerated categories could still preclude establishment of good moral character. Also, there are some exceptions to a bar of good moral character if the act at issue is caused or incident to the victimization.

Primary evidence of good moral character includes local police clearance letters or state issued criminal background checks from all the jurisdictions where an applicant lived for more than 6 months over the course of their time in continuous presence.¹⁶⁷ If police clearances, state background checks, or other similar evidence is unavailable, applicants should submit an affidavit explaining efforts to obtain clearances, why clearances cannot be obtained and should submit alternate evidence which may include fingerprints or state background checks.¹⁶⁸ If a T-visa holder is under 14, s/he is presumed to have good moral character and need not submit proof of good moral character. If DHS has reason to believe that the applicant does not have good moral character, it may request evidence.¹⁶⁹

Complied With Any Reasonable Request For Assistance During Continuous Presence¹⁷⁰ or Would Suffer Extreme Hardship¹⁷¹

In filing for lawful permanent residency the T-visa holder must prove that they complied with reasonable requests for assistance from law enforcement or prosecutors investigating and/or prosecuting traffickers.¹⁷² Victims may

¹⁵⁸ 8 CFR § 245.23(c)(1) (2008).

¹⁵⁹ INA §245(l)(2)(A); 8 U.S.C. § 1255(l)(2)(A).

¹⁶⁰ 8 CFR 212.18(b)(3) (2008).

¹⁶¹ 8 CFR § 245.23(c)(3) (2008).

¹⁶² 8 CFR 245.23(a)(4), 245.23(b)(4), 245.23(c)(2); and (3); *see* INA sec. 245(l)(2), 8 U.S.C.1255(l)(2); INA sec. 212(a), 8 U.S.C. 1182(a).

¹⁶³ 8 CFR § 245.23(g) (2008).

¹⁶⁴ 8 CFR § 245.23(a)(5) (2008).

¹⁶⁵ William Wilberforce Trafficking Victims Protection Act, Pub. L. No.110-457, §201(d) (2008).

¹⁶⁶ INA §101(f)

¹⁶⁷ 8 CFR § 245.23(g) (2008).

¹⁶⁸ 8 CFR § 245.23(g) (2008).

¹⁶⁹ 8 CFR § 245.23(g)(4) (2008).

¹⁷⁰ 8 CFR § 245.23(d), § 245.23(f)(1) (2008).

¹⁷¹ 8 CFR § 245.23(d), § 245.23(f)(2) (2008).

¹⁷² William Wilberforce Trafficking Victims Protection Act, Pub. L. No.110-457, §201(e), (2008) overruling 8 CFR § 245.23(d) (2008) which would have required that T-visa applicants for lawful permanent residency submit a U.S. Department of Justice issued

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submit any credible evidence to provide their assistance or willingness to assist with investigations and/or prosecutions of human trafficking. This evidence might include a certification from a federal prosecutor or a statement or other evidence from a federal, state or local law enforcement official.

Victims are who can not prove compliance with reasonable requests for assistance may alternately prove that extreme hardship involving unusual and severe harm upon removal would result if the victim is removed from the United States. Advocates working with trafficking victims should collect the same types of extreme hardship evidence that was required in the original T-visa application.¹⁷³

No one piece of evidence guarantees a finding of extreme hardship. Extreme hardship can be based on serious physical or mental illness necessitating medical or psychological assistance or support unavailable in the home country, nature of the psychological or physical consequences of the victimization, and the likelihood of harm from the trafficked in the home country.¹⁷⁴ There is no need to resubmit evidence on extreme hardship already submitted with the T-visa application. The applicant should however, establish that the hardship is ongoing.¹⁷⁵ The fact that a T-visa recipient already proved extreme hardship in order to receive the T-visa is helpful, but DHS is not bound by any previous extreme hardship determinations when issuing the T-visa.¹⁷⁶

Child trafficking victims under the age of 18 applying for T-visas are exempt from the requirement that they cooperate with reasonable requests for assistance from law enforcement.¹⁷⁷ This same exemption has been extended so as to not require proof of cooperation when victims who were under age 18 when they became trafficking victims file applications for lawful permanent residency based upon their T-visa.¹⁷⁸

Applicant's Burden to Convince DHS Exercise Discretion To Grant Victim Lawful Permanent Residency¹⁷⁹

Lawful permanent residency is a benefit that requires DHS exercises its discretion to grant or deny to an individual immigrant applicant. Thus, trafficking victims should submit sufficient evidence to convince DHS that the trafficking victim applicant deserves a favorable exercise of discretion to award lawful permanent residency. In making this determination,¹⁸⁰ DHS, , may consider factors other than eligibility which may weigh in favor of the grant of lawful permanent residence.¹⁸¹ Such factors include:

- family ties;
- hardship; and
- length of residence in the United States.

DHS may also take in to account adverse or negative facts or circumstances which are unfavorable to the victim's application for lawful permanent residency.¹⁸² When adverse factors exist in a trafficking victim's case the victim is permitted to introduce evidence to offset negative facts. Victims should submit supporting documentation establishing mitigating equities that DHS should consider in the applicant's case...¹⁸³

document stating that the victim has complied with any reasonable requests of assistance in an ongoing Federal, State, or local investigation or prosecution of acts of trafficking.

¹⁷³ See the discussion of extreme hardship above and 8 CFR 214.11(i).

¹⁷⁴ 8 CFR § 214.11(i) (2008).

¹⁷⁵ 8 CFR § 245.23(f)(2) (2008).

¹⁷⁶ 8 CFR § 214.11(i) (2008).

¹⁷⁷ INA §101(a)(15)(T)(i)(III)(bb)

¹⁷⁸ INA §245(l)(C)(iii) The TVPRA 2008, section 201(d), clarifies that T-visas based on trafficking while they were minors do not have to comply with reasonable requests for cooperation from law enforcement. William Wilberforce Trafficking Victims Protection Act, Pub. L. No.110-457, §201(d) (2008). This statutory amendment overruled the DHS practice and regulation at 8 CFR § 245.23(a)(6)(ii) (2008), that previously required child victims to prove cooperation or extreme hardship in order to attain lawful permanent residency as T-visa recipients.

¹⁷⁹ 8 CFR § 245.23(e)(3) (2008).

¹⁸⁰ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75545 (December 12, 2008).

¹⁸¹ 8 CFR § 245.23(e)(3) (2008).

¹⁸² 8 CFR § 245.23(e)(3) (2008)

¹⁸³ 8 CFR § 245.23(e)(3) (2008).

If there are sufficient unfavorable or adverse factors present, applicants may be required to show that the denial of lawful permanent residency will result in exceptional and extremely unusual hardship. Depending on the case, even such a showing may still not overcome unfavorable factors.¹⁸⁴ Examples of adverse factors include convictions for violent crimes, crime of sexual abuse against a child, multiple drug-related crimes, and security or terrorism concerns.¹⁸⁵

Application Procedures for T-Visa Victims Seeking Lawful Permanent Residency

A T-visa victim's application for lawful permanent residency must include a completed Application for Lawful Permanent Residence (Form I-485) along with "initial evidence" supporting the victim's eligibility for lawful permanent residency.¹⁸⁶ If the victim's application is not supported by sufficient evidence DHS may deny an application or issue a Request for Evidence if it deems the application incomplete.¹⁸⁷ A documents list for a complete T-visa based lawful permanent residency application includes:

Document List for T-Visa Victim Applying for Lawful Permanent Residency

- Form I-485 *Application for Lawful Permanent Residence* with fee or fee waiver¹⁸⁸
- Form I-765 *Application for Employment Authorization* based on category (c)(9) with an application fee or fee waiver
- Form I-601 *Application for Waiver of Grounds of Inadmissibility*, if necessary with fee or fee waiver
- Form I-797 *Notice of Action* containing proof of T-visa status¹⁸⁹
- Passport/Travel document or reason why passport is unavailable¹⁹⁰
- I-94 *Arrival-Departure Record* documenting a T-visa victim's entry into the United States ¹⁹¹
- Evidence of continuous presence¹⁹²
- Evidence of the nexus between victimization and unlawful presence¹⁹³
- Medical examination
- Evidence of good moral character (police clearance letters and/or other evidence)
- Documentation of continued cooperation from the U.S. Department of Justice or from state or local prosecutors or law enforcement officials or documentation of extreme hardship
- Evidence in support of a favorable exercise of discretion that may include but is not limited to: family ties, hardship, length of US residence; adverse factor may require proof of exceptional and extremely unusual hardship)

Document List for T-Visa Victim's Family Members Applying for Lawful Permanent Residency

- Proof of relationship to the T-visa victim
- Form I-485 *Application for Lawful Permanent Residence* with fee or fee waiver¹⁹⁴
- Form I-765 *Application for Employment Authorization* based on category (c)(9) with fee or fee waiver
- Form I-601 *Application for Waiver of Grounds of Inadmissibility* if necessary with fee or fee waiver

¹⁸⁴ 8 CFR § 245.23(e)(3) (2008).

¹⁸⁵ 73 Fed. Reg. 75,545 (2008-12-12)

¹⁸⁶ 8 CFR 103.2(b)(1).

¹⁸⁷ 8 CFR § 103.2(b)(8) (2008).

¹⁸⁸ 8 CFR § 245.23(a)(1) (2008).

¹⁸⁹ 8 CFR § 245.23(e)(2)(i) (2008).

¹⁹⁰ 8 CFR § 245.23(e)(2)(i) (2008).

¹⁹¹ 8 CFR § 245.23(e)(2)(i) (2008).

¹⁹² 8 CFR § 245.23(e)(2)(i) (2008).

¹⁹³ 8 CFR § 245.23(c)(3) (2008).

¹⁹⁴ 8 CFR § 245.23(a)(1) (2008).

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- Form I-797 *Notice of Action* containing proof of T-visa status¹⁹⁵
- Passport/Travel document or reason why passport is unavailable¹⁹⁶
- I-94 *Arrival-Departure Record* documenting a T-visa victim's entry into the United States ¹⁹⁷
- Evidence of the nexus between the victimization and unlawful presence¹⁹⁸
- Medical examination
- Receipt of T- visa victim's *Application for Lawful Permanent Residence* (Form I-485) if the family member is not filing their application for lawful permanent residence concurrently with the T-visa victim..¹⁹⁹

DHS Adjudication

DHS will grant up to 5,000 T-1 visa holder applicants lawful permanent residency per year. Family members receiving T-visas are not counted as part of the 5,000 visa cap. T-visa applications are adjudicated in the order they are received. Any applications in line after the cap is reached in any fiscal year will be carried over to the subsequent fiscal year and will be adjudicated in the order received.²⁰⁰ New filings received by DHS after the cap has been reached will be processed in the same manner as all T-visa applications, but no T-visas will be granted until the next fiscal year when new T-visas become available.²⁰¹

Once the applicant's case has been adjudicated, DHS will issue a written notice of approval and the notice will instruct the applicant on how to obtain temporary lawful permanent residency documentation.²⁰² The trafficking victim's date of admission to the United States will be the date the victim's application was approved by DHS. Applicants must complete a form from which DHS will produce a green card (Form I-89) ²⁰³ If the victim has family members living abroad included in the victim's application, notice of the approval of the family member's application will be sent to National Visa Center that prepares the paperwork that will be needed for the family member's case to be processed by officials at the American Consulate responsible for the country in which the family member is residing for consular processing.

If lawful permanent residence is denied, the applicant will receive written notice stating the reasons for the denial and will have the right to appeal the denial to the DHS Administrative Appeals Office.²⁰⁴ A denial of a victim's lawful permanent residency application based on T-visa status will result in the automatic denial of any pending applications for lawful permanent residency filed by the victim's family members.²⁰⁵

Extension of T-Visa Status

If a trafficking victim is not eligible for, has been denied, or chooses not to file for lawful permanent residency, before they reach the end four year T-visa, the victim may apply to extend his or her T-visa status. To be granted an extension of T-visa status a victim must prove that their continued presence in the U.S. is necessary for an investigation or prosecution of activity related to human trafficking. Applications for extension require certification from a federal, state or local law enforcement official that the victim's presence in the U.S. is needed for the investigation or prosecution.²⁰⁶

¹⁹⁵ 8 CFR § 245.23(e)(2)(i) (2008).

¹⁹⁶ 8 CFR §245.23(e)(2)(i) (2008).

¹⁹⁷ 8 CFR § 245.23(e)(2)(i) (2008).

¹⁹⁸ 8 CFR §245.23(c)(3) (2008).

¹⁹⁹ 73 Fed. Reg. 75,550 (2008-12-12). Family members may file lawful permanent residency applications either concurrently with the victim's T-visa application, when the T-visa victim's application for lawful permanent residency is pending, or has been approved. (8 CFR 245.23(b))

²⁰⁰ 8 CFR § 245.23(l)(2) (2008).

²⁰¹ 8 CFR § 245.23(l)(2) (2008).

²⁰² 8 CFR § 245.23(h) (2008) instructs .

²⁰³ 73 Fed. Reg. 75,546 (2008-12-12)

²⁰⁴ 8 CFR § 245.23(i) (2008).

²⁰⁵ 8 CFR § 245.23(i) (2008).

²⁰⁶ 8 CFR § 214.11(p)(1) (2008).

T-visa victims who file for lawful permanent residency before the expiration of their T-visa status are protected from harm should their T-visa expire prior to the victim being granted lawful permanent residence. The T-visa status of trafficking victims with pending applications for lawful permanent residency is automatically extended by law to cover the time between filing for and DHS adjudication of lawful permanent residency. In this way Congress ensured that trafficking victims would not be harmed should the DHS adjudication of the victim's lawful permanent residency application be delayed.²⁰⁷

Limitations on Travelling Outside of the United States On A T-Visa

A T-visa holder may travel outside of the United States once the victim has been awarded a T-visa. This ability to travel is limited in two ways if the victim wishes to apply for lawful permanent residency. First, should the victim travel abroad, the victim must be able to demonstrate that no trip abroad lasted for 90 days or longer and that the number of days of travel abroad did not amount to 180 days or longer.²⁰⁸ If a trafficking victim travels out of the United States for durations in excess of these limits, the victim loses their ability to file for lawful permanent residency based on having been awarded a T-visa.

The second limitation on a T-visa victim's ability to travel occurs on the date that the T-visa victim applies for lawful permanent residency. Generally, T-visa victims who have filed applications for lawful permanent residency cannot travel abroad unless they obtain from DHS legal permission to travel. ²⁰⁹ The permission granted is called "advance parole." Advance parole must be received before a T-visa victim with a pending application for lawful permanent residency can travel abroad. If a victim with a pending lawful permanent residency application travels abroad without receiving advance parole, DHS deems the victim to have abandoned his or her application for lawful permanent residency as of the date the victim departed the United States²¹⁰ and their lawful permanent residency application will be denied.²¹¹

Anyone who travels, whether it is on the T-visa or with advance parole, ²¹² will have to show admissibility every time they re-enter the United State. ²¹³ Even T-visa holders whose prior acts were waived when their T-visa was granted may be challenged at a port of entry. A trafficking victim who travels abroad can be barred from reentry into the United States by any history inadmissibility factors. By remaining in the United States and not traveling abroad until after the trafficking victim obtains lawful permanent residency may be the safest option for many trafficking victims. DHS officials at U.S. borders or ports of entry have no authority to grant waivers of admissibility. Such waivers may only be granted by DHS officials during the adjudication of a T-visa application or a lawful permanent residency application filed by a T-visa holder. T-visa victims whose travel strands them abroad without the ability to reenter the United States, jeopardize both their T-visa status and the T-visa status of their family members.²¹⁴

Both T-visa victims with expired T-visas and victims with pending lawful permanent residency applications must obtain advance parole in order to travel outside the United States. Applicants who determine they can safely travel without triggering bars to reentry into the United States who seek advance parole should file an Application for Travel Document (Form I-131) and obtain advance parole before departing the U.S.²¹⁵

Removal Proceedings

²⁰⁷ INA § 214 (o)(7)(C).

²⁰⁸ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75541 (December 12, 2008); 8 CFR § 245.23(a)(3) (2008)

²⁰⁹ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75545-6 (December 12, 2008); 8 CFR § 245.23(j). These requirements also apply to T-visa holders applying for lawful permanent residency in removal, deportation or exclusion proceedings before an immigration judge. 8 CFR 245.23(i); 8 CFR 245.2(a)(4)(ii)(A).

²¹⁰ 8 CFR § 245.23(j) (2008).

²¹¹ Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75546 (December 12, 2008); 8 CFR § 245.23(j); 8 CFR 245.2(a)(4)(ii)(B)

²¹² 8 CFR § 245.23(j) (2008).

²¹³ 8 CFR § 245.23(j) (2008).

²¹⁴ 8 CFR § 245.23(j) (2008).

²¹⁵ 8 CFR § 245.23(j) (2008). The filing fee of \$305 for the advance parole petition may be waived for victims of human trafficking. INA § 245(l)(1)(A)(7) (overruling form instructions and DHS practice prior to December 23, 2008).

DHS has sole jurisdiction over INA §245(l) applications for lawful permanent residence. An immigration judge has no authority in removal proceedings to grant or review denials by DHS of lawful permanent residency to T-visa victims.²¹⁶ The grant of a T-visa to a trafficking victim automatically, by operation of law terminates any pending removal proceeding initiated against the victim.²¹⁷ Victims with final orders of removal will need to file motions to reopen their immigration case before the removal action can be terminated. Victims who have filed T-visa applications that DHS determines set forth a prima facie case for approval, may be granted an administrative stay of any final orders of removal issued against the trafficking victim.²¹⁸ DHS denial of an administrative stay of removal does not preclude an immigration judge from granting the trafficking victim a stay of removal.²¹⁹ A denial of a stay under this provision does not preclude an individual from applying for a stay, deferred action, or a continuance under other immigration provisions. This provision does not preclude DHS or DOJ from granting stays of removal or deportation under other immigration provisions.²²⁰ In reviewing any of these motions filed by a trafficking victim, the immigration judge may ask to review a copy of the T-visa victim's T-visa application or lawful permanent residency application filed with DHS.

Part 3: Repatriation, Collaboration and Additional Resources

Safe Repatriation

Though the T-visa and continued presence provide protection and allow trafficking victims to remain in the United States, some victims will elect to return to their home country. Victims may feel that they can safely return home because their trafficker is in prison or will not be able to find them if they return. Some victims may decide not to cooperate with law enforcement so that they do not antagonize their traffickers which may provide them an opportunity to return home. Other victims may elect to return home despite safety risks in order to rejoin family members not protected under the Trafficking Victim's Protection Act or family members who do not want to come to the United States. Financial issues may also motivate some victims to return to their home countries. Regardless of the reason, a victim should be able to choose which options may be the safest for themselves and their family members. Advocates and attorneys working with victims of human trafficking who is considering returning to their home country should contact the International Office of Migration and/or reputable local non-governmental organization in the human trafficking victim's home country to enlist their assistance in securing the trafficking victim's safe repatriation.

If there is an ongoing investigation or prosecution and the victim's cooperation is needed, advocates can advocate on victim's behalf with law enforcement officials. Law enforcement officers and prosecutors have the authority to allow a victim to return home and can work with DHS to bring the victim back to the United States if her testimony is needed at a later date. In order to return home, advocates will need to assist a victim in securing travel and identify documents as well as the financial resources needed for the victim to travel to her home country.²²¹

Resources for Victims of Human Trafficking

Technical Assistance for Advocates and Attorneys Working With Victims of Human Trafficking

For additional resources and Technical Assistance contact:

National Immigrant Women's Advocacy Project

telephone: (202) 274-4457 fax: (202) 274-4226, E mail: niwap@wcl.american.edu

Address: 4910 Massachusetts Ave NW – Suite 16, Lower Level – Washington, DC 20016

ASISTA

3101 Ingersoll Ave. • Ste 210 •

²¹⁶ INA §245(l).

²¹⁷ New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status; Final Rule, 67 Fed. Reg. 4793 (January 31, 2002);

²¹⁸ INA Section 237(d)(1).

²¹⁹ INA Section 237(d)(2).

²²⁰ William Wilberforce Trafficking Victims Protection Act, Pub. L. No.110-457, §204 (2008); INA §237(d).

²²¹ The International Office of Migration 202/862-1826 assists some trafficking victims with travel funds for repatriation.

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Des Moines, IA 50312
(515) 244-2469
questions@asistahelp.org
www.asistahelp.org

For referrals to non-governmental organizations with expertise providing services to human trafficking victims contact:

Freedom Network USA – National network of anti-trafficking advocates and service providers at
<http://www.freedomnetworkusa.org/>.

Resources and Technical Assistance Available for Trafficking Victims²²²

- Arizona League to End Regional Trafficking (ALERT)
PO Box 57839
Phoenix , AZ 85079
(602) 433-2440
www.traffickingaz.org
- Asian Anti Trafficking Collaborative
C/o Asian Pacific Islander Legal Outreach
1188 Franklin Street, Suite 202
San Francisco, CA 94109
(415) 567-6255
www.apilegaloutreach.org
- Association of the Bar of the City of New York
Immigrant Women and Children Project
42 W. 44th Street
New York, NY 10036
(212) 382-6717
www.citybarjusticecenter.org
- Ayuda
1736 Columbia Road, NW
Washington, DC 20009
Tel: 202-387-2870, ext. 33
- Break the Chain Campaign
733 15th St, NW Ste 1020
Washington, DC 20005
202-234-9382
www.breakthechaincampaign.org
- Coalition to Abolish Slavery and Trafficking (CAST)
231 E. 3rd Street, Suite G104
Los Angeles, CA 90013
(213) 473-1611
www.castla.org
- The Door - A Center of Alternatives, Inc.
121 Avenue of the Americas

²²² For further information visit: <http://www.freedomnetworkusa.org/members/index.php>

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New York, NY 10013
(212) 941-9090
www.door.org

- VIDA Legal Assistance
27112 South Dixie Highway
Naranja, FL 33032
305-247-1057
<http://www.vidalaw.org/>
- Legal Aid Foundation of Los Angeles
1102 Crenshaw Blvd.
Los Angeles, CA 90019
(800) 399-4529
www.lafla.org
- MOSAIC Family Services, Inc.
4144 North Central Expressway, Ste 530
Dallas, TX 75204
214-821-5393
www.mosaicservices.org
- Calleen Ching – Hawaii Immigrant Justice Center at Legal Aid
P.O. Box 3950
Honolulu, Hawaii 96812
808-536-8826
www.naloio.org

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- National Immigrant Justice Center
208 S. LaSalle Street, Suite 1818
Chicago, Illinois 60604
(312) 660-1354
www.immigrantjustice.org
- American Gateways
314 East Highland Mall Boulevard, Suite 501
Austin, Texas 78752
(512)478-0546
<http://www.americangateways.org/>
- Safe Horizons
346 Broadway
New York City, NY 10013
(212) 577-3220
www.safehorizons.org
- Refugee Women's Alliance (REWA)
4008 Martin Luther King Jr. Way S
Seattle, WA 98108
(206) 721-0243
www.rewa.org
- SOS Boat People
P.O Box 2652
Merrifield, VA 22116
(703) 205-3916
<http://bpsos.org>
- TAPESTRI Inc.
PMB 362 3939 La Vista Rd. Ste. E
Tucker, GA 30084
(404) 299-2185
www.tapestri.org
- Urban Justice Center
Sex Workers Project 666 Broadway, 10th Floor
New York, NY 10012
(646) 602-5690
www.sexworkersproject.org

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

Sexual Assault Survivors and Gender-Based Asylum¹²

By Alicia (Lacy) Carra and Hema Sarangapani

Survivors of sexual assault who fear returning to their home country may be able to obtain lawful status in the United States by applying for gender-based asylum. If an applicant is successful in her application for asylum, she³ will be authorized to live and work in this country; subsequently apply to become a lawful permanent resident; and eventually become a U.S. citizen. This chapter is designed to help advocates and attorneys not trained in immigration law identify when a survivor might be eligible for gender-based asylum and explain how to help a survivor develop the evidentiary record necessary to succeed in bringing a gender-based asylum claim.

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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 We use “she” and “her” in this chapter for ease of reading, but men can also be survivors of sexual assault who may be able to use the information in this chapter.

Sexual Assault Survivors and Gender-Based Asylum

To qualify for asylum in the U.S., an applicant must establish that she is a refugee.⁴ To be classified as a refugee, an applicant must demonstrate that she has a well founded fear of suffering harm in the future in her home country that rises to the level of persecution. In addition, an applicant must establish that the persecution was or will be on account of **Race, Religion, Nationality, Membership in a Particular Social Group, or Political Opinion**. Additionally, an applicant must establish that the persecution she suffered was committed by a foreign government, or, in the alternative, that the government of her home country is or was unwilling or unable to protect her from the harm of a non-governmental actor. As a general rule, an individual must apply for asylum within one year of her entry into the United States.

It is important to note that asylum is a legally complex process with highly specific criteria for eligibility. Denial of an asylum application can ultimately lead to deportation. U.S. law imposes many bars to asylum. For example, filing for asylum after one year of entry into the U.S. or an applicant's firm resettlement in another country may bar an applicant from receiving asylum. Likewise, certain criminal convictions, i.e. those constituting "particularly serious crime" may bar an individual from receiving asylum.⁵ Because an asylum applicant must navigate a minefield of statutory bars to relief, it is recommended that she proceed with her application only after consulting with an immigration attorney who has expertise both in immigration options for immigrant victims of violence and the intersection of immigration and crimes.

Additionally, gender-based asylum may not be the only option for relief for survivors of sexual assault. Under the Violence Against Women Act (VAWA), survivors of sexual assault or other violent crimes may benefit from relief under the U Visa, for victims of crimes, or the T Visa, for victims of trafficking.⁶ Gender-based asylum claims often arise in connection with sexual assault and domestic violence that occurs in a survivor's home country. However, some of the violence may also occur within the United States, and some of the future threat of violence may also exist within the United States. This may happen when those committing the crimes against a survivor follow them to the United States, or are connected to others who live in the United States, and are able to continue to harm the survivor because of family or community connections. In these situations, where violence also occurs within the United States, a U visa can also be a viable option for a survivor.

U Visas are for victims of crime who have participated in the investigation or prosecution of said crime by local, state, or federal authorities. A U-visa will allow an individual to remain in the US lawfully for four years,⁷ and then U-visa recipients who can show humanitarian need, public interest or family unity may apply for lawful permanent residency and then later U.S. citizenship. Similarly, victims of human trafficking may benefit from either the U or T Visa, a visa specifically designed for victims of severe human trafficking. Again, such a visa is contingent on the victim's assistance in the investigation or prosecution of the crime that is the basis for the visa. Like with asylum, both the U and T visas will provide the recipient with authorization to work, permanent residence, and an eventual path to citizenship. Based on these additional forms of relief, and dependent upon the facts underlying a particular case, a trained legal advocate may want to explore the availability of U and T visa relief in addition to pursuing an application for gender based asylum.

When is a survivor of sexual assault eligible for asylum?

Survivors of gang rape, stranger rape, acquaintance rape, attempted rape, domestic violence⁸, or spousal rape may be eligible to file for asylum when their experiences cause them to fear returning to their home country.

⁴ See INA § 101(a)(42); 8 U.S.C. § 1101(a)(42)(defining the term "refugee"); Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified at various sections of 8, 22 U.S.C.); United Nations Protocol Relating to the Status of Refugees, art. I § 2, opened for signature Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

⁵ INA § 208(b)(2)(A); 8 U.S.C. § 1158(b)(2)(A).

⁶ See INA § 101(a)(15)(T)-(U); 8 U.S.C. § 1101(a)(15)(T)-(U). A "U" visa is a visa for a victim of a crime who is or has cooperated with police to address the crime. A "T" visa is a visa for victims of trafficking. For more information on applicants who may be eligible for the U-visa see the U-visa chapter of this manual, for the T-visa see the T-visa chapter in this manual.

⁷ See the U-visa chapter in this manual for more information.

⁸ The case law is not clear on this point as of August 2008. See *Matter of R-A-*, 22 I&N Dec. 906 (AG 2001), remanded by AG, 23 I. & N. Dec 694 (A.G. 2005) (remanding earlier decisions to the Board of Immigration Appeals for reconsideration under final rule, yet to be issued, still only proposed rule). Still pending August 2008.

AN APPLICANT FOR ASYLUM MUST SHOW:⁹

1. Persecution

- a. Has either already occurred¹⁰ -or-
- b. Applicant has a well-founded future fear of persecution
 - i. Rape or well-founded fear of rape may rise to the level of persecution¹¹
 - ii. It is helpful to explain to a judge how rape is often a part of a larger picture of domestic violence.

2. Motive/ “On Account of”/Nexus

- a. An applicant must show that the persecution (in this case, rape, threat of rape, or sexual assault) was motivated, at least in part, by the applicants actual or perceived:
 - i. Race
 - ii. Religion
 - iii. Nationality
 - iv. Membership in a Particular Social Group¹²
 - v. Political Opinion

3. State Action/Inaction

- a. Either the country the survivor fled perpetrated or supported the sexual assault¹³ or
- b. The country was willfully blind, refused to act, or was unable to act to prevent or address the sexual assault/persecution.¹⁴

4. No safe option within home country

- a. The immigration officer or judge may raise the issue of whether the victim had a safe option to relocate within the victim’s home country in a victim’s asylum case. Under federal asylum law the immigration officer or judge raising the issue of safe relocation bears the burden for showing that the survivor could safely relocate within her country of origin.¹⁵
- b. To counter this issue, look for country condition documentation that establishes the nature of domestic violence and sexual assault in the applicant’s original country, as well as evidence of that government’s unwillingness or inability to protect victims of sexual assault/domestic violence. This can be from the victim’s own community as well as other communities in her home country where she has family members or some other support network.

5. Credibility

- a. The success of an asylum application often turns on the adjudicator’s determination of the credibility of the applicant. While corroborating evidence in support of an applicant’s claim is generally required, an applicant is not always required to corroborate her testimony to win

⁹ INA §101(a)(42)(A); 8 U.S.C. § 1101(a)(42)(A).

¹⁰ Past persecution generally only creates a presumption of a well founded fear of persecution that may be rebutted by the government. Past persecution only qualifies an applicant for relief when there is extraordinary persecution such that the victim should not be required to return to the country for humanitarian reasons regardless of whether or not there is a fear of future persecution. See *Matter of Chen*, 20 I. & N. Dec. 16 (B.I.A. 1989). Rape has met this standard. *Ali v. Ashcroft*, 394 F.3d 780, 787 (9th Cir. 2005).

¹¹ *Ali*, 394 F.3d at 787 (gang rape based on family identity past persecution rising to the level that well founding fear of future persecution presumed by the court).

¹² The definition of “membership in a particular social group” is currently under debate. See *In the Matter of Acosta*, 19 I. & N. Dec. 211 (B.I.A. 1985); *In re H-*, 21 I. & N. Dec. 337 (B.I.A. 1996); *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir. 2000). Most recently DHS has explained that: An individual may be able to show that she is a member of a particular social group when that group is defined by an immutable characteristic, namely a characteristic that someone cannot or should not be required to change. Family, for example, has been repeatedly held to constitute a particular social group. While gender *per se* has not yet been found to constitute a particular social group, successful claims by applicants for gender-based asylum often rest on the notion of “Gender+” as a category. DHS has suggested “Gender +,” with the plus defined as susceptibility to abuse/assault defined as an immutable characteristic: “married women who are unable to leave the relationship.” Brief of Dep’t of Homeland Sec.’s Position on Respondent’s Eligibility for Relief at 31-38, *In re Alvarado-Pena* (INS No. A 73 753 922) (Feb. 9, 2004), available at http://cgrrs.uchastings.edu/documents/legal/dhs_brief_ra.pdf (hereinafter “DHS Brief *In re R-A-*”).

¹³ *Korablina v. INS*, 158 F.3d 1038, 1045 (9th Cir. 1998); *Surita v. INS*, 95 F.3d 814, 819-820 (9th Cir. 1996), as cited in the DHS Brief *In Re R-A-*.

¹⁴ *Mgoian v. INS*, 184 F.3d 1029, 1036-37 (9th Cir. 1999), as cited in the DHS Brief *In Re R-A-*.

¹⁵ 8 C.F.R. § 208.13(b)(3)(i); *INS v. Ventura*, 537 U.S. 12, 123 S.Ct. 353 (2002).

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her claim.¹⁶ There is guidance that suggests that an adjudicator should not make a negative credibility finding based on an applicant's reticence or failure to immediately disclose incidents of rape or sexual assault. Just as in the criminal context, however, the credibility of a survivor of sexual assault may be called into question by an adjudicator's personal bias.¹⁷ It should be noted, however, that recent legislation has imposed more stringent requirements by imposing an obligation on the applicant to provide corroborating evidence where it is reasonably available.¹⁸

TIMING OF APPLICATION

As a general rule, an applicant for asylum has one year from her entry into the United States to file for asylum¹⁹. If an applicant has missed this deadline, she must either establish that her application was delayed due to circumstances beyond her control, or that circumstances have recently changed in her home country such that she now needs asylum.²⁰ Since there is such a short timeframe in which to apply for asylum, it is important that advocates or attorneys know how to identify potential gender based asylum cases and make referrals to immigration attorneys with experience in gender based asylum as quickly as possible.

The first exception to the one-year filing deadline requires a showing of "extraordinary circumstances related to the delay in filing" the application. These extraordinary circumstances must be factors beyond the applicant's control.²¹ In addition, the application must have been filed within a reasonable time period given the nature of the circumstances. Examples of extraordinary circumstances include:²²

- Serious illness or disabling medical condition. Such conditions may include the effects of past persecution or abuse;
- Legal disability, for example if the applicant was an unaccompanied minor or suffered from a mental impairment;
- The applicant maintained Temporary Protected Status or some other status until a reasonable period before the filing of the asylum application;
- The applicant submitted an asylum application prior to the expiration of the one-year deadline, but that application was rejected by the Department of Homeland Security (DHS) as not properly filed, was returned to the applicant for corrections, and was re-filed within a reasonable period; or
- Ineffective assistance of counsel.

The second exception to the deadline requires a showing of "changed circumstances" that materially affect the applicant's eligibility for asylum.²³ For example, after an applicant has entered the U.S. and resided for a period of time, her home country's political, religious, or social structure may significantly change so as to expose her to a well founded fear of persecution if she were to return. Additionally, the applicant may have become a member of a group subject to persecution after entering the U.S. In these instances, the applicant is required to file for asylum within a reasonable time period following the change in circumstances.²⁴

Options after the deadline has passed

¹⁶ Testimonial evidence is sufficient regarding sexual assault and asylum claims. *Shoafera v. INS*, 228 F.3d 1070, 1075-76 (9th Cir. 2000).

¹⁷ *Id.*; see also, *Hassan v. Ashcroft*, 94 Fed.Appx. 461, 463 (9th Cir. 2004) (noting that judges should not speculate as to untrustworthiness and must have substantiated reason to disbelieve testimony, and that immediate disclosure of a sexual assault is not required for trustworthiness); see Lawyers Committee for Human Rights, *Refugee Woman at Risk; Unfair U.S. Laws Hurt Asylum Seekers* (2002)(finding INS officials often fail to recognize cross-cultural differences in evaluating asylum seekers credibility), available at http://www.humanrightsfirst.org/refugees/reports/refugee_women.pdf.

¹⁸ INA § 208(b)(1)(B)(ii)-(iii); 8 U.S.C. § 1158(b)(1)(B)(ii)-(iii).

¹⁹ INA § 208(a)(2)(B); 8 U.S.C. § 1158(a)(2)(B).

²⁰ INA § 208(a)(2)(D); 8 U.S.C. § 1158(a)(2)(D).

²¹ *Id.*

²² See 8 C.F.R. § 208.4(a)(5).

²³ INA § 208(a)(2)(D); 8 U.S.C. § 1158(a)(2)(D).

²⁴ *Id.*

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If the applicant is not deemed to have met an exception to the one-year filing deadline, an applicant may still be eligible for the related forms of relief of

- Withholding of Removal or
- Relief under the Convention Against Torture Claim (CAT) for “non-refoulement.”
“Non-refoulement” is an international technical term of law referring to a principle that says you cannot send someone back into a situation where they will be tortured.

Both forms of relief require a higher standard of proof than asylum and, as a result, can be difficult to establish. Evaluating the risks and benefits of each path must be done with the assistance of an immigration attorney to best serve the survivor’s interests. These options are explained further at the end of this chapter.

PROCESSING OF THE APPLICATION

Applications for asylum are filed either affirmatively, when the applicant has not already been placed in removal proceedings, or defensively, as a request²⁵ for relief once removal proceedings have commenced.

It is highly recommended that asylum applications include:

- a form I-589 application for asylum, withholding, and/or relief under the Convention Against Torture;
- the applicant’s detailed affidavit documenting her eligibility for asylum;
- extensive country condition documentation supporting the applicant’s claims of harm and fear,
- psychological evaluation of the applicant to support credibility and corroborate applicant’s claim of harm, and
- expert affidavits.

Applications for asylum are submitted to the asylum office, if filed affirmatively, or with the immigration court, if filed defensively. Advocates can help gather supporting evidence throughout their interactions with their client.

After an application for asylum is filed, an applicant may be able to obtain work authorization if the asylum application has not been adjudicated within 150 days of filing.²⁶ An applicant for asylum must appear for a detailed interview before a government asylum officer and must bring her own interpreter.²⁷ Family members who are in the United States, including a spouse and unmarried children under 21, may be included in the application and must also attend the interview.

At the interview, the asylum officer will review the application and evidence and ask the asylum applicant questions about the claim. It is important that the facts stated in the written application be correct and consistent with the applicant’s oral testimony at the asylum interview. If there are inconsistencies, the applicant may be found not to be credible.²⁸ If the asylum office feels that it cannot approve the application based on the evidence presented and the interview, the case will be “referred” to the immigration court for a hearing, and will become a defensive application for asylum in immigration court. In immigration court the applicant will have a second chance to present testimony, this time before an immigration judge, regarding the substance of her asylum claim.²⁹

²⁵ Sometimes this request is also called a “prayer for relief”

²⁶ 8 C.F.R. § 208.7(a).

²⁷ 8 C.F.R. § 208.9(g); see U.S. Citizenship and Immigration Services Frequently Asked Questions About Asylum, available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=da55809c4410f010VgnVC M1000000ecd190aRCRD&vgnnextchannel=3a82ef4c766fd010VgnVCM1000000ecd190aRCRD>

²⁸ See *INS Supplemental Refugee/Asylum Adjudication Guidelines*, reprinted in 67 Interpreter Releases 101-03 (Jan. 22, 1990); *In re A-S-*, 21 I. & N. Dec. 1106 (B.I.A. 1998); INA § 208(a)(2)(D); 8 U.S.C. § 1158(a)(2)(D).

²⁹ If the applicant is already in removal proceedings before the immigration court prior to filing an asylum application, she can file her application directly with the immigration judge without first filing the application with the asylum office. The applicant, however, is still subject to the one year filing deadlines described above.

If the judge denies the gender based asylum claim, the applicant will be ordered removed (deported) to her home country. An applicant should reserve her right to appeal the decision of the immigration judge and immediately seek legal representation if she does not already have counsel. The victim may appeal to the Board of Immigration Appeals (BIA) within thirty days of the final order of the Immigration Judge. If an applicant encounters new evidence that supports her claim that was unavailable at the time of her initial hearing, she should consult with an immigration attorney as to whether her application for asylum may be reopened in light of the new evidence.

If a victim's application is granted, the individual and dependent family members are conferred the status of "asylee." Asylees are authorized to live and work in the United States. They also qualify for certain public benefits. If the asylee has a spouse or children outside the United States, she may file a petition to classify them as asylees and allow them to enter the U.S. After one year, an asylee is eligible to apply for lawful permanent resident status (a green card).³⁰

Due to the high risk of immediate removal if an asylum case is denied by the immigration judge, it is strongly recommended that no immigrant victim attempt to make a gender-based asylum claim without representation of an immigration lawyer with expertise on gender-based asylum and/or violence against women cases. If a victim is represented by an immigration attorney without this experience, those attorneys are strongly encouraged to consult with experts listed at the end of this chapter. If you are an advocate or non immigration attorney trying to help with a gender-based asylum claim you can call these resources as well in order to find help.

FACTORS TO CONSIDER IN PREPARING AN ASYLUM APPLICATION

The parameters of gender-based asylum remain somewhat unsettled due to the non-resolution of *In re R-A-*, a gender-based asylum claim brought by a Guatemalan survivor of domestic violence that is currently pending before the Board of Immigration Appeals (BIA).³¹ Attorneys should consult with local asylum experts to gauge how best to construct a gender-based asylum application before the local asylum office or immigration court. While *In re R-A-* remains pending, advocates and attorneys should know that many individuals across the country have successfully prevailed on gender-based asylum claims. The following framework provides some guidance as to what an immigration lawyer will consider when preparing an application for gender-based asylum for a survivor of rape/sexual assault.

Persecution

Asylum case law supports a finding of persecution for asylum applicants who have been the victims of stranger/gang rape³² or sexual assault by a government official.³³ Applicants who have been the victims of spousal rape³⁴ or domestic violence must largely rely on the discussion related to *In re R-A-* for guidance in preparing their application.³⁵ *In re R-A-* focused on domestic violence, the severity of torture, and the various forms of domestic violence, including rape, which the victim experienced. As of the date of this publication³⁶ there were no cases regarding spousal rape outside of the context of a long pattern of domestic violence/torture. However, amicus briefs and commentary have focused on the broad spectrum of persecution R-A- faced, including rape.

³⁰ INA § 209(b); 8 U.S.C. § 1159(b).

³¹ *Matter of R-A-*, 22 I. & N. Dec. 906 (AG 2001), *remanded by AG*, 23 I&N Dec. 694 (AG 2005) (remanded by Ashcroft in 2005 to be reconsidered by BIA in light of new regulations, still not issued as of August 2008).

³² *Ali v. Ashcroft*, 394 F.3d 780 (9th Cir. 2005); *Lopez-Galarza v. INS*, 99 F.3d 954 (9th Cir. 1996); *Aguirre-Cervantes v. INS*, 242 F.3d 1169, *vacated in 273 F.3d 1220* (9th Cir. 2001); *Hassan v. Ashcroft*, 94 Fed. Appx. 461 (9th Cir. 2004); *Paramasamy v. Ashcroft*, 295 F. 3d 1047 (9th Cir. 2002)

³³ *Shoaf v. INS*, 228 F.3d 1070, 1075-76 (9th Cir. 2000); *Lazo-Majano*, 813 F.2d 1432 (9th Cir. 1987).

³⁴ Also commonly referred to as 'marital rape'.

³⁵ *In re R-A-*, 22 I. & N. Dec. 906 (B.I.A.1999) (remanded by Ashcroft in 2005 to be reconsidered by BIA in light of new regulations, still not issued as of December 2007).

³⁶ December 2007.

In every state within the United States spousal rape is defined as rape.³⁷ Explaining the context of domestic violence, power and control, and societal factors trapping a woman in a situation where sexual assault occurs will help asylum officers and immigration judges understand that spousal/family/partner rape is also persecution, which explains how the applicant may qualify for gender-based asylum because of spousal rape.³⁸

Female Genital Mutilation as Sexual Assault

Female Genital Mutilation (FGM) is a form of sexual assault against women and girls, and is a form of persecution that may qualify an applicant for asylum. FGM is a crime in the United States³⁹. Both the Ninth and Seventh circuits have written that FGM is unequivocally persecution qualifying for asylum.⁴⁰ However, as of publication there is some confusion over this determination because of a few new cases.⁴¹ This type of confusion is why contacting an immigration expert on gender based asylum is crucial in preparing an asylum application. FGM is also a violation of human rights and should qualify for Convention Against Torture (CAT) relief. Fear of FGM can constitute a well-founded fear of persecution.⁴²

Motive, also called the “On Account of” or “Nexus” requirement

Asylum law requires proof that the assailant was motivated because of the survivor’s race, religion, nationality, membership in a particular social group, or political opinion. These categories **do not** have to be the only motive for the assault, but merely need to be part of the assailant’s motivation in persecuting the survivor.⁴³ Difficulties arise for gender based asylum applicants in meeting this requirement because there is not yet authority that suggests that gender, in and of itself, constitutes a particular social group. The Department of Homeland Security (DHS) issued a brief in support of a grant of asylum in *In re R-A-*. In its brief, it suggested that “Gender Plus(+)” may be a way to meet the nexus requirements of an asylum claim.⁴⁴ Under this framework, an applicant who believes she was persecuted on account of her gender could meet the nexus requirement by tying gender to another recognized social group such as family, nationality, religion, or political opinion.⁴⁵ Under such a framework, a survivor of gender based violence may have more likelihood of success if she was persecuted not solely on account of her gender, but on account of her gender within the context of her religion, nationality, or even political opinion. Thus, defining a particular social group more narrowly, such as “married women in X country who cannot leave their husbands or families” or “women in a particular country who refuse to conform to the gender-specific norms of their country,” may be successful

³⁷ National Center for Victims of Crime, “Spousal Rape Laws: 20 years later” <http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32701>

³⁸ *Morrison v. INS*, 166 Fed. Appx. 583 (2d Cir. 2006).

³⁹ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-209, §645 (1996):

SEC. 645. CRIMINALIZATION OF FEMALE GENITAL MUTILATION.

(a) Findings.--The Congress finds that— (1) the practice of female genital mutilation is carried out by members of certain cultural and religious groups within the United States; (2) the practice of female genital mutilation often results in the occurrence of physical and psychological health effects that harm the women involved; (3) such mutilation infringes upon the guarantees of rights secured by Federal and State law, both statutory and constitutional; (4) the unique circumstances surrounding the practice of female genital mutilation place it beyond the ability of any single State or local jurisdiction to control; (5) the practice of female genital mutilation can be prohibited without abridging the exercise of any rights guaranteed under the first amendment to the Constitution or under any other law; and (6) Congress has the affirmative power under section 8 of article I, the necessary and proper clause, section 5 of the fourteenth amendment, as well as under the treaty clause, to the Constitution to enact such legislation.

(b) Crime.-- (1) In general.--Chapter 7 of title 18, United States Code, is amended by adding at the end the following: “**Sec. 116. Female genital mutilation** “(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.” (b) A surgical operation is not a violation of this section if the operation is-- “(1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or “(2) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife. “(c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.”. (2) Conforming amendment.--The table of sections at the beginning of chapter 7 of title 18, United States Code, is amended by adding at the end the following new item: “116. Female genital mutilation.”.

⁴⁰ See *Mohammed v. Gonzalez*, 400 F.3d 785, 795 (9th Cir. 2005); *Agor v. Gonzales*, 487 F.3d 499, 502 (7th Cir. 2007).

⁴¹ See *In re A-T-*, 24 I. & N. Dec. 296 (B.I.A. 2007), but also see the 2nd Circuit: *Bah v. Mukasey*, *Diallo v. DHS*, *Diallo V. DHS* (June 11, 2008).

⁴² See *In re Kasinga*, 21 I. & N. Dec. 357 (B.I.A. 1996)(involving a Togolese woman who fled female genital mutilation)

⁴³ *Shoafra v. INS*, 228 F.3d 1070 (9th Cir. 2000).

⁴⁴ DHS Brief *In re R-A-* at 20-21; *In re Kasinga*, 21 I. & N. Dec. 357 (B.I.A. 1996); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 107 S.Ct. 1207 (1987); *INS v. Sanchez-Trujillo*, 801 F.2d 1571 (9th Cir. 1986).

⁴⁵ DHS Brief *In re R-A-* at 20-22.

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theories for a gender-based asylum claim.⁴⁶ To prevail in an asylum claim, a survivor must demonstrate that their persecution was on account of one of the protected grounds.

Examples of demonstrating this nexus include:

- Assailant(s) used derogatory slurs before, during, or after the assault.⁴⁷
- Assailant(s) targeted the victim because of her membership in a racial, religious, nationality, social group, or her political beliefs.⁴⁸
 - This could mean that her family, village, neighborhood, religious group, etc. was targeted in any way by the assailant(s).⁴⁹
- Military/guerilla groups assaulted her during civil war/rebellion/military action.⁵⁰
- An official used her, or her family's, race, religion, nationality, social group, or political beliefs to force her to interact with that official and that official assaulted her, for example
 - during an official interrogation⁵¹ or while blackmailing her to force her into domestic labor⁵²
- Her assailant(s) knew she would not be able to get any protection or help from the government because of her race, religion, nationality, social group, or political beliefs.⁵³
- She was targeted because of her family membership or to punish, hurt, or demean one of her family members.⁵⁴
- Her sexual identity is at odds with socially accepted sexual identities, and she has been persecuted or fears persecution on account of her sexual identity.⁵⁵

When the assailant was a spouse, a family member, or a partner

The nexus requirement is sometimes harder to demonstrate where the persecution occurred within a family, marriage, or intimate context. While the law is unsettled here, a DHS 2004 brief provides guidance on evidence that could be useful in meeting the nexus requirement in gender-based asylum cases.⁵⁶ The DHS brief

⁴⁶ See *Fatin v. INS*, 12 F.3d 1233 (3d Cir.1993) (recognizing feminism as a political opinion); *In re Kasinga*, 21 I. & N. Dec. 357 (B.I.A. 1996)(involving a Togolese woman who fled female genital mutilation), and *In re S-A-*, 22 I. & N. Dec. 1328 (B.I.A. 2000)(involving a Moroccan woman whose father abused her for violating strict Islamic rules governing women's behavior and dress).

⁴⁷ *Lopez-Galarza v. INS*, 99 F.3d 954 (9th Cir. 1996); *Nedkova v. Ashcroft*, 83 Fed. Appx. 909 (9th Cir. 2003); *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066 (9th Cir. 2004); *Hassan v. Ashcroft*, 94 Fed. Appx. 461 (9th Cir. 2004).

⁴⁸ *Shoafara v. INS*, 228 F.3d 1070, 1075-76 (9th Cir. 2000); *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066 (9th Cir. 2004).

⁴⁹ *Ali v. Ashcroft*, 394 F.3d 780 (9th Cir. 2005); *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066 (9th Cir. 2004).

⁵⁰ *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066 (9th Cir. 2004). However, the Ninth Circuit has determined that politically motivated rape by a guerilla group was not persecution because many other women in same village were also targeted. *Ochave v. INS*, 254 F.3d 859 (9th Cir. 2001). Further, the Eighth Circuit held that guerilla gang rape was expected crime in area and no fear of future persecution by guerilla group meant denial of asylum status. *Menendez-Donis v. Ashcroft*, 360 F.3d 915 (8th Cir. 2004).

⁵¹ *Angoucheva v. INS*, 106 F.3d 781 (7th Cir. 1997); *Lopez-Galarza v. INS*, 99 F.3d 954 (9th Cir. 1996).

⁵² *Lazo-Majano v. INS*, 813 F.2d 1432 (9th Cir. 1987).

⁵³ *Angoucheva v. INS*, 106 F.3d 781 (7th Cir. 1997); *Lazo-Majano v. INS*, 813 F.2d 1432 (9th Cir. 1987); *Shoafara v. INS*, 228 F.3d 1070 (9th Cir. 2000).

⁵⁴ *Gonzales v. Thomas*, 547 U.S. 183, 126 S.Ct. 1613 (2006).

⁵⁵ See *Karouni v. Gonzales*, 399 F.3d 1163 (9th Cir. 2005)(granting asylum based only on a finding of a well-founded fear of future persecution for a gay man with AIDS from Lebanon); *Amanfi v. Ashcroft*, 328 F.3d 719 (3d Cir. 2003)(finding imputed membership in the particular social group of homosexuals to constitute a particular social group); *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir. 2000)(gay men with a female sexual identity in Mexico constitute a protected social group for asylum law, sexual identity is here immutable); *Boer-Sedano v. Gonzales*, 418 F.3d 1082 (9th Cir. 2005).

⁵⁶ See Brief for Respondent, *In Re: R-A-* (2004) (No. A-73-753-922). See also Memorandum from Phyllis Coven, Immigration and Naturalization Services, Department of Justice (May 26, 1995) (detailing former proposed regulations from 1995, copy attached in Appendix); Asylum and Withholding Definitions, 65 Fed. Reg. 76,588 (Dec. 7, 2000) (to be codified at 8 C.F.R. pt. 208) (current proposed regulation, which should only be used as guidance since it is not yet promulgated, copy attached in Appendix).

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guides applicants toward the following factors as supporting the nexus requirement:

- Direct evidence about the abuser's motives supporting the determination he believes he has the authority to abuse on account of victim's status in the relationship, such as:
 - Slurs or commentary by assailant about the survivor's race, nationality, religion, social group or political opinion
 - A long pattern of sexual assault and/or domestic violence
- Circumstantial evidence that patterns of violence are supported by the legal system/social norms of the country and reflect a prevalent belief within the country, such as:
 - Pattern of lack of response from public safety or government officials
 - Condoning of abuse or assault by community leaders
 - An inability to leave the relationship or living situation given current social or cultural conditions

State Action

In determining whether there was state action for the purposes of an asylum claim, the immigration judge or asylum officer will examine whether the applicant's government, including its agents and officials⁵⁷, was the persecutor or, alternatively, whether the government was unwilling or unable to control non-state persecutors.⁵⁸

Ways to Find State Action:

- Was the assault committed by a public/government official acting in an official capacity?
- Did military or rebel/guerilla forces commit the abuse/assault?
- Was there a lack of response from public safety or community officials?
- Was the survivor denied or unable to ask for government/public official aid regarding the abuse/assault?
- Because of the assailant's official capacity was the survivor unable to get redress?
- Did a public official condone the sexual assault?⁵⁹
- Is there a cultural understanding that sexual assaults similar to the survivor's are commonplace or culturally accepted?
- Are there any laws or a lack of laws protecting people similar to the survivor from sexual assaults?
- Does divorcing or separating lead to further abuse, violence, or discrimination?
- Is there is a social stigma attached to a woman taking action or speaking about her husband, partner, family member assailant by seeking outside help?
- Are there laws that punish a woman for seeking outside help in a family, spousal, or domestic violence matter?

⁵⁷ For example: police officers, bureaucrats, attorneys, investigators, civil servants, etc.

⁵⁸ DHS Brief *In re R-A-* at 38.

⁵⁹ See *Morrison v. INS*, 166 Fed. Appx. 583 (2d Cir. 2006).

- Will the violence continue if she is returned to her home country?⁶⁰

Trustworthiness/Credibility

While guidance on adjudicating gender-based asylum claims stresses the importance of understanding the impact of gender-specific trauma, cultural, and language differences for a survivor appearing for her first asylum interview or hearing,⁶¹ some immigration officers or judges may equate hesitance on the part of survivor to share her story with a lack of credibility. In cases of spousal, family, and partner sexual assault putting the assault in context of other abuse and power dynamics can help officials understand the reactions of a survivor and a community. Courts have acknowledged that a survivor's inability or failure to initially relate details of a sexual assault should not automatically result in a negative credibility finding.⁶² In *In re RA*, the court explained that there was not a question of veracity because the abuse and its after effects were so severe and prolonged.⁶³

Advocates and attorneys working with immigrant victims of domestic violence and sexual assault should be aware that some potential gender-based asylum applicants will have been abused, assaulted, raped, or otherwise persecuted in the United States by someone who comes from their home country.⁶⁴ In such cases, the abuser or perpetrator could be deported back to the home country as a result of a criminal prosecution for crimes he committed against the applicant. If the victim is removed from the United States and returned to her home country, she may be in danger of persecution there, either by her abuser or by family members residing in that country. A survivor who has experienced domestic violence/sexual assault in the U.S. faces returning to her home country where her abuser now lives, and fears he may violently retaliate against her may have a basis for gender-based violence.

The lack of consistent interpretation from the courts on gender-related asylum claims, the complexity of this area of the law, and the grave risk associated with denial of an asylum claim makes it critical that advocates promptly refer clients with potential gender-based asylum claims to an experienced immigration attorney. Immigration attorneys who do not have experience working with battered immigrants or with gender-based asylum claims are encouraged to contact the asylum experts listed at the end of this chapter for advice and assistance in formulating case strategies in gender-based asylum cases.

OTHER FORMS OF IMMIGRATION RELIEF RELATED TO ASYLUM

What is Withholding of Removal?

A survivor who applies for withholding of removal⁶⁵ must prove that it is more likely than not that they will face persecution on account of an enumerated ground if forced to return to their country of origin. Applicants for asylum typically file for asylum and withholding of removal concurrently. However, in cases where an applicant is barred from applying for asylum (such as missing the one-year filing deadline), an applicant will typically rely on a withholding of removal claim once they have applied for and been denied asylum. Applying for withholding of removal is the next step after asylum has been applied for and denied, or if an applicant has missed the filing deadline for asylum and cannot get a waiver, or asylum was denied on discretionary grounds.

⁶⁰ See Leslye E. Orloff & Nancy Kelly, *A Look at the Violence Against Women Act and Gender-Related Political Asylum*, 1 *Violence Against Women* 380, 393, 398 (1995).

⁶¹ Memorandum from Phyllis Coven, Office of Int'l Affairs, INS to All INS Asylum Officers re: Guidelines, Office of International Affairs, Immigration and Naturalization Service, Regarding Adjudicating Asylum Cases on the Basis of Gender (May 26, 1996), available at <http://www.state.gov/s/l/65633.htm>. For children in general see Memorandum from Jeff Weiss, U.S. Dep't of Justice re: Guidelines for Children's Asylum Claims (Dec. 10, 1998).

⁶² *Paramasamy v. Ashcroft*, 295 F.3d 1047, 1053 (9th Cir. 2002); *Kaur v. Ashcroft*, 112 Fed. Appx. 652 (9th Cir. 2004); *Fiadjoe v. Att'y Gen. of the United States*, 411 F.3d 135 (3d Cir. 2005).

⁶³ DHS Brief *In re R-A-* at 12.

⁶⁴ See the U visa chapter within this manual for other options if this is the case.

⁶⁴ DHS Brief *In re R-A-* at 12.

⁶⁵ INA § 241(b)(3); 8 U.S.C. § 1231(b)(3).

When Does the Convention Against Torture (CAT)⁶⁶ Apply?

Applications for relief under Article III of the Convention Against Torture (CAT) are a last resort, and should only be attempted by an attorney after asylum and withholding claims have failed. A CAT claim arises from the international law principle of “non-refoulement,⁶⁷” and only applies where the survivor could show that being sent back to their home country would result in continuing of the torture and/or other cruel, inhuman, or degrading treatment or punishment, and that the government supports and/or refuses to act to prevent or correct the persecution.⁶⁸ Under the International Convention Against Torture, rape could be considered torture.⁶⁹

Revictimization and Evolving Immigration Official Awareness

Survivors interacting with immigration officials can expect a range of understanding of and/or sensitivity to issues concerning gender-related violence, such as sexual assault or domestic violence. The Department of Homeland Security has issued guidance to all field officers on evaluating asylum claims that includes gender-specific persecution.⁷⁰ However, even with these recommendations, including cultural sensitivity to differences in eye contact, comfort with interviewers of a different gender, or manner of describing sexual assaults,⁷¹ in 2002, the Lawyers Committee for Human Rights found that there was still a great need for increasing sensitivity of government officers handling asylum claims. The report found that many women felt re-victimized, or were victimized, by the interview process.⁷² Appeals courts have highlighted such failures on the part of asylum adjudicators as well.⁷³ Advocates and attorneys should work with survivors to prepare them for the retraumatization that may occur during the asylum interview process and work towards increasing immigration officials’ understanding of the dynamics of sexual assault and domestic violence.

Conclusion

Gender based asylum for survivors of sexual assault is an evolving field. With the aid of an immigration attorney who has experience in gender-based asylum claims or who works closely in developing the case with technical assistance experts (listed at the end of this chapter) a survivor can appropriately map out her asylum, withholding of removal, or CAT claims. No one should apply for asylum without the assistance of an immigration advocate or attorney who has experience with this type of case.⁷⁴ This chapter serves only as a basic introduction and should not be relied upon to apply for asylum without first consulting an attorney. Because asylum law is constantly evolving, these standards may have changed after publication of this manual.

Resources Available to Advocates and Attorneys

- NIWAP’s Technical Assistance Hotline 202-274-4457 for referrals and technical assistance to attorneys and advocates; <http://www.wcl.american.edu/niwap/>
- ASISTA’s Technical Assistance Hotline 515-244-2469

⁶⁶ Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment art. 1, adopted Dec. 10, 1984, 108 Stat. 382, 85 U.N.T.S. 1465 (hereinafter “CAT”).

⁶⁷ This legal term of art means that someone should not be sent back into a situation where they will be tortured again.

⁶⁸ Patricia J. Freshwater, *The Obligation of Non-Refoulement Under the Convention Against Torture: When Has A Foreign Government Acquiesced in the Torture of Its Citizens*, 19 Geo. Immigr. L.J. 585, 590-591 (Summer 2005).

⁶⁹ CAT

⁷⁰ Memorandum from Phyllis Coven, International and Naturalization Service (INS) Office of International Affairs, to All INS Asylum Officers and HQASM Coordinators, Considerations For Asylum Officers Adjudicating Asylum Claims From Women (May 26, 1995), available at http://cgrs.uchastings.edu/documents/legal/guidelines_us.pdf.

⁷¹ *Id.* at 4-7.

⁷² Lawyers Committee for Human Rights, *Refugee Woman at Risk; Unfair U.S. Laws Hurt Asylum Seekers* (2002).

⁷³ See *Angoucheva v. INS*, 106 F.3d 781, 793 (7th Cir. 1997).

⁷⁴ The following organizations can provide information and technical assistance:

National Immigrant Women’s Advocacy Project – Phone: 202-274-4457, Fax: 202-274-4226, E-mail: niwap@wcl.american.edu; Address: 4910 Massachusetts Ave NW – Suite 16, Lower Level – Washington, DC 20016.

National Immigration Project, National Lawyers Guild – Phone: 617-227-9727, Fax: (617) 227-5495, E-mail: gail@nationalimmigrationproject.org; Address: 14 Beacon Street, Suite 602, Boston, MA 02108.

Sexual Assault Survivors and Gender-Based Asylum

- Mentoring and materials on domestic violence claims are available from **ASISTA**, <http://www.asistaonline.org/>.
- **AILA**, the American Immigration Lawyers Association, <http://www.aila.org/>
- **The Refugee Case Law Site** at the University of Michigan, providing cases, summaries, links, and information on refugee law around the world <http://www.refugeecaselaw.org/>
- **The Center for Gender and Refugee Studies** at the University of California, Hastings College of Law, monitors domestic violence asylum cases; summarizes current domestic and international case law, regulations, and standards particular to gender asylum; lists contact information for gender asylum experts; and provides individual case support. Phone 415-656-4791 <http://www.uchastings.edu/cgrs>
- **The Refugee Law Center**, in conjunction with the Harvard Immigration and Refugee Clinic Program, provides document support, attorney referrals and general advice on gender-based asylum claims. Phone 617-524-8400 <http://www.refugeelawcenter.org/>
- <http://www.asylumlaw.org/> - provides contact information for pro bono and low fee attorneys
- Request a free **UNHCR Handbook on Procedures and Criteria for Determining Refugee Status** from UNHCR, 1775 K Street, N.W. Suite 300, Washington, DC 20006, email usawa@unhcr.ch or access the *Handbook* on the Internet at <http://www.unhcr.ch>
- Contact a **university law clinic** where law students supervised by licensed attorneys represent asylum clients pro bono. Typically students have more time to prepare for cases and take on cutting-edge issues. Following is contact information for some law school clinics around the country:
 - American University International Human Rights Law Clinic
Washington College of Law
Washington, DC
Phone: 202-274-4147
 - Harvard Immigration and Refugee Law Clinic at
Greater Boston Legal Services
Boston, MA
Phone: 800-323-3205, 617-603-1808
 - Immigration Clinic
St. Thomas University School of Law
Miami, FL
Phone: 305-623-2309
 - Immigration Law Clinic
University of California Davis School of Law
Davis, CA
Phone: 530-752-6942
 - Immigration Law Clinic
University of Southern California Law School
Los Angeles, CA
Phone: 213-821-5987

Sexual Assault Survivors and Gender-Based Asylum

- International Human Rights Law Clinic
University of California Berkeley Boalt Hall School of Law
Berkeley, CA
Phone: 510-643-4800

**National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law**

4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

When Foreign Students or Their Family Members are Sexually Assaulted: Immigration Implications of the Student and Exchange Visitor System¹²

By Joanne Lin, Kavitha Sreeharsha and Naila McKenzie

Summary

Sexual assault on college and university campuses has been a longstanding problem. It occurs in many different ways, including: marital rape, acquaintance rape, date rape, gang rape, stranger rape, sexual harassment, incest, child sexual abuse, as well as in many other forms of sexual crimes. Sexual assault occurs in residential halls, professors' offices, science laboratories, fraternities, and elsewhere both on and off campus. Sexual assault survivors include students, faculty, staff, and family members of every race, ethnicity, economic class, national origin, sexual orientation, age, or disability. In short, the endemic problem of sexual assault affects every

¹ "This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women."

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.

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segment of a campus community, including foreign or international students and faculty and their family members.²

This chapter focuses on recent changes in the foreign student visa system and explores how these changes affect the way academic institutions interact with sexual assault survivors who happen to be foreign students or family members of foreign students. Likewise, this chapter provides an overview for advocates and attorneys of immigration relief available to immigrant victims of sexual assault and domestic violence. Immigrant victims of sexual assault or their family members may qualify for other forms of immigration benefits unrelated to the victims' status as a student. These legal remedies are available to both documented and undocumented victims. This relief is available to immigrant victims with student visas, work-related visas, faculty members with work-related visas, and to victims' family members of students, faculty, or university staff.³

Since the tragic events of September 11, 2001, there have been significant changes in the laws and regulations governing the foreign student visa system. Specifically, the Departments of State ("DOS") and Homeland Security ("DHS") instituted a host of security measures aimed at keeping terrorists from entering the United States. The most important of these security measures with respect to foreign students was the creation of the Student and Exchange Visitor Information System ("SEVIS"), a new interagency information system created to track and monitor foreign students. Participation in the SEVIS program is now mandatory for all higher education institutions enrolling foreign students. The implementation of SEVIS has transformed the institutional role of academic institutions as well as the specific responsibilities of the Principal Designated School Officials ("PDSO") assigned to monitor foreign student enrollment and activities. The new mandatory reporting rules required of foreign students and schools have revolutionized inter-relationships among foreign students, their family members, PDSOs, and the Department of Homeland Security.

This chapter starts with an overview of the three visa classifications pertaining to foreign students and exchange visitors ("F", "M", and "J" visas). Part II describes the Student and Exchange Visitor Information System and the role of the PDSO. Part III concludes with a discussion of the impact of SEVIS on foreign students, their family members, and educational institutions. Understanding SEVIS' requirements and how it has been implemented at the victim's university is critical to knowing how to counsel foreign students and their family members who are sexually assaulted or raped.

Part I: The Most common student visas: F, M, J Programs

There are three avenues for foreign students to come to the United States to study temporarily:

- the "F" visa for academic study
- the "M" visa for vocational study
- the "J" visa for cultural exchange.

In Fiscal Year 2005, Department of State issued 565,790 F, M, and J visas to international students and scholars wishing to come to the United States to study and/or work as part of a cultural exchange program.⁴ In that same year, these three visa categories constituted 10.5 percent of all the nonimmigrant visas issued.⁵

It should be noted that nonimmigrant students are not necessarily required to possess a F, M, or J visa to study in the United States. Rather, individuals holding H-1B (specialty occupation), L-1 (multinational manager or executive), or O-1 ("extraordinary" aliens in sciences, arts, education, business, or athletics) are likewise permitted to attend school on a part-time basis. In addition, certain accompanying family members of visa

² See appendix for chart of sexual assault scenarios and immigration options and how many are granted.

³ For more detail, see other chapters on VAWA self-petitioning, The U-visa for victims of criminal activity, the T-visa for victims of human trafficking, gender-based asylum, and VAWA Cancellation of Removal.

⁴ The immigration law term to describe a person legally admitted to the United States for a specific purpose and a temporary period of time is a *nonimmigrant*. There are more than 20 nonimmigrant visa categories, and they are commonly referred to by the alphabet letter that denotes their subsection in the Immigration and Nationality Act section 101(a)(15). Nonimmigrants do not have permission to remain permanently in the United States without changing their status.

⁵ Chad Haddal, *Foreign Students in the United States: Policies and Legislation*, in CRS Report for Congress (2006).

holders who receive visas as dependents, such as those in E-2 (treaty investor), H-4 (specialty occupation)⁶, and L-2 (multinational manager or executive) can attend school on a part-time or full-time basis. Such students in non-F, M, or J status are not tracked by SEVIS.

Moreover, schools are not precluded from enrolling individuals who may be out of status or originally entered the United States without being admitted or paroled by an immigration official.⁷ Nor are they precluded from enrolling individuals not otherwise authorized under the immigration laws to engage in full- or part-time study.⁸ However, many schools have established administrative policies that preclude enrollment of such individuals or deny them certain benefits such as in-state tuition rates, on-campus housing, or access to highly competitive programs.

“F” Visa: F-1 student status is based on full-time attendance at a DHS-authorized school in addition to a showing that the student is making continued progress toward an educational goal.³ F-1 visas may also include a period of practical training.⁹ Schools that may be approved for attendance by F-1 students include:

- Colleges or universities, i.e., an institution of higher learning that award recognized bachelor’s, master’s, doctoral, or other professional degrees;
- Community colleges or junior colleges that provide instruction in the liberal arts or in the professions and that award recognized associate degrees; or
- Seminaries, conservatories, academic high schools, elementary schools, or institutions that provide language training, instruction in the liberal arts or fine arts, instruction in the professions, or instruction or training in more than one of these disciplines.¹⁰

The F-1 student is generally admitted as an F-1 visa holder for the period of the program of study, referred to as the “duration of status.” The F-1 student’s spouse and unmarried children under the age of 21 may accompany the F-1 student under a F-2 visas as dependents. F-2 dependents may remain in the United States for the duration of the F-1 student’s valid immigration status.⁴

F-1 and F-2 visa holders are generally barred from off-campus employment. F-1 students are permitted to engage in on-campus employment if the employment does not displace a United States resident. In addition, F-1 students are permitted to work in practical training that relates to their academic degree program, such as paid research and teaching assistantships. An F-1 or F-2 visa holder who otherwise accepts off-campus employment violates the terms of the F visa and is subject to deportation and other immigration penalties.

⁶ Under the Violence Against Women Act of 2005, a dependent family member of A, E(iii), H, and G non-immigrant visa holders may apply for employment authorization if s/he meets the requirement of being abused or subject to extreme cruelty during the marriage. The Violence Against Women and Department of Justice Reauthorization Act of 2005, PL 109-162, January 5, 2006 *amending* 8 U.S.C. § 1105a. For further discussion, see Chapter 7 on VAWA self-petitioning.

⁷ Although there exists no statute or regulation specifically barring undocumented persons from attending college, institutions maintain varying policies with respect to the issue of accepting undocumented persons. See Catherine Hausman & Victoria Goldman, *Great Expectations*, N.Y. TIMES, Apr. 8, 2001, Education Life Section, at 26. See also E. Badger, B. Ericksen & S. Yale-Loehr, *Betwixt and Between: Undocumented Aliens and Access to U.S. Higher Education*, INTERNATIONAL EDUCATION (Fall 2000).

⁸ Memorandum from the INS Central Office, CO 214f-P/CO-214m-P (Jan. 14, 1994), *reprinted in* 71 INTERPRETER RELEASES 261 (Mar. 14, 1994).

³ See I.N.A. § 101(a)(15)(F)(i); 8 U.S.C 1101(a)(15)(F)(i). For a list of current DHS approved schools, U.S. Immigration and Customs Enforcement, Student Exchange and Visitors Program Approved Schools, <http://www.ice.gov/sevis/students/>

⁹ Practical training presents the F-1 student with an opportunity to apply classroom theory to a real world setting, rounding out an educational stay with relevant work experience.

¹⁰ 8 C.F.R. § 214.3(a)(2)(i) (2003). Note: F-1 students may *not* attend *public* elementary schools nor publicly-funded adult education programs; nor may F-1 students attend a public high school for more than one year. Those attending a public high school must pay the school the “reasonable and realistic estimates” of the actual cost to attend, generally paid in advance. See I.N.A § 214(m); 8 U.S.C. § 1184(m).

⁴ See I.N.A. § 101(a)(15)(F)(ii); 8 U.S.C 1101(a)(15)(F)(ii).

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An F-2 child may pursue full-time studies in a primary or secondary school but may not pursue full-time studies at the post-secondary level.¹¹ F-2 spouses are prohibited from engaging in full-time studies at any level.⁵

“M” Visa: Foreign students who wish to pursue a vocational course of study may qualify for an “M” visa. Like with F-1 visa holders, an M-1 student’s spouse and unmarried children under the age of 21 may accompany the M-1 visa holder as M-2 dependent family members. All M nonimmigrants, including derivatives, are barred from working in the United States including on-campus employment. Unlike the F-1 student who is granted duration of status for his or her studies, an M-1 student is admitted for a specified date certain.

An M-2 child may pursue full-time studies in a primary or secondary school. No M-2 spouse or child may pursue full-time studies at the postsecondary level.

Schools that may be approved for attendance by M-1 students include:

- Community colleges or junior colleges that provide vocational or technical training and that award recognized associate degrees;
- Vocational high schools; or
- Schools that provide vocational or nonacademic training other than language training.¹²

“J” Visa: Foreign students admitted as recipients of the cultural exchange J-1 visa include Fulbright scholars, professors, teachers, trainees, specialists, medical graduates, au pairs, and participants in travel/work programs. The J-1 visa recipient’s spouse and unmarried children under 21 years of age may accompany the J-1 visa holders on J-2 visas.

Many J-1 students are required to return to their country of origin for two years before they can return to the United States in another legal immigrant or nonimmigrant status.¹³ There are few exceptions to the foreign residency requirement for J-1 nonimmigrants.⁶ Even J-1 nonimmigrants who marry United States citizens are required to return home for two years.¹⁴ Among the limited exceptions to the two year requirement are: if a J-1 visa holder’s US citizen or legal permanent resident spouse or child would experience extreme hardship if the J-1 visa holder were required to leave the United States¹⁵; in cases of persecution on the basis of race, religion, political option, national origin, or social group¹⁶; or if it is the national interest for the J visa holder not to return to their home country¹⁷.

Part II: Student and Exchange Visitor Information System (“SEVIS”)

SEVIS refers to the regulations governing F, M, and J student visa holders, their dependents, and educational institutions that admit them as well as the interagency, integrated computer information system that tracks F, M, and J students.

DHS’ enforcement branch, US Immigration and Customs Enforcement (“ICE”), manages the SEVIS program, which can only be accessed by DHS-approved schools and by government employees at the Department of State and the Department of Homeland Security. DHS’ Citizenship and Immigration Services (USCIS) approves the

¹¹ Post secondary includes junior and community colleges, four year colleges and universities for the purposes of bachelor’s or post-graduate degrees.

⁵ 8 C.F.R. § 214.2(f)(15)(ii)(B).

¹² 8 C.F.R. § 214.3(a)(2)(ii) (2003).

¹³ This foreign residency requirements applies to J nonimmigrants who meet any of the three following conditions: (i) an agency of the United States government or their home government financed in whole or in part, directly or indirectly, the J-1’s participation in the program; (ii) the country of origin clearly requires the services or skills in the field of academic study; or (iii) the J-1 is coming to the United States to receive graduate medical training.

⁶ INA § 212(e); 8 U.S.C. §1182(e). For example, a J-1 nonimmigrant may apply for a visitor visa, without having to return home for two years.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* U-visa applicants may also apply for a waiver of the two-year requirement.

schools that students are authorized to attend while in F, M, and J status. These schools are responsible for filing requests with USCIS. As of August 2003, all continuing foreign students were entered into SEVIS.¹⁸

The most important change introduced by SEVIS is the new mandatory institutional reporting requirements placed on all schools participating in the SEVIS program. Prior to SEVIS, schools had not been required to make regular reports to the Immigration and Naturalization Service on students in F and M status. Now that SEVIS is in place, schools are required to report virtually *all* changes or “events” requiring action by a student, including:

- monitoring of student status;
- reporting violations;
- issuing SEVIS I-20 Certificates of Eligibility;
- transferring schools;
- seeking reinstatement of foreign student status;
- reporting address changes; and
- tracking students’ movements inside and outside the United States.

Principal Designated School Official (“PDSO”): In light of the new school reporting requirements under SEVIS, it is critical to understand the responsibilities placed on PDSO. PDSOs are the only individuals authorized to sign SEVIS Forms or to act officially on behalf of the school in carrying out the institution’s responsibilities under the immigration regulations. Foreign students have frequent contact with PDSOs on issues including the student’s school records, immigration applications, and proof of financial responsibility. The PDSO must ensure that the school maintains all appropriate records and must update SEVIS within 21 to 30 days of a specified event¹⁹, depending on the nature of the occurrence.²⁰ This information – whether reporting a student’s failure to maintain status or simply an address change – becomes part of the student’s permanent SEVIS record and will follow the student wherever he or she goes. Failure of the PDSO to ensure compliance with SEVIS requirements may result in the prosecution of the PDSO under federal law²¹ and/or in the withdrawal of school approval to participate in SEVIS. Grounds for withdrawal of school approval include:

- Failure to maintain certain information on students or failure to provide it on written notice;
- Failure to comply with DHS/Citizenship Immigration Services (“CIS”) reporting requirements regarding students;
- Failure to inform CIS of a student’s intent to transfer to another school;
- Willful issuance of a false statement in connection with a school transfer or an application for employment or practical training; and
- Issuance of certificates of eligibility to individuals who will not be enrolled in or carry full courses of study consistent with maintenance of student status.

Within 21 days of occurrence, institutions must report the following changes in SEVIS:

- Changes in information included on SEVIS I-20 Certificate of Eligibility including name, country of birth, country of residence, country of citizenship, date of birth, field of study, financial support requirements, intended field of study, degree objectives, and start/end dates of program;
- Student falling below full course load without PDSO’s prior authorization *or* for any other status violations;
- Optional practical training, curricular practical training, and/or academic training beginning and ending dates;
- Program termination date and reason, if known;
- Any disciplinary actions taken by the school against the student due to a criminal conviction;
- Enrollment date at the school or commencement of a program, or failure to enroll or begin program;
- Name or address changes for students or their dependents; and

¹⁸ 76 Fed. Reg. 76256-76280 (Dec. 11, 2002).

¹⁹ This will be discussed more fully below.

²⁰ 8 C.F.R. § 214.3(g) (2003).

²¹ I.N.A. §101; 18 U.S.C. § 1001.

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- Changes in numbers and/or names of dependents.

No later than 30 days after deadline for class registration or the beginning of the program, institutions must also report additional information, both for newly enrolled and newly arrived students and their dependents:

- Continuing student's current address if it has changed;
- Start date of continuing student's next term if it has changed; and
- Any student who fails to enroll or start participation in the program if he or she entered the United States or transferred using the institution's SEVIS I-20 Certificate of Eligibility.

Name and Address Changes: Foreign students must report any legal name change or change of address within 10 days of the change to the PDSO.²² J exchange visitors must also report address changes to DHS using Form AR-11 within 10 days of any change of address.

Maintaining student status: As a general matter, it is critical for foreign students to maintain their student status in order to remain in a valid F or M status. There is no longer a grace period for students who fail to maintain status or who withdraw without PDSO authorization. Failure to maintain student status can result in severe, permanent immigration consequences.²³

An F-1 student is required to maintain a full-time course load. At the undergraduate level this generally means registration for at least 12 academic credit hours per term.²⁴ Graduate level "full-time" is more flexible and left essentially to the school to define. Regardless of level, students are expected to be making normal progress toward the educational goal stated on the face of the certificate of eligibility.²⁵

The PDSO may permit the student to enroll for or drop to less than a full-time course load where it is recommended for academic reasons (e.g., to allow a student to adjust to a United States educational program methodology or because of initial language difficulties) or due to the student's illness.²⁶ SEVIS regulations severely restrict the number of times a student may reduce his or her course load. Specifically, a student may drop below a full course load only *once* during a particular program level for academic reasons but must still maintain at least six semester or quarter hours, or half the clock hours required for a full course of study during that term.²⁷ The only exception to the one-time rule is during the final term if the student needs less than a full course to graduate.²⁸ Furthermore, if a student *fails* to obtain authorization from the PDSO prior to reducing his or her course load, or he or she drops below a full course load more than once, he or she will be considered out of status and must seek reinstatement of student status.²⁹

Dropping below a full course load for medical reasons is a bit more flexible, however, such drops are limited to 12 months in the aggregate at one program level and must be approved, where practicable, by the PDSO ahead of time by providing medical documentation from a medical doctor, doctor of osteopathy, or a licensed clinical psychologist to substantiate the illness or medical condition.³⁰

²² 8 C.F.R. § 214.2(f)(17) (2003).

²³ Nonimmigrant visa holders who fail to maintain status may still be eligible for VAWA self-petitions, VAWA cancellation of removal, some family petitions when the sponsor is an immediate relative, asylum, U-visas for victims of criminal activity and T-visas for victims of human trafficking. J visa holders with the two year residence requirement are not eligible for a waiver under VAWA but are eligible for waivers when applying for U-visa or T-visa. T-visas will have limited availability to student visa holders because an applicant must prove that she is physically present in the United States on account of the trafficking. Asylum is also a less likely option because applicants are required to file an asylum petition within one year of arriving in the United States. For a more extensive discussion about these options for immigration relief, please see chapters on VAWA self-petitioning, VAWA cancellation, U-visas, T-visas, and gender-based asylum.

²⁴ 8 C.F.R. § 214.2(f)(6)(i)(B) (2003).

²⁵ 8 C.F.R. § 214.2(f)(5) (2003).

²⁶ 8 C.F.R. § 214.4(f)(6)(iii) (2003).

²⁷ *Id.* The clock hour requirement enforces attendance for those hours per week rather than just be enrolled in the minimum units.

²⁸ 8 C.F.R. § 214.2(f)(6)(iii)(C) (2003).

²⁹ *Id.*

³⁰ 8 C.F.R. § 214.2(f)(6)(iii)(B) (2003). Medical conditions related to sexual assault or domestic violence will be discussed further below.

Extension of Stay: Prior to SEVIS’s implementation, PDSOs were permitted to indicate an additional period of up to one year longer than the normal period required to complete the program when calculating the completion date placed on the I-20. The SEVIS regulations no longer permit this. Any necessary program extension must be requested by the student *prior* to the date listed on the I-20 as the date by which the program will be completed. Otherwise, the student will be out of status and must seek reinstatement of student status.

An F-1 student is eligible for an extension of their stay if the application is timely, the student has continuously maintained status, and the student can demonstrate that the need for the extension is caused by compelling medical or academic reasons.³¹ A change of major or program may constitute a valid reason for seeking an extension of stay. However, academic probation or suspension from school is not considered a compelling academic reason warranting an extension.³² The PDSO authorizes an extension by updating the information in SEVIS and issuing a new I-20 noting the new expected completion date.³³ A student who does not qualify for an extension of stay must seek reinstatement of student status.

Transfer of Schools: When an F-1 student seeks a transfer from one SEVIS school to another, the student must notify the PDSO at the current school of the *intent* to transfer, upon which the student and the PDSO establish a “transfer out” date. This is the date when the current school releases its SEVIS records to the transfer school, allowing the transfer school to issue a new SEVIS I-20. Under no circumstances may an F-1 student remain in the United States while waiting to transfer to the other school *if* the start date for the new school is more than five months from the program completion date at the former school.³⁴ The transferring student must report to the PDSO at the new school no later than 15 days after the reporting date listed on the new school’s I-20 Certificate of Eligibility.

M-1 students are only permitted to transfer schools within the first six months of beginning their program unless circumstances beyond the student’s control³⁵ necessitate a later transfer and only with DHS/U.S. Citizenship and Immigration Services prior permission through adjudication of a change of status. The DHS form that the M-1 student must complete in order to obtain DHS permission to transfer schools is an I-539.

Reinstatement of student status: Reinstatement is only available to students who have been out of status for no more than five months, unless the student can show exceptional circumstances warranting an extended period of time.³⁶ Reinstatement will not be permitted unless the student never worked without authorization, is pursuing or intends to pursue a full-course of study, does not have a record of repeated and willful violations, and is not deportable on any ground other than overstaying status.

In addition, in order to be eligible for reinstatement of student status, the student must show that the violation of status was due to circumstance beyond his or her control such as serious injury or illness; closure of institution; a natural disaster; the inadvertence, oversight, or neglect of the PDSO; or that the violation relates to a reduction in the student’s course load that would have been within a PDSO’s power to authorize and failure to approve reinstatement would result in extreme hardship to the student. The student visa holder’s reinstatement application must be filed with CIS. If CIS denies the reinstatement application, the student will become undocumented and start accruing unlawful presence.

Part III: Impact of SEVIS on Foreign Students, Their Family Members, and Schools

WHEN A FOREIGN STUDENT IS SEXUALLY ASSAULTED OR RAPED:

³¹ 8 C.F.R. § 214.2(f)(7)(iii) (2003).

³² *Id.*

³³ 8 C.F.R. § 214.2(f)(7)(iv) (2003).

³⁴ 8 C.F.R. § 214.2(f)(8)(i) (2003).

³⁵ 8 C.F.R. § 214.2(m)(11)(i) (2003). A student may argue to DHS that sexual assault or domestic violence are situations beyond her control necessitating the transfer.

³⁶ 8 C.F.R. § 214.2(f)(16)(i)(A) (2003). A student may argue to DHS that sexual assault or domestic violence constitute exceptional circumstances.

When Foreign Students or Their Family Members are Sexually Assaulted: Immigration Implications of the Student and Exchange Visitor System

Dropping below full course load: If a foreign student is sexually assaulted or raped, she may find it difficult or impossible to maintain a full course load. In these cases, the student must seek the PDSO's approval to drop below a full-course of study prior to dropping any courses or credits. If the student drops below full-time for any reason without the PDSO's prior approval, the student will fall out of status and will be terminated in SEVIS. While this harsh rule places the foreign student in an extremely difficult situation by having to share the deep pain of being assaulted with the PDSO, there are no extenuating circumstances or exceptions. In cases like this, it may be helpful for the student to enlist the assistance of a counselor, residential advisor, pastor, advocate, attorney or other trusted confidante to approach the PDSO on the student's behalf. It is not required that the student tell the PDSO about the sexual assault; however, omitting this information may cause the PDSO to wonder why it is necessary for the student to drop below a full course load and may lead to the PDSO denying the student's request.

The student may drop to a half-time course load if she or he is experiencing **academic difficulties**³⁷, provided she or he resumes full-time studies the following semester. A reduced course load due to academic difficulties may only be granted one time during the course of studies.³⁸ The immigration regulations define "academic difficulties" to include initial difficulty with English or reading requirements, unfamiliarity with United States teaching methods, or improper course level placement.³⁹ Although the regulations do not contemplate situations where the student has been sexually assaulted or otherwise suffered severe trauma, foreign students who are sexually assaulted by a professor, teaching assistant, or fellow classmate should argue that the sexual assault was the direct cause of the "academic difficulties" which thereby prevented the foreign student from completing a particular course.

Furthermore, a foreign student may drop to less than half-time due to the student's *temporary illness or medical condition* provided the reduction is limited to an aggregate of 12 months within one course of studies. In this case, the student will need to furnish documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist to the PDSO to substantiate the illness or medical condition.⁴⁰ This will require the foreign student to seek medical or psychological treatment, and will require the student to disclose the sexual assault and medical treatment to the PDSO. In addition to advocates, victims may turn to a variety of support services on campus. This may include informal networks of friends, peer sexual assault counselors, campus health centers, campus police or others. Any of these individuals may be helpful in collecting and providing the PDSO with documentation in support of the student's request.

Sexual assault may have significant impacts on an individual's physical and mental health, necessitating medical treatment and time to recover.⁴¹ Advocates should assist victims in obtaining necessary health treatment. This may be available on-campus, but it may be necessary to look for available treatment through a private health care plan or with crisis service centers that provide free or reduced rate medical services to sexual assault victims.⁴² Advocates should encourage victims to obtain health care treatment in that the victim will likely need to provide documentation of such medical services to the PDSO when asking to be allowed to drop below a full course of study. Especially when the victim is experiencing trauma, advocates can aid victims by assisting them in collecting such documentation for the PDSO. A victim may also be experiencing sufficient trauma to prevent her from being able to communicate with the PDSO. In such instances, advocates can help victims to communicate with the PDSOs so that all relevant information is provided and that critical school deadlines are met.

³⁷ 8 C.F.R. § 214.2(f)(6)(iii)(A) (2003).

³⁸ 8 C.F.R. § 214.2(f)(6) (2003). A course of study is the completion of a specific educational or professional objective at an undergraduate, postgraduate or postdoctoral study at a college, university, conservatory or religious seminary, postsecondary language schools, nonvocational training programs, elementary, middle, and high schools if these education institutions meet the required criteria set forth in the regulations.

³⁹ 8 C.F.R. § 214.2(f)(6)(iii)(A) (2003).

⁴⁰ 8 C.F.R. § 214.2(f)(6)(iii)(B) (2003).

⁴¹ Health consequences from domestic violence and sexual assault related injuries include much more than treatment from a specific incident and may include long-term physical health effects like chronic back pain and migraines as well as vision loss, stammering, sexually transmitted diseases and other effects. Coker, A., Smith, P., Bethea, L., King, M., McKeown, R. *Physical Health Consequences of Physical and Psychological Intimate Partner Violence*, 9 ARCHIVES OF FAMILY MEDICINE (2000).

⁴² See Health care chapter for a student visa holder's access to health services.

Name and Address Changes: A foreign student who has been sexually assaulted may need to move, especially if the assault occurred at or near her residence. F and M visa holders must report any change of address to the PDSO within 10 days of the move. Likewise, J visa holders must report any change of address to DHS as soon as possible. Similarly, if the foreign student makes a legal name change, she will need to report that change to the PDSO within 10 days of the change.

Extension of Stay: A foreign student who has been sexually assaulted may find that she needs additional time to complete her course requirements. If she seeks an extension of stay, she must ensure that she requests this extension to the PDSO before the expiration date on the SEVIS I-20 Certificate of Eligibility. She is eligible for an extension of stay if she submitted the application timely, has continuously maintained status, and can demonstrate that compelling medical or academic reasons create the need for the extension.⁴³ Documentation of compelling medical or academic reasons for extensions of stay is similar to the documentation requirements for dropping below a full course load. For example, if a student changes her major or research topic – which may be necessary if she was sexually assaulted by her dissertation/thesis advisor or departmental chair – that change in program should constitute a valid reason for seeking an extension of stay. To make the case for compelling academic reasons, the student will likely need the assistance and cooperation of a faculty member within the department who can help make a change in program or research topic.

A student who does not qualify for an extension of stay must apply for reinstatement of student status with United States Citizenship and Immigration Services of DHS as discussed below

Transfer of Schools: A foreign student who has been sexually assaulted on campus may find that she needs to transfer to a new school for her own safety or in order to get the distance she needs for emotional and psychological healing. When an F-1 student seeks a transfer from one SEVIS school to another, she must notify the PDSO at the current school of her intent to transfer. At this time, the student and the PDSO will establish a “transfer out” date. The transferring student must then report to the PDSO at the new school no later than 15 days after the reporting date listed on the new school’s SEVIS I-20 Certificate of Eligibility. The student may not remain in the United States while waiting to transfer to the other school *if* the start date for the new school is more than five months from the program completion date at the former school.⁴⁴

Advocates and attorneys can play a critical role in advocating for victims in this respect. Victims may experience physical and/or emotional trauma that prevent them from following through on the steps necessary to facilitate transfer between schools. Advocates may assist by identifying and helping students to prioritize the PDSO requirements, accompany them to meetings with the PDSO, and advocate on their behalf to ensure that the PDSO has a complete understanding of the hardship faced by the victim.

Reinstatement of student status: As stated above, if a foreign student falls out of status, she may apply for reinstatement with CIS provided that she has not been out of status for more than five months. She must show that she never worked without authorization, is pursuing or intends to pursue a full course of study, does not have a record of repeated and willful violations of her immigration status, and is not deportable on any ground other than overstaying her present student status. In addition, she must show that the violation of status was due to circumstance beyond her control, such as serious injury or illness; closure of the educational institution; a natural disaster; the inadvertence, oversight, or neglect of the PDSO; **or** that the violation relates to a reduction in the student’s course load that would have been within a PDSO’s power to authorize **and** failure to approve reinstatement would result in extreme hardship to the student.

If the student is seeking reinstatement based on serious injury or illness caused by the sexual assault, she will need to disclose and share this information with CIS. If possible, the student should submit any information corroborating the sexual assault in the form of medical records, psychological records, police reports, photographs, or third-party statements.

Alternate immigration options for the foreign student who has been sexually assaulted: Because the new SEVIS rules are so complex and harsh, it is critical for foreign students to explore alternate immigration options in the

⁴³ 8 C.F.R. § 214.2(f)(7)(iii) (2003).

⁴⁴ 8 C.F.R. § 214.2(f)(8)(i) (2003).

When Foreign Students or Their Family Members are Sexually Assaulted: Immigration Implications of the Student and Exchange Visitor System

event they fall out of student status. Foreign students should meet in person with an experienced immigration attorney who can assess them of all possible immigration options. Victims should likewise seek immigration attorneys who have experience handling VAWA cases involving immigrant victims of violence. Some of these immigration options may be based on the sexual assault or rape itself; other immigration options may have nothing to do with the sexual assault but are instead based on the student's employment skills, market demand, experience in the country of origin, and familial relations. To find a local immigration attorney, foreign students should contact the American Immigration Lawyers Association (www.aila.org) and ask for referrals to local immigration lawyers.⁴⁵

IMMIGRATION OPTIONS BASED ON SEXUAL ASSAULT:

(1) U-Visa for victims of criminal activity⁴⁶: In order to apply for a U-visa, a victim must obtain a certification from the federal, state, or local agency investigating or prosecuting the criminal activity.⁴⁷ University and campus law enforcement certifications may likely qualify. Likewise, the regulations explicitly state that the Equal Employment Opportunity Commission ("EEOC") may certify for the U-visa.⁴⁸ Because sexual harassment in the workplace is typically investigated by the EEOC, one may conclude that, where sexual harassment violates federal, state, or local laws, sexual harassment may qualify for a U visa in certain circumstances. Therefore, students and their advocates should look for evidence of criminal activity, such as threats of violence and physical assaults, which may make a victim eligible to apply for a U-visa.

(2) Violence Against Women Act ("VAWA") self-petitioning⁴⁹: This form of immigration relief is available to foreign students who have been sexually assaulted by their United States citizen or permanent resident spouse or parent or by their United States citizen adult son or daughter. In addition, the foreign student, among other requirements, must show that she resided with the abusive family member, that the marriage was entered into in good faith (not for the purpose of obtaining permanent resident status), and that she has good moral character.⁵⁰ The VAWA self-petition is available to student visa holders who marry United States citizen or lawful permanent resident students, faculty or on-campus staff in addition to individuals not affiliated with an educational institution. A student who is married to a lawful permanent resident or a United States Citizen may already have a nonimmigrant visa status and therefore have elected not to obtain permanent status through her spouse. Alternatively, a student visa holder may seek permanent status but her spouse who perpetrated sexual assault may not have sponsored his spouse in a timely manner or failed to sponsor as a mechanism to perpetuate power and control. In both situations, a student visa holder is eligible to self-petition under VAWA.

(3) VAWA cancellation of removal: This form of immigration relief is available to foreign students already in immigration removal proceedings who have been sexually assaulted by a United States citizen or permanent resident spouse or parent. VAWA cancellation is also available to foreign students with a child who has been sexually assaulted by that child's United States citizen or permanent resident parent, regardless of whether or not the parents were ever married. Unlike the U visa which is available to many categories of sexual assault survivors, VAWA cancellation is limited to those individuals who have been assaulted by their United States citizen or permanent resident spouse or parent or to individuals whose child has been sexually assaulted by that child's United States citizen or permanent resident parent. In addition, the foreign student must show that she has been physically present in the United States for a continuous period of at least three years immediately preceding the date of her cancellation application; that she has had good moral character during that three-year period; that she is not inadmissible and has not been convicted

⁴⁵ Technical assistance is also available to immigration attorneys through National Immigrant Women's Advocacy Project at (202) 274-4457, niwap@wcl.american.edu and ASISTA at (515) 244-2469, questions@asistaonline.org.

⁴⁶ For a more detailed discussion of U-visas, see Chapter 10 on U-visas.

⁴⁷ 8 C.F.R. § 214.14(a)(2) (2007).

⁴⁸ *Id.*

⁴⁹ For a more detailed discussion, see chapter 7 on VAWA self-petitioning.

⁵⁰ "Good moral character" is defined at I.N.A § 101(f); I.N.A. §1101(f).

of an aggravated felony conviction; and that her deportation would result in extreme hardship⁵¹ to her, her child, or her parents.⁵²

IMMIGRATION OPTIONS NOT BASED ON SEXUAL ASSAULT:

In addition to the above-mentioned immigration options, foreign students should explore all other forms of immigration relief, whether in nonimmigrant status or permanent resident status. Many foreign students, in particular graduate students, may qualify for a nonimmigrant visa that permits them to work in the United States as:

- E-1 (treaty trader)
- E-2 (treaty investor)
- H-1B (specialty occupation)
- L (multinational executive or manager)
- O (extraordinary alien)
- P (athlete, entertainer)
- R (religious worker)

However, J-1 exchange visitors subject to the two-year foreign residency requirement will most likely be barred from seeking H-1B status unless they obtain a waiver of the requirement. Foreign students will need to consult with an experienced business immigration lawyer to explore these options.

WHEN A FOREIGN STUDENT SEXUALLY ASSAULTS HIS SPOUSE OR CHILD:

These cases are very difficult since they often involve marital rape and/or incest. In addition, they pose complicated immigration consequences since the sexual assault survivor's immigration status can be intertwined with the perpetrator's status.

For example, if an F-1 student sexually assaults or rapes his spouse or child, DHS could revoke his F-1 status, thereby resulting in the revocation of the F-2 dependent's status *even if* the F-2 dependent was the victim of the sexual assault. The F-1 student would most likely be barred from applying for reinstatement of student status with DHS if the sexual assault conduct renders him deportable. In cases like these, it is critical that the sexual assault survivor who is an F-2 dependent be informed of her option to pursue a U visa so that she can obtain immigration status for her and her children apart from the status she has received from her abusive spouse, the F-1 student. In these situations, the survivor needs the counsel of an experienced immigration attorney who can assist her in obtaining a law enforcement certification form. The U-visa regulations provide guidance encouraging law enforcement certifying agencies to develop protocols to help victims through the U-visa certification process.⁵³ However, most law enforcement agencies are still unfamiliar with the U-visa certification process. Consequently, advocates, especially those with established relationships with law enforcement, should work closely with law enforcement to develop these protocols so that victims may access the services and law enforcement protection available to them.

Since a victim's ability to lawfully remain in the country may be dependent on an abuser maintaining valid F, M, or J visa status, rape crisis counselors, peer counselors, and other victim advocates need to inform the victim that one possible consequence of calling the police after an assault is the potential deportation of both the perpetrator and victim. The victim should understand this potential consequence ahead of time to empower the victim to explore other immigration options separate from the abusive family member. In working closely with victims to coordinate services and protection, it is critical that advocates understand all the immigration consequences of reporting abuse before making reports to law enforcement or DHS. Given the complexities of both SEVIS and VAWA, advocates should connect student victims to immigration attorneys and advocate early in the process.

⁵¹ Extreme hardship requires factors beyond deportation. Adjudicators look to the totality of the circumstances and may include multiple factors contributing to the hardship. 8 C.F.R. § 1240.20(c) (1999).

⁵² The three-year period is not cut off by the filing of a Notice to Appear but rather by the filing of the VAWA cancellation of removal application.

⁵³ *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant status* DHS Docket No. USCIS-2006-0069, Preamble at 37.

Part IV: Recommendations for Best Practices

- (1) Sexual assault coordinators/counselors should proactively train PDSOs in their area on sexual assault and violence against women issues as they pertain to immigrant victims. This will help in promoting a greater sensitivity to these issues.
- (2) Learn how to identify situations in which a victim might be eligible for VAWA self-petitioning, VAWA cancellation, T-visas and U-visas.
- (3) Sexual assault coordinators/counselors should reach out to local immigration non-profit organizations and immigration lawyers so they can establish referral systems for foreign students who have potential U visa and/or VAWA claims.
- (4) Sexual assault coordinators/counselors, residential advisors, academic advisors, and others aiding sexual assault survivors should familiarize themselves with the new SEVIS rules. They need to educate foreign students on the increased reporting requirements placed on PDSOs by DHS.

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Protection Orders for Immigrant Victims of Sexual Assault¹²

By: Leslye Orloff, Laura Martinez, Soraya Fata, Rosemary Hartman, and Angela Eastman

Introduction

Sexual assault is the most underreported crime in the United States.³ Statistically speaking, most sexual assaults are committed by persons already known to the victim, including 18% by an intimate partner or

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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 Kelly O'Connell, *A New Tool for Safety: Introducing Washington's Sexual Assault Protection Order*, WASH. STATE BAR ASS'N NEWS (June 2006), available at <http://www.wsba.org/media/publications/barnews/june06-o%27connell.htm>.

Protection Orders for Immigrant Victims of Sexual Assault

relative and 48% by a friend or acquaintance.⁴ Few victims and fewer immigrant victims report rape and sexual assault to authorities. In 2002, only 39% of rapes and sexual assaults were reported to law enforcement officials.⁵ When the offender was a friend or acquaintance, 61% of completed rapes, 71% of attempted rapes and 82% of sexual assaults were not reported.⁶ Even when police reports are filed, if the report results in no prosecution or conviction, the victim will be left unprotected.⁷ Victims of sexual assault are at an increased risk of being abused again⁸ and perpetrators of the crime have an increased likelihood of perpetrating again.⁹

According to a representative study of women living in the United States, 1 in 5 women has experienced an attempted or completed rape.¹⁰ Immigrant women in the United States account for more than 1 in 10 females.¹¹ Studies conducted in immigrant Latina and Asian communities have found that immigrant women have a higher rate of sexual assault than reported by US residents as a whole (30-50% versus 25%, respectively).¹² Immigrant victims of sexual assault need remedies outside of the criminal justice system. They need to be able to access civil legal relief requiring that the assailant has the burden of staying away from and not contacting the sexual assault victim.

When most people think about remedies for sexual assault victims, they think in terms of the criminal justice system. Unfortunately, it takes an average of 1 to 2 years for the criminal justice system to provide remedies for sexual assault victims, if the victim receives relief at all.¹³ Yet, sexual assault can have a very powerful effect on a victim's entire social and economic life. One incident of sexual assault can "destabilize a victim's housing, schooling, privacy, employment, immigration status and basic long-term financial welfare."¹⁴ Therefore, "instead of focusing our legal resources exclusively on the issue of criminal sanctions against the assailant, we need to concentrate our legal resources on stabilizing the physical, emotional, and financial welfare of the victim."¹⁵ In many cases, civil relief may be available to victims of sexual assault and may allow flexibility and creativity in helping victims. Civil law remedies may be preferable in some circumstances because they involve a lower burden of proof. In addition, depending on statutory and case law in the jurisdiction, a finding of guilt in a criminal trial may be sufficient to establish civil liability. Some of the advantages of civil remedies include:

- It can empower victims. There can be more control in civil cases, whereas in criminal cases, the victim is usually only a witness in the case.
- Recovery of monetary damages for the harm inflicted on victims both validates the victim's experience and reinforces the idea that perpetrators must be accountable for their actions.
- The case can be filed and completed more quickly.
- The hearing and file can be sealed if requested.

This chapter will:

⁴ CALLIE MARIE RENNISON, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NATIONAL CRIME VICTIMIZATION SURVEY: CRIMINAL VICTIMIZATION 2001, CHANGES 2000-01 WITH TRENDS 1993-2001 (Sept. 2002), available at www.ojp.usdoj.gov/bjs/pub/pdf/cv01.pdf.

⁵ CALLIE MARIE RENNISON & MICHAEL R. RAND, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NATIONAL CRIME VICTIMIZATION SURVEY: CRIMINAL VICTIMIZATION, 2002 (Aug. 2003), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cv02.pdf>.

⁶ CALLIE MARIE RENNISON, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, RAPE AND SEXUAL ASSAULT: REPORTING TO POLICE AND MEDICAL ATTENTION, 1992-2000 (August 2002), available at www.ojp.usdoj.gov/bjs/pub/pdf/rsarp00.pdf.

⁷ Diana M. Elliott, Doris S. Mok & John Briere, *Adult Sexual Assault: Prevalence, Symptomatology, and Sex Differences in the General Population*, JOURNAL OF TRAUMATIC STRESS, VOL. 17, No. 3, PP. 203-211 (June 2004).

⁸ *Id.*

⁹ David Lisak & Paul M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 VIOLENCE AND VICTIMS, 73 (2002).

¹⁰ PATRICIA T. JADEN & NANCY THOENNES, NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY (Nov. 2000).

¹¹ U.S. Census Bureau (2000).

¹² Anita Raj & Jay G. Silverman, *Violence Against Immigrant Women: The Roles of Immigrant Culture, Context, and Legal Status on Intimate Partner Violence*, 8 VIOLENCE AGAINST WOMEN 367 (2002).

¹³ Catherine A. Carroll, *Addressing the Civil Legal Needs of Sexual-Assault Victims*, WASH. STATE BAR ASS'N NEWS (Apr. 2004), available at <http://www.wcsap.org/legal/PDF/barnews2004.pdf>.

¹⁴ *Id.*

¹⁵ *Id.*

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- (1) Discuss safety planning for sexual assault victims and practice considerations for their advocates and attorneys;
- (2) Provide an overview of civil protection orders;
- (3) Discuss the different types of civil protection orders available to victims of sexual assault, including sexual assault protection orders available in thirteen states and other civil protection orders available to family violence victims in all US jurisdictions;
- (4) Briefly discuss some options for creative bond and criminal release provisions that can be helpful to immigrant victims of sexual assault whose assailants are being criminally prosecuted;
- (5) Provide a detailed discussion of obtaining effective remedies through creative civil protection order provisions that will assist immigrant victims of sexual assault, and;
- (6) Discuss specific legal issues regarding civil protection orders for immigrant victims of sexual assault.

The first part of this chapter focuses on civil remedies available to sexual assault victims whose perpetrators are strangers or acquaintances. The second portion of this chapter discusses additional remedies and other forms of civil protection order relief available only when the relationship between the victim and the perpetrator is covered by state family violence protection order statutes. Family violence sexual assault victims can apply for either a domestic violence civil protection order or a sexual assault protection order and a criminal bond order as any combination in the order that would be most likely to promote safety. A victim of stranger or acquaintance sexual assault in most jurisdictions would not qualify for a family violence protection order and should explore the various types of other protection available to help sexual assault victims. Since sexual assault protection orders, where offered, are available to all victims this chapter discusses these remedies first. The second part of this chapter focuses on family violence protection orders.

It should be noted that while civil protection order remedies available in stranger and acquaintance sexual assault cases are discussed separately from sexual assault remedies in the family violence context, many of the issues for victims greatly overlap. Therefore, attorneys and advocates working with clients who are victims of sexual assault should read the chapter in its entirety. Many of the creative remedies described in detail in the family violence section of this chapter could also be included in a criminal court stay away order, bond order, sexual assault protection order or a general civil restraining order offering specialized help in a case of an immigrant victim.

For a discussion of other civil options for victims of sexual assault, including civil restraining orders, anti-harassment orders, stalking protection orders, university protection orders and protection orders for vulnerable populations and a more complete discussion of working with victims whose perpetrators are being criminally prosecuted we refer readers to four other manuals that should be read in conjunction with this manual.

- Susan H. Vickers, *Beyond the Criminal Justice System: Transforming Our Nation's Response to Rape*, Victim Rights Law Center (2003);
- Jessica E. Mindlin and Liani Jean Heh Reeves, *Rights and Remedies: Meeting the Civil Legal Needs of Sexual Violence Survivors*, The Center for Law and Public Policy On Sexual Violence (2005);
- Douglas E. Beloof, Jessica E. Mindlin, and Liani Jeah Heh Reeves, *A Criminal Justice Guide: Legal Remedies For Adult Victims of Sexual Violence*, The Center for Law and Public Policy On Sexual Violence (2005); and
- Lynn Hecht Schafran, *Understanding Sexual Violence: The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault* (2005).

Safety Planning

For months or years following sexual assault, victims can have difficulty reestablishing a sense of safety.¹⁶ Recovering from sexual assault and feeling safe again can be even more difficult for an immigrant victim who is also struggling to adapt to a new country, culture and language. The perpetrator of sexual assault against an immigrant victim may pose an ongoing threat to the victim.¹⁷ He may use threats of deportation or he may

¹⁶ SUSAN H. VICKERS, *BEYOND THE CRIMINAL JUSTICE SYSTEM: TRANSFORMING OUR NATION'S RESPONSE TO RAPE*, A Practical Guide to Representing Sexual Assault Victims, VICTIM RIGHTS LAW CENTER (JUNE 2003).

¹⁷ *Id.*

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manipulate her fear of him following the first assault to keep her from seeking help from the civil or criminal justice systems. These threats and fears may also keep her from talking to anyone, including close friends, counselors or victim advocates, about the assault or attempted assault. For these reasons it is very important that every immigrant victim of sexual assault be offered comprehensive safety planning. This safety planning should include providing immigrant victims with an overview of the various criminal and civil protection order options that could be used to legally require the assailant to stay away from, have no further contact with or otherwise modify his behavior toward the sexual assault victim. It must also include providing immigrant victims with an overview of immigration relief that is available to them.

Careful safety planning is needed if the assailant knows:

- Where the victim lives,
- Where the victim works,
- Where the victim attends cultural and religious events and/or goes to worship
- Where the victim attends school,
- Where the victim frequents,
- What kind of car the victim drives/which public transportation locations the victim uses,
- If the assailant has access to a weapon,
- If the victim reports the assault,
- If the assailant has made a specific threat to harm the victim and/or their family (here and abroad), or
- If the assailant has threatened to have the victim deported.

Safety planning measures can include:

- Notifying neighbors and friends of the safety threat,
- Carrying a cellular phone to call 911 in the event of an emergency,
- Identifying safe places to stay or reside away from home,
- Informing the victim about the forms of immigration relief she may qualify for and the steps she may need to take to obtain immigration benefits¹⁸; and
- Seeking a restraining order from the civil or criminal courts.

Unlike the other safety measures listed, the purpose of a protection order is to place a legal burden on the assailant to have no further contact with the victim.¹⁹ If an order is obtained, the assailant could be penalized for just contacting the victim, even if no further criminal activity took place through the contact. Protection orders do not preclude the pursuit of other civil or criminal remedies and may create the security to pursue those remedies; however, such orders are not without risk.²⁰

Depending on jurisdiction, several types of civil protection orders and remedies exist to help immigrant victims of sexual assault. They include:

- Sexual Assault Protection Orders (SAPO);
- Civil Protection Orders (CPO) Issued Under the State Domestic Violence Statutes;
- General Civil Restraining or Anti-Harassment Orders;
- Stalking Orders;
- Orders that Protect Elderly, Disabled, or Other Especially Vulnerable Populations
- College or University Stay Away Orders;
- Housing Stay Away or Vacate Orders;

¹⁸ For victims who qualify for a crime victim visa (U-visa) or a trafficking victim visa (T-visa) this can include a requirement that the victim cooperate or be willing to be helpful in a criminal investigation or prosecution. For more information on the U-visa, see Chapter 3 of *BREAKING BARRIERS*, *supra* note **ERROR! BOOKMARK NOT DEFINED.**, and for more information on T-visas see Aimee Clark Todd et al., *Protecting Victims of Crime*, IMMIGRATION & NATIONALITY LAW HANDBOOK (AILA 2d ed. 2006).

¹⁹ VICKERS, *supra* note 16.

²⁰ *Id.*

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- Civil Injunctive Relief for “Arms Length” Relationships;
- Special Conditions Bond for Family Violence.

An attorney or advocate should assess whether an order, and which type of order, may be appropriate for the particular needs of a client and the facts of the case.²¹ Depending on the type of relationship a victim has with the assailant, and other civil or criminal remedies she is seeking, the victim may qualify for one, some, all or none of the types of orders.²² It is important to assess which protection orders an immigrant victim qualifies for and compare which options are likely to be the most effective in promoting victim safety. When working with immigrant victims, the immigration options available to the victim and the evidentiary requirements of each option must be part of this assessment.

If a criminal case is pending, an immigrant victim could ask that the prosecutor include stay away orders and other protection relief as a condition of releasing the perpetrator from government custody in a rape, sexual assault or domestic violence criminal case.²³ Any criminal stay away or protection order issued in a criminal case will end if the criminal prosecution is dismissed, if the perpetrator is not convicted or when the perpetrator has completed serving any sentence imposed. For this reason, it is highly recommended that immigrant victims whose assailants are being criminally prosecuted not rely solely on the stay away orders issued in the criminal case for protection.

Advocates and attorneys working with victims in criminal cases should identify and pursue other civil protection order remedies that immigrant sexual assault victims also qualify for. If a victim can pursue multiple options, then it is particularly important to pay attention to the timing of filing of protection orders. For example, when a criminal case is being initiated against the perpetrator, timing the filing of the civil protection order action so that service can be accomplished while the assailant is still in court custody can offer additional protection to the victim at a time when the danger of retaliation is particularly high.²⁴

PRACTICE CONSIDERATIONS

Just because a state has a protection order tailored to sexual assault victims, does not mean that it is the best option for a particular victim. Advocates and attorneys need to address the benefits and risks of a protection order with a sexual assault victim before pursuing this avenue. The following will describe the risks and benefits involved with obtaining a protection order.

BENEFITS OF A PROTECTION ORDER

1. Documentation Trail

A protection order is often a very useful tool for immigrants when other court cases against the perpetrator may also be occurring, including a criminal case brought by the state or a civil tort action against the perpetrator. It documents abuse and provides evidence proving that the abuse occurred. This documentary evidence of abuse helps victims show a pattern of abuse that can be useful in subsequent legal actions. It can help a victim prove domestic violence in a future custody case. It can also provide immigrant victims with evidence of abuse to support their VAWA immigration case.

2. Giving Back Control to the Victim

Civil protection orders can be a middle ground for victims who do not want to or could not move forward with a criminal trial. It is important to a victim’s recovery from sexual assault, that the victim be given choices since a fundamental choice was violently taken away from her when she was assaulted. A protection order can be a tool that helps victims regain control over their lives. Also, a

²¹ *Id.*

²² *Id.*

²³ See discussion of creative use of bond and release orders in criminal cases with specific provisions to help immigrant victims, see Chapter 5.1 in *Breaking Barriers*, *supra* note **ERROR! BOOKMARK NOT DEFINED.**, See also DOUGLAS E. BELOOF, JESSICA E. MINDLIN, & LIANI JEAN HEH REEVES, *A CRIMINAL JUSTICE GUIDE: LEGAL REMEDIES FOR ADULT VICTIMS OF SEXUAL VIOLENCE* (CTR. FOR LAW & PUB. POLICY ON SEXUAL VIOLENCE AT THE NATIONAL CRIME VICTIM LAW INSTITUTE) 28-29 (2005), available at www.ncvli.org.

²⁴ VICKERS, *supra* note 16.

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protection order allows a victim to tell her story, which often helps victims heal from the trauma they suffered.

3. *Speed and Efficiency*

Protection order hearings may be speedier and more victim-friendly than other avenues of accountability. They can be resolved in as quickly as two weeks instead of years as is common for a criminal prosecution.

4. *Potential for Perpetrator Accountability*

The process of enjoining a protection order can often involve the perpetrator admitting that he did some act that is leading to the issuance of the order. Alternatively, a judge in issuing the protection order is finding (after trial or based on the pleadings in the case) that some part or all of the sexual assault or alleged abuse occurred. This finding or admission can be important in holding the perpetrator accountable and may change the balance of power between the victim and the abuser. When the perpetrator is a non-citizen the issuance of a civil protection order will not affect the perpetrator's immigration status. However, certain actions, such as those that lead to a finding of contempt for violating the protection order, are deportable offenses.

RISKS OF A PROTECTION ORDER

1. *Confronting the Perpetrator*

Protection orders are not automatic. They require preparation of a petition, service of the petition on the perpetrator and a hearing with the presence and testimony of the victim. If the perpetrator contests the order, the victim will have to be in court with the perpetrator and describe what happened to her under oath. A victim, who is unwilling to come to court for a criminal trial, will have the same types of concerns for a civil protection order hearing. Having to be in the same room as the perpetrator is traumatic for most victims. If the case does not settle, both a civil protection order hearing and a criminal trial require cross-examination by the perpetrator or his attorney, which can further traumatize the victim. If the case goes to trial, perpetrators of crimes against immigrant women may try to raise the victim's immigration status at trial as an intimidation tactic and to undermine the victim's credibility. This is in addition to the other tactics that the perpetrator may use to impugn the credibility of the sexual assault victims and make it difficult for them to testify effectively at trial. For these reasons, sexual assault victims should additionally explore civil remedies outside of the protection order context. For example, if a woman was sexually assaulted by a neighbor in her apartment complex and did not want to have to confront her perpetrator in a protection order hearing—someone she might see everyday—she might choose to seek legal help in breaking her lease or helping the landlord evict the perpetrator.

2. *Impeachment of the Victim*

During the hearing for a protection order, the perpetrator and his attorney will have an opportunity to cross-examine the victim. The perpetrator and his lawyer will have the chance to listen to the victim's version of events. This allows one extra version of the victim's recitation of events to go on the public record, giving the defense attorney an additional tool for impeachment of the victim during the criminal trial. Impeachment in this context would consist of comparing the victim's testimony at a criminal trial to what was said under oath at the protection order hearing. Any discrepancies (for instance that the victim left her house at 10:30 a.m. instead of 10:15 a.m.) would be presented to the jury as evidence that the victim was lying.

This also gives the perpetrator an opportunity for "free discovery," the chance to find out information they might not otherwise have and to prepare a defense to a criminal or civil tort case based on this information. This is a real concern, which needs to be addressed with any client thinking about pursuing a protection order remedy. One strategy for avoiding the "free discovery" is to go forward with the civil case but bring up the minimum evidence necessary in order to succeed. Some states have addressed this issue in civil protection order cases by providing "use immunity" prohibiting the victim's testimony in the protection order matter from being used in the criminal case.

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Alternatively, the victim could choose to time the filing of her protection order case until after the criminal trial or request to trial the criminal case. There are, however, safety concerns that will need to be addressed with this approach. Before deciding to delay the civil protection order case, the victim will need to assure that any bond or pretrial order in the criminal case contains all of the remedies she needs from the civil protection order case including any remedies needed to protect the victim's safety. This criminal court order can include any remedies that would be available as part of a civil protection order including custody, monetary relief and protections against immigration related abuse. In addition, if a victim chooses to pursue this strategy the advocate or attorney working with the victim must carefully track the progress of the criminal case. If the case is dismissed for any reason, the victim will need to assure that the protection order is obtained before that date.

Civil Protection Orders in General

Civil protection orders are victim initiated and controlled civil remedies that offer protection to victims of sexual assault including immigrant victims independent of whether or not a police report has ever been filed or a criminal prosecution against the perpetrator has been initiated. A victim can pursue the protection order even when she does not want to notify police or prosecutors about the sexual assault. Protection orders do not require criminal justice system intervention and can be useful in deterring further violence and enhancing safety for victims. When civil protection orders are appropriately drafted and consistently enforced, they can provide effective protection for victims of sexual assault and domestic violence. Additionally, victims can file for civil protection orders when there is a pending criminal case against the perpetrator or a criminal trial is underway.²⁵ Civil protection order options are very important for sexual assault victims because persons already known to the victim commit most sexual assault crimes.²⁶ Further, studies have found that when a victim knows her perpetrator, the sexual assault often goes unreported.²⁷ Having access to non-criminal justice system related remedies is particularly important for immigrant victims of sexual assault who are likely to be more reticent to report sexual assault, rape and domestic violence crime to police than other victims.²⁸

What Is A Protection Order?

A civil protection order is a court order prohibiting or restricting a person from harassing, threatening, and sometimes even contacting or approaching another specified person. In most jurisdictions, protection orders offer a wide array of relief that can provide vital protection against repeated violence for victims. Adding forms of relief beyond violence prevention provisions to a civil protection order can increase the effectiveness of violence prevention. It is important to note that protection orders do not guarantee an end to violence, and may not always deter a perpetrator. Advocates and attorneys should explain to their clients that a civil protection order is not for every victim. Safety must be the first and foremost consideration.

Since victims have more control over the protection-order process, they can choose when, whether, and how to enforce protection orders, taking into account the potential for the abuser's deportation and whether that deportation might enhance danger to the victim and her family members. Protection orders can also provide crucial evidence of reoccurring abuse and therefore can help provide important evidence of battering or extreme cruelty for immigrants sexually abused by a U.S. citizen or a lawful permanent resident spouses or parents who qualify to apply for battered spouse waivers, self-petitions, or cancellation of removal applications under the Violence Against Women Act (VAWA). Additionally, protection orders can also provide evidence for U and T visas for immigrant crime victims ineligible to obtain immigration relief under battered spouse waivers, self-petitions, and cancellation or removal.

²⁵ JESSICA E. MINDLIN & LIANI JEAN HEH REEVES, RIGHTS AND REMEDIES: MEETING THE CIVIL LEGAL NEEDS OF SEXUAL VIOLENCE SURVIVORS (Ctr. for Law & Pub. Policy on Sexual Violence at the National Crime Victim Law Institute) (2005), available at www.ncvli.org.

²⁶ RENNISON, *supra* note 4.

²⁷ When the offender was a friend or acquaintance, 61% of completed rapes, 71% of attempted rapes, and 82% of sexual assaults were not reported. RENNISON, *supra* note 6.

²⁸ Nawal H. Ammar et al., *Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA*, 7 INT'L J. POLICE SCI. & MGMT. 230, 231, 236-37 (2005); Leslye E. Orloff et al., *Battered Immigrant Women's Willingness to Call the Police For Help and Police Response*, 13 UCLA WOMEN'S L.J. 43, 60-62 (2003).

Domestic Violence Protection Orders—An Option For Victims of Intimate Sexual Assault

Victims of sexual assault whose assailants are family members, intimate partners or other persons covered by the state domestic violence statute can seek family violence protection orders against their assailants in addition to or instead of the various forms of sexual assault protection orders and criminal bond orders will be discussed in this chapter.

Civil protection orders are available in all fifty states, Puerto Rico, the District of Columbia, Native America tribes, and all U.S territories²⁹ and are designed to protect battered individuals from their abusers.³⁰ The civil protection order aims to offer the victim protection from future abuse and can be crafted to uniquely address and counter abuse, power, and control in each particular relationship. When civil protection orders are appropriately drafted and consistently enforced, they can provide effective protection for victims of domestic violence.³¹ Most importantly, civil protection orders provide a victim-initiated and controlled justice response to domestic violence that does not require criminal justice system involvement. Civil protection orders are initiated by the victim, thus a victim can choose to pursue this justice-system remedy without reliance on the criminal courts. For example, a victim of domestic violence can obtain a civil protection order even if her abuser is not being criminally prosecuted for the abuse. Victims of domestic violence can obtain civil protection orders whether or not there is also a criminal prosecution of their abuser. Criminal prosecution of abusers is designed to hold abusers accountable for their behavior. Victim needs may or may not be addressed as part of the criminal case. Thus, it is recommended that victims, whose abusers were criminally prosecuted, also obtain civil protection orders.

Civil protection orders may be one of the most effective means to protect victims from further abuse, particularly when the orders are drafted to fit the specific needs of the victim. The most effective protection orders are obtained when a victim is represented by counsel or a trained domestic violence advocate.³² This allows the court to address the victim's particular needs, while generic protection orders may exclude specific provisions necessary to ensuring the victim's safety. Advocates or attorneys assisting battered immigrants need to understand how protection orders can positively affect the victim's ability to attain legal immigration status. They must listen to and respond to the fears and concerns of the victim and understand the manner in which abusers may be exerting power and control over immigrant victims.³³

²⁹ See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 810 (1993).

³⁰ *Id.* at 811.

³¹ *Id.* at 813.

³² PETER FINN & SARAH COLSON, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE AND ENFORCEMENT (U.S. DEP'T OF JUSTICE)(1990).

³³ See Chapter 1 of this Manual, *Dynamics of Sexual Assault Experienced by Immigrant Victims*, for an overview of power and control used against immigrant victims.

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Protection orders can effectively reduce domestic violence and offer protection and assistance to battered immigrant women, particularly because non-citizen abusers can be deported for a protection order violation. It is important to note, that although protection orders can enhance safety for significant numbers of victims 72%³⁴, in 28% of domestic violence cases, a protection order may have little effect in ending abuse and it remains difficult to confidently predict when victims fall into the group for which protection orders may not be effective in reducing future violence.³⁵ These particular cases have a high level of lethality and are extremely dangerous for the victims and their families. In such situations, advocates and attorneys can play a key role in helping battered immigrants survive abuse by conducting safety planning, danger assessments and support for immigrant victims.

In most jurisdictions, protection orders offer a wide array of relief that can provide vital protection against repeated violence for victims, even those who are not ready to separate from their abusers. A civil protection order can be an effective tool to shift the balance of power between an abuser and a victim. Studies have demonstrated that in 72% of domestic violence cases, the issuance of a civil protection order decreased physical violence and made petitioners feel more secure.³⁶ Adding forms of relief beyond violence prevention provisions to a civil protection order can increase the effectiveness of violence prevention. It is important to note that protection orders do not guarantee an end to violence, and may not always deter an abuser. Advocates and attorneys should explain to their clients that a civil protection order is not for every victim. Safety must be the first and foremost consideration. Often a civil protection order is a crucial component of the victim's safety plan. However, in some situations, because violence escalates upon separation or immediately after separation from the abuser, a civil protection order may exacerbate the abuse.

There are two types of protection orders available to victims of abuse, an emergency or temporary protection order and a full protection order. A majority of states authorize the issuance of an emergency or temporary protection order after a hearing demonstrating the victim's immediate danger.³⁷ Generally these hearings are held ex parte, without the opposing party (abuser) being present. Such orders are short-term (typically last 14-30 days) and are temporary remedies until the court can schedule a full hearing.³⁸ A full protection order is of longer duration and is granted after a full hearing. Full protection orders typically last one to three years, however orders may be extended upon demonstrated need.³⁹ In the vast majority of states, victims can choose whether to obtain a temporary protection order or whether to initiate protection order proceedings by filing directly for a full protection order. Obtaining a temporary protection order first is usually the appropriate procedure when the victim and the abuser reside together at the time the victim seeks a protection order. This helps against immediate retaliation when the abuser is served with notice of the protection order proceedings. Temporary protection orders are also particularly useful as a means to remove the abuser from the family home, helping deter efforts to make extra copies of house keys and to take or destroy papers in the home. A full protection order is of longer duration and is granted after a full hearing. Full protection orders typically last one to three years, however orders may be extended upon demonstrated need.⁴⁰ In the vast majority of states, victims can choose whether to obtain a temporary protection order or whether to initiate protection order proceedings by filing directly for a full protection order.

Psychological Barriers to Accessing Civil Protection Orders

³⁴ SUSAN L. KEILLITZ ET AL., *CIVIL PROTECTION ORDERS: VICTIM'S VIEWS ON EFFECTIVENESS*, NAT. INST. OF JUSTICE, (Jan. 2008).

³⁵ See Jacqueline C. Campell, *Commentary on Websdale: Lethality Assessment Approaches: Reflections on Their Use and Ways Forward*, 11 VIOLENCE AGAINST WOMEN 1206 (Sept. 2005). Factors that can enhance the probability of lethality include unemployment, access to weapons, use of weapon in prior abusive incidents, threats with weapons, serious injury in prior abusive incidents, threats of suicide, drug or alcohol abuse, forced sex of female partner, control over immigration status and obsession/extreme jealousy/extreme dominance.

³⁶ See FINN, *supra* note 31 at note 141.

³⁷ *Id.* at 1035.

³⁸ David M. Zlotnick, *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders*, 56 OHIO ST.L.J. 1153, 1191-92 (1995).

³⁹ *Id.* at 1192; Deborah Epstein, *Procedural Justice: Tempering the State's Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1859 (2002).

⁴⁰ *Id.*

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The psychological impact of physical, psychological, and sexual abuse can also interfere with a battered woman's ability to participate in a protection order hearing.⁴¹ The victim may appear angry and hostile, socially withdrawn and passive, highly anxious and disorganized, or numb and detached.⁴² While these are normal reactions to trauma, not all battered women will appear the same and many may exhibit a combination of these emotions. A battered woman's demeanor and oral testimony at a protection hearing may be strongly affected if she is encountering the batterer for the first time after being separated.⁴³ However, a victim with support from family and friends may appear assertive, confident, and strong. Advocates should be aware of the many factors that impact a battered woman's psychological response to violence.⁴⁴

A civil protection order can help deter physical, sexual and psychological abuse and can help battered immigrants regain a sense of wellbeing. Yet, the psychological trauma of domestic violence, sexual assault and the power and control exerted by the abuser can often keep victims from obtaining a protection order and from reporting violations to the police.

Battered immigrant women face distinct psychological barriers regarding civil protection orders. Many immigrant women fear the legal system. Even women with legal immigration status often believe that reporting domestic violence will result in their deportation.⁴⁵ Battered immigrants are also less likely to call the police or turn to the courts for help.⁴⁶ Many were raised in countries where the judiciary was the arm of a repressive government, and where the persons who prevailed in court were the ones with the most influence, the strongest ties to the government, and the most economic resources.⁴⁷ Additionally, in many such legal systems, a man's word is inherently more credible than a woman's word.⁴⁸ Battered women who have learned not to expect justice from such legal systems find it difficult to believe that our system will function any differently, and thus feel isolated and alone.⁴⁹ Because of these fears it is likely that a battered woman's testimony at a protection order hearing will be affected.

Protection orders can be particularly effective for battered immigrants when the abuser is an immigrant. For example, non-citizen abusers may be more afraid of the repercussions from protection order violations (i.e., deportation) and therefore, may be more willing to comply with the provisions of the order. If the abuser is a non-citizen and is found guilty of violating a protection order, the abuser can be deported. For battered immigrant women, the complexities arising from reporting a violent act can be compounded by the fact that the report may trigger the deportation of a non-citizen abuser.⁵⁰ For some women, the deportation of their abusers can help them recover tremendously by allowing them to remove violence from their lives. For other women, the opposite is true. The abuser's deportation may create enhanced dangers related to economic survival, her ability to attain legal immigration status, and her safety and the safety of family members both here and abroad.⁵¹ Advocates for battered immigrant women should ascertain whether criminal prosecution, following an arrest for violating a protection order, will enhance or undermine an individual victim's safety. Different

⁴¹ Cf. Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (1993) (stating that expert witnesses must understand the numerous ways that domestic violence victims will respond to violence); see also Margaret J. Hughes & Loring Jones, *Women, Domestic Violence, and Posttraumatic Stress Disorder (PTSD)*, 27 FAMILY THERAPY 125 (Jan. 2000); R.C. Kessler et al., *Posttraumatic Stress Disorder in the National Comorbidity Survey*, 52 ARCH GEN. PSYCHIATRY 1048 (1995).

⁴² Hughes, *supra* note 40, at 125-139; Kessler, *supra* note 40, at 1048.

⁴³ AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH ED. (DSM-IV-TR) (JULY 2000).

⁴⁴ Martie P. Thompson et al., *Partner Violence, Social Support, and Distress Among Inner-City African American Women*, 28 AM. J. COMMUNITY PSYCHOLOGY 127 (2000).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ HOWARD DAVIDSON, *THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION* 19 (Aug. 1994).

⁴⁹ LESLYE E. ORLOFF AND RACHAEL LITTLE, *SOMEWHERE TO TURN: MAKING DOMESTIC VIOLENCE SERVICES ACCESSIBLE TO BATTERED IMMIGRANT WOMEN A "HOW TO" MANUAL FOR BATTERED WOMEN'S ADVOCATES AND SERVICE PROVIDERS* (Ayuda, Inc.) (May 1999), available at http://new.vawnet.org/Assoc_Files_VAWnet/BIW99toc.pdf.

⁵⁰ ANN BENSON & JOSEPH JUSTIN ROLLINS, *IMMIGRATION CONSEQUENCES OF CRIMINAL CONDUCT: AN OVERVIEW FOR CRIMINAL DEFENDERS IN WASHINGTON STATE*, WASH. DEFENDER ASS'N, (2001).

⁵¹ See ORLOFF *supra* note 48, at 206 and 279.

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women will have completely different needs that must be met if the abuser is deported.⁵² By looking at the problem from different angles, advocates can help battered immigrant women make the best choices.

Advocates and attorneys should be aware of cultural restraints, which may inhibit the victim from leaving the abuser. Many victims choose not to separate themselves from their abusers. A battered immigrant, including those who have been sexually abused, may opt to live with her abuser, as long as the individual receives therapy and agrees to stop the abuse. Attorneys and advocates should view the victim's willingness to obtain a protection order, while she continues to reside with her abuser, as an important step towards building her self-esteem and taking action to protect herself and her children. A protection order without a stay-away provision should also be offered as an alternative if a victim suddenly wants to drop the protection order altogether. Many times, an abuser will promise to stop abusing the victim if she promises not to pursue the protection order. In this situation the protection order can serve as a deterrent to the abuser and shift the power balance to the victim.

Obtaining a Protection Order

Protection orders are important for battered immigrants and sexual assault victims seeking to leave an abusive citizen or lawful permanent resident or immigrant visa holder, because the order will legally document evidence of violence for her immigration case.⁵³ Most state statutes recognize the relevance of past abusive acts and violence to provide a context to evaluate present fear and danger.⁵⁴ Hence, in most jurisdictions, protection order laws do not specify time limits after a violent incident has occurred within which a victim must file for a protection order.⁵⁵ Courts regularly consider the parties' history of violence as evidence of the need for a current protection order.⁵⁶ If the last incident or threat against a battered immigrant woman took place months before filing an application for a protection order, the advocate or attorney should help gather evidence of the history of abuse. The attorney should present this evidence to the court and demonstrate that additional protection is needed. Explaining that the victim may need this protection when filing for immigration relief separate from that of her abuser, should serve to underscore the need for additional protection.

Despite statutory authority allowing courts to issue protection orders without regard to the date of the most recent incident of physical violence or criminal behavior, a few courts may not grant an order if the most recent threat or incident occurred several months prior to the filing of a civil protection order petition. Moreover, some courts also require before the issuance of the protection order a finding of family violence and that there is a likelihood that violence will continue. When this occurs, advocates and attorneys working with battered immigrants who need protection orders should be prepared to demonstrate to the court the likelihood of future violence and the need to have future, ongoing protection. They should demonstrate the dynamic of power and control and how it may escalate if the case is denied for a lack of a recent incident of abuse. The battered immigrant may want to consider locating an attorney who can help with an appeal.

Who can obtain a protection order?

Any victim of family violence, including all immigrants, can obtain a protection order because protection orders are designed to deter criminal acts against intimate partners, spouses, or family members. Regardless of immigration status, all persons are entitled to this protection. To deny access to family court relief because of immigration status is a violation of Equal Protection and Due Process.⁵⁷ If protection orders were not available for all persons, then abusers would be free to abuse immigrants and escape the criminal ramifications of such action. No justice system official, including police, prosecutors, court staff or judges, should be asking victims

⁵² Edna Erez & Joanne Belknap, *In Their Own Words: Battered Women's Assessment of the Criminal Processing System's Responses*, 13 VIOLENCE AND VICTIMS 251 (Jan. 1998).

⁵³ See Leslye E. Orloff et al., *With No Place to Turn: Improving Legal Advocacy For Battered Immigrant Women*, 29 FAM. 313 (1995).

⁵⁴ Klein, *supra* note 28, at 901.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ 42 U.S.C.S. § 1981(a)(2006); See also Plyer v. Doe, 457 U.S. 202, 210-213 (1982).

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about their immigration status or if they have a social security number when they call for help or seek a protection order.⁵⁸

State statutes vary on which relationships are covered under protection order laws. The relationships covered in protection order statutes include a broad range of family and household members who may have perpetuated acts of sexual assaults. Advocates and attorneys should determine if the relationship between the client and her abuser is covered by the state's protection order statute. The relationship between the parties generally included in state protection order statutes are defined as follows:⁵⁹

- Current or previous spouses;
- Family members related by blood, marriage, or adoption (i.e., parents, minor children, adult children, aunts, uncles, siblings, grandparents, and in-laws);⁶⁰
- Current or previous household members regardless of their marriage or blood relation;
- Unmarried spouses of different genders who have lived as spouses or are currently living as spouses;
- Persons who have a child in common;
- Persons who were previously or are currently in a dating or intimate relationship;
- Persons who were previously or are currently in a same-sex relationship, regardless of whether they live or have lived together;
- Household members of an abuse victim that is stalked or harassed; and
- A few states allow protection orders to be extended to those that offer refuge to victims of domestic violence as well as to the victim's employers.

At least two state statutes specify that an adult may file for another adult who is unable to go to court.⁶¹ Most states allow an adult to file on behalf of an incompetent adult or a child.⁶² Some states allow certain teenage minors to petition for their own protection order.⁶³ Depending on the relationship of the parties, state statutes may provide different types of civil protection order remedies, and/or may require parties to litigate the case in a particular court. In some jurisdictions all protection order proceedings are brought in Family Court. While in others, protection orders are brought in front of magistrate judges. In these courts, there is an opportunity for De Nova in front of a family court judge, some states have a two-level system where, initially, the case goes to District court. However, a party that disagrees can bring the case De Nova in front of a family court judge. As discussed throughout this chapter, it is important to identify the process in your state and ask for the full range of remedies available. For example, in some jurisdictions, if the parties are intimate partners, have a child in common, or were previously intimate partners, the protection order is sought in Family Court. In some jurisdictions, Family and District courts are the same.

Parties do not need to separate in order for the victim to obtain a protection order. Many people believe that victims of domestic violence can easily leave an abusive home or relationship, but this is not necessarily true.⁶⁴ Violent relationships are often characterized by power disparities that make leaving very difficult, particularly for women with children.⁶⁵ Economic control is an important component of the abuser's system of maintaining control over the victim.⁶⁶ A woman who decides to leave her abuser faces great economic challenges regardless of her income level because she frequently has to leave behind her only financial

⁵⁸ If such inquiries are being made in your jurisdiction, contact the National Immigrant Women's Advocacy Project for technical assistance: 4910 Massachusetts Ave NW – Suite 16, Lower Level – Washington, DC 20016; 202-274-4226; niwap@wcl.american.edu.

⁵⁹ Klein, *supra* note 28, at 814-46.

⁶⁰ Relationships by blood or marriage include adoption and cover all family members of the victim's own family, the victim's spouse's family and extended family members.

⁶¹ Klein, *supra* note 28.

⁶² *Id.* at 846.

⁶³ *Id.* at 820-21.

⁶⁴ See Sarah M. Buel, *Fifty Obstacles to Leaving, Why Abuse Victims Stay*, 28 COLO. LAW. 19 (1999).

⁶⁵ See Ethan Brennan Lauer, *Housing and Domestic Abuse Victims: Three Proposals for Reform in Minnesota*, 15 LAW & INEQ. 471, 477 (1997).

⁶⁶ Numerous victims are forced to go back to their abusers because of lack of money or housing. U.S. GEN. ACCOUNTING OFFICE, DOMESTIC VIOLENCE: PREVALENCE AND IMPLICATIONS FOR EMPLOYMENT AMONG WELFARE RECIPIENTS 7-8 (1998) (detailing evidence that desire for economic control underlies many brutal crimes against women).

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resources or support.⁶⁷ Women also face social pressure to maintain their relationship. They may believe that society, the legal system, and their communities consider dissolution of their relationships undesirable. Victims courageous enough to take the first step in overcoming all these obstacles by seeking a protection order need to be able to access protection orders whether or not they are currently planning to separate from their abusers.

A battered immigrant woman may prefer to remain with the abuser because of religious or cultural reasons. In many cases, the victim's immigration status is linked to the abuser and she may just now have learned that she can apply for lawful permanent residence on her own through VAWA. In other cases, the immigrant victim's legal status may be tied to a spouse with a legal work visa. These immigrant victims may qualify to apply for immigration benefits under the VAWA 2000 crime victim visa provisions, but since this process can take some time, victims may want to continue living with their abusers until they can receive legal immigration status through the U-visa process.⁶⁸ In cases in which battered immigrants plan to try to continuing living with their abuser, the protection order should require that the abuser attend an intervention program and refrain from assaulting, threatening, or harassing the victim. This type of protection order would not include an order that the abuser stay a minimum distance away from the victim, rather it emphasizes that the abuser cease harmful behavior. Some battered immigrants may prefer this sort of temporary arrangement until the DHS approves their self-petition, or victim of crime case (U-visa) and grants them work authorization, after which they may choose to try to leave their abusers. Once the victim separates from her abuser, her protection order may be modified to include a separation or "no contact" clause.⁶⁹

Grounds for Issuance of a Protection Order

Generally, state statutes condition issuance of a protection order on the existence of an underlying act of abuse which constitutes a criminal act, including: assault, battery, burglary, kidnapping, criminal trespassing, interference with child custody, sexual assault, rape, threats and attempts to do violence or bodily harm, interference with personal liberty, unlawful or forcible entry into a residence, child abuse, false imprisonment, stalking, and destruction of property.⁷⁰ Some states will issue protection orders based on emotional abuse and harassment that might not have directly caused physical harm to the victim.⁷¹

Jurisdiction⁷²

Courts have jurisdiction to issue protection orders generally in one of two locations: in the state where the acts of abuse or threats have occurred, or the state in which the victim is currently present.

Under the Violence Against Women Act of 1994,⁷³ federal law requires that each state, tribe, or territory give full faith and credit to another state's protection order (including an emergency order) as long as due process requirements were met in the state where the order was issued. The full faith and credit provision of the Violence Against Women Act says that a valid protection order must be enforced throughout the United States. This means that if a victim receives a valid protection order, it is good in the community where it was issued as well as in all other jurisdictions or locations in the United States. These full faith and credit provisions apply to protection orders issued in all 50 states, Indian tribal lands, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, American Samoa, the Northern Mariana Islands, and Guam.⁷⁴

⁶⁷ Leslye E. Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 WM. & MARY J. WOMEN & L. 597, 616-19 (2001).

⁶⁸ Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(2006).

⁶⁹ For a more complete discussion of U-visa relief, please see Chapter 3, *Battered Immigrants and Immigrant Relief*, in *BREAKING BARRIERS*, *supra* note 1.

⁷⁰ Klein, *supra* note 28, at 849-50.

⁷¹ *Id.* at 866-73.

⁷² For a more detailed discussion on jurisdiction please refer to Chapter 8 of this Manual, *Sexual Assault Against Immigrant Children-Incent*. Specifically, review the section on Immigrant Status and Family Court Jurisdiction.

⁷³ 42 U.S.C. § 13981 (2006).

⁷⁴ Ctr. on Full Faith & Credit & Pa. Coalition Against Domestic Violence, *Increasing Your Safety: Full Faith and Credit for Protection Orders*, VIOLENCE AGAINST WOMEN ONLINE RESOURCES, <http://www.vaw.umn.edu/FinalDocuments/survivorbrochure.asp> (last modified Sept. 15, 2003).

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If a state, the District of Columbia, tribe, or a U.S. territory issues a protection order, and the order complies with federal requirements, it is entitled to full faith and credit if it is valid under the full faith and credit law. A protection order is valid if the issuing court had jurisdiction over the victim and the abuser and had authority to hear and decide the case, and the abuser was given notice and an opportunity to be heard.⁷⁵ Protection orders issued with due process are enforceable in any US jurisdiction. Victims should be able to call police in a neighboring state to have their protection orders enforced. Some jurisdictions require that a victim moving to a new jurisdiction follow specified steps to have her protection order recognized and enforced.⁷⁶

Although states are required to recognize another state's protection order, some states have not enacted legislation implementing VAWA's full faith and credit provisions. In these states, the police may not want to enforce an out-of-state protection order, despite the federal law requirement. State domestic violence programs and coalitions can be helpful in advocating with police to enforce protection orders issued in other states.

If the victim is planning to move away from the original jurisdiction in which she obtained the protection order, contact the state domestic violence coalition or another domestic violence program in the new jurisdiction to verify what the procedures are in the different jurisdiction. These procedures need to be followed in order for the protection order to be enforced. For programs working with migrant worker victims of domestic violence, familiarity with VAWA full faith and credit provisions is essential. It is also useful for programs to develop relationships with other domestic violence and legal services agencies in the communities migrant workers come from or typically travel to for work. Find out if registration of the protection order is required, and if any fees are required. Recommend that the victim obtain a certified or court-issued official copy of the protection order at the completion of the protection order hearing. The victim should be instructed to carry the order with her and staple to it a copy of the statutory language of the VAWA full faith and credit provisions.

For victims being sexually abused or harassed by a family member, household member, intimate partner, or dating partner, civil protection orders are available in all fifty states, Puerto Rico, the District of Columbia, and all U.S. territories.⁷⁷ Many domestic violence protection order statutes offer protection in a range of relationships that include marriages, divorced couples, persons to whom the victim is related by blood, marriage or adoption, dating relationships, and persons with whom the victim is living or has lived within the past. If the assailant has a relationship with the victim that is covered by state domestic violence protection order statutes, then the sexual assault victim can seek a protection order under the state domestic violence protection order statutes. A sexual assault victim who qualifies for a domestic violence protection order may also qualify for, and should consider also, pursuing other protection orders she may qualify for including a sexual assault protection order and a stay away order in any pending criminal case. Sometimes, even if a victim has been assaulted by a family member or intimate partner she may choose the relief available under a specific sexual assault statute rather than a general civil protection order.

While a protection order can be obtained in connection with a criminal proceeding, family violence civil protection orders are generally unavailable to victims who are unrelated to their perpetrators. Sexual assault victims whose perpetrators are strangers, co-workers, employers, neighbors, or other acquaintances will have more limited civil protection order options. These include the following types of protection orders discussed earlier in this chapter: sexual assault protection orders, general civil restraining orders, or anti-harassment orders. Additionally, depending on the facts of the case, a victim may also qualify for an anti-stalking protection order, a college or university protection order, or a protection order specifically designed to protect vulnerable populations (e.g. elderly or disabled). Currently, only thirteen states have statutes that allow victims of sexual assault to obtain a protection order regardless of their relationship to their perpetrator.⁷⁸

Types of Civil Protection Orders

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See Klein, *supra* note 79, at 810; see also Carroll, *supra* note 13.

⁷⁸ See Memorandum from Jodee LeRoux Regarding Protection Orders for Victims of Sexual Assault (Aug. 30, 2004).

Victims of sexual assault may or may not have any prior relationship with their assailants. The civil protection order options for sexual assault victims will differ depending on whether she has a relationship with her assailant that is covered by state domestic violence laws or not.

1. Sexual Assault Protection Orders—An Option For Victims of Non-Intimate Sexual Assault

Sexual assault protection orders were developed based on recognition that sexual assault victims need a protection mechanism that is not dependent on the criminal justice system and is more attuned to the needs of sexual assault victims than general civil restraining orders and anti-harassment orders. Anti-harassment protection orders often require a “course of conduct” to be shown on the part of the assailant before the victim is eligible.⁷⁹ A “course of conduct” requires two or more contacts between the victim and the assailant.⁸⁰ Therefore, if the victim has only experienced one incident of sexual assault, an anti-harassment order would not be available.⁸¹ However, even if a victim has only experienced one incident of sexual assault, they may be in danger and safety measures, like a protection order, are necessary.

To address this issue some states have passed laws creating sexual assault protection orders. These are civil protection orders that sexual assault victims may obtain **regardless of their relationship** to the perpetrator. Sexual assault protection orders are often structured like civil protection orders. Violation of the order is a crime. Currently, thirteen states have statutes that allow victims of sexual assault to obtain a protection order regardless of their relationship to the perpetrator: California, Colorado, Florida, Illinois, Maine, Maryland, Minnesota, Montana, Oklahoma, South Dakota, Texas, Washington and Wisconsin. In three of those states, Illinois, Texas and Washington, the statute is specifically geared towards victims of sexual assault.⁸² Colorado, Florida, Montana, Oklahoma, and South Dakota have statutes that are directed at domestic violence, but victims of sexual assault, regardless of their relationship to the perpetrator, can also obtain a protection order.⁸³ In Maine, Minnesota, California, and Wisconsin, the state anti-harassment statutes have been crafted so as to offer protection to sexual assault victims.⁸⁴

In each of these states, “harassment” is defined to include one incident of sexual assault. For example, in Minnesota, the definition of harassment includes a single incident of physical or sexual assault or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target.⁸⁵ In Maryland, a victim of assault in any degree, rape, false imprisonment, harassment, stalking, trespass or malicious destruction of property can obtain a “peace order” that provides the victim with protection for up to six months.⁸⁶ States that have statutes specifically written to offer protection to sexual assault victims (Illinois, Texas and Washington) provide the greatest protection. An example of a sexual assault protection order from Texas is included in the appendix to this chapter.

◇ Grounds for Issuance of a Protection Order to a Sexual Assault Victim

The thirteen states that provide protection orders to victims regardless of their relationship to the assailant require that the victim meet distinct eligibility requirements before a protection order may be obtained. In Illinois, any victim of non-consensual sexual conduct or non-consensual sexual penetration, including a single

⁷⁹ See Klein, *supra* note 79.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² 22 ILL. COMP. STAT. ANN. §§ 101-302 (West 2004); TEX. CRIM. PROC. CODE ANN. § 7A.01 (West 2004).

⁸³ COLO. REV. STAT. ANN. § 13-14-102 (West 2004); FLA. STAT. ANN. § 784.046 (West 2004); MONT. CODE ANN. § 40-15 (2004); OKLA. STAT. ANN. tit. 22, § 60 (West 2004); S.D. CODIFIED LAWS § 22-19A-17 (2004).

⁸⁴ CAL. CIV. PROC. CODE § 527.6 (West 2004); ME. REV. STAT. ANN. 5, §§ 4651 – 4659 (2004); MINN. STAT. ANN. § 609.748 (West 2007); WIS. STAT. ANN. § 813.125 (West 2004).

⁸⁵ MINN. STAT. ANN. § 609.748 (West 2007).

⁸⁶ MD. CODE ANN., CTS. & JUD. PROC. § 3-1501–3-1509 (2004).

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incident of non-consensual sexual conduct or non-consensual sexual penetration is eligible for protection.⁸⁷ In Texas, any victim of sexual assault or aggravated sexual assault can file for a protection order.⁸⁸

In Colorado, Florida, Montana, Oklahoma, and South Dakota, victims of sexual assault are eligible for protection orders under more general statutes that also address victims of domestic violence, stalking, and/or harassment.⁸⁹ In South Dakota, orders can be issued against any person against whom stalking or physical injury is alleged.⁹⁰ Florida's statute specifically addresses domestic violence, but if a victim of sexual assault who has no intimate relationship with the assailant reports the sexual violence to a law enforcement agency and cooperates in any criminal proceeding against the assailant, the victim is eligible for a protection order.⁹¹ It does not matter whether criminal charges based on the sexual assault have been filed, reduced or dismissed.⁹²

In Maine, Minnesota, California, and Wisconsin, protection orders are available for victims of "harassment."⁹³ The definition of harassment is defined differently in each of the states, but all of the definitions include victims of sexual assault.⁹⁴ For example, in California "harassment" includes "unlawful violence" or a "credible threat of violence."⁹⁵ The statute defines "unlawful violence" as any assault, battery or stalking.⁹⁶

◇ **Scope of Protection**

In all thirteen states, the assailant respondent can be ordered to stay away from the petitioner. A detailed discussion of how to craft detailed and effective stay away provisions in cases of immigrant victims is discussed below in the section of this chapter on family violence protection orders.

Apart from a general stay away provision, state statutes vary greatly in the types of remedies available. Some states, Montana, Maryland and Texas, provide a detailed list of potential relief courts can issue as remedies for victims of sexual assault that can include a catch-all provision authorizing the court to offer any form of relief it deems helpful or necessary to the safety of the victim or her family. For example, Montana's statute includes the following provisions:

- prohibiting the respondent from threatening to commit or committing acts of violence against the petitioner and any designated family member;
- prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family member, any other victim of this offense, or a witness to the offense;
- directing the respondent to stay 1,500 feet or other appropriate distance away from petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any other specified place frequented by the petitioner and by any other designated family or household member;
- prohibiting the respondent from possessing or using the firearm used in the assault
- directing the respondent to complete violence counseling
- directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.⁹⁷

Minnesota, on the other hand, has an extremely limited scope of available protections. The court can only order the respondent to cease or avoid harassment of another person or to have no contact with the person.⁹⁸

⁸⁷ 22 ILL. COMP. STAT. ANN. §§ 101-302 (West 2004).

⁸⁸ TEX. CRIM. PROC. CODE ANN. § 7A.01 (West 2004).

⁸⁹ COLO. REV. STAT. ANN. § 13-14-102 (West 2004); FLA. STAT. ANN. § 784.046 (West 2004); MONT. CODE ANN. § 40-15 (2004); OKLA. STAT. ANN. tit. 22, § 60 (West 2004); S.D. CODIFIED LAWS §§ 22-19A-8-22-19A-17 (2004).

⁹⁰ S.D. CODIFIED LAWS §§ 22-19A-8-22-19A-17 (2004).

⁹¹ FLA. STAT. ANN. § 784.046 (West 2004).

⁹² *Id.*

⁹³ CAL. CIV. PROC. CODE § 527.6 (West 2004); ME. REV. STAT. ANN. 5, §§ 4651 – 4659 (2004); MINN. STAT. ANN. § 609.748 (West 2007); WIS. STAT. ANN. § 813.125 (West 2004).

⁹⁴ CAL. CIV. PROC. CODE § 527.6 (West 2004); ME. REV. STAT. ANN. 5, §§ 4651 – 4659 (2004); MINN. STAT. ANN. § 609.748 (West 2007); WIS. STAT. ANN. § 813.125 (West 2004).

⁹⁵ CAL. CIV. P. CODE ANN. §527.6

⁹⁶ *Id.*

⁹⁷ MONT. CODE ANN. § 40-15.

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In the thirteen states that provide protection orders to sexual assault victims, regardless of their relationship to their perpetrators, not all of the statutes include a catch-all provision.⁹⁹ Catch-all provisions are particularly important for immigrant victims as they allow the court latitude to craft remedies specifically assigned to control perpetrator behavior and to improve each particular victim's safety. Catch-all provisions may look different in each state's statutes. In four states, Florida, Maine, Oklahoma and Illinois, the court may provide any relief that it deems proper. In Florida, the court may grant any relief it deems proper, including an injunction enjoining the respondent from committing any acts of violence or any other relief necessary to protect the petitioner.¹⁰⁰ In Maine, the court may grant any protection order remedy that is designed to bring about a cessation of harassment.¹⁰¹ In Oklahoma, a court can impose any conditions in the order it reasonably believes are necessary to bring about the cessation of the domestic abuse, stalking or harassment against the victim or the victim's immediate family.¹⁰² In Illinois, the court can order any other injunctive relief that the court finds necessary and appropriate.¹⁰³

◇ Obtaining a Sexual Assault Protection Order

For victims of sexual assault without a qualifying relationship to the assailant under state family statutes, three types of sexual assault protection orders exist: emergency, temporary and full. These orders are described below.

SERVICE OF PROCESS

For immigrant victims and all sexual assault victims not in an intimate relationship with the perpetrator, service of process can be difficult. Victims will have to know the perpetrator's first and last name, their address, and their date of birth. Many victims do not know this information about the person who sexually assaulted them.¹⁰⁴ For advocates and attorneys working with victims it is important to work with the victim to obtain the information necessary to file the protection order. Advocates and attorneys also need to work with the immigrant victim on figuring out safe ways to serve the respondent. The victim may need to think of creative ways to accomplish service if she does not know the respondent well. If the respondent works, then service of process at work by police or a professional process server can improve safety. Generally, it is safest for a professional process server or the police to serve the perpetrator.

EX PARTE ORDERS

Sexual assault protection orders for victims of non-intimate partner sexual assault include temporary or *ex parte* orders available for non-intimate relationships. Temporary orders are available in all thirteen states: Colorado, Illinois, Maine, Maryland, Florida, Montana, Minnesota, Oklahoma, Texas, California, South Dakota, Washington and Wisconsin. Generally, there must be a showing of good cause. This could mean a showing of imminent harm, or reasonable proof of harassment.¹⁰⁵ Generally, a temporary order will be issued *ex parte* if the victim can show an immediate threat of future violence. These orders last between 7 to 14 days and/or until a full hearing can be scheduled.

In addition, in 4 of the 13 states, Colorado, Illinois, Maine and Maryland, a victim may be eligible for an emergency protection order. An emergency protection order is only available when the court is closed and the victim is in immediate danger. The victim can, following procedures set out in the statute, obtain a verbal

⁹⁸ MINN. STAT. ANN. § 609.748.

⁹⁹ California, Maryland, and Minnesota do not contain a catchall provision. The scopes of protection provided under these statutes are limited to stopping violence and/or harassment. See CAL. CIV. P. CODE ANN. § 527.6; MD. CODE ANN., CTS. JUD. PROC. §§ 3-1501-3-1509; MINN. STAT. ANN. § 609.748.

¹⁰⁰ FLA. STAT. ANN. § 784.046.

¹⁰¹ 5 ME. REV. STAT. ANN. §§ 4651-4659.

¹⁰² OKLA. STAT. ANN. tit. 22, § 60.

¹⁰³ See *Id* at note 81.

¹⁰⁴ SHANNON WALKER, WASH. COALITION OF SEXUAL ASSAULT PROGRAMS, SURVIVORS OF SEXUAL ASSAULT AND THEIR USE OF PROTECTION ORDERS (2002).

¹⁰⁵ See e.g. MINN STAT. § 609.748; COL. REV. STAT. ANN. § 13-14-102; CAL. CIV. PROC. CODE 527.6; WIS. STAT. § 813.125.

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order from either a judge or a commissioner over the telephone. This method should only be used in an emergency because the order is typically limited in scope and usually lasts only until the court's next business day. The victim should go to court the next business day to obtain either a temporary or a full protection order. For example, in Colorado, an emergency order may be issued if the judge finds an imminent danger in close proximity exists to the life or health of a person in the reasonably foreseeable future.¹⁰⁶ In Maryland, this type of order is called an interim peace order and is effective until the earlier of the following: 1) the temporary peace order hearing or 2) the end of the second business day the office of the clerk of the district court is open following the issuance of the interim order.¹⁰⁷

FULL PROTECTION ORDERS

In all of the thirteen states full protection orders are available. A hearing will be held to establish that respondent is given an opportunity to respond to the petitioner's allegations. Full orders usually last for one to two years unless they are modified or dismissed. The length of full orders fit within one of three categories:

- orders that do not expire unless modified or dismissed,
- orders that expire automatically after a certain period of time (with an option for the victim to take steps to extend the order), or
- orders that automatically expire after a certain length of time (with no possibility of extension).

In Colorado and Florida, full orders are permanent and are in effect until modification or dismissal by the court.¹⁰⁸ In Illinois, full orders are called plenary orders. A plenary order is valid for a certain period of time, not to exceed two years.¹⁰⁹ This period can be extended one or more times as necessary.¹¹⁰ In Montana, an order of protection may continue for an appropriate period of time or can be made permanent.¹¹¹ In Oklahoma, an order will remain in effect for a period not to exceed three years unless changed through a motion.¹¹² In California, an injunction lasts up to three years, but at any time within three months prior to expiration, the plaintiff may apply for renewal.¹¹³ In South Dakota, an order cannot exceed three years.¹¹⁴ In Wisconsin, an injunction must not exceed two years.¹¹⁵

2. Stalking Orders

All fifty states, the District of Columbia, the federal government, and at least ten Native American nations have established stalking as a crime.¹¹⁶ In order to be eligible for a stalking protection order, state law typically requires at least two or more unwanted contacts. Violation of a stalking order is a crime in every state. Sanctions vary widely and may range from up to 180-days in jail to a felony prison sentence for a repeat violation.¹¹⁷

The range of remedies available to a sexual violence victim who secures a stalking protection order may also be much broader than the remedies available through a domestic violence protection order or a sexual assault protection order.¹¹⁸ For example, in some jurisdictions a stalking victim may:

- request that the court order the perpetrator to refrain from contacting and/or coming within a certain distance of the sexual assault victim;

¹⁰⁶ COLO. REV. STAT. ANN. § 13-14-102.

¹⁰⁷ MD. CODE ANN., CTS. & JUD. PROC. § 3-1501-3-1509.

¹⁰⁸ COLO. REV. STAT. ANN. § 13-14-102; FLA. STAT. ANN. § 784.046.

¹⁰⁹ 22 ILL. COMP. STAT. ANN. §§ 101-302 (West 2004).

¹¹⁰ *Id.*

¹¹¹ MONT. CODE ANN. §40-15.

¹¹² OKLA. STAT. ANN. tit. 22, §60.

¹¹³ CAL. CIV. P. CODE ANN. §527.6.

¹¹⁴ S.D. CODIFIED LAWS §§22-19A-8—22-19A-17.

¹¹⁵ WIS. STAT. ANN. §813.125.

¹¹⁶ See 18 U.S.C. § 2261A(1) for the federal crime of stalking.

¹¹⁷ BELOOF, *supra* note 23.

¹¹⁸ *Id.*

Protection Orders for Immigrant Victims of Sexual Assault

- ask the court to order the assailant to attend mental health counseling;
- ask the court to authorize punitive damages.¹¹⁹

3. General Civil Protection/Anti-Harassment Orders

An anti-harassment order is a civil protection order that prohibits unlawful harassment.¹²⁰ Victims of sexual assault who do not meet the relationship requirement under a domestic violence protection order often seek this type of protection order.¹²¹

To get an anti-harassment order a victim must be able to show that the person who assaulted them has engaged in unlawful harassment.¹²² Generally speaking, “unlawful harassment” means a knowing and willful course of conduct directed at the victim which seriously alarms, annoys, harasses, or is detrimental to the victim, and which also serves no legitimate or lawful purpose. “Course of conduct” means a series of acts over a period of time, however short, all with a similar purpose.¹²³ Sometimes it is difficult to show that there is a pattern if there was only one incident of sexual assault; however, a victim may still be eligible for such an order.¹²⁴

4. Orders that Protect Elderly, Disabled, or Other Especially Vulnerable Populations

Generally speaking, under the law, a vulnerable adult is someone over the age of sixty who has the functional, mental, or physical inability to care for him or herself.¹²⁵ Alternatively, this person may be found incapacitated, developmentally disabled, or admitted to a healthcare facility.¹²⁶ A vulnerable individual also includes someone receiving services from home health, hospice, or home care agencies or an individual provider.¹²⁷ Obtaining an order protecting elderly, disabled or vulnerable persons may not require a showing of physical violence because emotional or financial abuse may be enough.¹²⁸ Unlike domestic violence and sexual assault protection orders, a petition for an order to protect a disabled or elderly victim may be submitted to the court by a relative, neighbor, care provider, or other third party in some jurisdictions.¹²⁹ A sexual assault victim pursuing this order may receive relief that requires the perpetrator not to contact the victim and not to come within a specified distance of the victim.

5. Institutional Based Orders: College or University Stay Away Orders and Housing Stay Away or Vacate Orders

These orders are issued by employers, universities or housing authorities to provide protection to victims within the confines of the institution.¹³⁰ Sexual assault victims may receive the following relief through stay away orders:

- The perpetrator must remain a certain distance away from the sexual assault victim.
- The perpetrator may be assigned to different college/university classes and/or housing areas in order to minimize contact with the sexual assault victim.
- The perpetrator may be asked to leave the institution and/or housing neighborhood.
- Violation of a stay away order may result in criminal consequences.

¹¹⁹ *Id.*

¹²⁰ Protection Orders for Survivors of Sexual Assault, Stalking & Domestic Violence: Anti-Stalking Orders found at <http://www.wcsap.org/legal/ProtectionOrders.htm>.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Protection Orders for Survivors of Sexual Assault, Stalking & Domestic Violence: Who is a Vulnerable Adult found at <http://www.wcsap.org/legal/ProtectionOrders.htm>.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ BELOOF, *supra* note 23, at 28.

¹²⁹ *Id.* at 29.

¹³⁰ VICKERS, *supra* note 16, at 3-8.

6. Civil Injunctive Relief

Some jurisdictions grant a civil order requiring that an assailant refrain from committing certain acts if the victim has filed an underlying civil claim against the assailant.¹³¹ If a sexual assault victim fears for her physical safety and/or privacy, and the assailant is a neighbor, co-worker, classmate or has some other type of person with whom she has potential ongoing contact, civil injunctive relief is an important and innovative option to consider that may offer an appropriate remedy, especially if the victim is simply seeking a “no contact” order requiring the assailant to stop all contact with her.¹³² This type of order “is not likely to lead to irreparable harm to the assailant, and it may prevent irreparable harm to the victim.”¹³³ While civil injunctions lack the criminal consequences that most of the above orders have if violated, civil injunctions are court issued orders.¹³⁴ If the order is violated, then a victim can bring an action to enforce the order through civil or criminal contempt.

This remedy can be used by sexual assault victims living in states that do not offer sexual assault protection orders, when the assailant is a stranger or an acquaintance and the victim does not have a relationship with the assailant that can qualify for a family violence protection order. Examples of relief available for the sexual assault victim:

- The perpetrator may not contact the sexual assault victim.
- The perpetrator may not come within a certain distance of the sexual assault victim.
- The perpetrator may be ordered to pay damages to the sexual assault victim for torts committed (i.e. intentional infliction of emotional distress, assault, etc).

7. A CRIMINAL COURT OPTION

Special Conditions Bond for Family Violence

If the perpetrator has been arrested, attorneys and advocates can also creatively use criminal bond orders or conditions of release to achieve protection relief similar to a protection order. Criminal bond orders might be the only possibility for some sexual assault victims who do not fall under the state family violence protection order statute, do not live in a state with a sexual assault protection order, or who live in a state where the sexual assault protection orders are restrictive in scope. Victims may first want to obtain creative criminal bond or conditions of release orders that protect them during the criminal case and then after the criminal case has concluded, they may choose to seek a sexual assault or civil protection order.

Creative bond orders are also a possible remedy for those who are unwilling to pursue a civil protection order. This approach protects against the victim’s testimony in the civil case being used to impeach her in the criminal case. It also offers the victim added protection during the criminal case and gives her time to obtain civil orders that can provide ongoing protection when the orders in the criminal case end. The full range of protection provisions that would be helpful in a civil protection order can also be included in a criminal bond order. This type of creative remedy has been used by some criminal courts including an excellent example in Georgia. The criminal bond order utilized in Fulton County, Georgia is included in the appendix.

- The defendant shall have no contact directly or indirectly with the victim, victim’s family, professional, personal, or close associates, by phone, mail, electronic methods, or a through third party, including at the victim’s work place, place of worship, home or daycare. If defendant encounters victim, defendant must leave immediately, and must not come within 200 yards of the victim or her family.
- The defendant shall not possess any weapons or permits to maintain such arms. All certified officers have the authority to confiscate all weapons and permits and maintain in their possession until further

¹³¹ *Id.* at 3-6.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

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order of the court. Defendant's failure to comply with said provision may subject Defendant to the federal offense punishable by up to ten years imprisonment 18 U.S.C. §§ 922 (g) (8), 924 (a) (2)

- Where the parties have children together, visitation orders can be included in a bond order requiring no visitation or no visitation until such time as defendant completes court ordered counseling, and/or supervised visitation.
- Defendant shall not remove the children from the court's jurisdiction and/or the United States absent a court order and shall relinquish the children's passports to the petitioner or the Court. Further, the Respondent or someone on Respondent's behalf shall not request a visitor's visa or other visa (or passport) for the child(ren) of the parties absent an order from the Court.
- Where the abuse was linked to the victim's immigration status, the Court includes the following provisions:
 - Defendant shall give petitioner access to, or copies of, any documents supporting victim's immigration status;
 - Defendant shall not withdraw any application for permanent residency filed on behalf of victim and shall take any and all action necessary to ensure that the victim's application for permanent residency is approved;
 - Defendant shall not contact DHS, any U.S. Consulate or Embassy including the Consulate and/or Embassy at the following location _____ about victim's immigration petition;
 - Defendant shall return to victim: the victim and children's work permits; identification cards; bank cards; religious documents; driver's licenses; social security cards; passports; alien registration receipt cards; alien registration cards; passport stamps; marriage license and copies of school records, leases, rent receipts, utility bills and income tax returns.
 - Defendant shall provide copies of Defendant's work permit, passport, certificate of naturalization or citizenship, alien registration card, alien registration receipt card or passport stamp, work permit, ID card, bank card, baptismal certificate, social security card and driver's license.
 - The Defendant shall provide any proof of a good faith marriage to victim, including family photos, papers, documentation or other objects relating to the marriage, copies of respondent's divorce certificates for any previous marriages and/or information about where such divorce decrees may be obtained as well as a copy of his birth certificate
 - The Respondent shall pay to the victim all costs associated with replacing documents destroyed, hidden, or claimed to be missing by the respondent including, but not limited to the Defendant's or the children's passports, social security cards, alien registration cards, work permits, bank cards, health insurance cards, or drivers' licenses.
 - The Respondent shall pay any and all fees associated with the petitioner and/or children's immigration case.
 - The Respondent shall sign a Freedom of Information Act form and give it to victim or Victim's attorney.
- The defendant is hereby ordered to pay the sum of _____ to the victim as restitution for the damage of property as follows _____.
- The defendant is hereby ordered to pay the sum of _____ to the victim as support for the victim and/or minor children as follows _____.
- The defendant shall not be entitled to the victim's telephone numbers and addresses or Victim's residence, place of employment, school or daycare. Defendant's attorney shall not provide such information to the Defendant.
- Victim is entitled to notification of the defendant's release from incarceration and custodial authority shall be responsible for notifying victim pursuant to the guidelines set out by law.
- The defendant shall screen for Drug Court eligibility and/or participation as required.
- The defendant shall submit to drug and alcohol testing and/or treatment, including requests to breath, urine, and/or blood specimen for analysis for the possible presence of any substance prohibited or controlled by any law.
- The defendant shall maintain full time employment, school or GED as directed.

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- The defendant shall report to the Probation Officer as directed, and the Probation Officer shall be able to visit the defendant's home.

These criminal bond orders should also include an enforceability clause, such as the following:

This Order is enforceable throughout the state of Georgia and all other forty-nine states, Indian territories, Puerto Rico, District of Columbia, and US jurisdictions. Violations can be punished under state and federal law, may be criminal and civil in nature, falling under the Violence Against Women Act, Parental Kidnapping Prevention Act, Uniform Child Custody Jurisdiction Act, and the International Child Abductions Remedies Act. Violations of this order may subject the defendant to serious sanctions, such as aggravated stalking, misdemeanors, jail and/or fine. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as codified at 8 U.S.C. § 1227 (a) (2)(E) makes a violation of this order a deportable offense.

Obtaining Effective Remedies—Creative Protection Order Provisions

To be most effective, protection orders should contain all the relief an immigrant woman needs to address the violence and fear of future abuse or sexual assault, including threats or attempts. Relief in the protection order should be as detailed as possible and should ensure that the individual needs of the victim are addressed. Gaps in relief sought in the protection order for lack of specificity may lead to further violence. Likewise, it may make the order difficult, and in some cases, impossible to enforce.

Protection orders can contain a wide range of remedies that can be used to address the specific needs of each victim and each immigrant victim. For example, certain protections are critical for most victims when the perpetrator and victim are in an intimate relationship and have children. The protection order should always contain provisions regarding custody. Advocates and attorneys should also consider naming the children explicitly as protected parties in their mother's protection order. Additionally, when women take steps to protect themselves against further abuse, abusers may retaliate against the victim's family members. Therefore, protection orders should include prohibitions against contact or harassment of the victim's family members. This is especially true for immigrant victims.

Other specific protections are critical when the victim and the perpetrator are co-workers, classmates, or otherwise are in regular contact. It is important to work with the immigrant woman to determine all the possible places of contact and what relief would be needed in the protection order to ensure her safety.

Creative Application of Traditional Provisions of Civil Protection Order Remedies

PROTECTION ORDERS FOR VICTIMS STAYING WITH THEIR ABUSERS

- *The respondent shall not assault, molest, harass, or in any manner threaten or physically abuse the petitioner and/or his/her child(ren).*

An order that *the respondent shall not assault, molest, harass, or in any manner threaten or physically abuse the petitioner and/or his child(ren)* can be included in a protection order issued to parties who continue to reside together.

If an immigrant victim chooses to live with her abuser, the protection order may include a "no further abuse" provision. The advocate or attorney should keep in mind that the immigrant victim does not need to leave her abuser in order for a protection order to be issued. Advocates and attorneys should interview victims and identify their fears, needs, and barriers to leaving their abusers. The advocate should be aware of cultural and religious traditions that might hinder the victim from seeking a protection order that requires separation. The victim may simply want a protection order that requires the abuser to receive counseling and refrain from violent behavior. When the parties have children, full contact protection

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orders that allow the parties to continue to live together can also contain provisions that award custody to the victim should the parties separate. Such orders can also require that child support payments begin while the parties still reside together, which can be helpful when the abuser has been denying the victim access to money she needs to buy food or other essential items for the household and the children. Obtaining an order that child support commence while the parties still reside together provides the victim the greater economic security of having this already in place, should she decide to separate from the abuser in the future. These types of protection orders are valid in all jurisdictions.

There are two important advantages to obtaining a protection order even when the parties plan to continue living together. First, if the order is violated, the respondent can be charged with a criminal offense and the police will respond seriously when called for help. Second, the protection order provides crucial evidence that will support the victim's VAWA or U-visa immigration cases. Immigrants need not leave their abusers to obtain VAWA immigration relief.¹³⁵ The following are examples of these types of protection order provisions:

- *The respondent shall not assault, molest, harass, or in any manner threaten or physically or sexually abuse the petitioner and/or his/her child(ren).*

This “no further abuse” clause is essential to every protection order. Enforcement through criminal or contempt prosecution is very difficult without this clause. The clause should be clearly worded so the abuser is aware of exactly what types of actions are prohibited. This provision allows immigrant victims to specifically request protections that are important to her safety and the safety of her family and household. It may also be important to include language to prohibit the respondent from communicating directly or indirectly with the immigrant victim and/or her family in a threatening or harassing manner. This behavior may also be known as “stalking.”¹³⁶ In addition, this provision can be specifically tailored to the respondent's behavior against the immigrant victim, family, or household that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass. Some examples include: “the respondent shall not follow the immigrant victim nor send in any manner (including electronically) embarrassing materials to family, friends, or the employer.”¹³⁷

Civil protection orders can be helpful in preparing U-visa cases under VAWA.¹³⁸ They can provide crucial evidence of the crime and should be submitted as part of the request for U-visa relief. An immigrant victim will still need to provide certification from a government official that the immigrant victim is helpful or is likely to be helpful in the prosecution or investigation of a crime. Evidence of a civil sexual assault protection order can be a way to demonstrate the victim's willingness to cooperate with law enforcement.

- *The respondent may not contact the petitioner and/or his children in any manner, either personally, by telephone, in writing, by computer communication, or through third parties.*

Abusers and perpetrators often find other ways to harass the victim after the issuance of a protection order. This may include threatening phone calls, e-mails, letters, sending unwanted deliveries to her home (i.e., flowers, pizza), and other forms of communication. While these activities are still attempts to intimidate and maintain power and control, the perpetrator may not be in violation of the specific provisions of the protection order. It is therefore important that the above clause be included in the protection order. To obtain evidence of violations of this provision, the victim can screen phone calls through an answering machine or caller ID. This will provide documentary evidence of the respondent's attempt at communication. The victim should also keep copies of any written communication and take photos (with date stamps, if possible) of any things

¹³⁵ See Chapter 10 of this Manual, *U-Visa Relief for Immigrant Victims of Sexual Assault*, for more information.

¹³⁶ Stalking is a series of actions that make someone feel afraid or in danger. Stalking is serious, often violent, and can escalate over time. Some behavior includes: following, repeated phone calls, damage to home, car, other property, sending unwanted gifts, letters, cards, using technology to track movements, and other actions that control, track, or frighten. For more information, please see the National Center for Victims of Crime, Stalking Resource Center at <http://www.ncvc.org>.

¹³⁷ See TEXAS ADVOCACY PROJECT, PRO SE SEXUAL ASSAULT PROTECTION ORDER PACK (Mar. 2005), available at [http://www.women-law.org/documents/Pro%20Se%20Protective%20Order%20Packet%20\(English\).pdf](http://www.women-law.org/documents/Pro%20Se%20Protective%20Order%20Packet%20(English).pdf).

¹³⁸ See Chapter 10 of this Manual, *U-Visa Relief for Immigrant Victims of Sexual Assault*, for more information.

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delivered to the house by the perpetrator. Any third party contact and/or communications (e.g., through his family members or co-workers) should also be documented.

- *The respondent shall pay for all medical expenses the petitioner incurred as a result of the respondent's violence, including treatment of physical injuries, illness, and mental health treatment. The respondent shall pay for the repair of the door to the petitioner's house and all costs associated with the changing of the petitioner's lock, as well as any other damaged property due to the abuse.*

The protection order can include a provision that orders the perpetrator to provide other specific forms of monetary relief to the petitioner. Victims can receive court ordered reimbursement for economic losses, including repair of damaged property, medical costs, attorney's fees, and court costs. By ordering the perpetrator to pay for medical expenses, the victim can receive needed medical treatment. Medical bills will not accumulate and there may be less need for the immigrant victim to become reliant on public benefits, thus strengthening her immigration case. Orders should cover the costs of both emergency and long-term healthcare for treatment of injuries, contracted diseases, prenatal care, ongoing related women's health issues and mental healthcare treatment. All of these are essential to the immigrant sexual assault/domestic violence victims' recovery.

If the parties are married, the court can order that the abuser maintain the victim on his medical insurance. Payment of medical expenses and costs associated with damage to property is especially important for immigrants and their children. Ordering the abuser to pay for damage to property may help prevent the victim's eviction from her home. It can be difficult for immigrant women to find alternative housing, as they may have difficulty establishing employment history and landlords may discriminate against renting to immigrants or domestic violence victims.

- *The respondent shall stay 200 yards away from the petitioner's home, person, school, place of worship, workplace, day care provider, community center, and other specified locations.*

It is very important to **clearly define** where the respondent is forbidden to go. Include in the provision all locations frequented by the petitioner, including homes of relatives and friends, the petitioner's community center, workplace, place of worship, the petitioner's hairdresser and health care provider.

In preparation for the CPO hearing, advocates and attorneys should carefully review with the petitioner all of the various locations the perpetrator should be ordered to stay away from. In doing so, it is important not to reveal the exact location if respondent does not already have this information. The abuser can in these instances be ordered to stay away from an entire area of the city in which the victim lives. Problems can arise when the parties are working together and when both are active in the same place of worship, community establishment, or other cultural meeting place. One possible solution to this problem is to order that the perpetrator may only attend a place of worship, community event, or religious/cultural event at specified times that are different from those the victim will be attending. If they share the same workplace, advocates and attorneys with the immigrant sexual assault victim should work with the employer to ensure that the immigrant victim's safety is upheld and that precautions are made to prevent further abuse.¹³⁹ Good advocacy may be required to assure that the employer does not fire the victim and keep the abuser or sexual assault perpetrator as an employee. When the victim and the perpetrator do not work for the same employer it is also crucial to specify that the respondent must refrain from contacting the petitioner's workplace. An immigrant may only be able to work at a workplace that DHS has approved when granting her a work-related visa and she may lose her job because of the respondent's harassment. This could cause her to violate the terms of her legal immigration visa, making her more susceptible to deportation. When such an order is entered, the petitioner should provide a photograph of respondent and copies of the order to her employer, place of worship and other religious personnel, community personnel, or other related personnel so that they can help her enforce the order if needed.

If the petitioner is in hiding, the provision should not reveal her exact location, but merely state that the respondent is required to stay away from her person and her residence. It is also important to state that

¹³⁹ See Chapter 18 of this Manual, *Employment* of this Manual.

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respondent is not allowed to locate or attempt to locate the petitioner either directly, or through third parties. The order may also specify a minimum distance that the respondent is required to stay away from the petitioner and from specified locations.

- *As of (date and time) the respondent shall turn over to the (local) police department any and all weapons that the respondent possesses or owns and all licenses that allow the respondent to possess or purchase weapons.*

This provision prohibits the respondent from possessing a weapon or firearm. It also revokes the respondent's weapons license. This will prohibit the respondent from purchasing or receiving a weapon during the duration of the protection order. To further prohibit the respondent from possessing a weapon, the provision can order the local police to search for and confiscate weapons during the vacate order, when they are called for assistance in enforcing the protection order, when they are ordered by the court, by the victim's request, or they can be sent to the perpetrator's home specifically to confiscate weapons. The court should require the respondent to produce a receipt proving that the weapons were relinquished. Some jurisdictions may waive this requirement if the respondent is a police officer or in the armed forces. The advocate or attorney should ask the victim what, if any, weapons the perpetrator owns or were used against her. The order should include anything used, including knives and machetes. The advocate should also investigate the specific procedures used in their jurisdiction when weapons are confiscated so that the order issued contains all provisions necessary for the order to be enforceable.

- *The (local) Police Department or Sheriff shall assist the petitioner in enforcing this order and shall pay special attention to calls for assistance from petitioner and/or (petitioner's address).*

The protection order may provide a provision with instructions for law enforcement to assist with vacate orders, transport the petitioner to a shelter, accompany the petitioner home, serve process, or carry out orders regarding the abuser's or perpetrator's relinquishment of personal property or weapons. The protection order may also state that law enforcement officials monitor the victim's residence and respond quickly to future calls from the petitioner's residence. Again, the advocate should investigate exactly how local law enforcement want the order drafted to assure compliance with the order.

- *The respondent shall relinquish possession and/or use of the following personal property (list specifically itemizing property in question) as of (date and time).*

This provision is helpful if the perpetrator or abuser has some of the immigrant victim's belongings. If the immigrant victim and the perpetrator work together, the perpetrator may have taken some personal property. The perpetrator may have also taken things from the immigrant victim's home if he is an acquaintance or friend that would have had occasion to be at the immigrant victim's home. It is important to find out from the immigrant victim if the perpetrator has any personal property of the immigrant victim's. Prior to the hearing, the petitioner should make a list of the items that she wants returned to her. It may be possible, if the respondent is represented, for the belongings to be brought to the hearing. If this is not possible, then advocates and attorneys should make sure that plans are made with the petitioner regarding how she wants to recover her personal belongings and mention victim safety in doing so, arranging for an officer to stand by during the exchange.

This provision can also be utilized to gain possession of the family vehicle and particular documents for the victim. This is very important for immigrant victims who have left their home and need to retrieve documents she will need for any immigration case she has pending or that she may file.¹⁴⁰ The order should also include essential documents she will need for herself and the children for identification, health care, school, and child support, i.e. social security cards, birth certificates, medical insurance cards, vaccination records, copies of paystubs. The respondent can also be ordered to pay the cost that petitioner will incur to replace documents that he does not return. The attorney should know what the cost will be prior to the hearing so that the order can contain the exact amount to make payable on date certain in form,

¹⁴⁰ For a full list of documents she may need for immigration case, see Chapter 3 of this Manual, *VAWA Confidentiality*, for evidence checklists.

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requested to a specific place on specific date and time. The list of property should include items that are irreplaceable and that have sentimental value to her so that the abuser will not be able to maintain power and control by taking or destroying these items, e.g., family photos and heirlooms. Abusers of immigrant victims may try to take control of or destroy items that have sentimental or cultural value to the victim. Further, when the immigrant victim needs the car for transportation to work, granting her use and possession of the car can be of particular importance. If the protection order has a vacate provision, the order can request that the respondent relinquish possession of all property except for personal belongings and other items listed in the order. The language should also specify that a police escort accompany either the abuser or immigrant victim back into the home to retrieve belongings.

- *The respondent shall vacate the residence at (location) immediately. The (local) police department shall accompany the victim and allow the respondent 15 minutes to collect his personal belongings. Personal belongings may include toiletries, clothes, one set of sheets, and pillowcases. The petitioner's permission is required to remove any other items not listed above. The police shall take all keys and garage openers from the respondent, test them to make sure they are the right ones, and then return them to the petitioner.*

Vacate orders require that the respondent vacate the home shared with, owned by, or co-owned with the petitioner. Advocates and the attorney for petitioner should check with local law enforcement and follow language in the state statute and expand if possible. The order should also specify the exact manner in which the vacate provision should be carried out. It should establish time limits on the respondent and include additional provisions that prohibit him from reentering the home. It should also order the respondent to surrender all keys, to refrain from damaging the property or premises, and to refrain from tampering or interfering with utilities or mail service.

In cases involving immigrant women, it is important that vacate orders go into effect immediately. If perpetrators are given advance notice of a vacate order they may destroy, remove, or hide essential documents and evidence that the immigrant victim will need to win her sexual assault/domestic violence-related immigration case. When the victim has fled the family home and has sought a protection order to remove the abuser and return her and the children to the family home, there may be financial records in the home that the victim will want access to. When this is true, the vacate order can explicitly state that the perpetrator is not allowed to remove any financial records or other papers and/or computers from the home when he leaves. This way the victim can gain access to financial records in the home that could be useful to her in obtaining child support, spousal support, or an equitable distribution of property.

When an advocate or attorney helps a petitioner obtain a vacate order, it is important to also follow up with telephone and utility companies making needed changes in account numbers and asking that only persons with special, secure passwords be able to access the account information or make any changes in account service. Advocates and attorneys should consider including in the protection order (both in the temporary and final order) language that requires the respondent not to interfere with utility services and also including enforcement language (e.g., if respondent violates the provision, respondent is ordered to pay \$500 fine or up to six months in jail or both for each violation). Immigrant victims should immediately cut off the abuser's ability to make calls using telephone service either directly, using calling cards, making collect calls, or charging calls to her number. This will prevent the abuser from running up her telephone bill with international phone calls. It may inhibit his ability to harass or threaten her relatives abroad. Most importantly, it may help her prevent the phone company from cutting off her service for non-payment thereby cutting her off from an ability to call the police for help. If victims have a high phone bill balance left when the abuser vacates there are two possible options: he can be ordered to pay the phone bills or advocates and attorneys can obtain help, for example, from a local church or charitable organization, to pay her outstanding bill so that her phone with a new number can be reconnected. Advocates and attorneys may also want to consider negotiating with utility companies on the victim's behalf to structure a payment plan and maintain minimum service. Victims can also change their telephone number at no charge if they inform the utility company that it is due to harassment. Some companies will also allow a temporary change in number so that the respondent believes the number has been changed. In this way the victim will not need to change her contact information with the various locations of support.

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- *The respondent shall participate in and successfully complete the following (treatment program).*

The protection order may require the respondent to attend a treatment program in addition to other provisions. These programs may be batterer intervention, substance abuse treatment, parenting classes, and/or mental health counseling. Only those batterer intervention programs that are certified as having a specific expertise in working with domestic violence and sexual assault abusers should be used. In cases of domestic violence and sexual assault, joint or family counseling is **not** appropriate and should not be ordered or agreed to by the victim. Research indicates that family counseling can actually increase danger to the victim. The batterer should only be ordered to attend programs without the victim's presence. If the batterer is a substance abuser, he should first attend a substance abuse program and, once he has completed this program, he should be ordered to attend a batterer's intervention program. Advocates and attorneys should be familiar with the range of treatment programs available and should also seek a signed authorization from the respondent, allowing counsel to obtain information from the treatment program regarding respondent's completion, or participation. It is important to note that in certain jurisdictions, it may be difficult for courts to enforce and/or monitor compliance. There are very few programs available for batterers, thus making it difficult to mandate participation and compliance.

If the respondent is not fluent in English, he should be ordered to attend a certified program in a language in which he is able to communicate. If there is no program in the respondent's language, he should be ordered to arrange for an accompanying interpreter for all sessions. In some jurisdictions, the abuser can be ordered to use a court certified interpreter that he pays for on a sliding scale. If there is no counseling in the respondent's native language, he will likely use this as an excuse not to attend. This specific issue must be addressed whenever the respondent's native language is not English. If alternate provisions are not listed in the order, it is likely that the respondent will not attend counseling sessions. Advocates for victims whose abusers are not English speaking should identify potential interpreters in advance whom the abuser could pay to interpret during treatment sessions. The order can also specify review dates that the respondent will be ordered to return to court with certificates of completion. The order can be enforced if the respondent does not attend and/or complete the program by the date certain.

- *Temporary custody of the minor child(ren) is awarded to the petitioner until further order of the court, or until the expiration date of this order.*

It is important to include a custody order (when allowed by statute) whenever children are involved in an abusive relationship. Research has found that approximately 70% of abusers also abuse their children, thus demonstrating that children can also be physically harmed by domestic violence.¹⁴¹ Even if children may not have been directly abused, studies have proven that children living in violent homes are negatively affected.¹⁴² After separation, the abuser may use children as a form of control over the victim. If legal custody is not specified in the protection order, an immigrant victim may be forced to negotiate child custody and visitation with the abuser, posing enhanced danger to the victim and the children.

It is essential that the protection order include a custody clause if the parties have minor children in common. Generally, immigrant women should resolve custody questions as part of the immediate relief they receive in their protection order. The abuser may also tell the victim that she will lose her children if she leaves him. In many Latin American countries for instance, the concept of "Abandonado el lugar" or "Abandonment of the home" exists. This legal concept holds that if one abandons the home, they lose everything, rights to custody and property included. A protection order without a custody clause could therefore cause the victim to mistakenly believe that she will lose legal custody over her children and may cause her to return to the abusive relationship.

If custody is not awarded in the protection order, it is more likely that the victim will return to the abuser. Few immigrant victims are aware of the U.S. laws regarding custody, particularly those that favor awarding custody

¹⁴¹ Bowker, Arbitell, & McFerron, *On the Relationship Between Wife Beating and Child Abuse, in FEMINIST PERSPECTIVES ON WIFE ABUSE*, (Kersti Yilo & Michelle Bogard, eds., 1988).

¹⁴² See e.g., DAVIDSON, *supra* note 47.

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to the non-abusive parent even when the abusive parent is a citizen and the non-abusive parent is not.¹⁴³ Immigrant victims often assume that as in their home country, U.S. courts will automatically assign custody to the male head of the household, or to the parent with the greater earning capacity. Misinformation often provided by the abuser combined with incorrect assumptions and fear that their abuser will cut them off from their children altogether, make immigrant victims hesitant to seek child custody as part of their protection order or other family law case.

Advocates should explain the child custody process to the victim and that the best interests of the children is paramount and that domestic violence is a factor for the court to consider.¹⁴⁴ The best interest of the child standard is used by courts across the country in making child custody determinations.¹⁴⁵ Factors that courts consider in making best interest determination in the local jurisdiction could include the wishes of the child's parent or parents as to his or her custody; the wishes of the child as to his or her custodian; the interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest; the child's adjustment to his or her home, school and community; and the mental and physical health of all individuals involved, and who, if anyone, perpetrated domestic violence in the relationship.¹⁴⁶

Immigration status should not be used as a factor in custody cases. The court should be aware of the respondent's attempts to intimidate and threaten the victim with the loss of her children and possible deportation. If immigration issues are raised, the immigrant victim should find counsel to represent her. If she does not have counsel and does not have a way to address immigration issues in open court, then it is likely that she will return to her abuser.

In preparing an immigrant victim for any family court case at which custody could be contested, attorneys¹⁴⁷ and advocates should be prepared to put on evidence including the immigrant victim's testimony, testimony of other witnesses, and other evidence (e.g., photographs, police reports, school and medical reports) that demonstrate:

- The client is the primary caretaker of the children (have her testify about a typical day pre and post separation with the children and who is responsible for what childrearing tasks);
- Respondent is not the primary caretaker of the children (have her testify about respondent's typical day, e.g., respondent leaves the home for work and does not return until very late at night, etc.);
- How respondent interacts with the children, how he disciplines the children, etc.;
- The history of domestic violence and sexual assault and how it has affected the children (if the children have counselors, health care providers, schoolteachers, or advocates who can address this effect, they should be called as witnesses);
- Whether the children were abused directly or affected by witnessing the abuse;
- Who has been responsible for the children's health care, schooling, religious activities;
- How well the children are adjusted in their current school and community; and
- In a highly contested case, attorneys should consider having an expert witness testify about the effects of domestic violence on these children.

Depending on the age of the child(ren), attorneys can consider requesting the court to confer with the child(ren) in chambers.

¹⁴³ *Id.*

¹⁴⁴ *Battered Immigrants and Civil Protection Orders*, in *BREAKING BARRIERS*, *supra* note 1.

¹⁴⁵ *Id.*

¹⁴⁶ NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, MYTHS AND FACTS REGARDING DOMESTIC VIOLENCE AND CHILD CUSTODY DISPUTES (Aug. 1997); Naomi Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 *VAND. L. REV.* 1041, 1071 (1991); Elizabeth Scott & Robert E. Scott, *Marriage as a Relational Contract*, 84 *VA. L. REV.* 1225, 1234-35 (1998) (stating that the Uniform Marriage and Divorce Act is the model for several states' custody statutes).

¹⁴⁷ While trained advocates can effectively help immigrant victims obtain culturally effective protection orders, attorney resources in your community should be particularly used in contested custody cases involving immigrant victims.

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Immigrant victims contemplating moving with the children to another, safer jurisdiction should advocate for no geographic restrictions and should consult a family lawyer who can advise them on how to best make such a move without the immigrant woman becoming subject to parental kidnapping charges. The Hague Convention,¹⁴⁸ the Federal Parental Kidnapping Prevention Act,¹⁴⁹ state parental kidnapping acts, and State Uniform Child jurisdiction and enforcement acts¹⁵⁰ can all be factors in this decision. It is very important that immigrant women who are considering moving with their children do so in a manner that does not violate these statutes. Criminal kidnapping charges that could result from violating these statutes could result in the non-citizen parent's deportation¹⁵¹ and/or loss of custody and visitation.¹⁵² One should also discuss a situation where the victim may not want to adjudicate paternity in the protection order. If not adjudicated, the respondent has no rights but the client also gets no child support. Be sure to talk the client about what she wants and whether she is willing to forego child support for this. Judges often encourage victims to receive child support in order to prevent the need for federal welfare in the future.

- *The respondent has rights of visitation with the minor child(ren) under the following conditions (requirements).*

If a custody clause is included in the protection order, a clause granting visitation to the respondent will generally be included as well. In 60% of cases respondents retain visitation rights and in only 11% of cases is the respondent required to have supervised visitation only.¹⁵³ The National Council of Juvenile and Family Court Judges recommends supervised visitation until the abuser has completed a domestic violence treatment and a substance abuse program. Supervised visitation can be arranged at a supervised visitation center or with an approved third party. If a supervised visitation center is not available, advocates should work with the victim to find third parties the victim feels ensure the safety of herself and her children. Possible third parties could be friends, family members, religious personnel, or social workers. If the petitioner does not wish to request supervised visitation, orders authorizing unsupervised visitation should clearly state all of the specifics of abuser's visitation rights. The provisions should specify when, where, and how visitation should take place.

If there is to be no contact between the abuser and the victim, the order should clearly state a drop off and pick up arrangement that will not require contact between the parties. Ambiguous and non-specific visitation provisions create situations in which the abuser can continue to have contact with the victim. More importantly, non-specific visitation clauses often allow the abuser to use the children to maintain power and control over the victim. A third party can be involved in picking up and dropping off the children. A third party's home can also be used as the site of the pick up and drop off. If this is not possible, the exchange of children should occur at a public place, such as a restaurant. In this situation, the victim should ensure that a third party accompanies her to the exchange location. This can offer her protection and ensure that she has a witness with her should there be problems with the abuser during the exchange of children. The victim can also exchange children at the local police precinct. This ensures her safety and provides police witnesses should problems arise such as the abuser's failure to return the children. The orders can also require that the abuser remain at the precinct for fifteen minutes after the victim drops off the children the respondent is prevented from following her.

The visitation provision can also order that the respondent not use drugs or alcohol during or in the 24 hours prior to the visitation. Visitation rights can be suspended if this provision is violated. Random drug tests can be required in order to monitor these provisions.

¹⁴⁸ Hague Convention on the Civil Aspects of International Child Abduction, 51 Fed. Reg. 10494 (Mar. 26, 1986).

¹⁴⁹ Parental Kidnapping Prevention Act, Pub. L. No. 96-611, §§ 6-10, 94 Stat. 3568 (1980) (codified in 28 U.S.C. § 1738A (1994)). The Act requires states to give full faith and credit to custody decisions of other states that conform with the Act.

¹⁵⁰ UNIF. CHILD CUSTODY JURISDICTION ACT, 9 U.L.A. 115 (1988); UNIF. CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT, 9 U.L.A. 257 (1997).

¹⁵¹ You may also contact the National Immigrant Women's Advocacy Project for technical assistance on these matters: 4910 Massachusetts Ave NW – Suite 16, Lower Level – Washington, DC 20016; 202-274-4226; niwap@wcl.american.edu

¹⁵² See Chapter X of BREAKING BARRIERS, *supra* note 1; see also Catherine F. Klein, Leslye E. Orloff & Hema Sarangapani, *Border Crossings: Understanding the Civil, Criminal, and Immigration Implications for Battered Women Fleeing Across State Lines with Their Children*, 39 FAM. L.Q. 109 (2005).

¹⁵³ Susan L. Keilitz, Paula L. Hannaford & Hillery S. Efke, *Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence*, 20 ST. CT. J. 17 (1997).

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If the petitioner and/or children's safety cannot be ensured during visitation, the petitioner should ask that visitation be suspended until further court order. It is very difficult to convince the court to suspend an abuser's visitation rights or to require supervised visitation. When such relief is needed to protect the victim and the children, the victim will need to secure the assistance of counsel. The attorney should be ready to show why visitation is not feasible and argue that suspending visitation rights is in the child's best interest.

- *The respondent shall pay child support for (minor child) in the amount of (dollar amount), biweekly, weekly, or monthly and/or spousal support for the petitioner in the amount of (dollar amount), biweekly, weekly, or monthly*¹⁵⁴.

Protection orders for all immigrant women with minor children should also include child support awards and, if applicable, spousal maintenance awards. The state's child support guidelines should be used to determine the amount of the award. It is important to ensure that the child support amount is paid through wage withholding, so the respondent cannot use child support payments to exert control over the victim. With wage withholding, the payments come directly from the abuser's paycheck and are paid by the abuser's employer directly to the victim through the court or a state disbursement unit.

Other creative arrangements can require the respondent to pay specific bills, rent, mortgage payments, health insurance, or spousal support. If health insurance is ordered, the respondent must be ordered to provide to the court by a specific date, evidence that the children have been included in his health insurance coverage or that respondent reimburse petitioner for the cost she incurs to cover the minor child on her policy. The abuser can be ordered to file income tax returns and to turn over to the victim all or a specified proportion (at least half) of the tax refund. The protection order can state that the petitioner, not the respondent, has the legal right to claim the children as dependents on income tax returns. This can be ordered even when the abuser is paying child support, since the costs associated with supporting the children are usually significantly more than the child support award.

Financial support is important for immigrant victims who do not have work authorization, who are undocumented, or who have pending VAWA self-petitions and are only able to receive limited public assistance. If immigrant victims do not have financial support, they may be more likely to return to the abuser. For immigrant victims, obtaining child support can also strengthen an immigrant victim's VAWA case, as it will demonstrate that she is a person of good moral character who has taken all possible steps to ensure that her children have financial support. In addition, obtaining a child support order can help her attain lawful permanent residency through VAWA, as the support order can be used to demonstrate sources of income that she is entitled to received now and in the future. This can help her demonstrate that she will be able to support herself and will not have to rely on public benefits.

Catch-All Provisions

Catch-all provisions can be used to obtain creatively culturally competent relief, for immigrant women. In virtually all jurisdictions, protection order statutes for intimate/familial relationships contain catch-all provisions. Most state sexual assault protection order statutes also include catchall provisions of various types. These provisions can be used to assist immigrant victims to obtain other relief. Through catchall provisions, protection orders can address areas of potential conflict. Creative use of catchall provisions can also address petitioner's cultural and/or immigration status related needs.

Such provisions vary in their language, but a typical construction is: Granting any other appropriate relief sought by the plaintiff.¹⁵⁵ Another example is directing the respondent to perform or refrain from other actions as may be appropriate to the effective resolution of the matter.¹⁵⁶ Catchall provisions can be broadly interpreted and allow the courts to exercise discretion to order additional relief as necessary to prevent abuse.

¹⁵⁴ For more information on economic relief available to immigrant victims, see Chapter 4, Battered Immigrants' Access to Services, in *BREAKING BARRIERS*, *supra* note 1.

¹⁵⁵ 23 Pa. C.S. 16108.

¹⁵⁶ D.C. CODE §16-1005.

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For example in *Powell vs. Powell*,¹⁵⁷ the District of Columbia Court of Appeals determined that the courts had the authority under the statute's catch-all provision to grant monetary relief in civil protection order proceedings, though the remedy was not specifically provided by statute.¹⁵⁸ The court broadly interpreted the District of Columbia's intrafamily offenses act and concluded that, "[W]hile it is true that monetary relief is not specifically mentioned...the plain intent of the legislature was an expansive reading of the Act, which we think must be accorded to the catchall provision as well."¹⁵⁹

In *Maldonado v. Maldonado*,¹⁶⁰ the court confirmed the wide range of relief provided by a catch-all provision and included provisions to assist the battered immigrant petitioner in the following way:

"[T]he husband shall relinquish possession and/or use of the wife's pocketbook, wallet, working permit, ID Card, bank card, Social Security card, passport and any other item of the children's personal belongings, table, four chairs and dishes...the husband shall not withdraw the application for permanent residence that he had filed on behalf of the wife."¹⁶¹

The following section will describe how catchall provisions can be creatively utilized to provide culturally appropriate help for immigrant victims and to bolster a victim's access to immigration relief so that ultimately the victim can attain legal immigration status. With legal permanent resident immigration status, victims can live in the U.S. without fear of deportation; obtain legal work authorization and a social security number; access a greater range of public benefits; and travel to and from the United States.

Specific Protection Order Provisions That Assist Battered Immigrant Victims

It is important to screen an immigrant victim to determine her eligibility for immigration relief under the Violence Against Women Act (VAWA), the crime victim visa (U-visa) or other forms of immigration relief when assisting her in obtaining a protection order. The DHS requires that an immigrant victim prove that she has been a victim of battering or extreme cruelty (which includes physical, sexual, and some forms of emotional abuse) when applying for VAWA-related immigration relief. The protection order provides documentary proof that she has been a victim and she can submit a copy of the protection order to DHS as evidence. Provisions contained in the protection order can be used to help the immigrant client obtain evidence that she can then use to prove each of the required elements of her immigrant case. A protection order that uses the catchall provisions to address the client's needs for evidence in her immigration case will likely reduce the client's fear of deportation, as well as reduce the likelihood that she will actually be deported. When the evidence she obtains through the protection order helps her prove her domestic violence-related immigration case, it can also help her attain legal immigration status.

While in court, it is important that any immigrant victim seeking creative catchall relief demonstrate that the specific provisions sought are designed to help curb the violence. She should pay special attention to showing how the requested creative relief will help prevent future harassment to her or her children and/or will enhance her ability to flee her abuser and create a safe life for herself and her children.

Some judges may not be willing to incorporate these provisions into a protection order. If faced with this dilemma, advocates and attorneys must educate local judges on the importance of these provisions for protection orders to offer the most effective, culturally appropriate protection possible. Part of this training should provide an overview, with examples, of the imperfect role traditional protection order provisions play for immigrant victims. If judges in a particular jurisdiction have not ordered creative relief, advocates should insure that immigrants seeking such relief have legal representation. Counsel for immigrant victims seeking creative relief should demonstrate to the court, through evidence, why the relief sought would contribute to reducing the violence and harassment and the potential for future abuse. Immigrant victims needing creative

¹⁵⁷ *Powell v. Powell*, 547 A.2d 973 (D.C. 1993)

¹⁵⁸ *Id.* at 975.

¹⁵⁹ *Id.*

¹⁶⁰ *Maldonado v. Maldonado*, 631 A.2d 40 (D.C. 1993).

¹⁶¹ *Id.* at 41.

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protection order remedies should include evidence of immigration-related abuse in the petition for a protection order, if applicable. Then, if the protection order is issued by consent (the victim's uncontested affidavit), there is evidence in the record.

Attorneys should request all the relief that a client needs as an immigrant victim. If for some reason, the judge denies such relief, the advocate or the attorney must state: "Objection, your Honor. Could you please state for the record why this relief is being denied?" This will create a record so an attorney can appeal the decision. (See discussion of appeals below.)

The following are examples of creative provisions that can be particularly helpful to battered immigrants:

- *The respondent shall give petitioner access to, or copies of, any documents related to or needed for petitioner's immigration application.*

If the immigrant's husband has filed her immigration papers for her, she may need these documents and copies of information he filed with DHS to support her own individual immigration case. Any immigration case that the perpetrator has filed on behalf of the victim or the children's behalf will contain information that can be used to prove his immigration status and to prove other aspects of her VAWA immigration case. Advocates should assist the petitioner in consulting with an immigration attorney¹⁶² to find out what the petitioner may qualify for and which specific documents will be necessary for the client's case. Connection between this relief and violence: Helping the petitioner access documents and papers she will need to attain legal immigration status without the abuser's knowledge or assistance will counter the perpetrator's threats of deportation and allow the client to obtain legal immigration status on her own. It will rob the abuser of the threat of deportation, an intimidation tool he has over the immigrant victim, and facilitates her ability to attain any legal immigration status for which she qualifies.

This provision can also be used if the perpetrator has had access to the immigrant victim's immigration application. The perpetrator may be an acquaintance that has used access to these documents as a tactic to instill fear in the immigrant victim and to further harass her. It is important to explore with the immigrant victim if there is any cause to believe that the perpetrator may have had access to these documents.

- *The respondent shall not withdraw an application for permanent residency that he has filed on the petitioner's behalf, and shall take any and all action to ensure that the petitioner's application for permanent residency is approved.*

Abusers who have filed immigration papers on behalf of the victim often use this fact as a means to control and threaten the victim with deportation. The abuser may threaten to withdraw the application if the victim leaves him or reports violence to local authorities. The abuser therefore can exert control and can use this power to further abuse and harass the victim. Protection orders can require abusers not to undermine their spouse's immigration case, and can prevent abusers from withdrawing applications, thus allowing the victim to obtain legal permanent residency. The amount of evidence required to obtain legal permanent residency through an application filed by a citizen or lawful permanent resident husband is substantially less than the burden of proof required for VAWA relief. Therefore, it is important in some cases to try to get the abuser to complete the petition that he has filed. Ordering the abuser not to withdraw the victim's petition may also prevent him from taking steps to have the petitioner deported before she can file for VAWA immigration relief.

- *The respondent shall not contact any government agency, including, but not limited to, the DHS, the (particular) Embassy, or the (particular) Consulate about the petitioner, absent permission from the court, a police employee, or a subpoena.*

In addition to contacting DHS to withdraw or jeopardize the petitioner's immigration case, the respondent may also attempt to interfere by contacting the U.S. Embassy and/or Consulate processing the case. Protection order provisions limiting the perpetrator's ability to contact DHS or other government agencies about the victim lessens the perpetrator's ability to interfere with the processing of her immigration case, thus lessening

¹⁶² The immigration lawyer will know when and whether it is necessary to contact INS about the client's case.

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his ability to threaten her. Ordering the respondent not to contact DHS or the U.S. Consulate or Embassy about the victim's case can be particularly helpful to victims whose options for legal immigration status have been included in their spouse's immigration case. Further, many immigrant victims either have or are able to attain legal immigration status based on an immigration visa or immigration case initiated by the abuser. Ordering him to follow through on such a case, or not to withdraw her application based on a case he may have filed, can help many immigrant victims (e.g., derivative spouse's of work visas, asylees, workers for international organizations).

Once she has obtained a protection order and has informed DHS that her spouse is an abuser by filing a VAWA case (by providing DHS a copy of the protection order or any other means), VAWA confidentiality provisions preclude DHS from using unfavorable information provided by the abuser against the petitioner. This provision protects the victim from being harmed if the perpetrator continues abuse through the withdrawal of her immigration papers. This provision essentially lessens the amount of control that the abuser has over the victim and lessens his ability to abuse the victim through immigration-related abuse. It is important to note that research has found that immigration-related abuse almost always occurs in relationships that are also physically and sexually abusive.¹⁶³ The existence of immigration-related abuse corroborates physical or sexual abuse or is a lethality factor that predicts the potential for escalation of the abuse in the relationship.¹⁶⁴ When there is immigration-related abuse in the relationship, it is advisable to seek the assistance of counsel for the protection order case. Counsel should present evidence to the court about the immigration-related abuse and demonstrate how the abuser uses these threats to control her. Counsel should also consider having a local immigration attorney testify as an expert witness about the petitioner's immigration options and to be available to answer any of the court's immigration-related questions. Creating a record connecting immigration-related threats and abuse would provide support in the record for the court to award the victim the immigration-related relief she seeks.

An order restricting an abuser's ability to communicate with government agencies about the victim can withstand any first amendment free speech challenges.¹⁶⁵ If a perpetrator contends that the protection order is restricting his ability to contact government officials concerning his wife and infringes on his free speech rights protected by the First Amendment, advocates can challenge the assertion in two ways. First, attorneys for the victim can assert that any threats an abuser makes to report a victim to immigration authorities constitutes non-speech elements of communication and are in essence, conduct that warrants no First Amendment protections.¹⁶⁶ Second, attorneys should assert that "no contact with government agencies provisions" were designed not as an effort to restrain speech, but rather, as a remedy for an abuser's past conduct.¹⁶⁷ Courts using a balancing test have consistently upheld restrictions on abusers' speech (threats, harassment, communication with victims) because these restrictions are narrowly crafted so as to restrict only speech that harms or can cause harm to the victim. If an abuser files an appeal or otherwise contests entry of such order, victims should obtain the assistance of counsel to oppose his motions and appeals to invalidate this or other protection order provisions on constitutional grounds. **Any attempts to make these arguments must be done with the assistance of an attorney.**

¹⁶³ Giselle Aguilar Hass, Leslye E. Orloff & Mary Ann Dutton, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL RESPONSE 93 (2000).

¹⁶⁴ See generally Mary Ann Dutton, Leslye E. Orloff, & Giselle Aguilar Hass, *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 (2000).

¹⁶⁵ A brief on this issue *Ruiz v. Carrasco*, see Appendix A Chapter 5.3, of BREAKING BARRIERS, *supra* note ERROR! BOOKMARK NOT DEFINED..

¹⁶⁶ See *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), where the Supreme Court held that words threatening injury to a person, i.e., "fighting words," are not deserving of First Amendment protection, in that "their very utterance inflict injury or tend to incite an immediate breach of peace." *Id.* at 572. See also *Cox v. Louisiana*, 379 U.S. 536 (1965), where the Supreme Court further stated that "It had never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced or carried out by means of language, either spoken, written, or printed." *Id.* at 555-56 (quoting *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 409, 502 (1949)).

¹⁶⁷ See *Thorne v. Bailey*, 846 F.2d 241 (4th Cir. 1988), where the Fourth Circuit held harassment is not protected speech. *Id.* at 243. See also *Maldonado v. Maldonado*, 631 A.2d 40 (D.C. 1996), where the court assumed that threats to harm another person constitute conduct that the state may prohibit, rather than speech protected by the First Amendment. *Id.* at 43. See also *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994) where the Supreme Court upheld an injunction prohibiting a course of unlawful conduct, not because of the content of speech, but rather as a remedy for prior unlawful conduct. *Id.* at 763 n.2.

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For immigrant victims not in an intimate relationship, this provision may be needed to prohibit the perpetrator from further harassment. The perpetrator may use the immigrant victim's immigration status to threaten or harm the immigrant victim and may be part of a course of conduct through which the perpetrator victimizes the immigrant woman.

- *The respondent shall pay any and all fees associated with the petitioner's and/or petitioner's children's immigration cases.*

This provision requires the abuser to pay immigration fees for the victim and her children, and ensures that financial burdens will not hinder her immigration application. In some cases, requesting fee waivers can delay the immigration case or cause an immigration official to question whether she is likely to become a public charge.¹⁶⁸ The connection here between relief and abuse is that in many cases but for the abuser's refusal to file, or the withdrawal of the petitioner's immigration case, she would have legal immigration status. He would have filed and paid the fees for filing an immigration case for her. Ordering the abuser to pay filing fees or other fees related to the victim's immigration case removes financial disincentives to her filing and helps assure that her case will be resolved quickly and successfully. Further, his payment of these costs enhances the likelihood that she will be granted lawful permanent residence without encountering public charge problems. Both domestic abuse and sexual assault perpetrators can be ordered to pay these costs. The case may be a VAWA self-petition or a U-visa. However, advocates and attorneys working with immigrant victims should carefully consider the importance of maintaining VAWA confidentiality in the case. If it is important that the abuser not know about the immigration case, then ordering him to pay for the costs of the case would risk confidentiality.

- *The respondent shall immediately relinquish possession and/or use of and transfer to the petitioner the following items:*

(A) Petitioner's Property

This should include items that the petitioner wants returned to her that are in the possession of the respondent, i.e. clothing, jewelry, and toys of the petitioner's children, as well as other personal items, such as family photos from the petitioner's home country, mementos from the petitioner's home country, personal religious items, pictures of the petitioner's children, gifts from family members, letters, books, the petitioner's pocketbook, and any other items of personal importance or sentimental value to the petitioner. If the parties are married, a court may order the return of items that are needed by the petitioner immediately and not return other items until dissolution of the marriage. Attorneys representing the victim should argue for and provide evidence to support granting victim control over times that needs and are of value that could be sold, lost, gifted to others or destroyed by the abuser to preserve them until the divorce has been final. This provision will prevent the batterer from inflicting emotional abuse through the destruction or sequestration of petitioner's or the children's property.

(B) Petitioner's Property (needed to prove or attain legal status)¹⁶⁹

This includes the petitioner's essential documents, such as the petitioner's work permit, ID card, social security card, border-crossing card, pay stubs, bank card, alien registration receipt card, passport, or passport stamp to prove permanent residency. If the immigrant victim is a lawful permanent resident or a non-immigrant visa holder with permission to work and live in the U.S, she will need these essential documents to prove her status and her ability to work legally. Connection between relief and violence: This helps the victim prove her legal status, as well as her right to work and reside in the U.S. and ultimately prove that she will not become a public charge. It prevents the abuser from withholding or destroying these essential documents, thereby making it

¹⁶⁸ Advocates and attorneys can also explore whether domestic violence organizations, faith-based organizations or other groups in your community have established programs designed to help battered immigrants pay the fees associated with filing immigration cases.

¹⁶⁹ For a detailed list of the documents that will be helpful to an immigrant victims filing a VAWA immigration case, see Chapter 3 of this Manual, *VAWA Confidentiality*.

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harder for her to work. In the alternative, the petitioner should know the cost of replacing these documents and request that the respondent pay the amount it will cost her to replace them.

SAFETY NOTE: The provisions for delivery of these items should be drafted very carefully and with the involvement of the petitioner. If the items are larger items, plan for who will be allowed to be present to assist petitioner and that the respondent will not be present and that the law enforcement officer stand by during the process. Also, check ahead of time if there will be a cost involved with standby and/or rental of moving truck and request that respondent pay that amount.

The following documents should also be obtained through a protection order. They can be very important for immigrants attempting to gain immigration relief, especially if they are married to, or are the children of, abusive U.S. citizens or lawful permanent residents. This provision can allow the petitioner to obtain evidence needed to prove a VAWA, crime victim visa (U-visa), or other domestic violence/sexual assault-related immigration case.¹⁷⁰

*(1) Copies of Information or Documents About Respondent (VAWA related)*¹⁷¹

These items are essential for the victim's VAWA related case and may be needed to prove specific elements of the case, such as the respondent's immigration status. Examples of these documents include: the respondent's passport, work permit, certificate of naturalization or citizenship, alien registration card or passport stamp to prove permanent residency, bank card, ID card, Social Security card, abuser's baptismal certificate, birth certificate, military card, and copies of any documents the abuser may have filed with the DHS on the client's or the children's behalf. Connection between relief and violence: The immigrant victim must prove that her abuser is a lawful permanent resident or citizen in order to be granted immigration benefits under VAWA. If the abuser refuses to produce evidence of his immigration status, he can continue to control the victim's access to legal immigration.

*(2) Evidence of a Good Faith Marriage*¹⁷²

Evidence of a good faith marriage is a necessary aspect of a VAWA immigration case. Examples of evidence include: the parties' marriage license application, marriage certificate, wedding photos, joint bank accounts, income tax returns, deeds, correspondence addressed to both parties, photos from family trips or events, papers, documentation, or other objects relating to the marriage, copies of the respondent's divorce certificates from any previous marriages, and/or information about where such divorce decrees may be obtained. Connection between relief and violence: This provides essential evidence for a VAWA case and undermines the ability of her abuser to harm her immigration case by not withholding or destroying these documents.

*(3) Other Materials which the DHS needs to establish that the parties have resided together and that the petitioner currently resides in the United States, or that abuse against her occurred in the United States*¹⁷³

As part of the petitioner's VAWA case she must prove that for some period of time she resided with the abuser. She must also prove that she currently resides in the United States or that one or more incidents of abuse occurred in the United States.¹⁷⁴ She may need evidence that may be in the abuser's control to prove these facts. Examples of this type of evidence includes leases, rent receipts, children's school records, utility bills, cancelled mail addressed to either or both of the parties at the same addresses during the same time frame, and income tax returns. Connection between relief and violence: It lessens the ability of the abuser to control the victim and allows the petitioner to gather evidence for her immigration case.

¹⁷⁰ Review Evidence Checklist in Appendix of this chapter.

¹⁷¹ Refer to Chapter 3 of this Manual, *VAWA Confidentiality*, for a full list.

¹⁷² Refer to Chapter 3 of this Manual, *VAWA Confidentiality*, for a full list.

¹⁷³ Refer to Chapter 3 of this Manual, *VAWA Confidentiality*, for a full list.

¹⁷⁴ This is true unless her abuser is a member of the U.S. military or a U.S. government employee stationed abroad. INA Section 204(a)(1)(A)(v) and 204(a)(1)(B)(iv).

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The immigrant victim needs access to property, documents and information that may be in the abuser's control. This is true whether she remains in the family home and evicts him or if she or he leaves the family home. The process for obtaining the information under a protection order may be different depending on whether she leaves or removes the abuser from the home. If she leaves, her protection order should include a provision ordering that the police accompany her to the family home and stand by to ensure that the petitioner collects all items listed in the order in each of the categories discussed above. If the abuser refuses to turn over documents, the police can charge him with violation of the protection order. If he claims that he does not have listed items, the police should document that in a police report so that the victim can return to court to have her order modified to require the abuser to pay any costs associated with replacing the missing documents.

If the abuser will be evicted from the family home, the police should be ordered to:

- accompany the victim to the home;
- serve the abuser with the protection order or temporary protection order; and
- stand by while the respondent removes only those items that are his personal clothing, personal effects, and items that the protection order says he can remove.

It is best that the victim prepare a full list of what the respondent can take with him in advance, and ideally have it attached to or included in the protection order. If she has not included these items in the protection order, she can work with her advocate to prepare this list and present it to the police. It is not advisable to put the immigrant victim in the position of negotiating with the abuser in front of the police regarding which items the abuser can and cannot take. With any potentially disputed items and any items the abuser may claim are his, which the victim may need for her immigration case or for a custody case or child support case, use and possession of these items should be granted to the petitioner as part of her protection order.

If the immigrant victim is concerned that her abuser may try to destroy documents in his control that she may need for her immigration case and if she can show she is in imminent danger, she could either obtain a temporary protection order removing the abuser from the house and ordering him to stay away and then locate the documents or obtain an emergency order that allows the petitioner to leave the home with these items. If the documents that she needs cannot be located at the home, she can either ask that the abuser turn them over to her in open court, on a certain date, or ask that the abuser pays the cost of her securing duplicate documents as part of her full protection order, or as part of a modified protection order.

- *The respondent shall pay to the petitioner through the court all costs associated with replacing documents destroyed, hidden or claimed to be missing by the respondent, including the petitioner's or the children's passports, alien registration cards, social security cards, birth certificates, bank cards, work authorization documents, driver's licenses, or papers in any immigration case filed on behalf of the petitioner or the children.*

By requiring the respondent to assume financial responsibility for destroyed documents, he is less likely to destroy essential documents. The destruction of documents can affect a woman's legal right to work, ability to establish her or her children's identity and right to legal immigration status. If the abuser does destroy or hide immigration documents or other documents or papers the victim may need for immigration or a child support case, the respondent should be ordered to pay for replacements so that the respondent's actions will not succeed in interfering with her immigration case.

The respondent's destruction of documents also has cultural ramifications as in many countries official documents are essential to functioning in normal society, and the respondent may feel that by destroying these documents he is exerting control over the victim. Many abusers and perpetrators may try to minimize in court the importance of document destruction. By downplaying these actions they hope to convince the judge that the document destruction is unimportant. Many judges who have not received training to understand the particular role that identity documents play in other countries may wrongly dismiss evidence about document destruction as irrelevant. The connection between document destruction and abuse: Ordering the perpetrator to replace destroyed, lost, or missing documents will further the victim's ability to work legally, and obtain public benefits and, in some states, a driver's license.

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- *The respondent shall sign a document in open court in which he provides under oath, both orally on the official court record, and in writing, the following information: the state, city and country of his birth, and the hospital in which he was born. The respondent shall sign the state form required to obtain a copy of his birth certificate in open court.*

This allows the petitioner to obtain a copy of the respondent's birth certificate, which may be necessary to prove his citizenship for a VAWA self-petition immigration case. His birthplace information is provided in open court. Some statutes require a signature for release of birth certificate information. If so, obtain the form and during cross-examination of respondent ask him if he will sign it. If he will not, ask the court to order him to do so. Connection between violence and relief: Granting the victim direct access to proof of the abuser's citizenship makes it easier for her to proceed with her VAWA immigration case. Respondent's testimony, under oath, is also evidence that she can submit the VAWA immigration case.

- *The respondent shall sign a prepared FOIA (Freedom of Information Act) DHS form with the results of this form to be sent the petitioner or the petitioner's attorney.*

A signed FOIA form can be used to obtain copies of a respondent's immigration case file and any case the respondent may have filed on behalf of the petitioner or the children. His immigration files may include the respondent's immigration case in which he obtained lawful permanent residency, the file in which he became a naturalized citizen, or the file that he completed on behalf of his abused spouse or children. This provision is useful if the respondent has been withholding information from the petitioner regarding the status of the immigration petition that he filed on her behalf and/or documentation of her legal status. The petitioner will be unable to access this information from DHS unless the respondent signs a FOIA form. A signed FOIA form can also be useful if the DHS has in its records information that is needed to prove that the respondent is a citizen or lawful permanent resident or needed to prove the respondent's prior divorces. (See Appendix for sample FOIA form). Connection between violence and relief: Lessens the batterer's control over the victim's immigration status, thus lessening his ability to abuse her.

- *The respondent shall turn over his A-number or a copy of his U.S. passport in open court along with a copy of documentation proving that he has provided the correct number.*

An essential requirement of a VAWA immigration case is providing proof of the abuser's immigration status. Foreign-born naturalized citizens and lawful permanent residents will have been assigned an "A-number" – an immigration case number – when they applied for lawful permanent residency. Obtaining this number is the most effective way for an immigrant victim to prove the immigration status of her abusive spouse or parent. Submitting the A-number as part of her VAWA immigration case allows the Department of Homeland Security to search its own records to verify that her abusive spouse is a naturalized citizen or lawful permanent resident. Similarly, obtaining a copy of a U.S. born citizen's passport provides evidence of citizenship that the victim will need for her VAWA immigration case. Connection between violence and relief: Granting the victim direct access to proof of the abuser's citizenship or lawful permanent residency status makes it easier for her to proceed with her VAWA immigration case.

- *The respondent shall under oath, sign a document in open court stating whether he has been previously married and identifying the jurisdiction in which each prior marriage was terminated, including the date each prior divorce or annulment order was issued. He shall also state whether or not he has copies of his divorce or annulment decree(s) and shall turn over to the petitioner copies of each decree.*

It is best if immigrant victims can include in their VAWA self-petitions evidence of the abuser's prior divorces. Immigrant victims who can prove that they went through a formal marriage ceremony with the abuser can file for VAWA relief even if the abuser was a bigamist. However, until the statutory change included in VAWA 2000 is incorporated in new DHS regulations, it may be easier to request that the abuser provide this information. This provision helps the petitioner safely obtain this information and gives the petitioner access to proof that will facilitate swifter approval of her VAWA self-petition.

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- *The respondent shall not remove the children from the court's jurisdiction and/or the United States absent a court order, and shall relinquish the children's passports to the petitioner or the court.*

As a control tactic, abusers often threaten to abduct children and, in many cases, actually carry out these threats. In 1988, the Department of Justice estimated that parents or family members abducted 354,000 children in the United States.¹⁷⁵ It is suspected that 31.8% of these abducted children were taken out of the U.S.¹⁷⁶ If abusers manage to remove children to other countries, then it may be particularly difficult to trace or retrieve the children. If a provision designed to prevent removal of the children from the United States is included in the protection order, a copy of the order must be forwarded to the Office of Passport Services within the Bureau of Consular Affairs of the United States Department of State to prevent the issuance of passports or duplicate passports for the children if the respondent attempts to obtain them.¹⁷⁷ The children should also be registered in the State Department's Children's Passport Alert Program that will notify the victim if the abuser tries to obtain another passport for the children.¹⁷⁸ Connection between violence and relief: The dangers of international child abduction are real. Too often courts and attorneys do not take these threats seriously. Anytime the abuser makes threats that he will take the children and/or that he will prevent the victim from seeing the children ever again, it is important to explore with the victim the likelihood of future international child kidnapping. Some of the questions to ask include the following:

1. Does the abuser have family members or friends living abroad?
2. Does the abuser have the financial means to travel abroad with the children?
3. Has he in fact taken trips abroad in the past to visit family living abroad?
4. Has the abuser himself lived abroad?
5. Is the abuser's country of origin a member and signatory to the Hague Convention?
6. Has the abuser made threats to kidnap or sequester the children or prevent her from seeing them?
7. Has the abuser recently lost or left his job here in the United States?
8. Is the abuser documented or have family members in the U.S. that are documented?

Obtaining a protection order containing provisions that require that the abuser not remove the children from the court's jurisdiction can help prevent international kidnapping. Orders restricting the respondent from kidnapping the petitioner's children, and/or requiring respondent to turn over the children's passports, lessen his ability to threaten and abuse the victim. This provision should be included in the protection order whenever the abusive relationship has included threats of parental kidnapping.

The order should also address the mechanics of how and to whom the passports should be turned over. They can be turned over, in open court, to the petitioner or it can be ordered that the passports be held by counsel for petitioner. The passports could also be turned into the court to be held in the court record and turned over by the court to the petitioner.

- *The respondent shall sign a statement that will also be signed by the petitioner and the judge informing a (particular) embassy or consulate that it should not issue a passport (in the case of dual national children) or for U.S. citizen children a visitors' visas or any other visa to the child(ren) of the parties absent an order of the court.*

This provision provides an additional mechanism to prevent possible international kidnapping. A copy of the protection order must be filed by the petitioner with any potentially relevant consulates, passport offices, embassies, and airlines to prevent the issuance of a visa and the removal of the parties' children from the United States. Connection between relief and violence: In many cases, this provision has been very effective in preventing the removal of U.S. citizen children from the United States by their abusive parent.

¹⁷⁵ LINDA K. GIRDNER, PH.D & PATRICIA M. HOFF, ESQ., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, OBSTACLES TO THE RECOVERY AND RETURN OF PARENTALLY ABDUCTED CHILDREN 1 (1994).

¹⁷⁶ Klein, *supra* note 28, at 981.

¹⁷⁷ For a more detailed discussion on the removal of children, see Chapter 6 of BREAKING BARRIERS, *supra* note 1.

¹⁷⁸ For more information on how to use the Children's Passport Alert Program, see Chapter 6 of BREAKING BARRIERS, *supra* note 1.

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- *The respondent shall post a \$_____ bond that shall be forfeited if the respondent removes the children from the jurisdiction or from the country. The respondent shall purchase for the petitioner a full fair open unrestricted airline ticket to the respondent's country of origin and provide the ticket by ____ date to the petitioner.*

Both this provision and the previous one either separately or together can be included in a protection order to deter international child abduction. The bond should be set at a sufficient level to effectively serve as a deterrent to flight. Purchase of the airline ticket ensures that, should the children be abducted, the petitioner will have the means to travel to the abuser's home country in connection with legal actions to secure the return of her abducted children. Connection between relief and violence: In many cases, this provision has been very effective in preventing the removal of U.S. citizen children from the United States by their abusive father.

Specific Legal Issues Regarding Family Violence Civil Protection Orders

Trial Issues¹⁷⁹

SERVICE OF PROCESS

Most states require that notice of the protection order hearing and any *ex parte* order be served personally on the respondent by the local police, sheriff, or a process server hired by the petitioner. If petitioner does not know where respondent is, the attorney should find out if petitioner knows the location of respondent's parents, brothers, sisters, and other relatives or friends who may know the respondent's whereabouts. Petitioner may be able to file a motion for substituted service instead of personal service. Some states allow for service by publication if personal service is not possible.¹⁸⁰ If the immigrant victim will be arranging for service through a process server, she should consider having service carried out at the perpetrator's work place, where it may be safest. If the petitioner has obtained a temporary protection order removing the abuser from the family home, then that order should be served by the police on the respondent when they accompany her to the home.

STANDARD OF PROOF IN *EX PARTE* PROCEEDINGS

The standard of proof in *ex parte* proceedings is usually good cause, but may vary by state. Good cause can be proven through testimony and other evidence, which establishes that (1) the respondent abused the petitioner and (2) the petitioner's fear of future abuse is reasonable. Case law suggests that the petitioner must show that she is at risk of imminent harm¹⁸¹ and that she must show this by a preponderance of the evidence.¹⁸² In most, if not all jurisdictions, evidence of recent physical violence is sufficient proof of imminent harm.¹⁸³ Further case law illustrates that a broad range of acts, threats, or situations are sufficient to constitute imminent harm, including petitioner's fear that respondent would kidnap their children, the respondent's visitation violations, and an anonymous tip to the police that the perpetrator was going to kill the petitioner.¹⁸⁴

STANDARD OF PROOF IN FULL PROTECTION ORDER PROCEEDINGS

The standard of proof in full protection order hearings is generally a preponderance of the evidence, but this may vary by state.¹⁸⁵ This standard of proof can be established by showing that the petitioner has been the victim of recent abuse or harassment by the respondent. Some jurisdictions have removed the requirement of a recent act from their state's statute. In order to determine whether the standard of proof has been met, courts have acknowledged that past abuse is a factor that the court will consider. Thus, it is highly recommended that the petitioner include not only a listing of recent abuse but also an overview of the history of violence or course

¹⁷⁹ See Chapter 3 of this Manual, *VAWA Confidentiality*, for evidence checklist that can be useful in preparation for a protection order hearing.

¹⁸⁰ Klein, *supra* note 28, at 877-80.

¹⁸¹ *Id.* at 1036.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 1043-48. Preponderance of the evidence is generally considered that the credibility scales tip toward believing the petitioner (51%).

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of conduct in her protection order petition. The petitioner should include as many specific incidents of violence and threats as she can remember with approximate dates. In some jurisdictions, it is a two-pronged test—the petitioner must prove a history of domestic violence and the likelihood of future violence. If the parties have children, there will undoubtedly be future contact between the parties. If petitioner is dependent on respondent by virtue of an immigration application, this may also be true.

A petitioner's testimony alone can meet the standard of proof for issuance of a protection order. Thus it is very important that advocates and attorneys working with immigrant victims carefully explain that her testimony *is* valid evidence in the United States legal system. The testimony of immigrant victims will be more credible if the victim's fears about the legal system are addressed, if she has correct information about the system and if she has had an opportunity to see how the judicial system protects battered women before she will need to testify in her case. In addition to the immigrant victim's testimony, attorneys and advocates should assist immigrant victims in gathering and presenting other evidence that will be helpful to the court. Examples include witnesses, photographs, police reports, and medical reports to corroborate the victim's testimony. Presenting these types of evidence will help victims obtain comprehensive remedies addressing their specific needs. These forms of corroborating evidence will also assist the petitioner in proving her case if the respondent contests the case, seeks custody of the children, or comes to court with an attorney.

PREPARATION

Advocates and attorneys should prepare immigrant victims thoroughly for the protection order hearing or any open legal proceeding, including a review of the court procedures, potential questions that will be asked, proper courtroom attire, and behavior. Before explaining how the U.S. legal system functions, ask immigrant clients about their expectations of the legal system and help them understand how our system differs from the legal system in their home countries. Immigrant victims are often unfamiliar with the U.S. legal system. Unless they are informed otherwise, they expect it to function much like the legal system in their country of origin. In their home country, oral testimony may not be valid evidence; judges may serve both the prosecutor and the judge and may not be impartial, and may even function by having the person with the most money and political connections win (this is usually the abuser).

When immigrant victims are being prepared to present testimony at the protection order trial, it is very important for attorneys and advocates to explain that testimony is valued evidence in the U.S., and that a woman's testimony has the same value as a man's. Failure to identify and address the immigrant victim's concerns or misinformation about our legal system could affect the quality of her testimony and ultimately her credibility. Reviewing these issues with a client may significantly improve the client's credibility as a witness, as she will be able to better understand the proceedings and therefore be more forthcoming with details of her abuse. The client will testify more effectively if she thinks the court will believe her, if she knows that in our system testimony is valid evidence, and if she knows that the respondent is an equal party and cannot bribe the judge or court officials. This will allow the client to understand the importance of a victim's personal testimony, and envision a court issuing a protection order crediting the victim's oral testimony. It may be helpful to take the immigrant victim to court in advance of her hearing to watch other cases in order to bolster her confidence in our system and make her a more credible witness. It is recommended that an attorney prepare the immigrant victim through mock trials, so that she is comfortable with the line of questioning, the role of the judge, opposing attorney, and various other key participants and witnesses in her case. To summarize: advocates and attorneys can do the following to help prepare immigrant clients for civil protection order hearings:

- ask clients about what they expect of the legal system;
- describe how the U.S. legal system works;
- describe the difference between the U.S. system and that in her country of origin;
- review procedures used in the local court;
- offer to take the client to court to see protection order proceedings in other cases;
- review the questions that may be asked should a hearing be necessary with the client;
- review the questions that the defense attorney and/or the judge may ask; and
- explain proper courtroom behavior and dress.

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When preparing the client for her testimony in court, it is important to recognize the psychological impact of physical, mental, emotional, and sexual abuse that may interfere with the quality and credibility of her testimony. The victim may appear angry, hostile, withdrawn, passive, anxious, terrorized, or numb. Each of these presentations may be a “normal” reaction to trauma. An immigrant victim’s demeanor and oral testimony in court may be strongly affected if the victim is encountering the batterer for the first time since the abuse or assault occurred. However, a victim with strong support from family, friends, and advocates will appear more assertive, strong, and competent as a witness.¹⁸⁶

It is also important to recognize the cultural factors that may restrict the client from discussing intimate abuse, especially in the presence of her perpetrator and other male strangers. Advocates and attorneys need to work through these issues beforehand, to ensure that the client gives a complete, accurate, and uninhibited account of her abuse. It may be the first time she has shared such intimate and traumatic details with anyone, so she may not be emotionally prepared to tell her “story” in a manner that can be used as testimony. Specifically, attorneys and advocates should explore whether the respondent ever forced the petitioner to engage in sexual relations against her will, and if so, how often. Often times, clients will believe that if they are married to their abusers it is not against the law to force her to have sex.

It is important to make sure that a professional interpreter is available if needed. Although the National Center for State Courts and the National Institute of Justice strongly recommend that all courts have interpreters assist limited English proficient protection order applicants when filing for a temporary and/or full protection order hearing, the court may not always provide interpreters, they may charge fees for interpreting services, or they may have interpreters who, while certified and free, are not trained in sexual assault and domestic violence issues. Interpreters from the petitioner’s family or tight-knit cultural community may not translate appropriately due to shame, embarrassment, or loyalty to the respondent. It is possible to find qualified interpreters through nonprofit organizations in the petitioner’s community, through a local university, or a domestic violence organization with bilingual staff. Interpretation should not only be available at the court hearing; it should also be available to lawyers/advocates who need interpretation to communicate with their clients. It is important to have interpreters trained in domestic violence issues and cost-effective (or free) professional interpreters throughout the advocacy process.¹⁸⁷

Attorneys and advocates should take steps in advance to address the interpretation needs of clients. Hiring bilingual staff is the best way to address this need for significant language minority population.¹⁸⁸ Paid staff could include part-time interpreters who have been trained on domestic violence issues. They can be on-call, and paid on an as needed hourly basis. Part-time interpreters may be recruited from local universities, religious groups, social services agencies, and immigrant rights groups. Other ideas include funds in the agency budget to hire interpreters from the Language Line, and other similar resources for languages spoken by immigrant victims who are isolated from others who speak their language. In the long run, the best and most cost-effective approach is for advocates and attorneys to urge local domestic violence coordinating councils to advocate for passage of an interpreter statute or court rule that requires state or local jurisdiction to establish an interpreter service that is provided by the court to all who need its services in criminal and family court. These services should be free to indigent clients and available on a sliding fee scale for other litigants with some means to pay.

OBTAINING A JURISDICTIONALLY SOUND PROTECTION ORDER

Advocates and/or attorneys should attempt to negotiate a consent order with the respondent or the respondent’s counsel (if represented). If the respondent does not agree to the provisions listed, the immigrant victim’s attorney should be prepared to litigate the case. As more and more immigrant victims seek protection orders, courts are seeing higher caseloads, and are seeking ways to dispose of these cases more quickly. In response, some jurisdictions have begun to encourage greater numbers “of consent” protection orders.

¹⁸⁶ MARY DUTTON & GISELLE HAAS, AMERICAN BAR ASSOCIATION MANUAL ON VAWA CASES. (1999).

¹⁸⁷ For more information on language access and working with language interpreters, see Chapter 2 of this Manual, *Language Access, Confidentiality, Interviewing and Safety Planning*.

¹⁸⁸ ORLOFF *supra* at note 48.

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It is absolutely essential that immigrant victims understand the implications of accepting a consent protection order that, on its face, states that it is being issued without any finding of abuse or admission by the respondent, as such orders can undermine the petitioner's immigration case. Protection orders that explicitly state that the court is making no findings of abuse risk being found jurisdictionally unsound on appeal.¹⁸⁹

Subject matter jurisdiction in a civil protection order case under all state protection order statutes is conferred when an incident of sexual assault/domestic violence/harassment, as defined by the state statute, has occurred. Without any type of finding by the court that sexual assault/domestic violence/harassment has occurred, the court lacks the authority to issue a protection order. Parties by consent cannot confer subject matter jurisdiction on a court that does not have it.¹⁹⁰ Subject matter jurisdiction is fundamental to the court's authority to issue a protection order.¹⁹¹ Thus, courts should not be issuing protection orders that on their face state that the order is being issued "without findings" and/or that the court is entering the order without making any finding as to abuse.

Such orders are dangerous for abuse victims for a number of reasons. First, an order without findings may undermine the ability of courts to have perpetrators turn over weapons. Second, it may limit a victims' access to immigration relief and public benefits if she is also a victim of domestic violence. Third, it allows the perpetrator to avoid accepting responsibility for his violent and abusive behavior, thereby undermining the protection order's effectiveness. This does not mean, however, that courts cannot issue protection orders by consent of the parties. The court can issue a valid jurisdictionally sound protection order in one of three ways:

1. *The perpetrator can admit facts sufficient to support the issuance of a protection order either in the process of consent negotiations or to the court.* Although the victim may have included numerous incidents of violence and harassment in her petition, the perpetrator need only be willing to admit one offense, however minor (e.g. a push, shove, or threat of violence) that qualifies under the state statute. Courts often successfully issue consent protection orders on this basis.
2. If the perpetrator is willing to consent to the issuance of a protection order with the remedies the victim is seeking but is unwilling to admit the assault, harassment, or abuse specifically, *the court can base subject matter jurisdiction on the uncontested affidavit of the petitioner.* The court should review the affidavit and determine whether it contains facts that constitute sexual assault/domestic violence/harassment under state law. If the facts in the petitioner's affidavit are sufficient to support the issuance of a protection order, the court can treat it as any other uncontested civil court action and grant the protection order based upon the uncontested affidavit of the petitioner that the court finds to be credible. In practice, any time the parties agree to relief, the court, after reviewing the petitioner's affidavit, can issue the consent protection order on the standard form that contains a reference to the statutory authority for issuance of protection orders. The petition must plead facts that would constitute an intra-family offense. That gives that court statutory authority to issue the protection order. When the court issues a consent protection order, the court should issue the order on the standard court form just as it would do after a hearing. The provisions of the protection order can be those agreed upon by the parties. Courts in jurisdictions across this country currently issue consent protection orders in this manner.
3. If the respondent is unwilling to admit any abuse and is unwilling to agree to the relief the petitioner is seeking, or is only willing to agree to the issuance of a protection order "without a finding," *the petitioner should ask the court for a hearing.* Issuance of a protection order without findings can be harmful to the immigrant victim for several reasons:
 - It can undermine her domestic violence or sexual assault-related immigration case;

¹⁸⁹ For a more complete discussion of this issue, see Chapter 15 of this Manual, *No Findings Protection Orders*.

¹⁹⁰ *Am. Policyholders Ins. Co. v. Nyalcol Prod., Inc.* 989 F.2d 1256 (1st Cir. 1993); *Latin American Cas. Ins. Co. v. Hi-Lift Marina, Inc.*, 887 F.2d 1477 (11th Cir.1989); *Bush v. U.S.*, 703 F.2d 491 (11th Cir. 1983).

¹⁹¹ See generally *Billingsley v. CIR*, 868 F.2d 1081 (9th Cir. 1989).

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- It can be more difficult for the immigrant victim to be awarded custody of the parties' children;
- It can allow the perpetrator to retain his firearms avoiding federal laws that require that abusers with protection orders be barred from purchasing fire arms and obtaining a fire arms license;
- It can make it less likely in a divorce case for the immigrant victim to be able to retain the family home or to obtain an equitable distribution of the family assets;
- It can make it difficult for the immigrant victim to access welfare benefits, particularly those who are lawful permanent residents; and
- It allows the abuser to avoid accepting responsibility for his violence and can undermine the effectiveness of the order.

Advocates and attorneys must encourage immigrant clients to object to these consent orders, and request a full protection-order hearing. If the judge refuses to hold the hearing, the petitioner should object and appeal the decision. If the judge holds the hearing but retaliates in some way against the petitioner for demanding this hearing, she should appeal. Particularly in a strongly contested situation, it is important that the immigrant victim be prepared to prove her case. The victim's ability to win a hearing and/or appeal will be much improved if she has come to court ready to testify and with some evidence corroborating at least one incident of abuse. By doing so, the petitioner should be able to successfully argue that courts do not have the jurisdiction to issue protection orders without a finding or admission of abuse.

It should be noted that the process of obtaining a consent protection order is a *negotiation*. If the respondent does not consent to the protection order, the petitioner should ask the judge to hold a hearing and issue an order at that hearing. In negotiations to determine if a consent protection order can be issued, advocates and attorneys working with immigrant victims should advise the client to litigate the case or sign the consent order based on the strength of the case, the court's willingness to grant specific provisions sought, the need for a judicial finding of domestic violence/sexual assault for future immigration, welfare, or custody cases, and the client's desire to testify and/or hold the perpetrator accountable. It is important to prioritize the client's safety, including how her safety will be enhanced by her ability to obtain immigration relief.

◇ Obtaining a protection order at trial. It is important when working with immigrant victims to come to court on the date of the protection order hearing prepared to litigate. Advocates and attorneys working with immigrant victims should help the petitioner prepare and provide testimony and evidence informing the court about:

- The history of violence in the relationship;
- Any of the petitioner's or the petitioner's children's injuries;
- The affect of violence on the petitioner and/or children, including threats to abduct and/or harm the children;
- How the abuse has affected the children, and the children's counseling needs;
- The petitioner's role in the care and custody of the parties' children;
- Evidence supporting the petitioner's request that the respondent's visitation be supervised;
- The respondent's use of control over the petitioner's access to her immigration status as a tool to maintain power over her and perpetuate violence and abuse, and any threats or actions taken to call DHS to report the petitioner, or other attempts to have her deported;
- Information about the respondent's financial status, employer, and earnings, so that the petitioner can be awarded support;
- A list of documents and items of which the victim needs to take possession, including documents that will help in the petitioner's immigration case;
- The respondent's possession of, threats about, or ability to obtain weapons;
- Threats against the petitioner and/or family members, both in the U.S. and abroad;
- The respondent's abuse of drugs and/or alcohol;
- Any history of mental illness of the respondent;

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- The respondent's threats of suicide; and
- The criminal record of the respondent.

To prove that the immigrant victim is entitled to a protection order, to prove each of the facts listed above, and to prove that the immigrant victim is entitled to the relief she is requesting be included in her protection order, the immigrant victim will need to provide testimony to the court. Additionally, she should identify persons who witnessed the abuse, the effects of the abuse, including any injuries, and who would be willing to testify at the hearing on her behalf. Testimony is particularly helpful from persons who may have witnessed the violence itself, have seen the injuries that resulted from the abuse, or who may have arrived at the home while the violence was taking place or shortly thereafter (e.g., police). Law enforcement officials will be less subject to intimidation from the abuser than other witnesses, so it is particularly useful to have them as witnesses in cases in which the abuser has threatened other witnesses.

There can be significant benefit to having potential witnesses arrive with the petitioner at the court. First, should the perpetrator be unwilling to consent to the issuance of the protection order, or should he contest relief she is seeking, the petitioner will be able to proceed directly to a hearing and will not have to worry about whether her witnesses will arrive on time. Second, the presence of the witnesses may encourage the abuser not to contest the issuance of the order containing the requested relief, because he may be less willing to have a hearing when he knows that there are witnesses ready to testify on the victim's behalf. This is particularly true when police officer witnesses come to court on the victim's behalf. Finally, witnesses can provide support to the victim who may be seeing her perpetrator for the first time since the last incident. Advocates should check the local court rules for issuance of witness subpoenas, to ensure that witnesses are present at the time of the hearing.

In addition to coming to court with witnesses, immigrant women's advocates and attorneys need to gather various forms of documentary evidence and be prepared to issue this evidence should there be a hearing. Examples of documentary evidence might include photographs of injuries and/or the crime scene; items torn, burned, or destroyed during the violence; transcripts or tapes of 911 calls; police records; and medical records.

OTHER ISSUES REGARDING PROTECTION ORDER TRIALS

◇ Right to a Jury. The respondent does not have a right to a jury in proceedings for the issuance or modification of protection orders.¹⁹²

◇ Right to Counsel. The respondent does not have a right to an appointed counsel at a court proceeding to issue or modify a protection order, even if custody is an issue.¹⁹³

◇ Double Jeopardy. Since issuance of a protection order is a civil matter, the perpetrator cannot raise the defense of double jeopardy to prevent the issuance or modification of a protection order. Criminal prosecution would never preclude the victim from filing for a protection order based on the same incident. Immigrant victims should always try to obtain a civil protection order, even if a stay-away order has been issued in a criminal case. This provides protection for the victim in case the prosecution dismisses or does not successfully obtain a conviction in the criminal case. When the criminal case ends, so does the protection of the criminal stay-away order, even if the victim needs continued protection. The civil protection order will continue to protect her from her abuser without regard to the outcome of the criminal case.

Protection Order Enforcement

Upon leaving the courthouse with a signed protection order, the advocate and/or attorney should explain enforcement procedures to the client, and make sure that she understands what actions she can take to enforce

¹⁹² Klein, *supra* note 79, at 1070.

¹⁹³ *Id.*

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her order. Protection order violations are criminal offenses in all states. If a violation occurs, states can prosecute the respondent for criminal violation of the protection order.

When considering enforcing a civil protection order, victims should be informed that non-citizen abusers might be deported if convicted of violating protection orders.¹⁹⁴ Advocates and attorneys working with immigrants considering enforcing protection orders need to do a thorough safety assessment to determine whether she can safely enforce her protection order. Safety for some immigrant victims will be increased if the perpetrator is deported. For some other immigrant victims the danger to the victim and her family members could be worse if the abuser is deported. Further, if this is the first protection order violation and the victim experienced no substantial injury, she may wish to give the abuser the opportunity to seek treatment and comply with the order.

The immigrant victim should also be informed that there are two ways to enforce a protection order if the perpetrator violates it. First, she can call the police to have her order enforced. When police and state prosecutors enforce protection orders, the enforcement proceeding will be a criminal case brought by and controlled by the prosecutor. Second, the victim can also file a contempt action if the respondent violates the protection order. Victims may file civil or criminal contempt actions to enforce protection orders. The victim controls these actions. A civil contempt proceeding may be desirable when the provisions of the protection order the victim is seeking to enforce involve the abuser's compliance with these types of protection-order violations:

- failure to vacate the family home;
- failure to turn over documents, items, or articles that the court has ordered the abuser to place in the petitioner's possession;
- failure to pay child support, spousal support, rent, or mortgage payments or other payments;
- failure to turn over the children's passports;
- failure to provide the victim with a copy of the abuser's passport, birth certificate, or INS-issued "A" number; or
- failure to return children after visitation.

Generally, at the conclusion of a civil contempt proceeding, the abuser is given a specific time by which to pay the money or turn over the materials. If he fails to do so he is jailed until he complies. It is important to note that civil contempt proceedings for violation of the provisions of the protection order other than provisions that preclude violence, threats, attempts, harassment, and stalking, will not make the abuser deportable.

The immigrant victim may also enforce the order through the criminal contempt process. In a criminal contempt case, the victim brings charges for violation of the protection order against the abuser. This is a way to criminally enforce the order, potentially jailing the abuser as punishment for his protection order violations, in a case that the victim controls. It is important to recognize that a perpetrator who commits a crime against a victim in violation of a protection order may be subject to two types of actions in criminal court: (1) a criminal contempt action by the survivor, and (2) a criminal prosecution by the local prosecutor for the crime itself. The victim can bring her own criminal contempt action against the perpetrator, without prosecution for the underlying sexual assault/domestic violence/harassment/stalking crimes, so long as she seeks criminal contempt convictions for violation of the protection order only and not for commission of the underlying crime.¹⁹⁵ Criminal contempt can be charged for:

¹⁹⁴ Section 237(a)(2)(E)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(E)(ii)(2006) ("Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible *threats of violence, repeated harassment, or bodily injury* to the person or persons for whom the protection order was issued is deportable.") (Emphasis added).

¹⁹⁵ Survivors who believe that a criminal prosecution against the perpetrator is possible therefore should carefully structure their enforcement actions to avoid the problem of double jeopardy. Double jeopardy occurs if the respondent is being simultaneously or subsequently prosecuted for the same exact crimes by both the court in the contempt case and the court in the criminal case. The petitioner can avoid a double jeopardy violation by filing a contempt action for the respondent's violation of the protection order, not his criminal actions that he committed when he also violated the protection order; *United States v. Dixon*, 509 U.S. 688 (1993), referred to and discussed in Klein, *supra* note 79, at 810.

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- any further abuse
- harassment
- threats
- stalking
- violation of the stay away/no contact provisions
- failure to turn over the children after visitation
- kidnapping or sequestering the children.

Convictions for violations of a protection order in a criminal contempt proceeding are deportable offenses for non-citizen perpetrators, as are criminal enforcement of the protection orders by police and prosecutors. Advocates and attorneys working with immigrant victims whose perpetrators are non-citizens should undertake safety planning to determine whether the immigrant victim can safely cooperate in the prosecution of the perpetrator for criminal contempt or criminal prosecution for violation of the protection order.

Advocates should encourage the survivor to call the police if she is in danger, yet also support her decision not to call the police. This is particularly important if after lethality assessment and safety planning, she decides that her perpetrator's deportation actually enhances danger to her and her family members and/or may lead to attacks against herself, her children, or family members living in the United States or abroad.

There are important steps advocates and attorneys can encourage victims to take whether or not they are initially willing to use the justice system to enforce their protection orders. Attorneys working with immigrant victims must carefully explain to the victims the potential immigration consequences of enforcement. The following are steps clients can be encouraged to take whether or not they currently plan to enforce their protection orders:

- Calling the police to report violations even when the client is not asking the police to make an arrest or take other action. Most police departments have procedures for taking police reports of criminal activity after the fact and for handling cases in which they or the victim are not seeking an arrest. Filing of such reports in a timely manner relatively soon following an incident, or to document past unreported incidents when the victim has delayed in coming to the advocate or attorney for help, can document the domestic violence should there be future incidents of abuse or should the survivor in the future decide that she needs to enforce her protection order.
- Keep a journal or make notations on a calendar of all protection-order violations.
- Document the effect that protection order violations have had on themselves and on their children.
- Tell someone else: a friend, a co-worker, a therapist, a trusted family member, or a member of the clergy about ongoing abuse and protection order violations.
- Take photographs of injuries, destruction of property, unwanted gifts.
- Keep letters, e-mails, and phone messages.
- Report injuries to health professionals.

It is important to explain to immigrant clients that having this type of documentation may increase their protection in the future. Should violence and/or violations of the protection order increase, immigrant victims who have been helped to gather this documentation will be better able to enforce their protection orders. In addition, as mentioned above, these forms of documentation may be extremely helpful for the immigration relief available to the victim.

Modification of Protection Orders

If an immigrant victim wishes to amend any provisions of her protection order, she may file a motion to modify the order. Advocates and/or attorneys should inform her that she has the right to modify the order and support her in making that decision. She may wish to seek modification for a variety of reasons. She may not have received a form of relief in her original protection order that she now needs. For example, she may have wanted to continue living with her abuser originally, and now wishes to separate because there has been ongoing abuse or threats. In this case, she can choose to file a motion to modify her order based on continued

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abuse, ask the court to remove the abuser from the family home and grant her custody and child support, or she can file a motion for criminal contempt and modification of the order (see discussion of motions for contempt above in the section on enforcement).

On the other hand, she may have been separated from her abuser at the time she received her protection order and now wants to reunite with him. If she wants to reunite with her abuser, she may do so without being prosecuted for having violated her own protection order.¹⁹⁶ However, judges in contempt actions may be more lenient in sentencing abusers when the victim and abuser have reunited after the protection order was issued. Generally, judges will be willing to enforce the protection order should future violence occur despite reunification, even when the protection order was not modified as the order was against the respondent not the petitioner. However, it may be more difficult should the victim want the abuser to move out and wish to enforce and modify the order to state “no contact” provisions without future violence or threats. If the petitioner wants to reunite or has reunited with her abuser, it is advised that she seek modification of her protection order. Advocates or an attorney should remind her that she can always come back for legal assistance or advocacy in reinstating the old provisions of her protection order, if the parties again separate. It is vital that attorneys and advocates work with her to develop or revise a safety plan that uniquely addresses her situation upon reconciliation with the abuser.

Another reason women often seek modification of their civil protection orders is that they want to give the abuser generous visitation time with the children because they believe he is a “good father.” This is especially true when the abuser has not physically hit or injured the children. Abusers will often times use their visitation time to inflict more abuse by manipulating the children, bad-mouthing the victim, or by trying to use the children to find out information about their mother. In these situations, a motion to modify may be essential to protect the safety of the victim and children.

The immigrant victim may need to modify because the perpetrator is using other ways to harass or intimidate the victim or her family that were not specifically listed in the protection order.

Advisories

When protection orders involve non-citizens as petitioner, respondent, or both, the issuance of a protection order can have certain benefits and/or consequences particular to non-citizen victims and respondents. Advocates and attorneys involved in coordinated community responses to domestic violence, in judicial training, in court systems advocacy, and/or in representation of battered immigrants seeking protection orders, should urge judges to provide critical information to both parties in all protection order cases. It is best if these advisories from the bench be given in all cases because the court, attorneys, and advocates can never know for sure whether one of the parties is an immigrant. If the courts are unwilling to do this in all cases, judges may be willing to do so in cases in which a party requests one or more of the advisories listed below, or in cases in which the court becomes aware that one or both of the parties is a non-citizen. When training judges, it is important to emphasize that it is not prudent for the court to seek out information about any party’s immigration status. The court can convey the needed information to all parties, and any particular party’s immigration status is not relevant to any family court or protection order proceeding.¹⁹⁷

There are four issues courts should address in advisories to the parties in all protection order cases:

1. Any person can seek and receive a protection order without regard to immigration status.
2. The issuance of a protection order has no immigration consequences for either party.
3. Issuance of a protection order may provide evidence that could be helpful to a petitioner in her immigration case; and
4. Violation of a protection order is a deportable offense.

¹⁹⁶In all states, except Hawaii and Iowa, the protection order is between the court and the abuser, only the abuser may be prosecuted for protection order violations. Victims should not be prosecuted for aiding and abetting the abuser’s violation of the court order, if the parties resume living together in violation of court orders. A sample amicus brief in the case of *Harrison v. Harrison*, articulating the legal arguments against enforcing protection orders against victims in see Appendix C, Chapter 5.3 in *BREAKING BARRIERS*, *supra* note **ERROR! BOOKMARK NOT DEFINED.**

¹⁹⁷ See full discussion of immigration status and jurisdiction in Chapter 6 of *BREAKING BARRIERS*, *supra* note 1.

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When the court opens proceedings each day, along with advising courtroom attendees that the petitioners are to sit on one side of the courtroom and respondents on the other, the court should inform all parties that the issuance of a protection order does not have any immigration consequences. Further, the judge should state that any person who has been abused might seek and obtain a protection order without immigration consequences. The court may also wish to advise respondents at this time that any violation of a protection order is a deportable offense for any non-citizen. Courts should be urged to provide the information that the issuance of a protection order could help petitioner's immigration case only upon issuing the protection order, so that providing this information is not perceived by the court as influencing the victim's testimony should a hearing be necessary.

◇ Recommended advisory at opening of protection order proceedings: “This court's role in these proceedings is to issue orders of protection in cases in which the court believes that a domestic violence offense under the statutes of this state occurred. The court will issue such orders without regard to the immigration status of either the petitioner or the respondent. Further, the issuance of a protection order will not have negative immigration consequences for either party. However, violation of a protection order issued by this court can be a deportable offense for any respondent who is a non-citizen.”

◇ Advisory upon issuing the protection order: Additionally, before issuing a consent protection order, or after holding a hearing on the issuance of a protection order, and before issuing the order the court should issue the following advisory in open court to both parties on the record:

“The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as codified at 8 U.S.C. Sec. 1227(a)(2)(E)) makes a violation of this Order a deportable offense. If you are not a U.S. citizen, *which includes being a lawful permanent resident or other lawfully present non-citizen*, violation of this Order may result in your being deported.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 also makes a conviction for a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment a deportable offense. If you are not a U.S. citizen, *which includes being a lawful permanent resident or other lawfully present non-citizen*, and you violate this order or are convicted for one of the above listed offenses, you may be deported.¹⁹⁸ Petitioners who have been awarded protection orders by the court should know that immigrant victims of domestic violence might be eligible to receive legal immigration status as victims of domestic violence. Any non-citizen who wants a referral to a battered women's services agency that can advise her of her legal rights to immigration benefits and other services available for victims of domestic violence should ask the courtroom clerk for a brochure that will provide petitioners information about services available in our community to help victims of domestic violence.”

Conclusion

In terms of remedies, lawyers or advocates should know the specific scope of protections available in their state. A chart detailing each state's statute is included in the appendix. They should see how those provisions overlap with traditional and creative provisions as outlined in the intimate relationships part of this chapter. Many of the provisions do overlap, and the discussion above will also be relevant to the non-intimate context. Attorney and advocates should consider traditional protection order provisions with any possible catchall provisions. Where a catchall provision does exist, attorneys should advocate for creative use of catchall provisions. Additionally, where a perpetrator does not fall under a typical state protection order, but is well known to the victim, lawyers and advocates should also consider protection order provisions used in intimate relationship situations.

¹⁹⁸ Suggested Order for Protection Relief for Battered Immigrants. Centro Legal (3/16/98).

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Jurisdictionally Sound Civil Protection Orders¹²

By Alicia (Lacy) Carra, Leslye Orloff, Jason Knott, Darren Mitchell

What is a protection order?

A protection order, sometimes called a 'restraining order,' is an official court document that provides specific restraints on the actions of an abuser and/or assailant. A victim of domestic violence, sexual assault, trafficking, or other criminal activity may want a protection order to keep physical distance between herself and her assailant, to protect her family and home, or to try to prevent further violence. Protection orders were developed to offer a civil remedy to victims without involving the criminal justice system.³ For a more detailed explanation of what protection orders are and how an

¹ "This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women."

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](http://www.supremecourt.gov/opinions/12-307/wl_2013_0084), 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 *D.C. Intrafamily Offenses Act, 1969: Hearings on H.R. 8781 Before Subcomm. No. 1 To Establish Family Court System*, 91st Cong. (1969). For more information about protection orders look to: LESLYE E. ORLOFF & CATHERINE F. KLEIN, DOMESTIC

immigrant survivor can access a protection order, please see the protection order chapter in this manual.⁴

Why is jurisdiction important in receiving a protection order?

A protection order tells an abuser/assailant they cannot commit certain acts. In order for a court to have the jurisdiction to restrict someone's activities the court must have a legally valid reason for doing so. In the case of a protection order there must be a finding of violence or the threat of violence. If a court tries to restrain someone's activities without a statutorily recognized reason for doing so they lack any constitutional justification for limiting someone's actions, which means they lack the subject matter jurisdiction to control someone's actions.⁵

A protection order without a finding of domestic violence is an order issued by a court without subject matter jurisdiction, and is therefore invalid.⁶ Protection orders issued without findings violate the Violence Against Women Act's (VAWA) full faith and credit provisions and are unenforceable across state lines.⁷ Some judges may accede to requests from a domestic violence perpetrator and issue a protection order that is not based upon findings of domestic violence and may believe that such orders offer protection to victims.⁸ A court's jurisdiction for issuing a protection order depends on the court having subject matter jurisdiction. The subject matter jurisdiction for a protection order is based on an occurrence of domestic violence such as assault, battery, or other acts covered by the state domestic violence statute including stalking, threats, sexual assault, and attempts to cause bodily injury. When a judge issues a protection order without a finding of domestic violence, the order is unenforceable because the court does not have the subject matter jurisdiction to issue the order.⁹

VIOLENCE: A MANUAL FOR PRO BONO LAWYERS, (Ayuda) (2d ed. 1992). For an amicus brief on protection orders see: Brief for Ayuda et. al. as Amici Curiae Supporting Petitioner at 9, *United States v. Dixon*, 509 U.S. 688 (1993) (No. 91-1231) ("The Criminal Justice System Alone Cannot Ensure Victims' Safety"); NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, FAMILY VIOLENCE: IMPROVING COURT PRACTICE, RECOMMENDATIONS FROM THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES', FAMILY VIOLENCE PROJECT (1990).

⁴ Immigrant victims of domestic violence, sexual assault, stalking, or other forms of violence against women often encounter systematic barriers when accessing the justice system and victim services in the United States. They can be particularly useful for immigrant victims who may not want to become involved in the criminal justice system because of lack of information, immigration status concerns, cultural stigma, or language access issues. All victims may obtain protection orders regardless of their immigration status.

⁵ See *Schramek v. Bohren*, 429 N.W.2d 501, 502 (Wis. Ct. App. 1988); *Gilbert v. State*, 659 So.2d 233 (Fla.1995); *Master v. Eisenbart*, No. 90-2897, 1991 Wisc. App. LEXIS 1270 (Wis. Ct. App. Sept. 18, 1991). See also generally NANCY LEMON, DOMESTIC VIOLENCE LAW (West) (2006).

⁶ Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 849-50 (1993). See also *Broaca v. Broaca*, 435 A.2d 1016, 1018 (Conn. 1980); *People v. Wade*, 506 N.E.2d 954, 956 (Ill. 1987); *Robertson v. Commonwealth*, 25 S.E.2d 352, 358 (Va. 1943); 46 AM. JUR. 2D *Judgments* § 24 (2005) ("When a suit is dismissed for lack of jurisdiction, rulings on the merits rendered prior to the dismissal are nullities, void ab initio. . . . A judgment rendered without jurisdiction may be attacked and vacated at any time, either directly or collaterally.").

⁷ 42 U.S.C. § 13981 (1994).

⁸ "No findings" protection orders can be issued in a variety of ways. The order may be issued on a court form that the judge alters inscribing "no findings" on the face of the order. The court may issue a protection order and may cross out the information on the standard court form that crosses out or deletes the reference to the state statutory section that defines the subject matter jurisdictional basis for issuance of a protection order. In a few instances court forms have been erroneously developed that include a check box stating that the order is being issued and no findings have been made. Generally, court forms using this approach have been revised once subject matter jurisdictional concerns have been raised.

⁹ *Bryant v. Williams*, 161 N.C. App. 444 (N.C. Ct. App. 2003) (vacating protection order where woman consented to order, but court had dismissed domestic violence complaint because no domestic violence found cannot approve even a consent order because order is to make domestic violence cease); *El Nashaar v. El Nashaar*, 529 N.W.2d 13 (Minn. Ct. App. 1995) (granting husband writ of prohibition where civil protection order granted by lower court because no findings accompanied civil protection order, so no basis for civil protection order); *Price v. Price*, 133 N.C. App. 440 (N.C. Ct. App. 1999) (reversing civil protection order because no evidence/findings of violence, only suspicion of husband); *John P.W. ex rel. Adam W. v. Dawn D.O.*, 214 W. Va. 702, 707 (W. Va. 2003) (issuing civil protection order at father's request without findings of domestic violence- reversed); *Brandon v. Brandon*, 132 N.C. App. 646 (N.C. Ct. App. 1999) (reversing civil protection order because accompanied by unclear findings of fact); See also *Capron v. Van Noorden*, 6 U.S. 126, 126 (1804); 20 AM. JUR. 2D *Courts* § 99 (2005) ("jurisdiction over the subject matter cannot be affected by agreement or consent").

Jurisdictionally Sound Civil Protection Orders

All protection orders, including consent protection orders, need subject matter jurisdiction. Parties cannot consent to give a court jurisdiction that the court would not otherwise have.¹⁰ A consent protection order without a finding of domestic violence can be vacated for lack of jurisdiction.¹¹ A consent protection order must include findings to support subject matter jurisdiction for the court issuing the order. This does not mean that the judge must always hold a full hearing and issue a formal domestic violence finding to obtain subject matter jurisdiction to issue a civil protection order. The court may base its subject matter jurisdiction on an admission by the respondent of one or more acts that qualify as domestic violence under the state protection order statute. Alternatively, when the parties are willing to consent to a protection order, subject matter jurisdiction can be obtained based upon the uncontested affidavit or pleading of the protection order petitioner. When there is no admission and all of the allegations in the protection order petition are contested the court must hold a hearing and issue a protection order based upon findings of domestic violence.

Why do judges issue Protection Orders without subject matter jurisdiction?

Judges may want to issue orders without any findings for a variety of reasons. The court may do so to promote more consent orders and avoid holding hearings.¹² The court may be responding to an abuser's request that he maintain access to firearms¹³ or to avoid triggering presumptions against awarding custody to an abuser.¹⁴ In divorce proceedings that occur after a protection order has been issued, opposing counsel may attempt to argue that a no-findings protection order has already decided that there was no domestic violence in the relationship. In each of these instances if the court issues a "no findings" protection order when it lacks subject matter jurisdiction to do so, the court denies a victim of domestic violence the protection that was afforded to her under state protection order laws, and jeopardizes the health and safety of a victim and her children.

Some state court judges may issue court orders specifically designed to avoid treatment of that court order as an order under state protection order laws. These orders are not included in the state electronic protection order enforcement system (e.g. the California Law Enforcement Telecommunication System (CLETS) or Domestic Violence Restraining Order System (DVROS). Such orders are not protection orders and are unenforceable as protection orders. These orders offer protection to no one.

When a victim files for protection order relief the court should grant that relief after trial or by consent of the parties if the pleadings contain facts of abuse that qualify for issuance of a protection order under state law. If the court holds a hearing and does not find facts sufficient to support issuance of the protection order, the request for the order should be denied. In practice there may be proof problems in some protection order cases that do not sustain issuance of an order. In these cases, the judge's role is to deny issuance of the protection order and not give the petitioner victim less than the law requires. In other cases judges issue orders that are not jurisdictionally sound protection orders when asked to do so by the parties. This usually occurs when the abuser is represented and the victim who is not represented has been coerced into agreeing to a stipulated

¹⁰ See *Capron*, 6 U.S. at 126; 20 AM. JUR. 2D *Courts* § 99 (2005) ("jurisdiction over the subject matter cannot be affected by agreement or consent"); *Bush v. United States*, 703 F.2d 491 (11th Cir. 1983); *Latin Am. Cas. Ins. Co. v. Hi-Lift Marina, Inc.*, 887 F.2d 1477 (11th Cir. 1989); *Am. Policyholders Ins. Co. v. Nyacol Products, Inc.*, 989 F.2d 1256 (1st Cir. 1993).

¹¹ *Bryant v. Williams*, 161 N.C. App. 444 (N.C. Ct. App. 2003).

¹² See Jennifer Heintz, *Safe at Home Base? A Look at the Military's New Approach to Dealing With Domestic Violence on Military Installations*, 48 St. Louis U. L.J. 277, 280 (2003) ("Mutual or consent orders of protection are often issued without a hearing or a specific finding of abuse . . ."); Klein et al., *supra* note 4, at 1074 ("Courts, relying on a sworn petition, also issue consent civil protection orders between the parties without a finding of abuse.").

¹³ See Lisa D. May, *The Backfiring Of The Domestic Violence Firearms Bans*, 14 COLUM. J. GENDER & L. 1, 34-35 (2005) ("Rather than properly applying state laws that would trigger the federal statutes, some judges misapply the state laws for the very purpose of circumventing the application of the federal firearms bans.").

¹⁴ See Nancy K.D. Lemon, *Statutes Creating Rebuttable Presumptions Against Custody To Batterers: How Effective Are They?*, 28 WM. MITCHELL L. REV. 601, 664-65 (2001).

order that is not legally a protection order because the parties have agreed to leave findings of domestic violence out of the Agreed to Order.

When Judges agree to go along with this request, danger to domestic violence victims is enhanced. The victim receiving a court order that does not comply with the state protection order laws is misled into believing that she has received a valid enforceable protection order. The abuser may know that the order is not a jurisdictionally sound protection order and is not enforceable by law enforcement authorities. If the victim is operating under the illusion of a valid order and falsely relies on the order to protect her against future abuse, she may fail to take other steps to protect herself and her children from ongoing violence. The lack of subject matter jurisdiction for her order, as well as her reliance on that order, may place her in greater danger.

Practice Pointer- personal and subject matter jurisdiction¹⁵

If possible from a safety perspective, it is best to obtain a protection order in the jurisdiction in which the abuse occurred. A family law attorney will have to do a safety assessment with the survivor to determine if that is a viable option. Once the victim obtains a protection order in the state where the violence occurred, that protection order is enforceable in any U.S. jurisdiction to which the victim moves under the Violence Against Women Act's (VAWA) Full Faith and credit provisions.¹⁶ The victim can obtain the protection order in the original jurisdiction and then move to a new jurisdiction without the abuser knowing to which state she has relocated. When a victim has children with the abuser, laws governing interstate custody jurisdiction and parental kidnapping will need to be a part of this assessment.¹⁷ If the victim has already fled to a new jurisdiction, or the determination is made that a victim is safer moving and then obtaining the protection order, the attorney should interview the client to determine whether there is subject matter jurisdiction to file the protection order in the victim's new location. Harassing phone calls, threats, and stalking can be continuations of the abuse, giving the new jurisdiction subject matter jurisdiction.¹⁸ The presence of danger to the petitioner, such as when the abuser has come to the jurisdiction but has not yet contacted the survivor, can be enough of a threat for subject matter jurisdiction, and therefore to issue a protection order in the new jurisdiction.¹⁹ Review your state's long arm jurisdiction statute to determine the specific requirements for personal jurisdiction over the abuser and the minimum contacts needed, which in some locations may depend on the threats and or actions taken by the abuser since the survivor has moved to the new jurisdiction.

1) Legal ramifications

When a protection order is issued without a finding of domestic violence a victim is left without protection and may suffer further legal consequences.

Reversal

When there is no jurisdiction for a court to have issued a protection order, the order can be reversed. In *Andrasko v. Andrasko* the Minnesota Court of Appeals held that "the trial court erred by failing to make findings regarding domestic abuse" and reversed the civil protection order.²⁰ Similarly, the court in *Bryant v. Williams* stated that under North Carolina law "[t]he court's authority to enter a protective order or approve a consent agreement is dependent upon finding that an act of domestic

¹⁵ For a complete analysis of protection orders, see LESLYE E. ORLOFF & CATHERINE F. KLEIN, DOMESTIC VIOLENCE: A MANUAL FOR PRO BONO LAWYERS (Ayuda) (2d ed. 1992).

¹⁶ 42 U.S.C. § 13981 (1994); National Center on Full Faith and Credit, <http://www.fullfaithandcredit.org>.

¹⁷ See chapters on Interstate Custody and Jurisdiction in LEGAL MOMENTUM, BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS (2006).

¹⁸ *In re Anthony T.*, 510 N.Y.S.2d 810 (N.Y. 1986); *Adair v. United States*, 391 A.2d 288 (D.C. 1978); *United States v. Baish*, 460 A.2d 38 (D.C. 1983).

¹⁹ *Pierson v. Pierson*, 147 Misc.2d 209 (N.Y. Fam. Ct. 1990).

²⁰ 443 N.W.2d 228, 230 (Minn. Ct. App. 1989).

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violence occurred and that the order furthers the purpose of ceasing acts of domestic violence.”²¹ Similarly, in *Sandoval v. Mendez* the court affirmed the trial court’s refusal to enter a civil protection order for lack of subject matter jurisdiction because a necessary statutory provision had not been met.²²

Protection Order Is Not Valid and Enforceable Under the Violence Against Women Act’s Full-Faith and Credit Provisions

Under the Violence Against Women Act of 1994 (VAWA)²³ federal law requires that each state, tribe, or territory give full faith and credit to a sister state’s protection order (including an emergency order) as long as due process requirements were met in the state where the order was issued. The full faith and credit provision of VAWA requires that a *valid* protection order must be enforced throughout the United States. When there are no findings to give a court jurisdiction to issue a protection order, it is not a valid protection order and courts in other states may refuse to give the order full faith and credit.²⁴

In making protection orders enforceable across state lines, Congress limited full faith and credit protections to orders that meet the following requirements:

- 1) a pleading has been filed;
- 2) the restrained party was provided notice and an opportunity for a hearing; and
- 3) the order was based upon findings that the restrained party had committed acts deemed domestic violence under the protection order statute of the state issuing the order.²⁵

Congress took this approach to assure that the restrained party had been provided due process before a protection order was issued and to deter the practice of courts issuing mutual protection orders restraining both the abuser and the victim.²⁶ When judges issue “no findings” protection orders these orders are contrary to VAWA, are unenforceable beyond the boundaries of the issuing state, and risk rendering the legal order ineffective.²⁷

2) Impact on survivor

In addition to problems with reversal and full-faith and credit, a ‘no findings’ order causes several other problems for victims of domestic violence. Orders issued without jurisdiction, because of no findings of domestic violence, are dangerous for domestic violence victims because the order:

²¹ 588 S.E.2d 506, 508 (N.C. Ct. App. 2003); *cf. Ditlefsen v. Feyereisen*, No. 86-1151, 1987 WL 267486 (Wis. Ct. App. Feb. 3, 1987) (“[w]ithout findings on the criteria set out in [Wisconsin’s statute], there is no basis for determining subject matter jurisdiction” in custody case).

²² 521 A.2d 1168 (D.C. Ct. App. 1987).

²³ 42 U.S.C. § 13981 (1994).

²⁴ Heintz, *supra* note 10, at 280 (finding order did not comply with Violence Against Women Act’s “requirement of reasonable notice or opportunity to be heard” because of lack of findings). *Cf. In re Jorgensen*, 627 N.W.2d 550, 564 (Iowa 2001) (refusing to apply New York custody order because New York court failed to make factual findings and thus lacked subject matter jurisdiction).

²⁵ 18 U.S.C. §2265-6; U.S. ATTORNEY’S OFFICE W. DIST. N.Y. & ST. UNIV. OF N.Y. AT BUFF. SCH. OF LAW FAMILY VIOLENCE CLINIC, OBTAINING AND ENFORCING VALID ORDERS OF PROTECTION IN NEW YORK STATE, 37 (U.S. Dep’t of Justice), http://www.usdoj.gov/usao/nyw/victim_witness/pdf/OOPmanual.pdf; NATIONAL CENTER ON FULL FAITH AND CREDIT PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE, INCREASING YOUR SAFETY: FULL FAITH AND CREDIT FOR PROTECTION ORDERS, <http://www.vaw.umn.edu/documents/survivorbrochure/survivorbrochure.html> (last visited Jan. 24, 2008); Edward S. Snyder & Laura W. Morgan, *Domestic Violence Ten Years Later*, GP-SOLO LAW TRENDS & NEWS: FAMILY LAW, August 2005, <http://www.abanet.org/genpractice/newsletter/lawtrends/0508/family/domviolence.html>.

²⁶ BATTERED WOMEN’S LEGAL ADVOCACY PROJECT, INC., MUTUAL ORDERS OF PROTECTION: INFORMATION FOR JUDGES, ADVOCATES, AND BATTERED WOMEN (2003), <http://www.bwlap.org/TAPs/mutualOFP.pdf> (explaining the problems with mutual protection orders).

²⁷ 18 U.S.C. §2265(a)-(b)

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- Allows the abuser to avoid accepting responsibility for his violent and abusive behavior, thereby undermining the protection order's effectiveness.
- Can avoid state laws designed to avoid awarding custody to the non-abusive parent and make it more difficult for the battered victim to be awarded custody of the parties' children;²⁸
- Can allow the abuser to retain his firearms avoiding federal laws that require that abusers with protection orders be barred from purchasing fire arms and obtaining a fire arms license;²⁹
- May undermine the ability of courts to have abusers turn over weapons;
- Can undermine an immigrant victim's domestic violence-related immigration case³⁰ and access to public benefits;³¹
- Can delay or hinder access to welfare benefits for battered women and children; and
- Can make it less likely in a divorce for the battered victim to be able to retain the family home or to obtain a distribution of the family assets that takes domestic violence into account.

3) Issuing Jurisdictionally Sound Protection Orders – Including Consent Protection Orders

To issue a valid protection order there must be a finding of domestic violence, which gives the issuing court subject matter jurisdiction. This does not mean that there must be a full hearing. Ideally, the court can obtain abuser consent to the issuance of a protection order so that the court may avoid a full hearing on the subject of abuse. In consenting, the abuser must be agreeing to a finding of domestic violence,³² otherwise there is no subject matter jurisdiction, regardless of an abuser's agreement to the order.³³

As in any uncontested civil court case, the court can issue a valid order resting its subject matter jurisdiction upon the uncontested affidavit or pleading of the petitioner.³⁴ When the abuser does not contest to the issuance of the protection order and the protection order petition alleges facts sufficient to constitute domestic violence under the state protection order statute, protection order courts across the country have subject matter jurisdiction to issue valid consent protection orders. If the abuser insists on a consent civil protective order, without any finding of abuse, the court should reject the abuser's position, hold a full hearing, and issue a civil protective order if it finds that the victim has shown the required facts.

²⁸ See *Zimmerman v. Zimmerman*, 569 N.W.2d 277, 279 (N.D. 1997) (reversing custody order because court had not "carefully delineate[d] relevant and specific facts in support of its [domestic abuse] determination"); CLARE DALTON, LESLIE DROZD, & FRANCES WONG, NAVIGATING CUSTODY & VISITATION EVALUATIONS IN CASES WITH DOMESTIC VIOLENCE: A JUDGE'S GUIDE (2d ed. 2006); AMERICAN BAR ASSOCIATION, CIVIL PROTECTION ORDERS (CPO'S) AND CHILD RELATED ISSUES (2004) (summary of State CPO laws including child custody for non-abusive parents); Mark Hardin, *Ramifications for Spouse and Partners*, A.B.A. CRIMINAL JUSTICE MAGAZINE, Spring 2002, available at <http://discussions.abanet.org/crimjust/mo/premium-cr/cimag/17-1/ramifications.html>; HOWARD DAVIDSON, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION (Aug. 1994).

²⁹ See, e.g., 18 U.S.C. § 922(g)(8) (2005) (prohibiting possession of firearms by any person who is subject to a court order that issues after a hearing and "includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child").

³⁰ See 8 U.S.C. § 1229 (2000); 8 U.S.C. § 1101(a) (amended by Pub. L. No. 109-162 on Jan. 5, 2006); LEGAL MOMENTUM, *supra* note 15, at §§ 3, 5, 6.

³¹ LEGAL MOMENTUM, *supra* note 15, at §§ 4:1-2.

³² Some courts may ask the abuser to admit that one or more incidents of domestic violence have occurred. Other courts require only a general agreement from the abuser to the court's issuance of a domestic violence finding, coupled with an uncontested pleading by the petitioner alleging domestic violence. Both approaches are sufficient for subject matter jurisdiction.

³³ *Bryant v. Williams*, 161 N.C. App. 444 (N.C. Ct. App. 2003) (vacating protection order and dismissed domestic violence complaint where woman consented to order because no domestic violence found cannot approve even a consent order since order is to make domestic violence cease).

³⁴ See *Vogt v. Vogt*, 455 N.W.2d 471, 474 (Minn. 1990); LEGAL MOMENTUM, *supra* note 15, at § 5:1.

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All protection orders should be issued on unaltered court forms or other court orders that contain one of the following:

- A citation to the state protection order statute defining domestic violence for purposes of issuance of a protection order;
- A statement that the court finds that the petitioner is entitled to a protection order under the state protection order statute;
- A statement that the court has found that it has subject matter jurisdiction to issue a protection order;
- A statement that the respondent admits an act or act of domestic violence as defined by the state protection order statute; or
- A finding of fact by the court that the respondent has committed an act or acts that qualify as domestic violence under the state protection order statute.

Each of these rulings provides a sufficient factual finding to support subject matter jurisdiction for issuance of a protection order. When one or more of the above findings are clear from the text of the civil protection order issued by the court, no specific oral or written finding of abuse is required for a protection order to be valid.³⁵

What are the gun ownership ramifications of a protection order?

There are some federal laws that limit gun ownership and may affect a judge's desire to issue a no findings protection order. The law that directly mentions protection orders and firearms is 18 U.S.C. section 922 (g) (8). Often 18 U.S.C. section 922 (g) (9) (also called the Lautenberg amendment) is mistakenly assumed to be activated by a protection order. There are also several other laws that may affect an abuser's ability to receive firearms from others or increase the penalties for an abuser who lies in order to get a firearm.³⁶

18 U.S.C. 922 (g) (8)

922 (g) (8) prohibits some abusers subject to a protection order from possessing firearms and ammunition. In order for a protection order to deny an abuser access to firearms under this law the protection order must:³⁷

- 1) have been issued after a hearing with a) Notice to the respondent, and b) Opportunity for the respondent to participate
AND
- 2) restrain
 - a. stalking, harassing, threatening –OR–
 - b. other conduct that places partner or their child/children in reasonable fear of injuryAND
- 3) include a finding of credible threat –OR– explicitly prohibit the use of force/ harm to partner or child
AND
- 4) protect a petitioner who is or was an "intimate partner"
 - a. spouse or former spouse –or–
 - b. parent of a child with abuser –or–
 - c. person who cohabits or has cohabitated with abuser

³⁵ Oral approval by the judicial officer based on the pleadings and consent of the parties is sufficient to establish jurisdiction. Explicit on the record specific factual findings are not required.

³⁶ 18 U.S.C. § 922(a)(6), (d)(8)-(9), (g)(1)-(7). *See also* OFFICE OF VIOLENCE AGAINST WOMEN & NAT'L CTR ON FULL FAITH AND CREDIT, ENFORCING DOMESTIC VIOLENCE FIREARM PROHIBITIONS: A REPORT ON PROMISING PRACTICES 6-10 (2006) (noting various state statutes).

³⁷ OFFICE OF VIOLENCE AGAINST WOMEN & NAT'L CTR ON FULL FAITH AND CREDIT, *supra* note 34. *See also* 18 U.S.C. §922(g)(8).

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Some judges and attorneys mistakenly believe that a no findings protection order does not satisfy the requirements of section 922(g)(8) and, consequently, that the abuser would be free from any federal firearms prohibition. However, section 922(g)(8) applies even to a no findings order provided the order satisfies the other requirements of the federal statute and the terms of the order expressly prohibit the use, attempted use, or threatened use of physical force (see element 3 above, which provides for two alternatives). Most protection orders include provisions containing the required “physical force” prohibition; therefore, the failure to include a factual finding concerning credible threat would not evade the firearms prohibition in section 922(g)(8). To best ensure that protection orders comply with the federal statute, attorneys and judges should encourage the development of standard protection order forms that include a non-discretionary, explicit prohibition on the use, attempted use, or threatened use of physical force.

The Lautenberg Amendment (18 U.S.C. section 922 (g) (9))

This amendment prohibits those who have been **convicted** of a **misdemeanor crime of domestic violence** from possessing firearms and ammunition. A finding of domestic violence that is the basis of a protection order is NOT a conviction of a misdemeanor of the crime of domestic violence. A judge may mistakenly believe that they will be denying an abuser access to firearms under this amendment when they base a protection order on a finding of domestic violence; however, this is not the case. Although 18 U.S.C. 922 (g) (8) may prohibit access to firearms depending of the nature of the protection order, the Lautenberg Amendment will not.

Conclusion

By following these suggestions, courts may avoid the potential pitfalls of “no findings” protection orders and better protect victims of domestic abuse by providing jurisdictionally sound protection orders. If the respondent is unwilling to admit any abuse and is unwilling to agree to the relief the petitioner is seeking, or is only willing to agree to the issuance of a protection order “without a finding,” *the court must still find domestic violence to issue a protection order*. Without a finding of domestic violence there is no subject matter jurisdiction for the court to issue a protection order.

Jurisdictionally Sound Civil Protection Orders

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Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence¹²

By Soraya Fata, Leslye E. Orloff and Monique Drew

What Benefits May Immigrant Victims of Sexual Assault or Domestic Violence Receive?³

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) or Welfare Reform Act⁴ and the Illegal Immigration Reform and Immigration Responsibility Act of 1996

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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 For helpful information regarding the training of public benefits personnel at the state level see *Facilitating Access to TANF for Battered Immigrants: A Pilot Training Manual for TANF Eligibility Workers*, Leslye E. Orloff, Leandra Zarnow, and Yiris Cornwall.

⁴ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.) [hereinafter PRWORA].

(IIRAIRA)⁵ substantially altered the public benefits framework in the United States. Specifically, this legislation placed restrictions on immigrant eligibility to receive certain categories of public benefits.⁶ Under PWRORA, Congress added a requirement that non-citizens applying for certain federal public benefits programs establish that they are “qualified immigrants.”⁷

Congress recognized that immigrant women and children who were battered or subject to extreme cruelty needed access to public benefits in order to escape abuse. Therefore, in passing IIRAIRA later in 1996, Congress included immigrant women and children who were battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouse or parent in the definition of “qualified immigrants.” IIRAIRA also gave qualified immigrant status to immigrant victims of sexual assault and domestic violence whose abusers were family members, including extended family members under specified circumstances articulated in the statute.⁸ Moreover, while this new requirement to establish “qualified immigrant” status imposed restrictions on access to certain benefits, it is important to note that other categories of state and federally funded benefits and services remained unrestricted. Battered immigrants and victims of sexual assault may be eligible for a wide array of programs and services even when they are not considered qualified immigrants.⁹ These provisions underscore Congress’ commitment to ensuring that immigrant victims have broad access to services and protection from ongoing abuse.

This chapter will summarize those government funded benefits and services programs that are available to assist immigrant victims of sexual assault. The benefits available will be discussed in the context of federal and/or state restrictions on non-citizen eligibility for public benefits. The first set of benefits discussed will be those deemed “federal public benefits” that the smallest group of immigrants victims will be able to access. . As the chapter progresses, it will discuss progressively discuss less restricted benefits. The chapter will culminate with a discussion of federally and state and locally funded programs and assistance that are open to all immigrant victims without regard to immigration status. Victims of sexual assault are eligible for to receive varying degrees of federal, state, and local public benefits depending on several factors, including:

- The victim’s immigration status;
- How long he or she has been in the United States;
- The state/community where he or she resides; and
- Who perpetrated the sexual assault?

Specifically, this chapter will discuss the following four avenues of eligibility open to many and in some cases all immigrant victims of violence against women:

- I. Federal public benefits open to all qualified immigrants without limitation. This section will include a description of who is considered a qualified immigrant as well as which programs require qualified immigrant status.

⁵ Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-547 (codified as amended at 8 U.S.C. §§ 1101 et seq.) [hereinafter IIRAIRA].

⁶ While this legislation affected both documented and undocumented immigrant access to federal programs, it actually had the greatest impact on immigrants with lawful status. Immigration and Immigrants: Setting the Record Straight, Michael E. Fix and Jeffrey S. Passel (May 1, 1994), available at <http://www.urban.org/publications/305184.html> (last visited July 22, 2009).

⁷ This chapter uses the term “qualified immigrants” to refer to immigrants whom PRWORA and IIRAIRA categorize as “qualified aliens.”

⁸ 8 U.S.C. 1641(a)(1) (The statutory language “has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent’s family residing in the same household as the immigrant” requires residence in the same household currently, at the time of filing, or at the time of the battering or extreme cruelty. This protects immigrant victims who leave the home after the assault as well as those who are assaulted and then have the abuser move into their household.)

⁹ See A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3,613, 3,616 (Jan.16, 2001); Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19 2001) available at <http://www.legalmomentum.org/site/DocServer/appendixb-2.pdf?docID=222>.

- II. Federal means-tested public benefits (Supplemental Security Income (SSI), Temporary Aid to Needy Families (TANF), Medicaid, Food Stamps, and the State Child Health Insurance Program (SCHIP)) open to certain qualified immigrants depending on applicants meeting enhanced program requirements and the immigrants' date of first entry into the United States.
- III. State funded public benefits open to immigrant victims. This section will discuss the extent to which states offer state funded benefits to immigrants and/or immigrant victims who may or may not qualify to receive federal public benefits
- IV. Programs open to all victims regardless of immigration status. Benefits in this category may include, but are not limited to, emergency Medicaid, temporary public and assisted housing, urgent cash and food assistance...

I. ACCESS TO FEDERAL PUBLIC BENEFITS FOR QUALIFIED IMMIGRANT SEXUAL ASSAULT VICTIMS

INTRODUCTION

In 1996, PRWORA and IIRAIRA substantially reduced immigrant access to federal, state, and local public benefits.¹⁰ PRWORA restricted access to federal public benefits and federal means-tested public benefits to immigrants who were “qualified immigrants.”¹¹

QUALIFIED IMMIGRANTS

In general, only qualified immigrants are eligible to receive the assistance from the types of federal public benefits programs listed above. Immigrant victims of sexual assault who fit within one of the following categories are considered qualified immigrants, and are therefore eligible to receive federal public benefits:

- Lawful permanent residents¹²
- Conditional permanent residents¹³
- Asylees¹⁴
- Refugees¹⁵
- Persons paroled into the United States for a period of at least one year¹⁶
- Persons granted withholding of deportation¹⁷
- Persons granted conditional entry¹⁸
- Cuban and Haitian entrants¹⁹

¹⁰ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.) (hereinafter PRWORA); Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-547 (codified as amended at 8 U.S.C. section 1101 et seq.) (hereinafter IIRAIRA).

¹¹ While the term “qualified alien” is used in PRWORA, we will use the term “qualified immigrant.” Throughout this manual, except when quoting language contained in the statute, we use the term “immigrant” rather than “alien,” and “undocumented” rather than “illegal.” We strongly encourage advocates and attorneys working with immigrant sexual assault victims to use this same terminology.

¹² PRWORA § 431(b)(1).

¹³ PRWORA § 431(b)(1). Conditional permanent residents are spouses of U.S. citizens who were married for less than two years when they obtained residency status. Conditional permanent residents receive a “green card” that expires after two years, and must submit an application to remove the conditions of residence 90 days before the card expires. Once the conditions are removed, the spouse becomes a lawful permanent resident.

¹⁴ PRWORA § 431(b)(2).

¹⁵ PRWORA § 431(b)(3).

¹⁶ PRWORA § 431(b)(4).

¹⁷ PRWORA § 431(b)(5).

¹⁸ PRWORA § 431(b)(6).

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- Amerasian immigrants²⁰
- A victim of human trafficking who has filed for, had a prima facie determination or has been awarded a T-visa under INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T).²¹
- Persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, who have VAWA self-petitions or petitions for suspension of deportation or cancellation of removal pending or approved and their undocumented immigrant children listed as dependents in their VAWA self-petition application.²²
- Parents of children have been battered or subject to extreme cruelty by the other U.S. citizen or lawful permanent resident, and who have VAWA self-petitions or petitions for suspension of deportation or cancellation of removal pending or approved and their undocumented immigrant children listed as dependents in their VAWA self-petition application.²³

Benefits Access for Certain Native Americans Born Outside of the United States

Two groups of Native Americans qualify for access to certain specified federal public benefits. These include:

- Native Americans of certain federally recognized tribes born outside the United States;²⁴ and
- Certain Canadian born Native Americans.²⁵

¹⁹ IIRAIRA § 501; 8 U.S.C.S. § 1641(c); 8 U.S.C. § 1641(b)(7). Cuban and Haitian entrants are nationals of Cuba or Haiti who were paroled into the United States, applied for asylum, or who are in exclusion or deportation proceedings but have not received a final order of exclusion or deportation. Refugee Education Assistance Act of 1980 (REAA), Pub. L. No. 96-422 § 501(e) (Oct. 10, 1980).

²⁰ Pub. L. No. 102-232, Title III, § 307(n)(8)(c), 105 Stat. 1757. An Amerasian immigrant is a person born in Vietnam after January 1, 1962 and before January 1, 1976, fathered by a U.S. citizen. The category also includes the child's mother, the mother's spouse and other children, or someone who has acted as the child's mother, father or next of kin. *Id.* at § 307(n)(8)(b).

²¹ 8 U.S.C. § 1641(c)(4). T-visa applicants were made qualified immigrants by the Trafficking Victims Protection and Reauthorization Act of 2008 § 211(a).

²² 8 U.S.C. § 1641(c). VAWA petitioners' eligibility is discussed below, in the section on Access to Public Benefits for Immigrant Sexual Assault Victims.

²³ IIRAIRA § 501; 8 U.S.C. § 1641(c). VAWA petitioners' eligibility is discussed below, in the section on Access to Public Benefits for Immigrant Sexual Assault Victims.

²⁴ A Native American "who is a member of an Indian tribe," as defined by § 25 U.S.C. 450b(e), has access to SSI benefits and food stamps. PRWORA § 402(a)(2)(G)(ii), 8 U.S.C. § 1612(a)(2)(G); PRWORA § 402(a)(3), 8 U.S.C. § 1612(a)(3). "A member of an Indian tribe" is defined by 25 U.S.C. 450b(e) as

"any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act ([85 Stat. 688](#)) [[43 U.S.C. § 1601](#) et seq.] , which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

Members of these tribes who were born in the United States are also eligible to receive Medicaid benefits. PRWORA § 402(b)(2)(E), 8 U.S.C. § 1612.

For a full listing of "Indian tribes" currently recognized as being eligible for this exception to the exclusion from federal benefits, see 67 Fed. Reg. 46327-33 (July 12, 2002), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=46328&dbname=2002_register (last visited Apr. 17, 2009).

Native Americans born outside of the United States seeking to access public benefits must meet the definitions described above or must be lawful permanent residents or have another qualifying immigration status to gain access to public benefits.

See UNITED STATES DEP'T OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES POLICY ANNOUNCEMENT, No. TANF-ACF-PA-2005-01 2 (Nov. 15, 2005), *available at* <http://www.acf.hhs.gov/programs/ofa/policy/pa-ofa/2005/pa2005-1.htm> (last visited Apr. 16, 2009) for a more in depth discussion of this requirement.

²⁵ Canadian Born Native Americans are not mentioned specifically in PRORWA as "qualified immigrants." However, Canadian born Native Americans are exempted under the PRWORA from otherwise applicable immigrant restrictions on access to enumerated benefits programs under sections 402(a)(2)(G) and (b)(2)(E). Section 402(a)(2)(G) (8 U.S.C. § 1612(a)(2)(G)) exempts any individual, who is an American Indian born in Canada to whom the provisions of section 289 of the INA apply from Supplemental Security Income Program and food stamps (8 U.S.C. § 1612(a)(3)). Additionally, PRWORA section 402(b)(2)(E) provides access to Medicaid for Canadian born Native Americans who meet the requirements of INA section 289 (8 U.S.C. § 1612(b)(2)(E)). The requirements set forth in section 289 of the INA, by which Canadian born Native Americans receive the statutory right of entry and access to the aforementioned benefits, are, the immigrant: must have been born in Canada and must have at least 50 per centum of blood of the American Indian race (8 U.S.C. § 1359). In order to

Victims of severe forms of trafficking in persons in addition to being qualified immigrants are eligible to receive federal public benefits to the same extent as refugees because the Trafficking Victims Protection Act of 2000 recognized the need for protection and assistance for victims of severe forms of trafficking. This includes both T-Visa holders and trafficking victims who have been granted continued presence.²⁶

The law distinguishes between those qualified immigrants who first entered the United States before August 22, 1996, and those who entered on or after that date.²⁷ Qualified immigrants who entered the United States on or after August 22, 1996 cannot receive federal means-tested public benefits²⁸ for five years following entry with an immigration status included in the definition of “qualified immigrant,”²⁹ unless the immigrant falls within an exempt category.³⁰

FEDERAL PUBLIC BENEFITS

Certain immigrant sexual assault victims, particularly those who are victims of domestic violence and trafficking, lawful permanent residents, and those with certain other types of immigration status may be considered qualified immigrants.³¹

Only two types of benefits are considered federal public benefits. The first category of federal public benefits includes programs that provide a “grant, contract, loan, professional license or commercial license” to an individual, either through a Federal agency or with federally appropriated funds.³²

The second category of federal public benefits includes programs that provide one of the following types of benefits:

- Retirement benefits;
- Welfare benefits;
- Health benefits;
- Disability benefits;
- Public or assisted housing;
- Postsecondary educational grants and loans;
- food assistance benefits;
- unemployment benefits;
- any similar benefit.³³

receive any federal benefits, beyond Medicaid, SSI and food stamps the immigrant must become a lawful permanent resident. For a complete discussion of Canadian born Native Americans' access to federal benefits, see UNITED STATES DEP'T OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES POLICY ANNOUNCEMENT, No. TANF-ACF-PA-2005-01 2 (Nov. 15, 2005), *available at* <http://www.acf.hhs.gov/programs/ofa/policy/pa-ofa/2005/pa2005-1.htm> (last visited Apr. 16, 2009).

²⁶ See Section 107 of Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386 § 107(b)(1)(A). Trafficking victims will have Department of Health and Human Services certifications of benefits eligibility if they have been awarded continued presence or a T-visa.

²⁷ August 22, 1996 marks the passage of PRWORA into law.

²⁸ Federal means-tested public benefits are defined in section II of this chapter.

²⁹ PRWORA § 403(a). Some states have chosen to extend these same means-tested benefits to federally ineligible immigrants through state-funded programs. For more information, see the section on state-funded benefits in this chapter.

³⁰ Exempt categories include refugees and asylees, certain lawfully residing veterans, and Cuban and Haitian entrants.

PRWORA § 403(b), (d).

³¹ PRWORA, § 401, 8 U.S.C. § 1611.

³² PRWORA § 401(c)(1)(A), 8 U.S.C. § 1611(c)(1)(A); see also Department of Justice, Verification of Eligibility for Federal Public Benefits 63 Fed. Reg. 41,662, 41,664 (Aug. 4, 1998); Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998) (interpreting this provision to apply only to “agreements or arrangements between Federally funded programs and individuals”).

³³ PRWORA § 401(c)(1)(B); 8 U.S.C. § 1611(c)(1)(B).

To constitute a federal public benefit within this second category, the benefit must be provided by a federal agency or by federally appropriated funds, and must be provided to “an individual, household or family eligibility unit.”³⁴ HHS has interpreted the requirement of an eligibility unit to apply to individuals, households and families, meaning that that the “individual, household or family must, as a condition of receipt, meet specified criteria (e.g. a specified income level or residency) in order to be conferred the benefit . . .”³⁵

Although PRWORA provides a definition of the term “federal public benefit,”³⁶ individual federal benefits-granting agencies bear the ultimate responsibility for determining which of their programs are to be considered federal public benefits.³⁷ The Department of Justice has repeatedly affirmed the government’s preference for deferring to each federal agency’s own interpretation of the term “federal public benefit.”³⁸ The Department of Health and Human Services (HHS) has published an exhaustive list of programs it considers to provide federal public benefits.³⁹ The list includes 31 programs and services that HHS deems federal public benefits when the benefits is provided to an individual, household or family eligibility unit. Since the following programs have been deemed federal public benefits by HHS, they can only provide assistance to immigrants who are “qualified immigrants.”⁴⁰ Qualified immigrants are legally eligible to access the following programs funded by:

The Department of Health and Human Services

- Adoption Assistance
- Administration on Developmental Disabilities (ADD)-State Developmental Disabilities Councils (direct services only)
- ADD-Special Projects (direct services only)
- ADD-University Affiliated Programs (clinical disability assessment services only)
- Adult Programs/Payments to Territories
- Agency for Health Care Policy and Research Dissertation Grants
- Child Care and Development Fund
- Clinical Training Grant for Faculty Development in Alcohol & Drug Abuse
- Foster Care
- Health Profession Education and Training Assistance
- Independent Living Program
- Job Opportunities for Low Income Individuals (JOLI)
- Low Income Home Energy Assistance Program (LIHEAP)
- Medicare
- Medicaid (except assistance for an emergency medical condition)⁴¹

³⁴ PRWORA § 401(c)(1)(B), 8 U.S.C. § 1611(c)(1)(B); *see also* Department of Justice, Verification of Eligibility for Federal Public Benefits 63 Fed. Reg. 41,662, 41,664-65 (Aug. 4, 1998).

³⁵ 63 Fed. Reg. at 41,659.

³⁶ PRWORA 401(c).

³⁷ *See, e.g.* 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998) (Department of Health and Human Services interpretation of “federal public benefit”).

³⁸ *See* A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, *also available at* <http://www.legalmomentum.org/assets/pdfs/attorneygeneralsorder.pdf>, 66 Fed. Reg. 3613, 3614 (“the Department will grant all appropriate deference to the determination, if one has been made, by the benefit granting agency as to whether the program is a federal public benefit”); A.G. Order No. 2170-98, Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41.6662, 41.664 (“The Service will give all appropriate deference to benefit granting agencies’ applications of the definition to the programs they administer, or to applications provided by another Federal agency that oversees or administers a Federal benefit program”).

³⁹ Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) *also available at* <http://www.legalmomentum.org/assets/pdfs/prwora.pdf>; Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998).

⁴⁰ Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) *also available at* <http://www.legalmomentum.org/assets/pdfs/prwora.pdf>; Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998).

⁴¹ *See* Chapter 17 of this manual *Access to Health Care for Immigrant Victims of Sexual Assault* for an overview of immigrant victim eligibility for subsidized health care. The appendices to that chapter include state by state charts on access to

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- Mental Health Clinical Training Grants
- Native Hawaiian Loan Program
- Refugee Cash Assistance
- Refugee Medical Assistance
- Refugee Preventive Health Services Program
- Refugee Social Services Formula Program
- Refugee Social Services Discretionary Program
- Refugee Targeted Assistance Formula Program
- Refugee Targeted Assistance Discretionary Program
- Refugee Unaccompanied Minors Program
- Refugee Voluntary Agency Matching Grant Program
- Repatriation Program
- Residential Energy Assistance Challenge Option (REACH)
- Social Services Block Grant (SSBG)
- State Child Health Insurance Program (CHIP)
- Temporary Assistance for Needy Families (TANF)⁴²

The Department of Agriculture

- Food Stamps⁴³
- Federal Crop Insurance⁴⁴

The Department of Housing⁴⁵

- Public and Assisted Housing
- Public Housing Operating Fund⁴⁶
- Public Housing Capital Fund⁴⁷
- Public Housing Neighborhood Networks (NN) Program⁴⁸
- Public Housing Homeownership (Section 32)⁴⁹
- Section 8 Moderate Rehabilitation Single Room Occupancy (SRO)⁵⁰
- Supportive Housing for the Elderly (Section 202) (Projects with project-based § 8 Assistance)⁵¹
- Supportive Housing for Persons with Disabilities (Section 811) (projects with project-based § 8 Assistance)⁵²
- Renewal of Section 8 Project-Based Rental Assistance⁵³
- Housing Choice Voucher Program⁵⁴
- Homeownership Voucher Assistance⁵⁵

emergency Medicaid, forensic examinations, post-assault health care and pre-natal care for immigrant victims of sexual assault and domestic violence.

⁴² Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998).

⁴³ U.S. Department of Agriculture, Non-Citizen Requirements in the Food Stamp Program, *Eligibility Determination Guidance*, 1 (January 2003), available at http://www.fns.usda.gov/FSP/Rules/Legislation/pdfs/Non_Citizen_Guidance.pdf.

⁴⁴ U.S. Department of Agriculture, Eligibility for Federal Crop Insurance Benefits for Non-Citizens without a Social Security Number (SSN), May 26, 2005 **BULLETIN NO: MGR-05-008** available at: <http://www.rma.usda.gov/news/managers/2005/PDF/mgr-05-008.pdf>

⁴⁵ For a listing of all Public and Assisted Housing programs through HUD see Appendix XX. The first section of the appendix lists programs that are only available to "qualified immigrants." The second section lists the remaining programs that are available to all immigrants regardless of their status.

⁴⁶ Department of Housing and Urban Development, *Programs of HUD*, U.S., 80 (2006).

⁴⁷ *Id.* at 81.

⁴⁸ *Id.* at 82.

⁴⁹ *Id.* at 84.

⁵⁰ *Id.* at 22.

⁵¹ *Id.* at 57.

⁵² *Id.* at 70.

⁵³ *Id.* at 74.

⁵⁴ *Id.* at 75.

⁵⁵ *Id.* at 78.

- Project-Based Voucher Program⁵⁶

ACCESS TO FEDERAL PUBLIC BENEFITS FOR IMMIGRANT SEXUAL ASSAULT VICTIMS

Advocates and attorneys who work with immigrant victims of sexual assault, rape, incest or other sexual abuse should broadly consider whether a client's immigration status or options the victim has to obtain legal immigration status could provide eligibility for federal public benefits. All victims should be screened to determine whether they have an immigration status that already makes them eligible for benefits qualified immigrants. When assisting victims of sexual assault finding out some of the following information about the immigrant sexual assault survivor will help determine what government funded benefits they may be eligible to receive, service providers should consider:

- The victim's immigration status;
- When the victim received that immigration status;
- Whether the victim is eligible for immigration relief under the Violence Against Women Act⁵⁷, or the victim is certified by HHS as a victim of a severe form of trafficking in persons under the Trafficking Victim's Protection Act;⁵⁸
- Whether the victim's children qualify for benefits that she is not eligible for;⁵⁹ and
- Practices at local welfare departments that may result in the victim or her children being denied benefits they qualify for or being asked questions that could lead the welfare office to report to DHS victims who are applying for benefits for their citizen children and not for themselves.

Carefully evaluate the sexual assault victim's immigration status to ascertain whether their immigration status is on the "qualified immigrant" list or if they are a trafficking victim or otherwise exempt from the benefits access restrictions. Although, all immigrants can access the many government funded benefits, programs and services described later in this chapter, only qualified immigrant sexual assault victims will be able to access "federal public benefits."

To become a qualified immigrant most victims will have had to file for some form of legal immigration status with the Department of Homeland Security as a prerequisite to becoming a qualified immigrant. Advocates working with immigrant sexual assault survivors should interview clients early on to screen immigrant victims to determine if they have, are in the process of applying for or have received legal immigration status. If so these victims may also be able to access various forms of federal or state funded public benefits beyond those open to all immigrants. The remainder of this chapter discusses in detail which immigrant sexual assault victims will qualify for which federally and state funded benefits. The following victims are examples of sexual assault victims who will likely be eligible for some types of "federal public benefits."

- Victims battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse, parent or step-parent;
- Child victims of sexual assault or incest perpetrated by a U.S. citizen or lawful permanent resident spouse, parent or step-parent;
 - A child abused while under the age of 21 has until before the child turns 25 to file their VAWA self-petition;
- Victims of a severe form of trafficking in persons;
- Victims who entered the U.S. as a refugee, (based on a well-founded fear of persecution if returned to her home country);

⁵⁶ *Id.* at 79.

⁵⁷ INA § 204(a)(1), 8 U.S.C. § 1154(a)(1) (eligibility for VAWA self-petitioners), INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2) (eligibility for VAWA cancellation of removal), INA § 244(a)(3) (as in effect on March 31, 1997) (eligibility for VAWA suspension of deportation), INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T) (T-visa for victims of human trafficking).

⁵⁸ Trafficking Victims Protection Act of 2000, Pub.L. 106-386, 114 Stat. 1464 (codified in scattered sections of 22 U.S.C. and 18 U.S.C.).

⁵⁹ This includes children who become qualified immigrants as dependents on their parent's self-petition.

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- Victims granted asylum in the U.S. (based on a well-founded fear of persecution if returned to her home country);
- Victims with lawful permanent residency;⁶⁰
- Victims with conditional permanent residence;
- Child victims of sexual assault or incest perpetrated by U.S. citizen and lawful permanent resident parent whether or not the child has runaway to escape ongoing abuse;
- Child victims of sexual assault or incest perpetrated by a family member residing in the victim's household, where the child's citizen or lawful permanent resident parent filed a family based visa petition on the child's behalf.⁶¹

U-Visa Holders

Many sexual assault victims may be eligible for U-Visa immigration relief.⁶² When an immigrant receives a U-visa, he or she receives lawful immigrant status, protection from deportation and permission to be lawfully employed.⁶³ U-visa applicants and recipients, however, are not “qualified immigrants” eligible for federal public benefits. Some immigrant victims may qualify as U-visa victims, and may also qualify for other forms of immigration relief. If a U-visa victim is eligible for multiple forms of relief, it may be that a T-visa or VAWA self-petition is preferable to the U-visa, because it also offers federal public benefits eligibility. Victims who only qualify for the U-visa are not eligible to receive federal public benefits, but may still have access to some state funded public benefits beyond those open to all undocumented immigrants.⁶⁴ In addition the U.S. U.S. Attorney General is statutorily required to provide all U-visa recipients with a referral to organizations that provide immigration and other assistance to victims.⁶⁵

T-Visa Holders

The Trafficking Victim's Protection Act (TVPA) grants immigration relief to certain victims of human trafficking.⁶⁶ The law provides a special immigration status, the T visa, as well as a path to permanent residency for victims of “a severe” form of trafficking. Law enforcement officials in trafficking cases can request continued presence for victims of severe forms of trafficking.⁶⁷ T-visa applicants may request immigration benefits both for themselves and certain of their family members. Spouses and minor children of T-visa victims can receive T-visas upon proof of the requisite family relationship.⁶⁸ Parents and under 18 year old siblings of child trafficking victims (under the age of 21) may also be granted T-visas.⁶⁹

In addition to providing immigration relief, the TVPA provides that victims of a severe form of trafficking in persons are eligible to access certain federal benefit programs.⁷⁰ Trafficking victims are afforded access to benefits to the same extent as refugees.⁷¹ They are directly eligible for the major

⁶⁰ There are a variety of paths through which the victim may have obtained lawful permanent residency including through a family member or through employment.

⁶¹ 8 U.S.C. 1641(a)(1) (“has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the immigrant”) This relief is accessible to both adults and children.

⁶² See U Visa Relief for Immigrant Victims of Sexual Assault, Chapter 10 of this Manual.

⁶³ 8 U.S.C. § 1184(p)(3)(B).; For more information on the U-visa and other forms of immigration relief, please see Chapter 10 of this manual.

⁶⁴ See the Section V later in this chapter for a full discussion of state funded benefits.

⁶⁵ 8 U.S.C. § 1184(p)(3)(A).

⁶⁶ Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386, 114 Stat. 1464 (Oct. 28, 2000).

⁶⁷ Trafficking Victims Protection Act of 2000, Pub.L. 106-386, 114 Stat. 1464 (codified in scattered sections of 22 U.S.C. and 18 U.S.C.). ...

⁶⁸ See 67 Fed. Reg. 4783, 4783-820 (Jan. 31, 2002) (upon a showing of extreme hardship). See also, National Immigration Law Center, *DOJ Issues Regulations for T Visas, Available to Victims of Trafficking*, Immigrants' Rights Update, Vol. 16, No. 1, February 28, 2002, available at: <http://www.nilc.org/immlawpolicy/obtainlpr/oblpr071.htm#eligibility>.

⁶⁹ *Id.*

⁷⁰ 22 U.S.C. § 7105(b)(1).

⁷¹ 22 U.S.C. § 7105(b)(1)(A) (2008). Refugees and trafficking victims are eligible for benefits including SSI and Medicaid eligibility for the first 7 years after they enter as refugees or are certified for benefits as trafficking victims. At the end of the 7

federal programs (Supplemental Security Income (SSI), Temporary Aid to Needy Families, food stamps, Medicaid, and State Child Health Insurance Program (SCHIP)) without having to wait 5 years.⁷² Trafficking victims who are not eligible for TANF or Medicaid can receive Refugee Cash Assistance and Refugee Medical Assistance for the first 8 months for the date of certification as a trafficking victim.⁷³

The trafficking victim must be certified by Health and Human Services. Adult victims, or those over 18, must also be willing to assist in the investigation and prosecution of the trafficker. There are several ways to be certified (1) as a minor; (2) continued presence; (3) receiving a bona fide determination in a T-visa case; or (4) being granted a T-visa.⁷⁴ Family members of victims who receive bona fide determinations or T-visas are also eligible to access benefits.⁷⁵

VAWA Self-Petitioners, VAWA Cancellation of Removal and VAWA Suspension of Deportation Applicants

Some victims whose assault occurs within the context of family violence may be considered qualified immigrants under the Violence Against Women Act. In 1996, Congress made immigrant spouses and children who had been battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouse or parent eligible to access federal public benefits that would help them escape, survive, overcome or prevent ongoing abuse.⁷⁶ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA)⁷⁷ also included in definition of “qualified immigrants” certain abused immigrants and sexual assault victims whose spouses or parents had filed family based immigration petitions on the victim’s behalf.⁷⁸ Many immigrant victims of sexual assault whose abusers are their spouse, parents or other members of their household can meet the definition of qualified battered immigrants. Here we will discuss in some detail what steps victims of sexual assault must take to become qualified battered immigrants.

Sexual Assault within the family includes:⁷⁹

- 1) Immigrant victims of domestic violence who have been battered or subjected to extreme cruelty by a current or former spouse or parent who is a United States citizen or legal permanent resident.
- 2) Immigrant victims whose United States citizen or legal permanent resident Spouse or parent filed an I-130 Family Based Visa Petition for them and the immigrant victim has been abused by another family member of the U.S. citizen or lawful permanent resident spouse or parent who is residing in the same household.

year period they lose access to benefits unless they have become a naturalized citizens, Kaiser Commission on Key Facts: Medicaid and the Uninsured, Medicaid and SCHIP Eligibility for Immigrants. P2 (April 2006).

⁷² PRWORA sec 403(b), 8 U.S.C. sec 1613(b). The Trafficking Victims Protection Reauthorization Act of 2008 additionally made trafficking victims who have been granted a prima facie determination or who have approved T-visas qualified immigrants. This may have some effect on the durational limitations applicable to asylees.

⁷³ Office of Refugee Resettlement: Cash & Medical Assistance, <http://www.acf.hhs.gov/programs/orr/benefits/cma.htm> (last visited Sept. 29, 2009).

⁷⁴ 22 U.S.C. § 7105.

⁷⁵ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4(a)(2) (Dec. 19, 2003).

⁷⁶ IIRAIRA § 501, 8 U.S.C. § 1641. “Legal protections for battered immigrant women and children have expanded significantly since 1990. VAWA 1994 and VAWA 2000 have effectively raised awareness about domestic violence in immigrant communities and are offering protection to many immigrant victims of domestic violence. Legislative protections have helped battered immigrant women escape abuse, survive economically, and bring their abusers to justice while at the same time reducing domestic violence in their communities.” Leslye E. Orloff & Janice v. Kaguyutan, *A Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U.J. GENDER SOC. POL’Y & L. 95, 169-70 (2001), available at <http://www.legalmomentum.org/assets/pdfs/wwwofferingahelpinghand.pdf> (last visited Apr. 22, 2009).

⁷⁷ IIRAIRA § 501, amending PRWORA by adding § 431(c).

⁷⁸ The VAWA case may be a self-petition, a cancellation of removal application, or a suspension of deportation application.

⁷⁹ Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344 (Nov. 17, 1997).

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The abuser and/or sexual assault perpetrator may be any family household member including but not limited to a father in law, brother, or uncle⁸⁰.

- 3) Immigrant victims who have an approved Family Based Legal Petition (I-130) and who can demonstrate that they have been battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouse or parent who filed the family based petition on their behalf.

The circumstances under which battered immigrant spouses or children of U.S. citizens or lawful permanent residents can be granted “qualified immigrant” status are the following:

- 1) The Department of Homeland Security⁸¹ or an immigration judge:⁸²
 - Has approved a self-petition⁸³ or family-based visa (filed by the spouse or parent) for the applicant
 - Has granted cancellation of removal
 - Has granted suspension of deportation or
 - Has found that the applicant's pending petition or application sets forth a *prima facie* case for such benefit or relief;⁸⁴ and
- 2) The immigrant or the immigrant's child has been battered or subject to extreme cruelty in the United States by a U.S. citizen or lawful permanent resident spouse or parent, or by a member of the spouse's or parent's family residing in the same household
 - (if the permanent resident or citizen spouse or parent consents to or acquiesces in such battery or cruelty and, in case of a battered child, the immigrant did not actively participate in the battery or cruelty) and
- 3) There is a substantial connection between the battery or extreme cruelty and the need for public benefit sought, and
- 4) The battered immigrant or child no longer resides in the same household as the abuser.

Requirements When Applying for Benefits Based Upon Pending or Approved Applications:

- A VAWA case or qualifying family-based visa petition must be filed with the Department of Homeland Security or the immigration judge before the immigrant can qualify to receive benefits
- If the case has been filed but is not yet approved, the Department of Homeland Security must have ruled that the pending self petition or application filed sets forth a *prima facie* case⁸⁵

⁸⁰ For further examples, see Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344 (Nov. 17, 1997).

⁸¹ Memorandum from William Yates, Dir. of Operations U.S. Citizenship & Immigration Services to Paul Novak, Dir. of Vermont Serv. Ctr. U.S. Citizenship & Immigration Services (Apr. 8, 2004).

⁸² See Letter from Michael J. Creppy, Chief Immigration Judge, Executive Office for Immigration Review, to All Assistant Chief Immigration Judges, All Immigration Judges, All Court Administrators and All Support Staff, *Operating Policy and Procedure Memorandum 97-9: Motions for "Prima Facie" Determination and Verification Requests for Battered Spouses and Children* (1997), available at <http://www.usdoj.gov/eoir/efoia/ocij/oppm97/97-9.pdf> (last visited Apr. 22, 2009).

⁸³ Note that spouses can file a self-petition up to two years after divorce. 8 U.S.C. 1154(a)(1)(iii)(II)(aa)(CC).

⁸⁴ A *prima facie* case is one in which the Department of Homeland Security or an immigration judge has made initial determination that a VAWA case contains all of the necessary elements of proof. See also, Memorandum from William Yates, Dir. of Operations U.S. Citizenship & Immigration Services to Paul Novak, Dir. of Vermont Serv. Ctr. U.S. Citizenship & Immigration Services (Apr. 8, 2004).

⁸⁵ Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,366 (Nov. 17, 1997) (providing guidance for establishing a *prima facie* case). *Prima Facie Review of Form I-360 When*

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- If the case is in proceedings before an immigration judge the applicant will need to file a motion requesting a *prima facie* determination from the immigration judge⁸⁶
- To prove a *prima facie* case, the applicant must have presented in his or her petition at least one piece of credible evidence that provides proof of each required element of the VAWA or family-based visa petition case
- These *prima facie* determinations and approved petitions or applications qualify the applicant for benefits.
- When applying for benefits, the battered immigrant must give the public benefits agency a copy of his or her approval notice from the Department of Homeland Security or the immigration judge, or a notice of *prima facie* case determination.

Requirements for Benefits Applications Based Upon Being Battered or Subjected to Extreme Cruelty:

- A battered immigrant with an approved VAWA case or *prima facie* determination is not required to provide the benefits-granting agency with evidence of abuse beyond his or her approved petition or *prima facie* determination letter.
 - In order to have DHS or the immigration judge approve the VAWA petition or application for VAWA cancellation of removal or suspension of deportation or enter a *prima facie* determination, an applicant under VAWA must have shown that he or she experienced such battery or extreme cruelty.
 - The Department of Homeland Security has already determined battery or extreme cruelty and the benefits granting agency should not re-adjudicate this issue.⁸⁷
- A battered immigrant with a family-based petition (I-130) filed by his or her spouse or parent must submit:
 - Proof of the battery or extreme cruelty (such as a protection order, police report, photographs, a report from a counselor at a battered women's program, or medical records) along with his or her approval notice or *prima facie* determination to the benefits agency.⁸⁸

Filed By Self-Petitioning Battered Spouse/Child, Interim Regulations Vol. 62 No. 219 Federal Register 60769 (November 13, 1997) 8 C.F.R. 204.2(c)(6) and (e)(6);

⁸⁶ Michael J. Creppy, Operating Policy and Procedure Memorandum 97-9: Motions for "Prima Facie" Determination and Verification Requests for Battered Spouses and Children. (1997). ("Any alien, who has a pending application for suspension of deportation under section 244(a)(3) and seeks a determination that he or she is a "qualified" alien for purposes of receiving public benefits, may file a motion, in writing, under 8 C.F.R. § 3.23(a), with the Immigration Judge requesting a finding that he or she is "prima facie" eligible for suspension of deportation. An applicant for cancellation of removal under section 240A(b)(2) of the INA may also request a "prima facie" determination.)

⁸⁷ Letter from Pearl B. Chang, U.S. Department of Homeland Security, to Patricia S. Arnaudo, U.S. Department of Housing and Urban Development (May 5, 2005) (on file with Legal Momentum).

⁸⁸ Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,369 (Nov. 17, 1997) ("The benefit provider should consider *any credible evidence proffered by the applicant*. Evidence of battery or extreme cruelty (and in the case of a petition on behalf of a child, evidence that the applicant did not actively participate in the abuse) includes, but is not limited to, reports or affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, counseling or mental health personnel, and other social service agency personnel; legal documentation, such as an order of protection against the abuser or an order convicting the abuser of committing an act of domestic violence that chronicles the existence of abuse; evidence that indicates that the applicant sought safe-haven in a battered women's shelter or similar refuge because of the battery against the applicant or his or her child; or photographs of the visibly injured applicant, child, or (in the case of an alien child) parent supported by affidavits. An applicant may also submit sworn affidavits from family members, friends or other third parties who have personal knowledge of the battery or cruelty. Additionally, an applicant may submit his or her own affidavit, under penalty of perjury (it does not have to be notarized), describing the circumstances of the abuse, and the benefit provider has the discretion to conclude that the affidavit is credible, and, by itself or in conjunction with other evidence, provides relevant evidence of sufficient weight to demonstrate battery or extreme cruelty. The benefit provider should keep a copy of all evidence presented by the applicant. The benefit provider should bear in mind that, due to the nature of the control and fear dynamics inherent in domestic violence, some applicants will lack the best evidence to support their allegations (e.g., a civil protection order or a police report). Thus, the benefit provider will need to be flexible in working with the applicant as he or she attempts to assemble adequate documentation. In determining the existence of battery or cruelty, it is important that the benefit provider understand both the experience of intimate violence and the applicant's cultural context. The dynamics of domestic violence may have inhibited the applicant from seeking public or professional responses to the abuse prior to applying for benefits

“Battery or extreme cruelty” is defined as, but not limited to:

“...Being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence.”⁸⁹

To be a “member of the spouse or parent’s family” is defined as:

“... Any person related by blood, marriage, or adoption to the spouse or parent of the immigrant, or any person having a relationship to the spouse or parent that is covered by the civil or criminal domestic violence statutes of the state or Indian country where the immigrant resides, or the state or Indian country in which the immigrant, the immigrant’s child, or the immigrant child’s parent received a protection order.”⁹⁰

The “Substantial Connection” Element of Proof

To obtain benefits an immigrant victim must demonstrate that there is a “substantial connection” between the battery or extreme cruelty and the need for the public benefit. The Department of Justice issued an Attorney General’s Order that sets forth a non-exclusive list of factors that establish “substantial connection.” The following are examples of the types of circumstances in which there would be a “substantial connection” between abuse and the need for benefits:⁹¹

- To become self-sufficient following separation from the abuser
- To escape the abuser or the abuser’s community
- To ensure the safety of the victim, the victim’s child, or the victim’s parent
- To compensate for the loss of financial support resulting from the separation
- Because the victim lost his or her job or earns less because of the battery or cruelty or because of the involvement in legal proceedings relating them (child custody, divorce actions, etc.)
- Because the victim had to leave his or her job for safety reasons
- Because the victim needs medical attention or mental health counseling or has become disabled
- Because the victim loses a dwelling or a source of income following separation
- Because the victim’s fear of the abuser jeopardizes the victim’s ability to take care of his or her children;
- To alleviate nutritional risk or need resulting from the abuse or following separation
- To provide medical care during a pregnancy resulting from the relationship with the abuser,

needed to enable the applicant to leave the abuser. For many cultural groups, going to outsiders for help is viewed as disloyalty to the community and an embarrassment to the family. In some cultures, for example, women have been conditioned to accept the authority and control of their husbands. Thus, there may be little independent documentary evidence of the abuse; the benefit provider should be sensitive to the needs and situation of the abused applicant when reviewing allegations and evidence of abuse.”)

⁸⁹*Id.* at 61,369. This definition is parallel to the definition of “battering and extreme cruelty” contained in the regulations governing VAWA self-petitions and battered spouse waivers. Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13,061, at 13,074 (Mar. 26, 1996) (codified at 8 C.F.R. pt. 204). It is important for advocates to understand that this definition is broader than the definition of domestic or family violence contained in many state domestic violence statutes in that it includes emotional abuse, which, in many states, would not lead to the issuance of a protection order. It therefore may be necessary for advocates and attorneys assisting battered immigrants to educate state benefits-providing agency staff about this more inclusive definition.

⁹⁰Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,369. (Nov. 17, 1997)

⁹¹*Id.* at 61,370. Full cite for first cite of each pg.

- the abuse, or abuser's sexual assault, or
- To replace medical coverage or health care services lost following the separation with the abuser.

Considerations when the immigrant victim or child has not yet left the same household as the abuser at the time of the benefits application

The U.S. Attorney General's Order notes that:

Although a qualified applicant is not a "qualified immigrant" eligible for benefits until the battered applicant or child or parent ceases residing with the batterer, applicants will generally need the assurance of the availability of benefits in order to be able to leave their batterer and survive independently.⁹²

The Order therefore suggests that, wherever possible, the federal or state benefits provider completes the eligibility determination process and approve the applicant for receipt of benefits prior to the time that the applicant has separated from the batterer. This ensures that the applicant will be able to receive benefits as soon as he or she leaves the abuser.

States have addressed this issue in two ways. Some states take the immigrant victim's application and complete the process of determining that he or she will be eligible to receive public benefits as a qualified immigrant. They then award benefits immediately and give the immigrant one month to return to the benefits-granting agency to provide them evidence that he or she no longer resides with the abuser. Other states complete the benefits determination process and inform the immigrant victim that he or she will receive the benefits as soon as the immigrant provides the benefits-granting agency with evidence that he or she is no longer residing with the abuser.

Evidence of separation from the abuser could include but is not limited to:

- A civil protection order removing the abuser from their home
- A civil protection order requiring the abuser to stay away from his or her home
- A letter from the landlord stating that the abuser no longer resides there
- Letters from family members, friends, neighbors, or victim advocates stating that the abuser no longer resides in the household
- An affidavit from victim asserting that abuser no longer resides with her
- A new lease agreement evidencing that the immigrant is not residing with the abuser
- Utility bills evidencing that the immigrant is no longer living in the abuser's home.

Once a battered immigrant qualifies for benefits under VAWA, he or she is legally entitled to access a much wider array of services and benefits than he or she would be able to receive if he or she was not a qualified immigrant, including:

- Public and assisted housing;
- Post-secondary education grants and loans; and
- All HHS funded federal public benefits except federal means-tested public benefits.⁹³

A. HOUSING

⁹² *Id.* at 61,370.

⁹³ Including TANF, Medicaid, SCHIP, Food Stamps and SSI. Access to these programs have additional immigrant eligibility requirements and restrictions that will be discussed later in this chapter.

All immigrant victims of domestic violence and child abuse, and sexual assault victims at risk of homelessness are all eligible for shelter and transitional housing for up to 2 years without regard to the victim's immigration status.⁹⁴

Public and assisted housing is considered a federal public benefit. For an immigrant victim of sexual assault to qualify for public and assisted housing benefits she must be a qualified immigrant. Generally speaking, the immigrant victims who qualify for public and assisted housing will be those victims with prima facie determinations or approved applications in a VAWA self-petition, a VAWA cancellation of removal, or a VAWA suspension of deportation case. They may also be eligible if they have had a family based visa petition filed on their behalf by their United States citizen or legal permanent resident spouse or parent. This option was designed to provide access to public benefits to sexual assault and domestic violence victims who live in homes with extended family members where the sexual assault perpetrator may be a father-in-law or brother-in-law of the victim. Certain immigrant victims of sexual assault also qualify for housing if they are lawful permanent residents, refugees, asylees, Cuban Haitian entrants⁹⁵ or any other group of immigrants that are qualified immigrants eligible to receive public benefits.⁹⁶

While these groups are clearly eligible for housing under the law, since HUD has not issued implementing regulations, in practice many battered qualified immigrants continue to have difficulty convincing public and assisted housing authorities in their communities to grant battered immigrants access to the public and assisted housing benefits they qualify to receive.⁹⁷ As a result, many immigrants who would normally be eligible for housing, have been denied.⁹⁸ Additionally, an immigrant victim may qualify to live in public housing if they are part of a mixed household. Under HUD policies and regulations a household is eligible for public housing if one member of the family is eligible for public or assisted housing. A mixed household is a term used for public benefits eligibility purposes and refers to a household where some family members are eligible for public and assisted housing because they are citizens or qualified immigrants and other family members are not because they are undocumented or have an immigration status that does not make them a qualified immigrant. For example, an undocumented mother with two United States citizen children would qualify. Mixed status families do not receive the full public or assisted housing benefit that they would receive if all family members were qualified immigrants. The public or assisted housing grant is pro rated and the family is required to pay more for their housing because their public or assisted housing grant is lower. In calculating benefits on a pro rata basis the amount of assistance paid for a mixed family is calculated based on the number of members that have eligible citizenship or immigration status. In calculating benefits for mixed families payment that would normally be available for that family size is reduced by the proportion of the family members who are not qualified to receive benefits. The result is a lower benefits payment than the household would receive if all family members were citizens or qualified immigrants.⁹⁹

When an immigrant victim and any undocumented children included in the victim's VAWA case living in public housing becomes qualified immigrants, the public housing benefit for either public or assisted housing is increased to add funds for each of the newly qualified immigrant family members who can now be counted as a family member eligible for the housing subsidy. This is extremely important for victims because economic security and the ability to support themselves and their children means a reduction in the chance that they will return to their abusers.

⁹⁴ Andrew Cuomo, Letter to HUD Funds Recipients, U.S. Department of Housing and Urban Development, January 19, 2001, also available at http://new.vawnet.org/Assoc_Files_VAWnet/ImmigrantAccess.pdf

⁹⁵ Cuban and Haitian Entrants are also statutorily available for the same benefits as battered immigrant qualified immigrants and HUD should therefore not leave this group out when issuing guidance, policy directive or regulations regarding housing assistance.

⁹⁶ See full discussion of qualified immigrants earlier in this chapter.

⁹⁷ Please see appendix XX for a detailed history of the law and current status of housing law.

⁹⁸ Please see appendix XX for a detailed history of the law and current status of housing law. You should use this as a guide to advocate for immigrant access to housing.

⁹⁹ U.S. Department of Housing and Urban Development, *HUD Occupancy Handbook Exhibit 3-10*, (2007),

As of fall of 2009, HUD still has not issued implementing regulations or policies making it difficult for victims to access public and assisted housing benefits. Until this problem is addressed by HUD, advocates should take the following documents with them when applying for public or assisted housing through HUD in order to facilitate the process.¹⁰⁰

- Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act issued on 1996¹⁰¹
- Documentation that the immigrant victim has applied for and has received either a prima facie determination or approval of her VAWA immigration case;¹⁰² or
- Documentation that a family based visa petition has been filed on the victim's behalf, together with evidence that the applicant has been a victim of battering or extreme cruelty;
- 8 U.S.C. 1641(c);
- The 2003 Budget Act directing DHS and HUD to work together to facilitate battered immigrant access to public and assisted housing.¹⁰³
- Letter from Department of Homeland Security to Department of Housing and Urban Development describing procedures that HUD should follow in processing cases of battered qualified immigrants seeking public or assisted housing.¹⁰⁴

B. EDUCATION : Financial Aid for Some Battered Immigrant Women

Immigrant sexual assault victims who are qualified battered immigrants and their children are eligible for post-secondary educational grants and loans.¹⁰⁵ Access to postsecondary grants and loans that enable victim to pursue educational opportunities enhances economic options and self-sufficiency of immigrant victims and reduces dependence on abusive family members or employers. Battered immigrants with pending or approved applications for immigration relief under the Violence Against Women Act (VAWA) are among the list of immigrants who are eligible for federal student financial aid programs as a "qualified immigrants."¹⁰⁶ Post secondary educational assistance are the higher educational loans and grants students apply for when they fill out a Free Application for Federal Student Aid (FAFSA) form.¹⁰⁷

Under 8 U.S.C §1611(c)¹⁰⁸ the term "Federal public benefit" is defined as:

"(A) Any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

¹⁰⁰ These documents are included in the Appendix for this section.

¹⁰¹ Interim Guidance on 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 (Interim Guidance).

¹⁰² In VAWA cases, DHS has made a ruling that the applicant is a victim of battering or extreme cruelty. HUD should not seek any further domestic violence evidence in these cases.

¹⁰³ HJ. Res. 2 Conference Report 108-10 February 13, 2003 page 1495 ("The conferees direct the Department to work with the Department of Justice to develop any necessary technical corrections to applicable housing statutes with respect to qualified aliens who are the victims of domestic violence and Cuban and Haitian immigrants to ensure that such statutes are consistent with the Personal Responsibility and Work Opportunity Act of 1996 and the Illegal Immigration Reform and Personal Responsibility Act of 1996.")

¹⁰⁴ Letter from Pearl B. Chang, U.S. Department of Homeland Security, to Patricia S. Arnaudo, U.S. Department of Housing and Urban Development (May 5, 2005) (on file with Legal Momentum).

¹⁰⁵ If you are having trouble accessing Post secondary financial aid for a client who is eligible, please contact National Immigrant Women's Advocacy Project for assistance. As of publication, the Department of Education was still in the process of creating specific forms and policies to address any barriers this group may face in the application process.

¹⁰⁶ 8 U.S.C. 1641; Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Division C, § 501, 110 Stat. 300a-546.

¹⁰⁷ For copies of the form and directions for filling out the FAFSA form, visit: <http://www.fafsa.ed.gov/>

¹⁰⁸ PRWORA § 401(c)(A) and (B)

(B) any retirement, welfare, health, disability, public or assisted housing, **postsecondary education**, [emphasis added] food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unity by an agency of the United States or by appropriated funds of the United States.¹⁰⁹

Federal financial aid programs are grants and loans “provided by an agency of the United States,” in this case the Department of Education.¹¹⁰ Postsecondary education is specifically listed as a federal public benefit in 8 U.S.C. 1611.¹¹¹ Not only are federal financial aid programs listed as federal public benefits programs accessible to “qualified immigrants,” PRWORA explicitly excludes post secondary financial aid from the list of federal public benefits that have time restrictions governing how long a qualified immigrant applicant must wait to access the benefits.¹¹²

Immigrants who become “qualified immigrants” are immediately eligible to receive postsecondary educational grants and loans. Federal financial aid programs under federal law fall within the definition of federal public benefits, but not federal means-tested public benefits.¹¹³ Once an immigrant becomes a qualified immigrant, the immigrant is legally able to access student assistance programs under the Higher Education Act of 1965.

Child Care

Funding for child care from the Child Care Development Fund is a federal public benefit that only qualified immigrants can access.¹¹⁴ Since child care is not a federal means tested public benefit, federally funded child care is available both citizens and qualified immigrants. The Child Care Bureau at the Administration for Children and Families of at the U.S. Department of Health and Human Services is the agency responsible for administering federal child care funding. The Child Care Bureau has determined with regard to immigration status verification that “only the citizenship and immigration status of the child, who is the primary beneficiary of the child care benefit, is relevant for eligibility purposes”¹¹⁵. Thus, children of immigrant victims who are U.S. citizens or qualified immigrants can be enrolled in child care programs and have their participation paid through federal child care benefits. Furthermore, when immigrant victims filing VAWA self-petitions who include their undocumented children as dependent (derivative) family members in their VAWA self-petition once a victim becomes receives a prima facie determination in her VAWA case, her children will also receive prima facie approval of their VAWA applications. This prima facie determination makes the derivative children “qualified immigrants” who are immediately eligible for federally funded child care.

¹⁰⁹ 8 U.S.C.1611(c); See also Interim Guidance on 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. 61,344 (1997). Attachment 3.

¹¹⁰ 8 U.S.C. 1611(c); PRWORA § 401(c)(A)

¹¹¹ 8 U.S.C. 1611; PRWORA § 401(c)(B). See also Verification of Eligibility for Public Benefits, Department of Justice, Proposed Rule, August 4, 1998, (Vol. 63 No. 149, 41664)

¹¹² 8 U.S.C. 1613; PRWORA § 403 (a) “In General. – Notwithstanding any other provision of law and except as provided in subsection (b), (c), and (d), an alien who is a qualified alien (as defined in section 431[1641 of USC]) and who enters the United States on or after the date of the enactment of this Act is not eligible for any Federal means-tested public benefit for a period of 5 years beginning on the date of the alien’s entry into the United States with a status within the meaning of the term “qualified alien”; see also Interim Guidance on 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. 61,344 (1997) (interpreting PRWORA’s measurement of 5 years from entry as alien’s first entry).

¹¹³ Postsecondary education assistance programs are **not** means-tested public benefits, because they were statutorily excluded from the definition. 8 U.S.C 1613(c)(2)(H); PRWORA § 403(c)(2)(H) states that despite the definition of a federal means-tested benefit it DOES NOT include: “(H) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act.”

¹¹⁴ Department of Health and Human Services, Program Instruction CCDF-ACF-PI-2008-01—Verification of Citizenship and Immigration Status by Non-Profit Organizations and Head Start Grantees, May 2, 2008.

¹¹⁵ Department of Health and Human Service Child Care Bureau, Clarification of Interpretation of “Federal Public Benefit” Regarding CCDF Services Program Instruction (ACYF-PI-CC-98-08) November 25, 1998.

Section 432(d) of PRWORA, as amended, provides that, “a nonprofit charitable organization, in providing any Federal public benefit...or any State or local public benefit...is not required under this chapter to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits.”¹¹⁶ However, if a non-profit agency is providing services that are federal public benefits, a government entity may conduct the verification and notify the non-profit agency that then cannot use funds that are federal public benefits to serve immigrants who do not qualify. The Child Care Bureau is encouraging state lead child care agencies not to subcontract with non-profit agencies for child care unless the non-profit agency agrees to conduct immigration status verification of children using the non-profit’s child care services.¹¹⁷ As a result undocumented immigrant children will have more limited access to government funded child care programs.

All children without regard to immigration status however, are legally eligible to participate in Head Start programs. The Head Start and Early Head Start programs are not “federal public benefits” because these programs like all educational programs except post secondary education benefits were omitted from the statutory definition of federal public benefits in title IV of PRWORA.¹¹⁸

II. ACCESS TO FEDERAL MEANS-TESTED PUBLIC BENEFITS

Federal means-tested public benefits are the most difficult category of public benefits for immigrant sexual assault victims to access. Only those qualified immigrants who meet one or more of the following criterion will be able to access federal means-tested public benefits:

- First entry into the United States by a statutorily specified date,¹¹⁹
- Overcome statutory eligibility bars to access,¹²⁰
- Not be barred by sponsor-to-immigrant deeming of income, and/or
- Be exempt from statutory bars and to deeming by being credited with 40-qualifying-quarters of work. Immigrant victims who qualify for relief under VAWA may additionally be exempt from deeming under special deeming exemption rules that apply in domestic violence cases.

A. FEDERAL MEANS TESTED PUBLIC BENEFITS DEFINITION

The term “federal means-tested public benefit” covers those benefit programs that determine eligibility for benefits on the basis of the income or resources of the individual or family seeking the benefit.¹²¹ In addition, federal means-tested public benefits must be funded through federal means-tested mandatory spending programs. Discretionary spending programs, as well as mandatory spending programs that are not means-tested, are excluded from the definition of federal means-tested public benefits.¹²² This distinction is important because, unlike federal benefits that are not

¹¹⁶ (8 USC 1642(d)).

¹¹⁷ Department of Health and Human Service, Program Instruction CCDF-ACF-PI-2008-01—Verification of Citizenship and Immigration Status by Non-Profit Organizations and Head Start Grantees, May 2, 2008.

¹¹⁸ of Health and Human Service, Program Instruction CCDF-ACF-PI-2008-01—Verification of Citizenship and Immigration Status by Non-Profit Organizations and Head Start Grantees, May 2, 2008. (If a Head Start Agency also runs a childcare program that received Child Care Development Funds only a program that provides child care services that are subject to the Head Start Performance Standards *and* supported by combined Head Start and CCDF funding is exempt from verification requirements. If the Health Start program also administers a separate program for children (not subject to Head Start Performance Standards) entirely supported by CCDF funds, this separate CCDF program would not be exempt from PRWORA’s verification requirements.)

¹¹⁹ In most cases this date will be August 22, 1996.

¹²⁰ 8 U.S.C. 1613; PRWORA § 403(a) places a five-year bar on immigrants that denies them access to “federal means-tested public benefits”.

¹²¹ PRWORA § 403; Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act, Interpretation of “Federal Means-Tested Public Benefit,” 62 Fed. Reg. 45,256, 45,257 (Aug. 26, 1997). The U.S. Departments of Agriculture, Education, Labor and Veterans Affairs, and the Social Security Administration, concur in or defer to the interpretation of federal means-tested public benefit proffered by the Department of Health and Human Services. Memorandum Opinion for the General Counsel, Department of Health and Human Services (Jan. 14, 1997), *available at* <http://www.usdoj.gov/olc/meanstst10.htm>.

¹²² 62 Fed. Reg. 45,256, 45,257.

means-tested that all who become qualified immigrants can access, qualified immigrants are generally ineligible for federal means-tested public benefits for a period of five years after they have been given qualifying status. This five year bar is discussed in detail in the following section.

Only four benefit programs have been determined to provide federal means-tested public benefits:

- Supplemental Security Income (SSI)
- Food Stamps
- Medicaid (except for emergency Medicaid)
- Temporary Assistance for Needy Families (TANF)

Prior to April 1, 2009, the State Child Health Insurance Program had been considered a federal mean-tested public benefits imposing a 5 year bar on access to benefits for qualified immigrant children and pregnant women.¹²³ The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA)¹²⁴ removed the 5 year to benefits access for under 21 year old children who are legally present in the United States. Under CHIPRA states that provide health care immigrant children who are qualified immigrants or otherwise legally present, including for example children of U-visa victims and VAWA self-petitioners. As a result qualified immigrant children and pregnant women can receive SCHIP funded health care

B. FIVE-YEAR BAR ON RECEIVING MEANS-TESTED PUBLIC BENEFITS

Advocates should be aware that qualified immigrants' eligibility for federal means-tested benefits depends in part upon when the immigrant entered the United States. The federal programs determined to be means-tested include Medicaid, SSI, TANF, and Food Stamps.. Immigrants who are "qualified immigrants" and who first entered the United States before August 22, 1996, are generally eligible for the same federal means-tested public benefits available to U.S. citizens, with the exception of SSI.¹²⁵

Immigrants who are "qualified immigrants" who entered the United States *on or after* August 22, 1996, however, are barred from receiving "federal means-tested benefits" during the first five years after obtaining qualified immigrant status. After this five-year period has ended, qualified immigrants who had an affidavit of support (Form I-864) filed on their behalf as part of their application for permanent resident status may be subject to income deeming rules that may continue to make them ineligible for federal-means tested public benefits (see discussion on sponsor deeming and the battered women's exception below).¹²⁶

Some post-August 22, 1996 entrants are exempt from this five-year bar. If immigrant sexual assault victim fall within any of the following categories they are exempt from the five-year bar. These immigrants include:

- Refugees
- Asylees
- Victims of trafficking
- Amerasians
- Cuban/Haitian entrants

¹²³ Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit" 62 Fed. Reg. No. 149, 41658.

¹²⁴ Public Law No. 111-3, 2009 (H.R. 2).

¹²⁵ Immigrants who entered before August 22, 1996, are eligible for Supplemental Security Income (SSI) only if they were qualified immigrants, were lawfully residing in the United States, and were receiving SSI on August 22, 1996.

¹²⁶ In all other respects, the rights and limitations on post-August 1996 immigrants to receive public benefits do not differ from the rights and limitations of "qualified aliens" who entered the U.S. before August 22, 1996.

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- Veterans and immigrants on active military duty, their spouses¹²⁷ (and surviving spouses who did not remarry), and their unmarried children under the age of 21 (includes Filipino, Hmong, and Highland Lao);
- Immigrants granted withholding of deportation

In addition, some states have elected to provide state funded SSI, health care, food assistance and/or cash assistance to immigrants who would otherwise be subject to the five-year bar by using their state funds to pay the costs of these benefits.¹²⁸

Another way that immigrants can be exempted from the 5-year bar to federal means-tested public benefits is to demonstrate that they or their spouse or parents can be credited with 40 quarters of work in the United States. Immigrants who satisfy a 40-qualifying-quarter requirement are exempt from the five-year bar on accessing means-tested programs.¹²⁹ A “qualifying quarter” is a unit of wages under Social Security law and is calculated upon the basis of how much a person earns in a calendar year.¹³⁰ Each year, the Social Security Administration (SSA) determines the required amount.¹³¹ Up to four quarters of credit may be earned yearly. All covered employment, and some uncovered employment, performed in the United States will be counted toward qualifying quarter credits.¹³²

Most employment is considered “covered.”¹³³ For the purposes of counting quarters, all work immigrants have done can be counted toward attaining 40 qualifying quarters including income from work performed when the immigrant was undocumented. Earnings made during periods when the immigrant did not have legal work authorization and earning for which no income taxes were withheld can be used as credit toward the 40 quarter goal.¹³⁴ However, because it is much easier to show work completed when it is done by an individual with a SSN, it is important that immigrants apply for SSN’s immediately after being authorized to work.

It is important to note that this is consistent with DHS procedures that require immigrants to pay taxes on earnings accrued while the undocumented immigrant was working. In the process of filing for lawful permanent residency immigrants are required to have paid any taxes due on prior earnings. The Social Security Administration issues Tax Identification numbers that are used to facilitate payment of income taxes by immigrants who are working without legal work

¹²⁷ Divorce from the veteran cuts the divorced immigrant spouse off from access to these benefits.

¹²⁸ See NILC charts and section below on SSI + Food stamps

¹²⁹ The other exceptions to both the permanent and five-year bars on receiving certain benefits apply to refugees, asylees, and veterans or active duty military members and their spouses and unmarried dependent children.

¹³⁰ Social Security Act, title II, 42 U.S.C. §§ 401, *et seq.*

¹³¹ For to receive four qualifying quarters an immigrant had to the following amounts:

Calendar Year	Amount Needed to Receive Four Quarters of Coverage
1999	\$2,960
2000	\$3,120
2001	\$3,320
2002	\$3,480
2003	\$3,560
2004	\$3,600
2005	\$3,680
2006	\$3,880
2007	\$4,000
2008	\$4,200
2009	\$4,360
2010	\$4,480

www.dcf.state.fl.us/publications/esspolicymanual/a_33.pdf

¹³² For a helpful guide to counting quarters please see Kansas Department of Social and Rehabilitation Services, , also available at *The Kansas Economic and Employment Support Manual (KEESM)*, app at A-4 40 *Qualifying Quarters of Coverage*, also available at http://www.srskansas.org/KEESM/Appendix/A-4_SSA40QualQuart1-01.pdf.

¹³³ Kansas Department of Social and Rehabilitative Services, *The Kansas Economic and Employment Support Manual (KEESM)*, app at A-4 40 *Qualifying Quarters of Coverage*, also available at http://www.srskansas.org/KEESM/Appendix/A-4_SSA40QualQuart1-01.pdf.

¹³⁴ United States Department of Agriculture, Eligibility Determining Guidance: *Non-Citizen Requirements in the Food Stamp Program*, (January 2003); see

authorization.¹³⁵ Payment of taxes through a tax identification number allows immigrants to pay taxes on earnings in a timely fashion without being subject to additional costs and penalties that can accrue if the immigrant defers tax payment on income until a future time when they may be eligible for lawful permanent residency.

The Social Security Administration (SSA) counts qualifying quarters solely based upon the total amount earned each year. That quarterly amount could have been earned any time during the calendar year. An immigrant receives full credit from 4 quarters of work if the total amount for the year exceeds the minimum required. All of the earnings could have actually been earned in one year. This amount changes yearly based upon inflation.¹³⁶

Since the maximum number of qualifying quarters that may be achieved each year is four, qualified immigrants must have worked for all or part of each year for at least ten years in order to attain their 40 qualifying quarters of work and to overcome the five-year bar on benefits eligibility. If an immigrant received federal means-tested public benefits at any time during a quarter, the individual will not receive credit for that quarter of work.

The qualified immigrant may obtain 40 quarters sooner than ten years by getting credit for quarters earned by the spouse or parent. In addition to quarters earned themselves, all quarters earned by a parent prior to the immigrant's eighteenth birthday may be counted. Similarly, if the immigrant is married or widowed, any quarters earned by the spouse during the marriage may be counted toward establishing a qualifying quarter. However, after divorce, immigrant spouses lose the ability to count quarters earned by their spouses during the marriage. Also, if qualified immigrants are subject to the five-year bar, but have not accumulated enough qualifying work quarters to overcome that restriction, qualified immigrants may count work during the 5-year bar period to establish qualifying quarters. Thus, if a person with only seven years of work credit becomes a qualified immigrant and if they work for three more years after attaining qualified immigrant status, they will only be barred from access to benefits for three rather than five years.

C. SPONSOR DEEMING EXCEPTIONS¹³⁷

After the 5 year bar to benefits access has ended, qualified immigrants can apply for benefits that they had been previously barred from receiving. However, for any person to qualify to receive public benefits, the benefits granting agency must determine whether the applicant is "income eligible" to receive the benefit. "Sponsor deeming" rules control how the income eligibility determination is made for non-citizens who apply for public benefits. When a U.S. citizen or permanent resident immigrant files a petition seeking immigration benefits for a family member, that citizen or lawful permanent resident petitioner must complete and file an affidavit of support with the Department of Homeland Security. This affidavit states that the citizen or permanent resident immigrant is willing to be financially responsible for the immigrant family member whom they are requesting be granted permission to legally immigrate to the United States.¹³⁸ When an immigrant with an affidavit of support filed on his or her behalf applies for public benefits, sponsor deeming rules require that the benefits-granting agency to assume, for the purposes of determining income eligibility for benefits, that the immigrant has full access to the income and assets of the sponsor. Deeming does not apply to immigrants w/o sponsors or whose sponsors did not sign an enforceable affidavit of support.¹³⁹

¹³⁵ See IRS.gov, *Individual Taxpayer Identification Number (ITIN)* (Nov. 6, 2009), available at http://www.irs.gov/individuals/article/0,,id=96287_00.html

¹³⁶ See Appendix XXX to this chapter for a chart showing the dollar value of earnings per quarter for 1999 through 2009. For updates see <http://www.ssa.gov/OACT/COLA/QC.html> (last visited Apr. 22, 2009)

¹³⁷ Unfortunately, there are no exemptions for victims who are solely victims of sexual assault. This relief is available to those sexual assault victims in marital relationships.

¹³⁸ Immigration and Nationalization Act (INA) § 212(a)(4)(C) & (D), 8 U.S.C. § 1182(a)(4)(C) & (D); INA § 213A(a)(1), 8 U.S.C. § 1183a(a)(1).

¹³⁹ NILC: Immigrants and Public Benefits Food and Nutrition Programs: <http://www.nilc.org/immspbs/fnutr/foodnutr015.htm>

Post-August 22, 1996 Entrants Exempt From Sponsor Deeming:

- Those who have become U.S. citizens,¹⁴⁰
- Persons with 40 quarters of work history in the United States,¹⁴¹
- Persons married to U.S. citizen or lawful permanent residents with 40 quarters of work history¹⁴²
- Persons who between their own work history and their parent's work history before they turned 18 have 40 quarters of work history;
- Married persons who can combine their work history with the work history of their spouse to arrive at 40 quarters of work history;
- Certain battered immigrants (for up to 12 months or longer if there has been a judicial finding regarding domestic violence),¹⁴³
- Indigent qualified immigrants¹⁴⁴ (Immigrants facing hunger or homelessness) (for up to 12 months)
- Those without sponsors, or those whose sponsors did not sign an enforceable affidavit of support¹⁴⁵

Sponsor Deeming Rules for Pre-August 22, 1996 Entrants

For immigrants who first entered the United States prior to August 22, 1996 the following categories of immigrants were exempted from sponsor deeming for federal means tested benefits:

- Refugees
- Asylees
- Immigrants granted withholding of deportation under Section 243 of the Immigration and Nationality Act (INA)¹⁴⁶
- Lawful permanent residents who have earned or can be credited with 40 qualifying quarters of employment,¹⁴⁷
- Lawful permanent residents at risk of hunger or homelessness
- Qualified battered immigrant spouses and children (with certain limitations discussed below), and
- Certain indigent immigrants whom the benefits provider determines to be unable to obtain food and shelter in the absence of assistance.

E. BATTERED IMMIGRANT EXEMPTION TO SPONSOR DEEMING

For any immigrant to qualify to receive public benefits, the benefits granting agency must determine whether the applicant is "income eligible" to receive the benefit. "Sponsor deeming" rules control how the income eligibility determination is made for non-citizens who apply for public benefits. Under immigration law, when an immigrant's family member sponsors him or her to receive lawful permanent residency in the United States, the sponsoring family member must sign and file an

¹⁴⁰ INA § 213A(a)(2), 8 U.S.C. § 1183a(a)(2).

¹⁴¹ INA § 213A(a)(3), 8 U.S.C. § 1183a(a)(3).

¹⁴² INA § 213A(a)(3)(B)(ii), 8 U.S.C. § 1183a(a)(3)(B)(ii).

¹⁴³ INA § 212(a)(4)(C)(i), 8 U.S.C. § 1182(a)(4)(C)(i), 8 U.S.C. § 1631(f). *See also* Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,370 (Nov. 17, 1997).

¹⁴⁴ 8 U.S.C. § 1631(e). *See also* Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,371 (Nov. 17, 1997).

¹⁴⁵ *USDA issues guidance on implementation of immigrant food stamp rules*, 17(1) Immigrants' Rights Update. (2003), *also available at* <http://www.nilc.org/immspbs/fnutr/foodnutr015.htm>.

¹⁴⁶ 8 U.S.C. § 1253.

¹⁴⁷ In certain circumstances, quarters of employment earned by a spouse or parent may be credited to the immigrant.

affidavit of support that is filed with the Department of Homeland Security. This affidavit states that the sponsor is willing to be financially responsible for that immigrant as the immigrant's sponsor.¹⁴⁸ When an affidavit of support has been filed in the immigration case of an immigrant who later applies for public benefits, sponsor deeming rules require that the benefits-granting agency assume, for the purposes of determining income eligibility for benefits, that the immigrant has full access to the income and assets of their sponsor. It is often the case that these rules render the vast majority of immigrants with sponsors ineligible to receive public benefits.

However, when creating deeming rules Congress exempted some immigrants from the sponsor deeming requirement. Immigrant victims of sexual assault who fall into one of the categories listed below, will be able to apply for public benefits based only on their own assets and resources and will not be subject to sponsor deeming. Congress exempted the following immigrants from sponsor deeming rules:

- Qualified battered immigrant spouses and children (with certain limitations discussed below);
- Refugees;
- Asylees;
- Those granted withholding of deportation under Section 243 of the Immigration and Nationality Act (INA);¹⁴⁹
- Lawful permanent residents who have earned or can be credited with 40 quarters of employment;¹⁵⁰ and
- Lawful permanent residents at risk of hunger or homelessness.

THE BATTERED IMMIGRANT DEEMING EXEMPTION

Sponsor deeming posed grave problems for battered immigrants who received their lawful permanent residency through abusive U.S. citizen or lawful permanent resident spouses or parents. In the past, deeming rules cut off many battered immigrant lawful permanent residents from public benefits and impeded their ability to flee their abusive sponsoring spouses. In order to reduce the harm to battered immigrant women and children, Congress created special sponsor deeming exceptions for immigrant domestic violence victims. Immigration law specifically exempts most qualified battered immigrants from satisfying deeming requirements for 12 months.¹⁵¹

- if the battery or extreme cruelty took place in United States;
- if the abuser was the spouse, parent, or member of spouse's or parent's family;
- if there is a "substantial connection" between the battery or extreme cruelty and the need for the public benefit; and
- if the victim no longer resides with the abuser.

As a result of this exception the following groups of battered immigrants are exempt for 12 months from meeting the deeming requirements:¹⁵²

¹⁴⁸ Immigration and Nationalization Act (INA) § 212(a)(4)(C)&(D), 8 U.S.C. § 1182(a)(4)(C)&(D); INA § 213A(a)(1), 8 U.S.C. § 1183a(a)(1).

¹⁴⁹ 8 U.S.C. § 1253.

¹⁵⁰ In certain circumstances, quarters of employment earned by a spouse or parent may be credited to the immigrant.

¹⁵¹ 8 U.S.C. 1631(f); Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,371 (Nov. 17, 1997).

¹⁵² Battered immigrants with I-864 affidavits of support submitted after December 5, 1997 are explicitly exempted from the I-864 deeming rules for 12 months. Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,371 (Nov. 17, 1997). Some immigrant victims will have had I-134 affidavits of support filed on their behalf prior to December 5, 1997. Immigrant victims with the I-864 and the I-134 affidavits of support should both be eligible for the battered immigrant exceptions to deeming. However, in some cases Balanced Budget Act of 1997 § 5505(e), Pub. L.

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- VAWA self-petitioners (adults and children with *prima facie* determinations, approved self-petitions, or those who have received lawful permanent residency under VAWA);
- VAWA cancellation of removal or VAWA suspension of deportation applicants (adults and children with *prima facie* determinations, approved self-petitions, or those who have received lawful permanent residency under VAWA);
- Battered immigrants with approved I-130 petitions filed for them by their spouses or parents;
- Children whose battered immigrant parent qualifies for benefits due to VAWA or an approved family-based visa petition (whether or not the child has been abused); and
- Lawful permanent residents and any dependent children who obtained their status through a family-based visa petition and were battered before or after obtaining lawful permanent residency.

After the one-year exemption expires, a battered immigrant applicant may continue to be exempted from the deeming requirements if the immigrant can demonstrate that:

- An order of a judge or a prior DHS determination has recognized the battery or cruelty, and
- There continues to be a substantial connection between the abuse and battery suffered and the need for the benefits sought.¹⁵³

Battered immigrants who need benefits beyond one year will either need a judicial or DHS determination of abuse. If they are required to satisfy deeming requirements after the expiration of the one-year period, they, like other lawful permanent residents, may count the qualifying quarters earned by their spouse or parent in order to qualify.¹⁵⁴

The determination of abuse could have been made in a wide range of proceedings. Judicial determinations of abuse that would be sufficient to meet this requirement might be made in a family court proceeding for:

- A protection order,
- A temporary protection order,
- Custody,
- A divorce, or
- Property division.

This determination might be made in a criminal court proceeding in the context of:

- A bond hearing,
- A plea,
- A conviction, or
- Sentencing.

No. 105-33, codified at 42 U.S.C. § 608(f) amendments may be used to apply deeming in cases of battered immigrants. If this occurs advocates and attorneys working with battered immigrants should argue that the state can use the Family Violence Option to waive deeming in the case of immigrant victims with old I-134 affidavits of support. Alternatively, since VAWA self-petitioners are fully exempt from deeming rules without regard to whether an affidavit of support was filed for them, immigrant victims seeking benefits based on an approved family based visa petition can additionally file a self-petition and then proceed to seek benefits based on the self-petition case and the victim will be exempt from deeming.

¹⁵³ *Id.*; IIRAIRA § 552, amending PRWORA § 421(f)(1)(B), 8 U.S.C. § 1631(f)(1)(B).

¹⁵⁴ Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,371 (Nov. 17, 1997).

Furthermore, the determination of abuse may be made in a civil court proceeding, such as:

- A small claims property division for non-married parties
- An immigration case:
 - Concerning a VAWA self-petition,¹⁵⁵
 - Concerning a battered spouse waiver,¹⁵⁶
 - Concerning a VAWA NACARA,¹⁵⁷
 - Under the VAWA Cuban Adjustment Act,¹⁵⁸
 - Under VAWA Suspension of Deportation¹⁵⁹
 - Under VAWA Haitian Refugee Immigration Fairness Act,¹⁶⁰
 - Concerning a VAWA cancellation of removal, or
 - Concerning a 10 year cancellation where battery or extreme cruelty is an extreme hardship factor.

Temporary Assistance to Needy Families (TANF)

TANF provides cash assistance to needy families with children.¹⁶¹ TANF is a joint federal and state income support program. States provide monthly cash grants to eligible families, and the federal government reimburses the states for a percent of their program costs. The Department of Health and Human Services (HHS) is the administering federal agency. Federal law and regulations define eligibility requirements, the application process, and due process safeguards that are binding upon the states. States cannot set more stringent requirements. States can, however, pass laws that provide more benefits to a broader range of immigrants than required under federal law.¹⁶² To determine which states provide state-funded cash assistance benefits to qualified immigrants subject to the five year bar, immigrants who are permanently residing under color of law or other immigrants the National Immigration Law Center provides up to date charts on state laws.¹⁶³

All members of a family or "assistance unit" who are included in the TANF grant must meet the program's eligibility requirements. Financial eligibility levels are set by the states. State TANF programs have work reporting requirements as a result of a federal welfare reform law.¹⁶⁴ In addition to the monthly check, another benefit for a family receiving TANF is automatic eligibility for Medicaid and federally funded Child Care. Many sexual assault victims will have limited access to TANF because they may be subject to limitations imposed by the 5-year bar and deeming. Some may be qualified immigrants who have already passed their 5-year bar limitation and others may live in states that provide state-funded TANF replacement programs.¹⁶⁵ TANF programs also have child support cooperation requirements that require that persons receiving TANF assistance cooperate

¹⁵⁵ See, e.g., 8 U.S.C. § 1154(a)(1)(A)(iii)(bb); 8 U.S.C. § 1154(a)(1)(B)(ii),(iii); 8 U.S.C. § 1186a(c)(4)(C); 8 U.S.C. § 1255 note; 8 U.S.C. § 1229b(b)(2).

¹⁵⁶ See 8 U.S.C. § 1229b(b)(2).

¹⁵⁷ See VAWA of 2000, Publ. L. No. 106-386, § 1510; Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. No. 105-100, § 202(d)(1).

¹⁵⁸ See VAWA of 2000, Pub. L. No. 106-386, § 1509.

¹⁵⁹ See IRIRA of 1996, Pub. L. No. 104-208 (division C) § 309.

¹⁶⁰ See VAWA of 2000, Pub. L. No. § 1511.

¹⁶¹ Social Security Act, tit. IV-A, 42 USC §§ 601, *et seq.*

¹⁶² PRWORA § 412, 8 U.S.C. § 1622.

¹⁶³ See generally, National Immigration Law Center, *Guide to Immigrant Eligibility for Federal Programs*, available at http://www.nilc.org/pubs/Guide_update.htm#tbl8.

¹⁶⁴ Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343.

¹⁶⁵ The list of states providing state funded TANF replacement programs as of October 2008 are CA, CT, FL, IL, IA, ME, MD, MN, NE, NJ, NM, NY, OR, PA, TN, UT, VT, WA, WI, WY. For regularly updated information see National Immigration Law Center, State-Funded TANF Replacement Programs, http://www.nilc.org/pubs/guideupdates/tbl8_state-tanf_2004-03_2008-10.pdf

with the state in collecting child support from the parent of the children that the TANF applicant is including as a beneficiary in the TANF benefits application.

Out of concern that several of TANF's requirements could pose a danger to domestic violence victims, Congress included as part of TANF the Family Violence Option (FVO). The FVO included in the Welfare Act of 1996 permits states to grant "good cause waivers" of certain TANF program requirements.¹⁶⁶ Under the FVO, states are required to identify victims of violence, conduct individual assessments, and develop temporary safety and service plans in order to protect battered immigrants from: "...immediate dangers, [to] stabilize their living situations and explore avenues for overcoming dependency."¹⁶⁷ These family violence option waivers are temporary in nature, but the actual length is defined broadly as "so long as necessary."¹⁶⁸ This definition gives welfare administrators the discretion to determine the period during which the waiver will apply, and renew the waiver on a case-by-case basis.¹⁶⁹

Under HHS regulations, states that formally adopt the Family Violence Option do not have to pay penalties if they do not meet work targets or exceed time limitations because of waivers granted to battered women. All states, the District of Columbia and Puerto Rico have adopted the Family Violence Option.¹⁷⁰ Advocates and attorneys working with immigrant victims should urge state benefits officials to apply Family Violence Option protections that specifically help immigrant victims. This may include screening in the appropriate language, allowing ESL classes to meet work requirements, waivers of work requirements, referrals to culturally competent services, as well as waivers of sponsor deeming requirements.

Medicaid

Medicaid is a joint federal and state program that provides medical care to the needy.¹⁷¹ The assistance consists of reimbursement to medical service providers rather than direct cash payments to the patient. Medicaid recipients will usually receive an identification card that they must show to participating providers to receive medical care. Such providers can include doctors, hospitals, nursing homes and pharmacies. These providers then bill the state for the cost of the service based on established rates.

The federal statute outlines the basic options that states may adopt in implementing their own Medicaid programs and the requirements that states must follow. States must meet federal requirements when implementing a Medicaid program, including minimum standards of eligibility, scope of services and procedural protections. States are also given a variety of options, which means that state programs can vary greatly. The state submits a plan to HHS to qualify for federal participation. The plan describes how the state will conform to federal laws and regulations. Federal regulations and interpretive guidelines from the Health Care Financing Administration, a division of HHS, interpret the federal law in this area.¹⁷² All states now provide Medicaid coverage. The federal government funds approximately half of the costs.

Medicaid is not provided to all low-income individuals. State programs implementing the federal guidelines have varied coverage, but they must include the federal standards for "categorically needy" recipients, i.e., persons who are automatically eligible to receive Medicaid because they are

¹⁶⁶PRWORA § 402(a)(7), 8 U.S.C. § 1612(a)(7).

¹⁶⁷Temporary Assistance for Needy Families Program (TANF), 62 Fed. Reg. 62,124, at 62,128 (Nov. 20, 1997) (to be codified at 40 C.F.R. pts. 270-5). State authorities are required to maintain the confidentiality of the victims.

¹⁶⁸42 U.S.C. § 607(a)(7).

¹⁶⁹Temporary Assistance for Needy Families Program (TANF), 62 Fed. Reg. 62,124, at 62,131 (Nov. 20, 1997) (to be codified at 45 C.F.R. § 270.30).

¹⁷⁰Jenny S. Pappariella, *Excerpts from the TANF Final Rule: Preamble and Regulations Related to Domestic Violence*, National Resource Center on Domestic Violence, p 4, also available at http://new.vawnet.org/Assoc_Files_VAWnet/TANFFinalRuleExcerpts.pdf

¹⁷¹Social Security Act title. XIX, 42 U.S.C. §§ 1396, *et seq.*

¹⁷²42 C.F.R. Part 430, *et seq.*

eligible for SSI and/or TANF.¹⁷³ Other low-income persons may qualify for Medicaid if they meet certain requirements established by their state. Financial eligibility levels are similar to those established for TANF, and vary depending upon the state's requirements.

Amendments to Medicaid eligibility were included in the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA)¹⁷⁴ effective April 1, 2009. These amendments expanded the groups of Medicaid eligible immigrants to include a range of lawfully present immigrant children and pregnant women. Prior to CHIPRA generally only qualified immigrant and trafficking victim sexual assault survivors qualified for Medicaid. The range of immigrant victims who will be eligible for Medicaid as of April 2009¹⁷⁵ includes:

- qualified immigrants
 - CHIPRA removed the 5-year bar for access to Medicaid for under 21 year old children and pregnant women;
 - All other immigrant victims still face a 5 year bar to access to Medicaid;
- trafficking victims; and
- lawfully residing immigrant children and pregnant immigrant women

Under CHIPRA states will be reimbursed by the federal government for providing Medicaid funded health care to lawfully residing non-citizen children under the age of 21 and for non-citizen pregnant women during pregnancy and for 60 days post-partum.¹⁷⁶

Federal benefits laws have defined "lawfully residing" to include several categories of immigrants who are "lawfully present" and intend to reside in the U.S. In addition to lawful permanent residents and other "qualified immigrants" the term has been defined to include other immigrants who are in the U.S. lawfully, such as U-visa victims, persons who receive deferred action status, and spouses and children of U.S. citizens who have applied for lawful permanent residency.¹⁷⁷ Examples of adult¹⁷⁸ immigrant sexual assault victims who will be Medicaid eligible include noncitizen victims:

- Who either first entered the U.S. prior to August 22, 1996 or who have been lawful permanent residents for more than 5 years who are
 - Lawful permanent residents
 - Conditional permanent residents
 - Battered spouse waiver applicants
 - VAWA self-petitioners
 - VAWA cancellation applicants;
 - Qualified immigrants
- Non-citizens who are pregnant who are
 - Lawful permanent residents
 - Conditional permanent residents
 - Battered spouse waiver applicants
 - VAWA self-petitioners
 - VAWA cancellation applicants
 - Qualified immigrants and

¹⁷³ Virginia Department of Social Services Medical Assistance Unit, **MEDICAID, TITLE XXI, SLH AID CATEGORIES**, (December 2007), also available at http://www.vcu.edu/vissta/bps/bps_resources/medicaid/aid_categories_chart_medicaid_slh.pdf

¹⁷⁴ Public Law No. 111-3, 2009 (H.R. 2).

¹⁷⁵ To receive federal reimbursement for health care provided to non-citizen children and pregnant women states will need to elect to participate in the program.

¹⁷⁶ Public Law No. 111-3 tit. I subtitle. B § 111, 2009 (H.R.2); National Immigration Law Center, *FACTS ABOUT New State Option to Provide Health Coverage to Immigrant Children and Pregnant Women*, (April 2009), also available at <http://www.nilc.org/immspbs/cdev/ICHIA/ICHIA-facts-2009-04-01.pdf>

¹⁷⁷ National Immigration Law Center, *FACTS ABOUT New State Option to Provide Health Coverage to Immigrant Children and Pregnant Women*, (April 2009), also available at <http://www.nilc.org/immspbs/cdev/ICHIA/ICHIA-facts-2009-04-01.pdf>. The Center for Medicare and Medicaid Services will issue regulations fully defining this category as CHIPRA is implemented.

¹⁷⁸ Noncitizen children eligible for healthcare benefits will be discussed in the following section on the State Child Healthcare Insurance Program.

- U visa recipients or who have received deferred action status.

Sponsor deeming rules are not applicable to noncitizen pregnant women who receive Medicaid under CHIPRA¹⁷⁹. Victims accessing Medicaid through this provision will be eligible without having to additionally qualify for the battered immigrant exemption to sponsor deeming.

Although CHIPRA significantly expands the categories of immigrant victims of sexual assault and domestic violence who will be eligible for Medicaid funded health care, many sexual assault victims who are not trafficking victims or pregnant will still be subject to the 5-year bar on access to Medicaid for qualified immigrants. Several states have opted to provide state-funded medical assistance to varying categories of legally present immigrants including qualified immigrants subject to the 5 year bar and U visa applicants.¹⁸⁰ Please refer to the health care chapter for more information on access to subsidized health care for immigrant victims of sexual assault.

State Child Health Insurance Program (SCHIP)

The State Child Health Insurance Program (SCHIP)¹⁸¹ was enacted August 5, 1997 as part of the Balanced Budget Act of 1997.¹⁸² SCHIP allocates funds to states to provide health insurance coverage for uninsured, low-income children. To be eligible, “targeted low-income children” must be ineligible for Medicaid yet live in families with incomes under 200 percent of the federal poverty line. The states must pay for part of the SCHIP program under a federal-state matching formula, defined in the statute. As with other federal public benefits programs PRWORA authorized states to choose whether to offer state funded benefits to immigrants who were not eligible to receive federally funded health care. At the time of the enactment of CHIPRA in January of 2009, 19 had passed state statutes authorizing the use of state funds to provide Medicaid and/or SCHIP coverage to legal immigrant children who were ineligible under the Federal law¹⁸³

In January 2009 Congress reauthorized SCHIP in the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA)¹⁸⁴. The reauthorized bill made several significant changes to the SCHIP program that will improve access to health care for immigrant victims and their children. The biggest change in the program is the elimination of the 5 year bar for access to SCHIP funded health care benefits for lawfully residing immigrant children and pregnant women. CHIPRA allows states providing health care lawfully residing noncitizen children to receive federal reimbursement for health care provided. To be covered noncitizen children must be under the age or 21. Examples of

¹⁷⁹ Children’s Health Insurance Program Reauthorization Act of 2009, Public Law No. 111-3, 2009 (H.R. 2).Section 214(a). (42 U.S.C. 1396b(v)(4)(A).

¹⁸⁰ The list of states providing state funded medical assistance as of March 2009 is AK, CA, CO, CT, DE, DC, FL, HI, IL, ME, MD, MA, MN, NE, NJ, NM, NY, OH, PA, RI, TX, VI, WA, WY. For regularly updated information see National Immigration Law Center, State-Funded Medical Assistance Programs, http://www.nilc.org/pubs/guideupdates/tbl10_state-med-asst_2007-07_2009-03.pdf

¹⁸¹ Title XXI of the Social Security Act

¹⁸² Pub. L. No. 105_33.

¹⁸³ The following states provide state funded healthcare covering varying groups of noncitizen children: CA (combined SCHIP and Medicaid expansion), CT (combined SCHIP and Medicaid expansion), DC, FL (combined SCHIP and Medicaid expansion), HI (Medicaid expansion), IL, ME (combined SCHIP and Medicaid expansion), MD (combined SCHIP and Medicaid expansion), MA (combined SCHIP and Medicaid expansion), MN (Medicaid expansion), NE (Medicaid expansion), NJ (combined SCHIP and Medicaid expansion), NM (Medicaid expansion), NY (Medicaid expansion), PA (separate SCHIP program), TX (combined SCHIP and Medicaid expansion), WA, WY (SCHIP expansion), **Correct**

Also, prenatal care is available regardless of immigration status through the SCHIP healthcare for the “fetus” option, in some of the states already listed (CA, IL, MA, MN, NE, RI, TX, and WA), and also in the following states: AR, LA, MI, and WI.

National Immigration Law Center, **SCHIP Reauthorization Legislation Can Help Ensure that Children Receive Timely Health Care Coverage**, January 2009) also available at http://www.nilc.org/immspbs/cdev/ICHIA/ICHIA_Talking_Points_Final_1-8-09.pdf For an up to date list of state programs ;

See also National Immigration Law Center, *New State Option to Provide Healthcare to Immigrant Children and Pregnant Women*, (April 2009) also available at: <http://www.nilc.org/immspbs/cdev/ICHIA/ICHIA-facts-2009-04-01.pdf>

¹⁸⁴ Public Law No. 111-3, 2009 (H.R. 2).

children who will be eligible for state funded health care under SCHIP without a waiting period include under 21 year old children who are:

- VAWA self-petitioners
- VAWA cancellation of removal applicants
- Children included in their parents VAWA self-petition or cancellation of removal application
- Child trafficking victims
- Children of trafficking victims
- Child U-visa recipients
- Children of U-visa recipients
- Child who are granted deferred action from DHS
- Lawful permanent residents
- Qualified immigrants

As with all federal public benefits, children qualify for benefits independent of their parent's immigration status. Benefits eligibility rules apply only to the individual seeking benefits, not to the entire household. Thus if a lawfully residing child is eligible for Medicaid or CHIP as a result of CHIPRA, the child's parents may apply for Medicaid or CHIP for their child, regardless of their own immigration status. For example, a battered immigrant who received a prima facie determination in her VAWA self-petitioning case will become a qualified immigrant but will not be eligible to receive Medicaid benefits because she will be subject to the 5 year bar. If the battered immigrant self-petitioner included her undocumented immigrant children in her VAWA self-petition, when the self-petitioner receives eligibility for public benefits as a qualified immigrant as part of her VAWA self-petitioning case, her children become qualified immigrants immediately eligible for health care benefits under SCHIP. Similarly, children included in a U-visa victims' application will receive access to healthcare under SCHIP when the U-visa application is approved or when they receive deferred action status in connection with the U-visa application.

Supplemental Security Income (SSI)

SSI is the hardest public benefits program for sexual assault victims to qualify to receive because special program eligibility rules significantly limit access.. There is an indefinite bar from receiving SSI that applies to non-qualified immigrants, as well as to qualified immigrants who entered the United States after August 22, 1996. However, certain qualified immigrants may fall within one of the exceptions to the indefinite bar on SSI..

SSI is a federally funded cash assistance program for low-income persons who are aged, blind or disabled.¹⁸⁵ The Social Security Administration (SSA), a division of HHS, administers the SSI program. SSI differs from traditional social security retirement or disability benefit programs in that it is based upon financial need rather than past earnings credited to a social security account. In other words, SSI is a needs-based income maintenance program providing a guaranteed minimum income to eligible persons. The program has national eligibility standards and a basic monthly payment that may be supplemented by the state.¹⁸⁶

Persons applying for SSI must meet the requirements of one or more of the following categories:

- **Disabled:** To qualify as "disabled" a person must demonstrate that physical or mental impairments will keep or have kept them from working for 12 continuous months.¹⁸⁷ Most

¹⁸⁵ 42 U.S.C. §§ 1381, *et seq.*

¹⁸⁶ The list of states providing state funded SSI supplemental state programs as of October 2007 are CA, HI, IL, ME, NE, NH.. For regularly updated information see National Immigration Law Center, State-Funded TANF Replacement Programs http://www.nilc.org/pubs/guideupdates/tb19_state-ssi_2006-07_2007-10.pdf

¹⁸⁷ 42 U.S.C. § 1382c(a)(3).

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people will have to have their disabilities verified by a doctor, which involves an examination and possibly a review of past medical records.

- Blind: Persons are “blind” for SSI purposes if the vision in their best eye is no better than 20/200n with corrective lenses.¹⁸⁸
- Aged: Persons 65 years or older.¹⁸⁹

To qualify a person who falls within one of these three categories must additionally prove financial eligibility. The maximum income levels are set slightly above the federal poverty income guidelines,¹⁹⁰ calculated annually by HHS, but the maximum income limits vary depending upon the basis of one’s SSI eligibility. Recipients of SSI are also automatically eligible for Medicaid.¹⁹¹

The following qualified immigrants are eligible for SSI:

- Immigrants who were receiving SSI benefits on August 22, 1996¹⁹²
- Qualified immigrants who were lawfully residing in the United States on August 22, 1996 and who are disabled at the time of application for assistance, regardless of the date of onset of the disability.¹⁹³ The immigrant need not have been physically present on August 22, 1996, as long as on that date he or she qualified as “lawfully residing in the United States.”¹⁹⁴ That phrase means the person resides here and fits within one of the “lawfully present” immigrant categories listed above. Residence entails physical presence plus an intent to remain. Short absences of less than six months do not terminate residency unless there is an intent to do so.¹⁹⁵
- - Example: An immigrant victim who became disabled related to incidents of domestic violence or sexual assault, would qualify for SSI if, they were lawfully residing in the U.S. on August 22, 1996 and if they became a qualified immigrant at sometime between August 22, 1996 and the time of application for SSI.
 - Elder abuse victims may be the most likely to qualify.
- Refugees, Cuban/Haitian entrants, Amerasians, and immigrants granted asylum or withholding of deportation/removal, but only for the first seven years after entry as a refugee, Cuban/Haitian entrant, Amerasian, or the grant of asylum or withholding of deportation. Note that if these immigrants were receiving SSI benefits on August 22, 1996, there is no seven-year limitation.
- Victims of trafficking¹⁹⁶
- Qualified immigrants who are either active duty service members or veterans, or their spouses and unmarried dependent children under 21¹⁹⁷

¹⁸⁸ 42 U.S.C. § 1382c(a)(2).

¹⁸⁹ 42 U.S.C. § 1382c(a)(1)(A).

¹⁹⁰ See 53 Fed. Reg. 4213 (Feb. 12, 1988).

¹⁹¹ 42 U.S.C. § 1396a(a)(10)(A)(i).

¹⁹² *Id.*

¹⁹³ Age unaccompanied by disability does not suffice, but the diseases that commonly occur with old age are incorporated into the disability determination.

¹⁹⁴ *Id.* Theoretically, but rarely, some grandfathered residents who are or become disabled may be rendered ineligible by the “deeming” rules that are described below in the section discussing eligibility for Temporary Assistance for Needy Families (TANF), the State Child Health Insurance Program (SCHIP), and Medicaid.

¹⁹⁵ Social Security Administration, Program Operations Manual System (hereinafter POMS) SI 00502.142(B)(2)(b).

¹⁹⁶ Victims of human trafficking who become disabled are the group of immigrant victims of sexual assault that have the greatest opportunity to qualify for SSI.

¹⁹⁷ Theoretically, but rarely, some immigrants who qualify for the veteran’s exemption may be rendered ineligible by the “deeming” rules that are described below in the section discussing eligibility for TANF, SCHIP, and Medicaid.

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- American Indians who were born in Canada and are members of federally recognized tribes and those defined in INA § 289
- Permanent resident immigrants who have worked at least 40 “qualifying quarters” for social security purposes or who can be credited with those quarters under special procedures¹⁹⁸

Persons should apply for SSI in person at the closest Social Security district or branch office. Payments date from the time a written application is filed. The applicant must show proof of age, income, and any medical impairment.

Food Stamps

Food Stamps are another public benefits program that will be difficult for many sexual assault victims to access. The immigrant eligibility requirements for Food Stamps are complicated and subject to various exceptions. Congress enacted the federal food stamp program to ensure that individuals in low-income households obtain adequate nutrition.¹⁹⁹ The food stamp program is a federal means tested public benefits program administered through state welfare or social services agencies under the supervision of the U.S. Department of Agriculture (USDA). States must follow federal guidelines in determining eligibility and in processing applications.²⁰⁰ However, states may extend state funded food assistance to immigrants who are not eligible for the federal program.²⁰¹ The program enables food stamp recipients to buy food and improve their diets. Qualified persons receive coupons called food stamps, in specific monetary denominations, which can be used in lieu of money to buy food items at participating stores.²⁰² The stamps cannot be used to purchase non-food items, alcohol, or cigarettes. The number of people in the household, their income, and their living expenses determine the amount of food stamps the household will receive.²⁰³ In general, the maximum amount of gross income that a household can receive and still be eligible for food stamps must be below 130 percent of the federal poverty income guidelines.²⁰⁴ A “household” can be one person who lives alone or a group of persons, related or unrelated, who live in the same place and buy and prepare food for use by all the members.²⁰⁵ In addition to meeting the financial eligibility requirements, most households must also register for work at the food stamp office or at the state or local job service office, and accept any “suitable” employment.²⁰⁶

Most immigrant victims of sexual assault or domestic violence will live in a mixed-status household in which some family members will be eligible for food stamps and other family members will not have an immigration status that qualifies them to receive food stamps.. In such a case the ineligible immigrant is not considered a household member, and his or her needs are not counted in allocating the amount of food stamps for the household. The ineligible immigrant's income, however, may be counted when calculating the income and resources available to the household members.²⁰⁷

¹⁹⁸ Welfare Act § 402(b)(2), as amended by the Balanced Budget Act of 1997 §§ 5301_5306. (In order to use work of a spouse or a parent the individual will need a Consent for Release of Information signed by the spouse/parent in order to use the employment gained under his/her SSN. The parent or spouse must indicate that the request pertains to Social Security Number, Identifying information, Information about benefit payments, and Other-Quarters Coverage History. For more information please see Kansas Department of Social and Rehabilitative Services, *The Kansas Economic and Employment Support Manual (KEESM)*, app at A-4 40 *Qualifying Quarters of Coverage*, also available at http://www.srskansas.org/KEESM/Appendix/A-4_SSA40qualQuart1-01.pdf.)

¹⁹⁹ 7 U.S.C. §§ 2011, *et seq.*; 7 CFR § 271.1(a).

²⁰⁰ See 7 C.F.R. § 272.3

²⁰¹ The list of states providing state funded food assistance programs as of July 2007 are CA, CT, FL, ME, MN, NE, WA, WI. For regularly updated information see National Immigration Law Center, State-Funded TANF Replacement Programs, http://www.nilc.org/pubs/guideupdates/tbl8_state-tanf_2004-03_2008-10.pdf Most recent on the site- these are fine

²⁰² 7 C.F.R. § 271.2

²⁰³ 7 C.F.R. § 273.9.

²⁰⁴ 20 C.F.R. § 404.820(g).

²⁰⁵ 7 C.F.R. § 273.1

²⁰⁶ 7 C.F.R. § 273.7(a)(1)

²⁰⁷ 42 CFR § 124.603(a)(2).

The sexual assault or domestic violence victims who will be eligible to receive food stamps will be those victims who fall within one of the following categories of Food Stamps eligible immigrants.²⁰⁸

- Refugees
- Cuban/Haitian entrants
- Amerasians
- Immigrants granted asylum
- Immigrants granted withholding of deportation
- Victims of trafficking
- Qualified immigrant children under age 18²⁰⁹
- Persons who have been qualified immigrants for five years or more
- Qualified immigrants who are either active duty service members or veterans and their spouses and unmarried dependent children under 21;
- Permanent resident immigrants who can be credited with at least 40 qualifying quarters for social security purposes through the immigrant's own work or combined with work quarters they can be credited from their spouse or parent.
- Qualified immigrants who are blind or have a disability at the time of application for assistance, regardless of the date of onset of the disability, and who are also receiving disability benefits
- Qualified immigrants who were lawfully residing in the United States on August 22, 1996 and were 65 years of age or older on that date
- American Indians who were born in Canada and are members of federally recognized tribes and those defined in INA § 289
- Immigrants who are lawfully residing in the United States and were members of a Hmong or Highland Laotian tribe at the time that the tribe (not necessarily the individual immigrant) rendered assistance to United States personnel by taking part in military or rescue operation during the Vietnam era, their spouses, unmarried dependent children, or their un-remarried surviving spouses.²¹⁰

It is important to note that immigrant parents who do not qualify for food stamps themselves, can file applications for food stamps for their U.S. citizen, lawful permanent resident or qualified immigrant children under the age of 18. Qualified immigrant children eligible for food stamps would include child abuse victim self-petitioners, children granted VAWA cancellation of removal, child trafficking victims or immigrant children included in their abused mother's self-petition. When the mother receives a prima facie determination in her VAWA self-petitioning cases, her children receive prima facie determinations as well. Once children become qualified immigrants through any of these and the above listed avenues they become immediately eligible for food stamps. Parents applying for food stamps on their children's behalf are required to provide immigration status and social security number information only for the child food stamps applicant. Parents who do not qualify for food stamps, if asked for their immigration status information or social security numbers information should tell benefits workers that they are not applying for foods stamps for themselves and are not required to provide either their immigration status information or social security number.²¹¹

III. STATE FUNDED BENEFITS

State funded benefits provide a significant option for access to the public benefits safety net for immigrant victims of sexual assault, domestic violence, child sexual assault and child abuse for

²⁰⁸ 7 C.F.R. 273.4; 7 C.F.R. 732-6. See also Supplemental Nutrition Assistance Program, *Section 402- Limited Eligibility of Qualified Aliens for Certain Federal Programs*, United States Department of Agriculture, Food and Nutrition Service, also available at http://www.fns.usda.gov/snap/rules/Memo/PRWORA/99/Section_402.htm

²⁰⁹ 7 C.F.R. § 273.4(a)(5)(i)(G) (2009).

²¹⁰ Welfare Act § 402(a)(2), (b)(2), as amended by AREERA §§ 503-510.

²¹¹ For further information see Breaking Barriers Ch 4.2, Public Benefits Access for Battered Immigrant Women and Children

victims who live in state that provide various forms of state funded public benefits to immigrants who are legally present,²¹² lawfully residing under color of law (PRUCOL)²¹³ or who are qualified immigrants subject to the federal 5 year bar on federal public benefits access. In addition to placing significant restrictions on immigrant access to federally funded public benefits, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) gave states the authority to control two aspects of state-funded benefits programs. First, PRWORA gave states the authority to extend state-funded benefits eligibility to include non-qualified immigrants.²¹⁴ Second, PRWORA gave states the ability to limit the state-funded public benefits available to qualified immigrants,²¹⁵ immigrant visa holders²¹⁶ and immigrants paroled into the United States for less than one year.²¹⁷

As with federal public benefits, certain services are excluded from PRWORA's definition of the state or local public benefits that are restricted by PRWORA. Services, assistance and programs funded by state and local government funds that are paid to an entity other than an "individual, household or family eligibility unit" are not "state or local benefits" under PRWORA and are available to all persons, regardless of immigration status.²¹⁸ Programs and services necessary to protect life and safety that are funded by state or local government are explicitly open to all immigrants without any immigrant restrictions. All immigrants can receive state-funded emergency medical care, in-kind emergency disaster relief, immunizations for communicable diseases, and services necessary for the protection of life or safety.²¹⁹ Treatment of emergency medical conditions,²²⁰ Short term, non-cash, in-kind emergency disaster relief;²²¹ and Public health assistance for immunizations with respect to immunizable diseases and testing and treatment of symptoms of communicable diseases;²²²

A. STATE AUTHORITY TO EXTEND BENEFITS ELIGIBILITY TO NON-QUALIFIED IMMIGRANTS

Prior to the passage of PRWORA in 1996 federal law did not place limitations on state and local governments' ability to grant access to general assistance and other state-funded benefits to immigrants whether they were documented or undocumented. PRWORA restructured immigrant access to benefits defining "federal public benefits", "federal means tested public benefits", and "state or local benefits". PRWORA also set forth procedures that states and localities must follow to extend state or locally funded public benefits to persons other than those deemed by the federal government to be qualified immigrants, persons residing legally in the United States on immigrant visas, and certain parolees.²²³ PRWORA also gave states the discretion of passing affirmative legislation extending state and local public benefits access to undocumented immigrants, to other non-qualified immigrants, and/or to qualified immigrants that are subject to the 5 year bar on access federal public benefits and federal means tested public benefits. In order to extend immigrant access to state and/or local public benefits, PRWORA required states to pass laws after August 22, 1996 that specifically authorized non-qualified immigrant access to state and local public benefits.²²⁴ Numerous states have done so, authorizing access to state-funded benefits programs for varying categories of immigrants.²²⁵

²¹² This category includes U-visa victims and the family members included in their U-visa applications.

²¹³ This category includes U-visa victims and the family members included in their U-visa applications.

²¹⁴ PRWORA § 411, 8 U.S.C. § 1621(b).

²¹⁵ PRWORA § 411(a)(1), 8 U.S.C. § 1621(a)(1).

²¹⁶ PRWORA § 411(a)(2), 8 U.S.C. § 1621(a)(2) (These groups of immigrant visa holders are called nonimmigrants under the Immigration and Nationality Act INA Section 101(a)(15) and include immigrants granted legal temporary visas).

²¹⁷ PRWORA § 411(a)(3), 8 U.S.C. § 1621(a)(3). (These are immigrants paroled into the United States for less than one year under INA section 212(d)(5)..

²¹⁸ *Id.* at § 411(c), 8 U.S.C. § 1621(c)(1)(B).

²¹⁹ See The following section of this chapter for a full discussion of programs and services necessary to protect life and safety.

²²⁰ PRWORA § 411(b)(1).

²²¹ PRWORA § 411(b)(2).

²²² PRWORA § 411(b)(3).

²²³ PRWORA at § 411(a), 8 U.S.C. § 1621(a)(3).

²²⁴ *Id.* at § 411(d), 8 U.S.C. § 1621(d).

²²⁵ The National Immigration Law Center (NILC) has created and regularly updates several charts detailing immigrant eligibility for state-funded benefits. These charts are available as an appendix to this manual, however, because public benefits

State-funded benefits programs can provide important access to public benefits for immigrant sexual assault victims who because they are not qualified immigrants are not eligible to receive federal public benefits, or who are qualified immigrants but subject to a five-year bar on access to federal benefits under PRWORA.²²⁶

- Twenty-four states have implemented replacement programs that provide state-funded medical assistance to immigrants ineligible for federally funded Medicaid.²²⁷
- Twenty states provide cash assistance to immigrants ineligible for the federally-funded Temporary Assistance to Needy Families (TANF),²²⁸
- Eighteen states provide medical care for immigrants ineligible for the federally-funded through State Children's Health Insurance Plan (SCHIP) and or Medicaid expansion programs,²²⁹
- Eight states provide food assistance to immigrants who are ineligible for federally-funded Food Stamps,²³⁰ and
- Six states provide cash assistance to immigrants ineligible for federally-funded Supplemental Security Income (SSI).²³¹

There is significant variation amongst the states as to the categories of immigrants who can receive various state-funded benefits. Some states only provide state-funded replacement benefits to qualified immigrants who are ineligible for federal benefits due to the five-year bar. Others extend state-funded benefits to include immigrants who are domestic violence, trafficking or u-visa victims, undocumented immigrant children, immigrants who are "legally present," "legally residing," and/or to "persons who are permanently residing in the U.S. under color of law" (PRUCOL)²³²

PRUCOL²³³ is not an immigration status, it is a benefits eligibility category. PROCOL means that the Department of Homeland Security is aware of the person's presence in the United States, and

information is subject to change, please refer to the NILC website for regularly updated information.

http://www.nilc.org/immspbs/sf_benefits/index.htm#stfnd.

²²⁶ The five-year bar on federal means-tested public benefits is discussed later in this chapter.

²²⁷ The list of states providing state funded medical assistance as of March 2009 is AK, CA, CO, CT, DE, DC, FL, HI, IL, ME, MD, MA, MN, NE, NJ, NM, NY, OH, PA, RI, TX, VI, WA, WY. For regularly updated information see National Immigration Law Center, State-Funded Medical Assistance Programs, http://www.nilc.org/pubs/guideupdates/tbl10_state-med-asst_2007-07_2009-03.pdf

²²⁸ The list of states providing state funded TANF replacement programs as of October 2008 are CA, CT, FL, IL, IA, ME, MD, MN, NE, NJ, NM, NY, OR, PA, TN, UT, VT, WA, WI, WY. For regularly updated information see National Immigration Law Center, State-Funded TANF Replacement Programs, http://www.nilc.org/pubs/guideupdates/tbl8_state-tanf_2004-03_2008-10.pdf

²²⁹ The list of states providing state-funded health care for children through SCHIP and/or Medicaid Expansion as of September 2008 are: CA, CT, DC, FL, HI, IL, ME, MD, MA, MN, NE, NJ, NM, NY, PA, TX, WA, WY. For regularly updated information see National Immigration Law Center, State-Funded SCHIP Replacement Programs, http://www.nilc.org/pubs/guideupdates/tbl11_state-SCHIP_2007-07_2008-09.pdf

²³⁰ The list of states providing state-funded food assistance programs as of July 2007 are: CA, CT, FL, ME, MN, NE, WA, and WI. For regularly updated information see National Immigration Law Center, State-Funded Food Assistance Programs, http://www.nilc.org/pubs/guideupdates/tbl12_statefood_2007-07.pdf

²³¹ The list of states providing state-funded SSI replacement programs as of July 2006 are: CA, HI, IL, ME, NE, NH. For regularly updated information see National Immigration Law Center, State-Funded SSI Replacement Programs, http://www.nilc.org/pubs/guideupdates/tbl9_state-ssi_2006-07_2007-10.pdf

²³² For compendium that tracks state laws providing benefits to immigrants including a description of the exact groups of immigrants covered under each state law set the National Immigration Law Center's website at <http://www.nilc.org>. It is also important to note that several states use varying legal approaches to offer prenatal care to provide qualified immigrant and other documented and/or undocumented immigrant pregnant women including: California, Colorado, Illinois, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Rhode Island, Texas, and Washington), Arkansas, Louisiana, Michigan, Washington and Wisconsin.

²³³ Prior to 1996 welfare and immigration reforms PRUCOL was an eligibility category for federal benefits. While the federal government no longer recognizes PRUCOL as a category of immigrants who are eligible for federal benefits, many states use the definitions of PRUCOL in prior federal law to define groups of immigrants that qualify for state-funded benefits. Under prior federal law the Social Security Administration issued guidelines defining to whom the term applied as follows:

"We will consider you to be permanently residing in the United States under color of law and you may be eligible for SSI benefits if you are an alien residing in the United States with the knowledge and permission of the Immigration and Naturalization Service [INS] and that agency does not contemplate enforcing your departure. The [INS] does

has no plans to deport her. As a benefit eligibility category, PRUCOL has been interpreted differently by different states and sometimes differently by various benefits programs within each state²³⁴ PRUCOL may include persons:²³⁵

- Who have filed Violence Against Women Act and Trafficking Victim's Protection Act immigration cases
 - VAWA self-petitions
 - VAWA cancellation of removal
 - VAWA suspension of deportation
 - U-visas
 - T-visas
- With an approved immediate relative visa petition
- Who filed an application for adjustment to legal permanent resident status
- In deferred action status
- Granted family unity
- Granted a stay of deportation
- Who have lived in the US continuously since before January 1, 1972
- Other persons in the US with the knowledge of DHS whose departure that agency does not contemplate enforcing.

B.STATE AUTHORITY TO LIMIT BENEFITS FOR QUALIFIED IMMIGRANTS

PRWORA gave states discretion to expand state public benefits eligibility for non-qualified immigrants and also gave states discretion to limit state public benefits eligibility for many qualified immigrants,²³⁶ persons residing legally in the United States on immigrant visas,²³⁷ and certain immigration parolees.²³⁸ However, states may not cut off or restrict state-funded public benefits for the following qualified immigrants:

not contemplate enforcing your departure if it is the policy or practice of that agency not to enforce the departure of aliens in the same category or if from all the facts and circumstances in your case it appears that the [INS] is otherwise permitting you to reside in the United States indefinitely." 20 C.F.R. § 416.1618(a) (2008).

²³⁴ See e.g. National Immigration Law Center, State Funded Medical Assistance Programs (March, 2009).

http://www.nilc.org/pubs/guideupdates/tbl10_state-med-asst_2007-07_2009-03.pdf

²³⁵ Deeana Jang, *Health Care and other Benefits for Immigrants*, Presentation at the National Network to End Violence Against Immigrant Women Conference, Lexington, Kentucky November 2007 (Asian & Pacific Islander American Health Forum).

²³⁶ PRWORA § 412(a), 8 U.S.C. § 1622(a).

²³⁷ PRWORA § 412(a), 8 U.S.C. § 1622(a).

²³⁸ PRWORA § 412(a), 8 U.S.C. § 1622(a). National Center for State Legislators, National Policy Project, *2007 Enacted State Legislation Related to Immigrants and Immigration* (Jan. 31, 2008); see also Progressive States Network, *The Anti-Immigrant Movement that Failed: Positive Integration Policies by State Governments Still Far Outweigh Punitive Policies Aimed at New Immigrants* (Sept. 2008), available at <http://www.progressivestates.org/content/903>.

Some states limit state funding for immigrants and require that immigrants applying for state benefits provide proof of lawful presence in the United States. The definition of lawful presence can be similar to PRUCOL and covers immigrants who are in the process of applying for legal immigration status whose cases have not been denied. This would include immigrants with work visas, qualified immigrants who are subject to the 5-year bar on access to federal public benefits, VAWA self-petitioners with prima facie determinations, approvals or who attained lawful permanent residency based on their approved self-petition. It would also include U-visa victims with interim relief, a bona fide case or a U-visa grants.

Proof of lawful presence is required to access state funded benefits in

- CO (H.B. 07-1314, 66th Gen. Assem., Reg. Sess. (Colo. 2007);
- ID S.B. 1157, 59th Leg., **Reg. Sess. (Idaho 2007)**;
- IN **Limited to qualified aliens** for TANF S.B. 504, 115th Gen. Assem., **Reg. Sess.** (Ind. 2007));
- CA Limit certain state funded benefits programs for certain immigrants. In CA only "eligible alien status" can receive temporary homeless relief shelter, A.B. 335, 2007-2008 Reg. Sess. (Cal. 2007));
- KS: specifies which benefits immigrants may receive and which they are excluded from and requires verification, H.B. 2599, 2007-2008 Reg. Sess. (Kan. 2007).;
- LA creates an accountability program to determine the eligibility of refugees to receive TANF, state grants, food stamps, Social Security, and other public benefits, H.B. 2007 Reg. Sess. (La. 2007).;
- MI passed a law that that prohibits funds directed toward multicultural services from going to undocumented immigrants. Third-party grantees are required to certify that recipients of state funds are lawfully present in the United States. The legislature makes an exception for emergency medical situations. HB 4344 (Signed 10/31/2007)

- Refugees, asylees, trafficking victims, Cuban and Haitian entrants, Amerasian immigrants, and those granted withholding of deportation under INA § 243 for the first five years after their date of admission (seven years for Medicaid);²³⁹
- Permanent resident immigrants who have worked for 40 quarters as defined by the Social Security Act, and their spouses or children (who can use some or all of their citizen or lawful permanent resident spouse's 40 quarters to qualify);²⁴⁰ and
- Immigrants who are veterans on active duty, or the spouses or dependent children of such persons.²⁴¹

Additionally, PRWORA's grant of state authority to restrict access based on immigration status applied only to payments, programs, services or assistance that fall within the definition of "state or local public benefits". PROWRA barred state law restrictions on the following programs that Congress exempted from the definition of state and local public benefits:

- Treatment of emergency medical conditions;²⁴²
- Short term, non-cash, in-kind emergency disaster relief;²⁴³
- Public health assistance for immunizations with respect to immunizable diseases and testing and treatment of symptoms of communicable diseases;²⁴⁴
- Programs and services necessary to protect life and safety.²⁴⁵

FEDERAL PREEMPTION AND STATE ACTION IN THE IMMIGRATION AND PUBLIC BENEFITS CONTEXT

The United States Constitution imposes certain limitations on states' ability to determine state or local eligibility for public benefits under (1) the Supremacy Clause and the doctrine of federal preemptions, or (2) the Equal Protection Clause of the Fourteenth Amendment. Understanding these federal limitations on state laws is extremely important for programs serving immigrant victims in states and localities that have passed state laws and/or local ordinances that exercise state authority under PRWORA to limit provision of state funded public benefits to immigrants.

When federal and state laws appear to conflict how do advocates and attorneys effectively advocate to assure that immigrant victims of violence against women are able to access programs and services they are legally entitled to receive under federal law? The goal of this section of this chapter is to provide advocates and attorneys working with immigrants with the legal analysis of

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- MO prohibits undocumented immigrants from receiving state or local benefits and prohibits municipality sanctuary policies H.B. 1549, 1771, 1395 & 2366, 94th Gen. Assem., Reg. Sess. (Mo. 2008).;
 - RI prohibits new non-citizen children from enrolling in the state's Medicaid program H.B. 7120, 2006 Gen. Assem., Reg. Sess. (R.I. 2006).;
 - SC requires verification of immigration status for applicants over the age of 18 for public benefits, H.B. 4400, 117th Gen. Assem., Reg. Sess. (S.C. 2008). WV eligibility for the West Virginia Works program and delineates specific categories of immigrants for which exceptions are made S.B. 518, 2007 Reg. Sess. (W.Va. 2007).
- The most restrictive states have laws that are particularly harmful and concerning for immigrant victims.
- AZ restricts categories of non-citizens who receive state funded benefits to those who submit documentation of citizenship, permanent residency, or lawful presence in the United States, H.B. 5467, 48th Leg., Reg. Sess. (Ariz. 2007);
 - OK terminated several forms of state funded public assistance, placed tighter restrictions on higher education benefits, provided exceptions with respect to emergency care, disaster assistance and certain immunizations and enacted laws prohibiting undocumented immigrants from obtaining public benefits and requiring public agencies to check status of those above age 14 H.B. 1804, 51st Legis., Reg. Sess. (Okla. 2007).

²³⁹ PRWORA § 412(b)(1), 8 U.S.C. § 1622(b)(1)

²⁴⁰ *Id.* at § 412(b)(2); 8 U.S.C. § 1622(b)(2).

²⁴¹ *Id.* at § 412(b)(3); 8 U.S.C. § 1622(b)(3).

²⁴² PRWORA § 411(b)(1), 8 U.S.C. § 1621(b)(1)(except organ transplants).

²⁴³ PRWORA § 411(b)(2), 8 U.S.C. § 1621(b)(2).

²⁴⁴ PRWORA § 411(b)(3), 8 U.S.C. § 1621(b)(3)

²⁴⁵ PRWORA § 411(b)(4), 8 U.S.C. § 1621(b)(4).

these conflicting laws. Without this information state laws are used to cut victims off from federally funded public benefits, services and assistance victims are legally entitled to receive.

The United States Supreme Court, in *DeCanas v. Bica*,²⁴⁶ formulated a three-prong test to determine whether a state's action in the realm of immigration is pre-empted by Congress. First, the Court recognized that the “[p]ower to regulate immigration is unquestionably exclusively a federal power.”²⁴⁷ In other words, a state may not “regulate immigration.”²⁴⁸ Second, a state statute may be preempted if it is the “clear and manifest purpose of Congress” that there be complete ouster of state power in the area, including the power to promulgate laws that are not in conflict with the federal law.²⁴⁹ That is, a state statute is preempted where Congress has intended to “occupy the field.”²⁵⁰ Finally a state law cannot stand if it is “an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,”²⁵¹ or if it conflicts with federal law, making compliance with both state and federal law impossible.²⁵²

The extent to which PRWORA preempts states from imposing limitations on immigrant access to state benefits is complex. First, section 412 of PRWORA, 8 U.S.C. § 1622, specifically authorizes states to determine and limit eligibility for State public benefits for qualified immigrants, non-immigrants,²⁵³ and certain parolees, but not for categories of qualified immigrants listed under the exceptions. Second, under section 411 of PRWORA, 8 U.S.C. § 1621, a State may enact affirmative legislation after August 21, 1996, extending public benefits to immigrants who are not qualified immigrants, non-immigrants, or certain parolees. PRWORA's default rule, in the absence of affirmative State legislation, prohibits immigrants from being eligible for any State or local public benefits, unless that alien is a qualified immigrant, a non-immigrant under the INA, or one of certain parolees.²⁵⁴

At the same time PRWORA is clear that certain services are excluded from PRWORA's definition of the types of publicly funded states and federal benefits, programs and services that PRWORA restricts. PRWORA provides that specified programs and services are exempt from federal or state immigration restrictions and are to open to all persons without regard to the individual's immigration status. Exempt programs and services are state and/or federally funded:²⁵⁵

- Emergency medical care,
- In-kind emergency disaster relief,
- Immunizations for communicable diseases, and
- Services necessary for the protection of life or safety.

Although section 411 and 412 of PRWORA, 8 U.S.C. §§ 1621 and 1622, include specific directives, the scope of the states' right to regulate immigrant access to state benefits has not been fully clarified. While the Supreme Court has not determined the extent to which PRWORA preempts State laws governing immigrant access to public benefits; and there is some guidance from U.S. district

²⁴⁶ 424 U.S. 351 (1976).

²⁴⁷ *Id.* at 354.

²⁴⁸ See *Equal Access Education v. Merten*, 305 F.Supp.2d. 585 (E.D. Va. 2004); *League of United Latin American Citizens v. Wilson*, 997 F.Supp. 1244 (C.D. Cal. 1997).

²⁴⁹ *DeCanas*, 424 U.S. at 357.

²⁵⁰ *Id.* at 361.

²⁵¹ *Id.* at 363.

²⁵² See *Michigan Cannery & Freezers v. Agricultural Marketing and Bargaining Board*, 467 U.S. 461, 469 (1984); *Merten*, 305 F.Supp.2d. at 602; *League*, 997 F.Supp. at 1253.

²⁵³ “Non-immigrant” is the legal terminology used in immigration law to describe persons who come to the United States temporarily for some particular purpose without the intention to remain permanently. These “non-immigrants” receive immigration visas allowing them to lawfully enter the U.S. There are many types of non-immigrant visas issued including students, tourists, and temporary workers. This manual uses the term immigrant visas or temporary immigrant visas instead of the term non-immigrants so as to use a term that is clear to all readers whether or not they are immigration lawyers.

²⁵⁴ *Id.* at § 411; 8 U.S.C. § 1621.

²⁵⁵ *Id.* At § 411 (b), 8 U.S.C. § 1621 (b). For a listing of programs specified by the Attorney General pursuant to PRWORA § 411(b)(4), 8 U.S.C. § 1621(b)(4), that are excepted from PRWORA's immigrant access restrictions., see *Final Specification of Community Programs Necessary for Protection of Life and Safety Under Welfare Reform Legislation* [A.G. Order No. 2353-2001], 66 Fed. Reg. 3613 (Jan. 16, 2001).

courts. In *League of United Latin American Citizens v. Wilson*, the court found that, through Title IV of PRWORA, Congress intended to occupy the field of regulation of government benefits to immigrants.²⁵⁶ The court held that PRWORA “demarcate[d] a field of comprehensive federal regulation within which states may not legislate, and define[d] federal objectives with which states may not interfere.”²⁵⁷ Because PRWORA constitutes a comprehensive scheme that restricts immigrant eligibility for all public benefits (no matter how funded), the court reasoned that states have no power to legislate in this area.²⁵⁸ The court stated that PRWORA defines the full scope of permissible state legislation in the area of regulation of government benefits and services to immigrants:²⁵⁹

- (a) states may enact a law after August 22, 1996 that provides state or local public benefits to immigrants who are not qualified immigrants, non-immigrants under the INA, or one of certain parolees, and
- (b) states may further restrict the eligibility of qualified immigrants for state public benefits.

It should be noted that the court in *League* did not distinguish between “public benefits” and other government benefits that are not “public benefit.” Notably, PRWORA contains no prohibition on the states’ right to limit access to such programs. However, in *League*, the court indicated that PRWORA is a comprehensive regulatory scheme covering all government benefits to immigrants.²⁶⁰ Using the *League* court’s reasoning, states would be preempted from granting or denying access to government programs to immigrants, except as explicitly permitted by 8 U.S.C. §§ 1621 and 1622. Applying this decision in the case of immigrant domestic violence victims would prohibit states from denying access to federally funded public or assisted housing benefits for VAWA self-petitioners who become qualified immigrants.

In *Equal Access Education v. Merten*, the Eastern District of Virginia suggested that PRWORA’s regulatory scheme was less pervasive than the court in *League* had determined.²⁶¹ The court in *Merten* noted that PRWORA denied certain benefits to undocumented immigrants, and requires a state that wishes to make an undocumented immigrant eligible for any state or local public benefit for which the immigrant would otherwise be ineligible under PRWORA to enact a law affirmatively providing for such eligibility.²⁶² Thus, the court believed, “it does appear that Congress has preempted the field determining immigrant eligibility for certain public benefits, including state benefits.”²⁶³ Thus, the court contemplates that there are benefits *not* governed by PRWORA in fields not completely occupied by the federal government.²⁶⁴ The following can be gleaned from the statutory language of PRWORA, the tests in *DeCanas*, and the district court opinions in *League* and *Merten*:

- The express language of PRWORA, 8 U.S.C. § 1621(d), effectively “preempts” any state law that existed prior to August 22, 1996 that granted access to state or local public benefits to an immigrant who is not a qualified immigrant, non-immigrant under the INA, or certain parolees,²⁶⁵ and

²⁵⁶ *League*, 997 F.Supp. at 1253. The court uses the term “public benefits” and “benefits” interchangeably; it does not appear that the court distinguishes between the two, or would find that there are government benefits that are *not* “public benefits.”

²⁵⁷ *Id.* at 1253-54.

²⁵⁸ *Id.* At 1255. Accordingly, the only regulations that a state can promulgate are regulations that implement the provisions of PRWORA. California regulations that implemented Proposition 187 were at issue in *League*. The court determined that PRWORA prevents California from promulgating regulations to effectuate Proposition 187, even if Proposition 187 is a scheme parallel to that specified in PRWORA.

²⁵⁹ *Id.*

²⁶⁰ *League*, 997 F.Supp. at 1253-56.

²⁶¹ *Merten*, 305 F. Supp. 2d at 605.

²⁶² *Id.* (citing 8 U.S.C. § 1621 (d)).

²⁶³ *Id.*

²⁶⁴ In *Merten*, the government benefit at issue was attendance at public post-secondary institutions. The court found that access to public higher education is not a benefit governed by PRWORA, and that the field is not one completely occupied by the federal government. As such, states are permitted to adopt federal standards governing an immigrant’s status in the United States to prevent undocumented immigrants from attending public post-secondary institutions.

²⁶⁵ The Court of Appeal of California found that, through enactment of PRWORA, Congress decided that states may not provide state public benefits for undocumented immigrants. *Community Health Foundation v. Wilson*, 57 Cal.App.4th 296

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- PRWORA, 8 U.S.C. § 1622, permits states to determine the eligibility for any state public benefit for qualified immigrants, non-immigrants under the IMC, and certain parolees (subject to certain exceptions); by corollary, such action is not “preempted” by PRWORA.

In addition to the possibility that the federal preemption doctrine may serve as a limitation on a state’s right to determine the eligibility of immigrants for state-funded benefits, the Equal Protection Clause of the Federal Constitution may also restrict a state’s ability to pass laws that distinguish among immigrants. As already noted, PRWORA permits states to determine the eligibility for any state public benefit for qualified immigrants, non-immigrants under the INA, and certain parolees. The Attorney General has also fully exercised the power delegated to her under 8 U.S.C. § 1611(b)(1)(D) and 1621(b)(4) in regard to programs necessary for the protection of life or safety under PRWORA, stating:

“Neither states nor other service providers may use the Act as a basis for prohibiting access of aliens to any programs, services, or assistance covered by this Order. Unless an alien fails to meet eligibility requirements provided by applicable law other than the Act, benefit providers may not restrict the access of any alien to the services covered by this Order, including, but not limited to, emergency shelters.”²⁶⁶ ...

IV. Programs Open to All Victims Regardless of Immigration Status

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) dramatically overhauled the public welfare system in an effort to “promote[s] work over welfare and self-reliance over dependency.”²⁶⁷ However, Congress acknowledged that certain vulnerable persons still needed assistance and therefore included provisions ensuring that specific types of programs remained open all immigrants and were not subject to PRWORA’s immigration status restrictions.²⁶⁸ A series of federal laws, federal regulations and guidance confirm that undocumented immigrants and immigrant victims of violence against women are legally entitled to non-discriminatory access to a range of government funded benefits, services and assistance that are explicitly exempted from immigrant access restrictions.²⁶⁹ The federal laws, regulations, and policies that grant access to federal and state funded benefits, assistance and services without regard to the victim’s immigration status include but are not limited to:

- The Violence Against Women Act (VAWA)²⁷⁰,
- Orders issued by the U.S. Attorney General,²⁷¹

(1997). Accordingly, the state lacked discretion to determine whether it could continue to provide taxpayer funding for those benefits, under either state or federal law without passing a post-August 22, 1996 new law.

²⁶⁶ 56 Fed. Reg. 3615 (Jan. 16, 2001).

²⁶⁷ H.R. REP. NO. 104-725, at 261 (1996).

²⁶⁸ To help those in need the bill “retains protections for those who experience genuine and intractable hardship.” H.R. Conf. Rep. No. 104-725, at 261 (1996).

²⁶⁹ For a full description of the various types of government funding available to fund services provided to immigrant victims of sexual assault and domestic violence see, *Breaking Barriers*, Chapter 4.1 Access to Programs and Services That Can Help Battered Immigrants, (Legal Momentum, Washington, D.C. 2004). Pp 6-10.

²⁷⁰ Administered by the Department of Justice. See VAWA 1994 (108 Stat. 902 et. Sec. §4002 (a)(32) as amended by VAWA 2005) citing the USC Section on underserved populations. The Office on Violence Against Women at the U.S. Department of Justice lists as an activity that may compromise victim safety--,

“Procedures that exclude victims from receiving safe shelter, advocacy services, counseling, and other assistance based on their...immigration status...”

DEP’T OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, OVW FY 2009 GRANTS TO ENHANCE CULTURALLY AND LINGUISTICALLY SPECIFIC SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING PROGRAM 8 (2009), available at http://www.ovw.usdoj.gov/docs/fy09_culturally_and_linguistically_specific_services_solicitation.pdf. The Office on Violence Against Women encourages grantees to:

“Develop innovative approaches to improving culturally relevant services to immigrants including services to address barriers that immigrants frequently experience, such as lack of knowledge or existing resources, language barriers, and issues particular to immigration and deportation.” *Id.* at 7.

²⁷¹ See e.g., A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 FR 3613; Vol. 66, No. 10; Interim Guidance on Verification of Citizenship, Qualified

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- The Family Violence Prevention and Services Act²⁷²
- The Fair Housing Act,²⁷³
- The McKinney Homeless Act,²⁷⁴
- PRWORA,²⁷⁵
- IIRAIRA,²⁷⁶ and
- Guidance issued by federal agencies.²⁷⁷

Two major categories remain open to all immigrants regardless of status. First, Programs that do not fall within the definition of “federal public benefits”²⁷⁸ or “state or local public benefits”²⁷⁹ under the statute remain unrestricted. Second, PRWORA also created important categories of federal public benefits²⁸⁰ and state²⁸¹ public benefits that are exempt from the statute’s immigration restrictions, including programs that are necessary for the protection of life or safety.²⁸² Other exempt programs include emergency Medicaid²⁸³, in-kind emergency disaster relief,²⁸⁴ immunizations and treatment of communicable diseases.²⁸⁵

A. FEDERALLY FUNDED PROGRAMS OPEN TO ALL IMMIGRANTS BECAUSE THEY ARE NOT CONSIDERED “FEDERAL PUBLIC BENEFITS” UNDER PRWORA

Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 Vol. 62, No. 221.

²⁷¹ PRWORA § 401(c), 8 U.S.C. § 1611(c)

²⁷² The statutes codifying the Family Violence Prevention and Services Act services can be found at: Family Violence Prevention and Services Act, as amended, 42 U.S.C. §§ 10401-10421; Child Abuse Amendments of 1984, Title III, Public Law 98-457; Child Abuse Prevention, Adoption and Family Services act of 1988, Title III, Public Law 100-294, as amended; Violent Crime Control and Law Enforcement Act of 1994, Title IV, Public Law 103-322; 42 U.S.C. 10401; Child Abuse Prevention and Treatment Act Amendment of 1996, Public Law 104-235; Victims of Trafficking and Violence Protection Act of 2000, Title II, Public Law 106-836.

²⁷³ Sec. 805. [42 U.S.C. 3605] Discrimination in Residential Real Estate-Related Transactions (stating that “It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.”)

²⁷⁴ McKinney-Vento Homeless Assistance Act of 1986, Public Law 100-77, 101 Stat. 482, 07/22/1987k 100th Congress, as reauthorized in 2000, 42 U.S.C. 11301, Public Law 106-400, 106th Congress.

²⁷⁵ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, 110 Stat. 2105, August 22, 1996, Section 401(b)(1)(D).

²⁷⁶ Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Public Law 104-208, 110 Stat. 3009-546, Sept 30, 1996, section 576.

²⁷⁷ See, e.g., Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19 2001) available at http://new.vawnet.org/Assoc_Files_VAWnet/ImmigrantAccess.pdf and as Appendix XXX in this Manual;

see also OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, available at <http://www.hhs.gov/ocr/immigration/bifsltr.html> (date revised Jan. 30, 2001); and Interim Guidance on 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. 61,344 Vol. 62, No. 221.

²⁷⁸ PRWORA § 401(c), 8 U.S.C. § 1611(c). In order to be considered a federal public benefit under the statute, a program must fall under the provisions of at least one of the definition’s two subsections. Under subsection (A),

“a program is a federal public benefit if it is a “grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States.” PRWORA, § 401(c)(1)(A), 8 U.S.C. § 1611(c)(1)(A).

The Department of Health and Human Services has interpreted this provision to apply to “agreements or arrangements between Federally funded programs and individuals.” 63 Fed. Reg. at 41,659. Importantly, the term “grant” does not include “block grants” provided to states or localities. *Id.*

Subsection (B) applies to:

“any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.” PRWORA, § 401(c)(1)(B), 8 U.S.C. § 1611(c)(1)(B).

²⁷⁹ PRWORA § 411(c), 8 U.S.C. § 1621(c)

²⁸⁰ PRWORA § 401(b), 8 U.S.C. § 1611(b)

²⁸¹ PRWORA § 411(b), 8 U.S.C. § 1621(b)

²⁸² PRWORA § 401(b)(4), 8 U.S.C. § 1611(b)(4).

²⁸³ PRWORA § 401(b)(1), 8 U.S.C. § 1611(b)(1).

²⁸⁴ PRWORA § 401(b)(2), 8 U.S.C. § 1611(b)(2).

²⁸⁵ PRWORA § 401(b)(3), 8 U.S.C. § 1611(b)(3).

Although PRWORA provides a definition of the term “federal public benefit,”²⁸⁶ individual benefits-granting agencies (such as the Department of Health and Human Services or the Department of Housing and Urban Development) bear the ultimate responsibility for determining which of their programs are considered “federal public benefits.”²⁸⁷ The Attorney General and the Department of Justice have repeatedly affirmed the government’s preference for deferring to each agency’s own interpretation of the term “federal public benefit.”²⁸⁸

Several federal government agencies have published regulations and policies setting out lists of programs that each federal agency considers to be “federal public benefits.”²⁸⁹ Any, federally funded government programs that have are not included in each agencies list of “federal public benefit” are not restricted on the basis of immigration status²⁹⁰ and are open to all persons including undocumented immigrants; and including immigrant victims of sexual assault. Below are highlighted examples of the types of programs federal government agencies have deemed to be open to all immigrants because they are not federal public benefits or federal means-tested public benefits. What follows is an analysis federally funded programs that do not have restrictions on immigrant from agencies administering programs that are of greatest interest to advocates, attorneys and health care providers working with immigrant victims of sexual assault.

The U. S. Department of Health and Human Services (HHS)

Health Care: HHS provides significant sources of health care for immigrant victims of sexual assault and domestic violence who are not “qualified immigrants.” This health care is provided through community and migrant health centers, as well as substance abuse, mental health, and maternal and child health programs.²⁹¹ These services are available to all immigrant victims, regardless of immigration status.²⁹² HHS has provided specific guidance regarding the availability of unrestricted programs to immigrant survivors of domestic violence.²⁹³ Many of these programs also provide services that can help immigrant victims of sexual assault.²⁹⁴ :

²⁸⁶ PRWORA 401(c), 8 U.S.C. § 1611(c)..

²⁸⁷ See, e.g. 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998) (Department of Health and Human Services interpretation of “federal public benefit”).

²⁸⁸ See A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613, 3614 (“the Department will grant all appropriate deference to the determination, if one has been made, by the benefit granting agency as to whether the program is a federal public benefit”); A.G. Order No. 2170-98, Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41,662, 41,664 (“The Service will give all appropriate deference to benefit granting agencies’ applications of the definition to the programs they administer, or to applications provided by another Federal agency that oversees or administers a Federal benefit program”).

²⁸⁹ See e.g., Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658, 41,659 (Aug. 4, 1998). The list includes 31 programs that provide federal public benefits, including Medicare, Temporary Assistance to Needy Families, and the Social Services Block Grant; U.S. Department of Agriculture, Non-Citizen Requirements in the Food Stamp Program, Eligibility Determination Guidance (January 2003) available at

http://www.fns.usda.gov/fsp/Rules/Legislation/pdfs/Non_Citizen_Guidance.pdf; There are 12 HUD programs that are restricted to “qualified immigrants.” Public and Assisted Housing, Department of Housing and Urban Development, *Programs of HUD*, U.S., 80 (2006); Public Housing Operating Fund, *Id.* at 81; Public Housing Capital Fund, *Id.* at 82; Public Housing Neighborhood Networks (NN) Program, *Id.* at 84; Public Housing Homeownership, *Id.* at 22; Section 8 Moderate Rehabilitation Single Room Occupancy *Id.* at 57; Supportive Housing for Persons with Disabilities (Section 811) (projects with project-based § 8 Assistance), *Id.* at 70; Renewal of Section 8 Project-Based Rental Assistance, *Id.* at 74; Housing Choice Voucher Program, *Id.* at 75; Homeownership Voucher Assistance, *Id.* at 78; Project-Based Voucher Program, *Id.* at 79.

²⁹⁰ OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, available at <http://www.hhs.gov/ocr/immigration/bifsltr.html> (date revised Jan. 30, 2001).

²⁹¹ OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE.

²⁹² OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE.

²⁹³ OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE.

²⁹⁴ See Appendix XX for a chart of all HHS programs that are unrestricted based on immigration status.

Family Violence Prevention and Services Act Funding: According to HHS, Family Violence Prevention and Services Act (FVPSA) funding is not a federal public benefit and is funding that is to be used to serve any victim without regard to the victim's immigration status.²⁹⁵ Thus, immigrant sexual assault victims whose assault occurred in the context of domestic violence²⁹⁶ are eligible regardless of status to receive the same services as battered immigrants, including services provided by domestic violence shelters and other domestic violence programs that receive FVPSA funding.

Community Services Block Grant: The Community Services Block Grant (CSBG) program offers services open to all persons without regard to immigration status. CSBG funds are not deemed by HHS to be federal public benefits.²⁹⁷ The Community Services Block Grant programs provide assistance to State and local communities to fund initiatives that combat unemployment, inadequate housing, poor nutrition, lack of emergency and health services, and lack of educational opportunity.²⁹⁸ CSBG funding can be used to provide a wide array of services to all persons, including all immigrants including:

- Vocational and adult employment training,
- ESL courses,
- Transitional shelters,
- Crisis intervention telephone hotlines,
- Initiating community gardens, and
- Treatment for substance abuse.²⁹⁹

B. SERVICES NECESSARY FOR PROTECTION OF LIFE OR SAFETY

Under PRWORA, if the program is necessary for the protection of life and safety it is exempt from restrictions on immigrant access to public benefits.³⁰⁰ These programs include but are not limited to police, fire, emergency medical technician and ambulance services, emergency Medicaid, emergency shelter, transitional housing, access to the courts and victim services.³⁰¹

The PRWORA gives the U.S. Attorney General the authority to exempt certain programs from any restrictions on immigrant access to services and benefits, regardless of whether they are state or federally funded.³⁰² Under PRWORA, programs that meet the following criteria must be provided to all persons without regard to immigration status. Moreover, such programs are completely exempt

²⁹⁵ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE. These programs are only available to victims whose sexual assault occurred in the context of family violence. 42 U.S.C. § 10401.

²⁹⁶ Family Violence Prevention and Services Act, is 42 USC § 10410.

²⁹⁷ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE; Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41,658, 41,659 (Aug. 4, 1998).

²⁹⁸ HHS, Administration for Children & Families, Community Services Block Grant Fact Sheet, <http://www.acf.hhs.gov/programs/ocs/csbg/aboutus/factsheets.htm> (last updated Feb. 13, 2008).

²⁹⁹ CSBG Program, Report to Congress, Fiscal Year 2004, http://www.acf.hhs.gov/programs/ocs/csbg/report_grantprogram04.html.

³⁰⁰ See A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 FR 3613; Vol. 66, No. 10; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Sections 401 and 411; Immigration Reform and Immigrant Responsibility Act of 1996 (IRAIRA), Public Law 104-208, 110 Stat. 3009-546, Sept 30, 1996, section 501, (discussing section 431 of the PRWORA which was amended to add a new subsection allowing certain battered immigrants to be treated as qualified immigrants such that they can be eligible for public assistance.)

³⁰¹ AG Order No. 2129-97, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 FR 61344, 61345, Vol. 62, No. 221; See Claudia Schlosberg, *Not qualified Immigrants' Access to Public Health and Emergency Services After the Welfare Law*, available at www.healthlaw.org/pubs/19980112immigrant.html (1998).

³⁰² Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.) Sections 401 and 411.

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from any requirements that they verify or report the immigration status of persons seeking or receiving their services.³⁰³ To be exempt, programs must:

- Offer in-kind services at the community level
- Provide services regardless of the individual's income or resources, and
- Be necessary to protect life or safety.³⁰⁴

"In-kind" services are those that involve the provision of goods or services, not cash payments, to persons. These services could include food, clothing, shelter, legal assistance, counseling, protection orders, and victim services. The U.S. Attorney General's list explicitly includes the full range of services for crime victims necessary to protect life and safety guaranteeing that these services are open to all persons.³⁰⁵ As a result, both documented and undocumented immigrant victims of rape, sexual assault, incest, and domestic violence are eligible to receive these services.

The Attorney General's Order guarantees that programs that meet the four criteria described above are to be open to all persons without regard to immigration status. No federal, state or local government providing funding for programs that meet the four prongs of the test articulated by the Attorney General can restrict immigrant access to a program providing services necessary to protect life and safety that meets this test. Department of Justice regulations state that:

"assistance enumerated in this Order are ones that Congress authorized the Attorney General to except from limitations on the ban on the availability of federal, state, or local public benefits imposed by Title IV of the Act. ...The Attorney General has fully exercised the power delegated to her under §§ 401(b)(1)(D) and 411(b)(4) of the Welfare Reform Act (codified at 8 U.S.C. 1611(b)(1)(D) and 1621(b)(4)). .. Neither states nor other service providers may use the Act as a basis for prohibiting access of aliens to any programs, services, or assistance covered by this Order. Unless an alien fails to meet eligibility requirements provided by applicable law other than the Act, benefit providers may not restrict the access of any alien to the services covered by this Order, including, but not limited to, emergency shelters."³⁰⁶

The following public assistance programs provided by community-based agencies have been designated by the U.S. Attorney General to be open to all persons without regard to immigration status.³⁰⁷ This non-exclusive³⁰⁸ list of programs has been deemed by the U.S. Attorney General to be services necessary to protect life and safety:

- Crisis counseling and intervention programs³⁰⁹
- Services and assistance relating to child protection³¹⁰
- Adult protective services³¹¹

³⁰³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105; AG Order No. 2129-97, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 FR 61344, 61345, Vol. 62, No. 221 ; Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Public Law 104-208, 110 Stat. 3009-546, Sept 30, 1996, section 501, (amending section 431 of the PRWORA to add a new subsection making certain battered immigrants qualified for public benefits purposes.)

³⁰⁴ AG Order No. 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996); AG Order No. 2170-98, 63 Fed. Reg. 41,662, 4166 (Aug. 4, 1998) (to be codified at 8 C.F.R. pt. 104).

³⁰⁵ See A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 FR 3613; Vol. 66, No. 10

³⁰⁶ Vol 66, No 10 Fed. Reg. 3615 (January 16, 2001).

³⁰⁷ See A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 FR 3613; Vol. 66, No. 10.

³⁰⁸ See A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 FR 3613; Vol. 66, No. 10

³⁰⁹ Examples include: rape crisis, mental health counseling and treatment for sexual assault and domestic abuse survivors, counseling and programs for incest survivors, counseling and programs for trafficking, sexual assault, domestic violence child and elder abuse survivors.

³¹⁰ Including: State, local, non-profit services to child abuse, incest, and sexual assault victims, child abuse protection units.

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- Violence and abuse prevention³¹²
- Services to victims of domestic violence or other criminal activity³¹³
- Treatment of mental illness or substance abuse³¹⁴
- Programs to help individuals during periods of adverse weather conditions³¹⁵
- Soup kitchens and Community food banks³¹⁶
- Senior nutrition programs and other nutritional programs for persons requiring special assistance³¹⁷
- Medical and public health services³¹⁸
- Activities designed to protect the life and safety of workers, children, and youths or community residents³¹⁹

³¹¹ Including state, local non-profit services to elder abuse and neglect victims.

³¹² Including sexual assault, domestic violence, child abuse, incest, elder abuse, trafficking and crime victim outreach, education and prevention activities.

³¹³ Including the full range of services, assistance, and treatment for victims of sexual assault, incest, domestic violence, child abuse, elder abuse, trafficking, and crime victim services. This includes full access to protections offered by state and federal courts in civil, criminal, family and protection order matters.

³¹⁴ This provision assures that undocumented immigrants cannot be turned away from mental health treatment programs offered in-kind at the community level that are necessary to protect health, life, and safety. Immigrant victims of sexual assault, incest, trafficking, and family violence with DSM diagnosis or substance abuse can access mental health treatment programs. This includes counseling by rape crisis centers and domestic violence programs. Please refer to *Healthcare for Immigrant Victims of Sexual Assault, Charts*, Chapter 17 of this manual, for information on what additional mental health treatment that may be covered by victims of Crime Act (VOCA) funding. Further under the Mental Health Parity Act (MHPA) and the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) insurance companies that are required to comply with the provision of these laws must cover mental health treatment for mental illness in the same way that the plans cover medical and surgical benefits. . The acts apply to large group self-funded group plans and large group fully insured group health plans. Ctr. for Medicare & Medicaid Services, *The Mental Health Parity Act*, at http://www.cms.hhs.gov/healthinsreformforconsume/04_thementalhealthparityact.asp (last visited Feb. 27, 2009). Exempted from the act are: "small employers who have between 2 and 50 employees; large group health plans that can demonstrate that compliance with MHPA increases their cost by at least one percent; a non-federal government employer that provides self-funded group health plan coverage to its employees may elect its plan (opt-out) from most requirements." *Id.*; 29 U.S.C § 1185a(c). Medicare and Medicaid are not group plan insurance providers; they are public health plans, which are not covered under the acts. *Id.* The MHPA requires that covered group insurance plans treat mental health benefits in a similar way that they treat medical or surgical expenses. Accordingly, plans are not allowed to include an aggregate or yearly limit on mental health benefits that is set lower than limits placed on medical or surgical benefits. 29 U.S.C. §§ 1185a(a). MHPAEA mandates that group insurance providers who are covered by the act must not require the insured to pay any more in copayments or other expenses for mental health or substance use treatment than they would have to for medical or surgical benefits. Similarly, covered insurers are not allowed to have tighter restrictions on mental health or substance use "treatment limitations" than they do on medical or surgical benefits. Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, H.R. 1424—117 §§ 511-12 (2008) (codified as amended at 29 U.S.C. 1185a (Oct. 3, 2009)). § 512(a)(1). "Treatment limitations" include: limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of the treatment. For instance, an insurer that is covered by the act may not place a limit on the number of sessions the insured can seek for mental health or substance use if there is not the same limit on medical sessions. *Id.*

³¹⁵ "Although data are limited, field reports indicate that reported violence against women increases in communities hit by environmental disasters." Violence Against Women in Disasters, A Study of Domestic Violence Programs in the United States and Canada ELAINE ENARSON, University of British Columbia, Violence Against Women, Vol. 5, No. 7, 742-768 (1999); see also CRS Report for Congress, Order Code RS22258, September 13, 2005, Federal Food Assistance: Hurricane Katrina, Joe Richardson, Domestic Social Policy Division "The Agriculture Department has effectively waived most eligibility and benefit rules governing food assistance programs for those affected by Hurricane Katrina, making them automatically eligible for maximum benefits. <http://www.au.af.mil/au/awc/awcgate/crs/rs22258.pdf>.

³¹⁶ Sexual assault victims who are trying to rebuild their lives following sexual assault may leave or lose their jobs or housing and may need to rely on soup kitchens and community food banks to meet nutritional needs for themselves and their children particularly if she is an immigrant victim and has no access to food stamps.

³¹⁷ Examples include the Women Infants Children Program (WIC), public education and school meals program, summer meals, and medical assistance for people with AIDS (Alcohol and Drug Program Administration (ADAP) and ADAP Plus).

³¹⁸ This provision assures access to Emergency Medicaid, other HHS funded health programs including community health clinics and migrant health services are open to everyone without regard to immigration status. Community health clinics can provide an important source of health care for undocumented sexual assault victims who do not qualify for other subsidized post rape health care. See Appendix on unrestricted HHS Programs.

³¹⁹ This definition includes: police, fire department, emergency medical technicians, and access to courts. In the health care context services include immunizations for children and adolescents, AIDS and HIV services and treatment, tuberculosis services, and treatment for sexually transmitted diseases. See Claudia Schlosberg, *Not-qualified Immigrants' Access to Public Health and Emergency Services After the Welfare Law*, available at www.healthlaw.org/pubs/19980112immigrant.html (1998). ; see also NATIONAL IMMIGRATION PROJECT & SAN FRANCISCO AIDS FOUNDATION, HIV/AIDS AND IMMIGRANTS: A MANUAL FOR HIV/AIDS SERVICE PROVIDERS, available at

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- Short-term shelter or housing assistance for the homeless, victims of domestic violence, and runaway, abused, or abandoned children.³²⁰

In 2001 the Secretary of Housing and Urban Development issued policy guidance defining “short-term shelter” to include emergency shelter and transitional housing programs for up to two years.³²¹

“[T]his policy directive clarifies that all programs administering HUD grants, which provide emergency shelter, transitional housing, short-term shelter and housing assistance to victims of domestic violence are deemed necessary, under the Order, for the protection of life and safety. Therefore, programs and services of this type that deliver in-kind services at the community level and do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources are to make their programs available to all persons without verification of citizenship, nationality or immigration status, as set forth in the Order...”

Under the same HUD policy victims of sexual assault, regardless of immigration status, in need of shelter to escape abuse or to avoid homelessness qualify for federally funded emergency shelters and for short-term transitional housing programs for up to two years.³²²

Victim assistance and victim services programs are required, as a matter of law, to offer their services equally to all victims, without regard to the victim’s immigration status.³²³ To strengthen the ability of non-profit and charitable organizations to serve immigrants and immigrant victims, federal law exempts these programs from Department of Homeland Security (DHS) verification and reporting requirements. Congress explicitly confirmed that nonprofit charitable organizations have no legal obligation to inquire about the immigration status of persons who seek their services.³²⁴

<http://www.nationalimmigrationproject.org/HIV/2004HIVManual/2004hivmanual/> (Chapter 4 of this manual contains eligibility information about public benefits for HIV/AIDS immigrants).

³²⁰ HUD defines short term shelter or housing assistance to include emergency shelter and up to two years of transitional housing. Letter from U.S. Dept. of Housing and Urban Development to HUD Funds Recipients, to HUD Funds Recipients (Jan. 19, 2001). Some victims of sexual assault will qualify for emergency shelter and transitional housing as child abuse or domestic violence victims. Domestic violence is defined in the Violence Against Women Act as follows:

“The term ‘domestic violence’ includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.”

The Violence Against Women Act of 1994 (VAWA) Pub.L. 103-322, 108 Stat. 1902, 42 U.S.C. § 13925(a)(6) (2000). Under this definition sexual assault victims whose perpetrators are current or former family members, extended family member, intimate partners, cohabitants, boyfriends, girlfriends or any other person covered by your state’s protection order statute would qualify for emergency shelter and transitional housing as domestic violence victims. Child sexual assault victims will qualify as abused, abandoned or neglected children. Other sexual assault victims will qualify for shelter and transitional housing as persons who would otherwise be homeless or at risk of homelessness. Access to shelter and transitional housing would be particularly important for a sexual assault victim who was assaulted in her apartment or apartment complex and due to the psychological affects of assault is too traumatized to stay in her apartment unit. If the victim has been renting from a private landlord she may not have a place to move to and will need access to shelter or transitional housing. If the victim has been living in public housing or a subsidized housing unit and she is unable to convince the housing authority to transfer her and cannot afford to move on her own, she may end up in a homeless shelter.

³²¹ Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19, 2001) available at <http://www.legalmomentum.org/site/DocServer/appendixb-2.pdf?docID=222>.

³²² Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19, 2001) available at <http://www.legalmomentum.org/site/DocServer/appendixb-2.pdf?docID=222>. See also A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3,613, 3,616 (Jan.16, 2001). For a full list of HUD funded programs do not have restricted immigrant access, see, Appendix XXX HUD Funded programs.

³²³ AG Order No. 2129-97, Interim Guidance on 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. 61,344, 61,345-61,346, Vol. 62, No. 221; see also appendix to this chapter on Anti-discrimination.

³²⁴ 8 U.S.C. § 1642(d). These protections are broader and extend beyond programs offering services necessary to protection life and safety.

Further, programs that turn away undocumented immigrants risk being charged with discrimination in violation of Federal law and also loss of federal funding.³²⁵

C. OTHER SERVICES NOT RESTRICTED BY PRWORA

While services needed to protect life and safety are perhaps the most common unrestricted services victims of sexual assault and domestic violence may need to access, there are other unrestricted categories of publicly funded benefits and services that both documented and undocumented victims of sexual assault can access. These include: medical assistance under title XIX of the Social Security Act; short-term, non-cash, in kind emergency disaster relief; public health assistance for immunizations and treatment for symptoms of communicable diseases; and programs for housing or community development assistance or financial assistance administered by the secretary of HUD. A brief description of three of these programs follows.

1. Medical assistance under title XIX of the Social Security Act

Emergency medical assistance is available to all immigrants regardless of status for care and services that are necessary to the treatment of an emergency medical condition, not related to an organ transplant procedure as long as the immigrant meets any other eligibility requirements under his or her approved state plan.³²⁶

2. Short-term, non-cash, in kind emergency disaster relief

The Federal Emergency Management Administration (FEMA) has determined that programs providing the following services are considered short-term disaster relief:

- search and rescue;
- emergency medical care;
- emergency mass care;
- emergency shelter;
- clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;
- warning of further risk or hazards;
- dissemination of public information and assistance regarding health and safety measures;
- provision of food, water, medicine, and other essential needs, including movement of supplies or persons; and
- reduction of immediate threats to life, property, and public health and safety.³²⁷

3. Public health assistance for immunizations and treatment for symptoms of communicable diseases

All immigrants, regardless of immigration status, are eligible for public health assistance funded through sources other than the Medicaid program. The public health assistance is limited to immunizations with respect to diseases for which immunizations exist and for testing *and* treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease. Public health assistance includes a wide range of critical health services for immigrants and their families, including:

³²⁵ See Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, 61,346 (Nov. 17, 1997); see also appendix to this chapter on discrimination.

³²⁶ 42 U.S.C. § 1611(b)(1)(A); See Social Security Act, 42 USC 1396.

³²⁷ http://www.nilc.org/disaster_assistance/Disaster_Relief.pdf

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- Immunizations for Children and Adolescents;
- AIDS and HIV services and treatment including screening and diagnosis, counseling, testing and treatment provided with Ryan White Program funds³²⁸ or other non-Medicaid funds;
- Tuberculosis services including screening, diagnosis and treatment; and
- Sexually transmitted disease (STD) screening, diagnosis and treatment.³²⁹

³²⁸ Title XXVI of the Public Health Service Act was amended by the Ryan White HIV/AIDS Treatment Modernization Act of 2006 and provides funds for STD and HIV testing.

³²⁹ Claudia Schlosberg, *Not-qualified Immigrants' Access to Public Health and Emergency Services After the Welfare Law*, January 12, 1998, Paper can be viewed at <http://www.healthlaw.org/library/attachment.67503?print>. State and local health departments carry out the screening, diagnosis and treatment of STDs. In order to ascertain for which STD's free screening is available contact your state's health department. Access to state health departments' web sites is available at <http://www.cdc.gov/mmwr/international/relres.html>

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
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16.1

HHS Funded Programs Open to all Immigrants

Generally speaking, any HHS funded program that has not been classified by HHS as a “Federal Public Benefit” is open to all persons without regard to their immigration status. This memo contains the following program lists:

- Section 1 lists programs funded by HHS that are open only to qualified immigrants
- Section 2 lists programs funded by HHS that are open to all persons without regard to their immigration status
- Section 3 lists additional programs open to all persons without regard to their immigration status

SECTION 1: PROGRAMS OPEN ONLY TO QUALIFIED IMMIGRANTS

Currently, only thirty-one HHS funded programs have been classified as Federal Public Benefits. They are¹

Program Name	Eligibility
Adoption Assistance	Qualified immigrants only
Administration on Developmental Disabilities (ADD)—	Qualified immigrants only
State Developmental Disabilities Councils (direct services only)	Qualified immigrants only
Special Projects (direct services only)	Qualified immigrants only
University Affiliated Programs	Qualified immigrants only
Adult Programs/Payments to Territories	Qualified immigrants only
Agency for Health Care Policy and Research Dissertation Grants	Qualified immigrants only
Child Care and Development Fund	Qualified immigrants only
Clinical Training Grant for Faculty Development in Alcohol & Drug Abuse	Qualified immigrants only
Foster Care	Qualified immigrants only
Health Profession Education and Training Assistance	Qualified immigrants only
Independent Living Program	Qualified immigrants only
Job Opportunities for Low Income Individuals (JOLI)	Qualified immigrants only
Low Income Home Energy Assistance Program (LIHEAP)	Qualified immigrants only
Medicare	Qualified immigrants only

¹ HHS Interpretation of PRWORA “Federal Public Benefit”, 63 Fed. Reg. 41,658 (Aug. 4, 1998).

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Mental Health Clinical Training Grants	Qualified immigrants only
Native Hawaiian Loan Program	Qualified immigrants only
Refugee Cash Assistance	Qualified immigrants only
Refugee Medical Assistance	Qualified immigrants only
Refugee Preventive Health Services Program	Qualified immigrants only
Refugee Social Services Formula Program	Qualified immigrants only
Refugee Social Services Discretionary Program	Qualified immigrants only
Refugee Targeted Assistance Formula Program	Qualified immigrants only
Refugee Targeted Assistance Discretionary Program	Qualified immigrants only
Refugee Unaccompanied Minors Program	Qualified immigrants only
Refugee Voluntary Agency Matching Grant Program	Qualified immigrants only
Reparation Program	Qualified immigrants only
Residential Energy Assistance Challenge Option (REACH)	Qualified immigrants only
Social Services Block Grants	Qualified immigrants only
State Chile Health Insurance Program (SCHIP)	Qualified immigrants only
Temporary Assistance for Needy Families (TANF)	Qualified immigrants only

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SECTION 2: PROGRAMS OPEN TO ALL IMMIGRANTS

Programs Designed to Address the Specific Needs of Children and Families

	Website and Contact Information	Eligibility Requirements Unrelated to Immigration Status or Program Description	Eligibility
Abandoned Infants Assistance Program	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/aban_infant.htm 800.394.3366	Applicants: Public and private non-profit agencies are eligible to apply for these discretionary grants. Program Beneficiaries: Abandoned infants without regard to the infant's immigration status	All immigrants regardless of immigration status
Child Abuse and Treatment Act Research and Demonstration Project	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/captad.htm 800.394.3366	Projects have focused on every aspect of the prevention, identification, investigation, assessment and treatment of child abuse and neglect. Applicants: Grants are provided to State and local agencies and organizations as well as university—and hospital—affiliated programs.	All immigrants regardless of immigration status
Abandoned Infants Assistance Program	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/aban_infant.htm 800.394.3366	Applicants: Public and private nonprofit agencies are eligible to apply for these discretionary grants. Program Beneficiaries: Abandoned infants without regard to the infant's immigration status	All immigrants regardless of immigration status
Child Abuse and Treatment Act Research and Demonstration Project	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/captad.htm 800.394.3366	Projects have focused on every aspect of the prevention, identification, investigation, assessment and treatment of child abuse and neglect. Applicants: Grants are provided to State and local agencies and organizations as well as university and hospital affiliated programs	All immigrants regardless of immigration status
Community Based Child Abuse Prevention Program (CBCAP)	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/community.htm 800.394.3366	Discretionary grants may be awarded to selected Indian tribes, tribal organizations, and migrant programs to develop linkages with the statewide CBCAP program and/or to provide services otherwise consistent with the purposes of the CBCAP.	All immigrants regardless of immigration status
Compassion Capital Fund (CCF)	http://www.acf.hhs.gov/programs/ocs/ccf/ 800.422.4453	Eligibility requirements vary for the three grant programs funded by the CCF (The CCF Demonstration Program, The CCF Targeted Capacity Building Program, The CCF Communities Empowering Youth Program).	All immigrants regardless of immigration status
Head Start	http://www.acf.hhs.gov/programs/ohs/ or http://eclkc.ohs.acf.hhs.gov/hslc/HeadStartOffices/ 800.311.3435	You must be a parent or primary caregiver responsible for a child who is too young for public school. Income caps apply.	All immigrants regardless of immigration status
Mentoring Children of Prisoners Program	http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/mcpcfactsheet.htm 301.608.8098	Grant recipients are required to cultivate mentors from within the child's family and community through recruitment, screening, training, and monitoring and evaluation.	All immigrants regardless of immigration status

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Promoting Safe and Stable Families (PSSF)	http://www.acf.hhs.gov/ebrochure/childwelfare.htm	You must be a parent or primary caregiver responsible for a child(ren) under the age of 19 years, and you must need help to ensure the child(ren) is not separated from your home.	All immigrants regardless of immigration status
Children's Bureau Grant Programs (nondirect service components)	http://www.acf.hhs.gov/programs/cb/programs_fund/generals/cb_grant.htm 800.394.3366	The Children's Bureau and ACYF fund service demonstration, research, technical assistance, and training projects focused on knowledge development and knowledge transfer in the areas of adoption, foster care and child maltreatment.	All immigrants regardless of immigration status
Youth Information, Training & Resource Centers	http://www.addyic.org/ or http://www.acf.hhs.gov/programs/add/states/youth_map.html	These youth grantees are undertaking projects which enable them to design and demonstrate youth information, training and resource centers for youth and emerging leaders with developmental disabilities.	All immigrants regardless of immigration status
Child Abuse and Neglect State Grants	http://www.acf.hhs.gov/programs/cb/programs_fund/state_tribal/capta.htm 800.394.3366	To improve the national, State, community and family activities for the prevention, assessment, identification, and treatment of child abuse and neglect through research, demonstration service improvement, information dissemination, and technical assistance.	All immigrants regardless of immigration status
Child Support Enforcement Program (CSE)	http://www.acf.hhs.gov/opa/factsheets/cse_factsheet.html 202.401.9373	To assure that assistance in obtaining support (both financial and medical) is available to children through locating parents, establishing paternity and support obligations, and enforcing those obligations.	All immigrants regardless of immigration status
Child Welfare Training	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/cw_training.htm	This program upgrades the skills, knowledge and qualifications of prospective and current child welfare agency staff and supports special projects for training personnel to work in the field of child welfare. These discretionary grants are awarded to public and private nonprofit institutions of higher learning and are designed to assist State child welfare agencies in developing a stable and highly skilled workforce for providing effective child welfare services. Further, the Child Welfare Discretionary Grant Projects develop and maintain a strong UniversityPublic Agency Partnership toward the goal of identifying and developing the appropriate staff competencies.	All immigrants regardless of immigration status
Substance Abuse and Mental Health Services Administration (SAMSHA)			
Safe Schools/Healthy Students Initiative	http://mentalhealth.samhsa.gov/schoolviolence/ 800.370.2943	Grants are available to local education authorities.	All immigrants regardless of immigration status

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PROGRAMS TO PROMOTE SUICIDE PREVENTION AND MENTAL HEALTH

Substance Abuse and Mental Health Services Administration (SAMSHA)

Campus Suicide Prevention Grants	https://extranet.acf.hhs.gov/hhsgrantsforecast/index.cfm?switch=grant.view&gff_grants_forecastInfoID=10935 800.789.2647	Campus Suicide grants facilitate a comprehensive approach to preventing suicide in institutions of higher education. Public and State controlled institutions of higher education are eligible to apply.	All immigrants regardless of immigration status
Comprehensive Mental Health Services Program for Children and Their Families	http://mentalhealth.samhsa.gov/publications/allpubs/CA0013/default.aspx 800.789.2647	Communities are given flexibility in how they organize their systems of care approach to meet the needs of their children and families. However, each of these grantfunded programs must include families as partners in designing the system of service delivery.	All immigrants regardless of immigration status
National Suicide Prevention Lifeline	http://www.suicidepreventionlifeline.org 1.800.273.TALK (8255)	The National Suicide Prevention Lifeline is a 24-hour, tollfree suicide prevention service available to anyone in suicidal crisis.	All immigrants regardless of immigration status
National Center for Trauma Informed Care	http://mentalhealth.samhsa.gov/nctic/default.asp 1. 866.254.4819	NCTIC offers consultation and technical assistance, education and outreach, and resources to support the creation of traumainformed environments with traumaspecific interventions that support consumers and survivors.	All immigrants regardless of immigration status
Partners for Recovery (PFR)	http://pfr.samhsa.gov/index.html	The PFR initiative supports and provides technical resources to those who deliver services for the prevention and treatment of substance use and mental health disorders and seeks to build capacity and improve services and systems of care.	All immigrants regardless of immigration status
The Protection and Advocacy for Individuals with Mental Illness Program (PAIMI)	http://mentalhealth.samhsa.gov/cmhs/P&A/default.asp 202.619.0257 or 1.877.696.6775 (toll free)	You or a family/household member must be facing mental illness and you must be a resident or in the process of becoming a resident of a facility rendering care or treatment.	All immigrants regardless of immigration status
The Recovery Community Services Program	http://rcsp.samhsa.gov/	RCSP grant projects design and deliver peertopeer recovery support services to help individuals in their communities initiate and sustain recovery and gain overall wellness.	All immigrants regardless of immigration status
SAMHSA Access to Recovery (ATR)	http://atr.samhsa.gov/	The selected grantees have designed their approach and targeted efforts to areas of greatest need, areas with a high degree of readiness, and to specific populations, including adolescents.	All immigrants regardless of immigration status
SAMHSA Disaster Relief Information	http://mentalhealth.samhsa.gov/disasterrelief/about.aspx	The SAMHSA website provides documents and resources for any person with or at risk for mental and substance abuse disorders.	All immigrants regardless of immigration status

Immigration Relief for Child Sexual Assault Survivors

<p>Substance Abuse Prevention and Treatment Block Grants (SAPTBG)</p>	<p>http://www.samhsa.gov/grants/blockgrant/</p>	<p>You must need assistance or guidance regarding prevention of substance abuse or treatment of drug or alcohol dependency. You must also be either the parent or primary caregiver to a child(ren) under the age of 19 years, or you or any member of your family/household must be pregnant.</p>	<p>All immigrants regardless of immigration status</p>
<p>Suicide Prevention Resource Center</p>	<p>http://www.sprc.org/ 1.877.GETSPRC (438.7772)</p>	<p>Home of over 490 web pages and 250 library resources on suicide prevention information. Visitors can find a range of information from suicide prevention and mental health news to strategic tools for developing suicide prevention programs.</p>	<p>All immigrants regardless of immigration status</p>

Immigration Relief for Child Sexual Assault Survivors

PROGRAMS TO PROMOTE SUICIDE PREVENTION AND MENTAL HEALTH

Consolidated Health Centers	http://bphc.hrsa.gov/ Find a Health Center: http://findahealthcenter.hrsa.gov	Federally funded health centers provide a schedule of discounts corresponding to established charges for individuals with incomes at or below 200% of the Federal Poverty Guidelines.	All immigrants regardless of immigration status
Family Planning Services	http://www.hhs.gov/opa/index.html http://www.opaclearinghouse.org/db_search.asp 240.453.2888	Must characterize your financial situation as low income or as very low income. You or your family/household member must be pregnant, or you must be a parent or primary caregiver responsible for children under the age of 19 years.	All immigrants regardless of immigration status
Immunization Grants	http://www.cdc.gov/vaccines/programs/vfc/contactsstate.htm 800.CDC.INFO	You must be under the age of 19 years. You must also need financial assistance for health care/insurance costs, or you, your spouse, parents or children must receive or be eligible to receive Medicare, or you must be Native American/American Indian and you or your family member must be enrolled in a federally recognized American Indian tribe or Alaskan Native village.	All immigrants regardless of immigration status
Medicaid for an Emergency Medical Condition	http://www.cms.hhs.gov/EMTALA/01_overview.asp 800.575.WELL	Must be medical treatment for an emergency medical condition (EMC), including active labor and severe pain	All immigrants regardless of immigration status
Infant Adoption Awareness Training Program	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/iaatp.htm 800.394.3366	Awards grants to adoption organizations to develop and implement programs to train the designated staff of eligible health centers in providing adoption information and referral to pregnant women on an equal basis with all other courses of action included in nondirective counseling for pregnant women.	All immigrants regardless of immigration status
The Ryan White HIV/AIDS Program	http://hab.hrsa.gov/default.htm 800.458.5231	You or your family/household members must have HIV (human immunodeficiency virus) or AIDS (acquired immune deficiency syndrome) and characterize your financial situation as low income or very low income.	All immigrants regardless of immigration status
Community Food & Nutrition Program (CFN)	http://www.acf.hhs.gov/programs/fbci/progs/fbci_cfn.html 800.281.9519	The Community Food and Nutrition Program is designed to improve the health and nutrition status of low-income people by increasing and improving access to, or information about, healthy, nutritious foods.	All immigrants regardless of immigration status

Immigration Relief for Child Sexual Assault Survivors

PROGRAMS TO PROMOTE SUICIDE PREVENTION AND MENTAL HEALTH

Family Violence Prevention Service (FVPA)	http://www.acf.hhs.gov/programs/fysb/content/familyviolence/index.htm 800.799.SAFE	You must be the victim of domestic violence in need of aid to obtain decent, safe, and/or sanitary housing	All immigrants regardless of immigration status
Homelessness Resource Center	http://www.nrchmi.samhsa.gov/ 800.444.7415	An interactive community of providers, consumers, policymakers, researchers, and public agencies at federal, state, and local levels. The center shares stateofthe art knowledge and promising practices to prevent and end homelessness through: training and technical assistance; publications and materials; online learning opportunities; networking and collaboration.	All immigrants regardless of immigration status
Maternity Group Homes for Pregnant and Parenting Youth	http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/mghfactsheet.htm 301.608.8098	The MGH Program supports homeless pregnant and parenting young people between the ages of 16 and 21, as well as their dependant children. Services are provided for up to 18 months, and an additional 180 days is allowed for youth under 18 years old.	All immigrants regardless of immigration status
Projects for Assistance in Transition from Homelessness	http://www.pathprogram.samhsa.gov	You must be homeless/live in a shelter and you or any of your family/household members must be facing mental illness.	All immigrants regardless of immigration status
Street Outreach Program (SOP)	http://www.1800runaway.org 301.608.8098	In order to qualify for this benefit program, you must be less than 22 years of age living on the street.	All immigrants regardless of immigration status
Support Services for Runaway and Homeless Youth Basic Centers	http://www.acf.hhs.gov/programs/fbci/progs/fbci_rhyouth.html 202.205.8306 Find a Center: http://www.1800runaway.org	Any State, unit of local government, public or private agency, Indian Tribe, organization, or institution is eligible to apply for these discretionary funds	All immigrants regardless of immigration status
Transitional Living Program for Homeless Youth	http://www.ncfy.com/ 301. 608.8098 http://www.1800runaway.org	You must be between the ages of 16 and 21 years of age and you must either be homeless or live in a shelter.	All immigrants regardless of immigration status

**PROGRAMS ADDRESSING DOMESTIC VIOLENCE,
SEXUAL ASSAULT, AND HUMAN TRAFFICKING**

National Domestic Violence Resource Network	http://www.acf.hhs.gov/programs/fysb/content/familyviolence/network.htm 800.537.2238	The Network is operated by the Pennsylvania Coalition Against Domestic Violence and provides information and resources, policy development, and technical assistance designed to enhance community response to and prevention of domestic violence.	All immigrants regardless of immigration status
National Sexual Assault Hotline	http://www.rainn.org/ 800.656.HOPE (4673)	This nationwide partnership of more than 1,100 local rape treatment hotlines provides victims of sexual assault with free, confidential services around the clock.	All immigrants regardless of immigration status
Rescue and Restore Victims of Human Trafficking Regional Program	http://www.acf.hhs.gov/grants/open/HHS2009.ACFORRZV0027.html 1.888.373.7888	Eligibility is open to all types of domestic applicants other than individuals.	All immigrants regardless of immigration status

MULTI-FACETED AND MISCELLANEOUS PROGRAMS

Administration on Developmental Disabilities (ADD) University Affiliated Programs (nonclinical disability assessment)	http://orsaminore.dreamhosters.com/handy/documenti/cfda/p93632.htm 202.690.6590	All immigrants regardless of immigration status
ADD Protection and Advocacy for Individuals with Developmental Disabilities (PADD)	http://www.acf.hhs.gov/programs/add/states/pnafactsheet.html http://www.acf.hhs.gov/programs/add/states/pas.html 202.690.5905	All immigrants regardless of immigration status
ADD State Developmental Disabilities Councils (nondirect service components)	http://www.acf.hhs.gov/programs/add/states/councilfactsheet.html http://www.acf.hhs.gov/programs/add/states/ddcs.html 202.690.6590	All immigrants regardless of immigration status
ADD Special Projects	http://www.acf.hhs.gov/programs/add/ 202.690.6590	All immigrants regardless of immigration status
Community Economic Development (CED) Program Grants	http://www.acf.hhs.gov/programs/ocs/ced/index.html 202.401.5663	All immigrants regardless of immigration status
Community Services Block Grant (CSBG)	http://www.acf.hhs.gov/programs/ocs/csbg/	All immigrants regardless of immigration status
Rural Community Facilities	http://www.acf.hhs.gov/programs/ocs/rf/fact_sheet.html	All immigrants regardless of immigration status

SECTION 3

In addition to these programs, certain offices in HHS have discretionary grants that vary from time to time. To find a listing of current opportunities, visit the offices' websites.

- Administration for Children & Family (ACF) Discretionary Grants <http://www.acf.hhs.gov/grants/open.html>
- Administration on Aging (AoA) Funding Opportunities <http://www.aoa.gov/doingbus/fundopp/fundopp.aspx>
- Center for Disease Control and Prevention Grants (CDC) <http://www.cdc.gov/od/pgo/funding/grants/grantmain.shtm>
- Health Resources and Services Administration <http://www.hrsa.gov/grants/default.htm>
- Maternal and Child Health Bureau (MCHB) Discretionary Grants <http://mchb.hrsa.gov/grants/default.htm>
- SAMHSA Grants <http://www.samhsa.gov/grants/2009/fy2009.aspx>
- Administration for Native American Programs http://www.acf.hhs.gov/programs/ana/programs/program_information.html
- Family and Youth Services Bureau Funding (nondirect services components)
http://www.acf.hhs.gov/grants/grants_fysb.html

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

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HUD Programs and Immigrant Eligibility¹²

Section 214 of the Housing and Community Development Act restricts access to certain HUD programs to eligible immigrants including qualified.³ The following programs are only available to “qualified immigrants” as defined by the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) and immigrants considered “eligible immigrants” under Section 214 of the Housing and Community Development Act.⁴:

Public Housing Operating Fund	http://www.hud.gov/offices/pih/programs/ph/am/of/	HUD provides these operating subsidies to public housing agencies (PHAs) to help them meet operating and management expenses. A PHA can use operating funds for operating and management costs, including administration, routine maintenance, anti-crime and anti-drug activities, resident participation in management, insurance costs, energy costs, and costs, as appropriate, related to the operation and management of mixed finance projects among other things.
Public Housing Capital Fund	http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm	The Capital Fund is available by formula distribution for capital and management activities, including development, financing, and modernization of public housing projects, which includes redesign, reconstruction, and reconfiguration of public housing sites and buildings (including accessibility improvements) and development of mixed-finance projects; vacancy reduction; addressing deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment; planned

¹This project was supported by Grant No. 2005-WT-AX-K005 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this web library and its publications are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

² List compiled from <http://www.huduser.org/resources/hudprgs/ProgOfHUD06.pdf>

³ See 42 U.S.C. 1436(a) (2006).

⁴ Qualified immigrants include: (1) LPRs, including Amerasian immigrants; (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry, or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also qualified.

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		code compliance, management improvements, including the establishment and initial operation of computer centers in and around public housing through a Neighborhood Networks initiative, for the purpose of enhancing self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with on-site computer access and training resources; demolition and replacement; resident relocation; capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents, and improve resident participation; capital expenditures to improve safety and security of residents; and homeownership activities, including programs under Section 32.
Public Housing Neighborhood Networks (NN) Program	www.hud.gov/offices/pih/programs/ph/ross/aboutnn.cfm	Grants awarded to PHAs for the purposes of providing computer and Internet access and job training to public housing residents.
Public Housing Homeownership (Section 32)	http://www.hud.gov/offices/pih/centers/sac/homeownership/index.cfm	The program offers public housing agencies (PHAs) a flexible way to sell public housing units to low-income families, with preference given to current residents of the unit(s) being sold. PHAs can retain and reuse the proceeds of the sale of public housing units to meet other low-income housing needs.
Section 8 Moderate Rehabilitation Single Room Occupancy (SRO)	www.hud.gov/offices/cpd/homeless/programs/sro/index.cfm	Assists very low-income, single, homeless individuals in obtaining decent, safe, and sanitary housing in privately owned, rehabilitated buildings.
Supportive Housing for the Elderly (Section 202) (Projects with project-based § 8 Assistance)	www.hud.gov/offices/hsg/mfh/progdesc/eld202.cfm	Capital advances are made to eligible private, nonprofit sponsors to finance the development of rental housing with supportive services for the elderly. The advance is interest free and does not have to be repaid so long as the housing remains available for very low-income elderly persons for at least 40 years. Project rental assistance covers the difference between the HUD-approved operating cost of the project and the tenants' contributions toward rent (usually 30 percent of monthly adjusted income).
Supportive Housing for Persons with Disabilities (Section 811) (projects with project-based § 8 Assistance)	www.hud.gov/offices/hsg/mfh/progdesc/disab811.cfm	Program provides assistance to expand the supply of housing with the availability of supportive services for persons with disabilities.

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Renewal of Section 8 Project-Based Rental Assistance	http://edocket.access.gpo.gov/cfr_2008/aprqrtr/pdf/24cfr402.3.pdf	HUD renews Section 8 project-based housing assistance payments (“HAP”) contracts with owners of multifamily rental housing. The project-based rental assistance makes up the difference between what a low- and very low-income household can afford and the approved rent for an adequate housing unit in a multifamily project. Eligible tenants must pay the highest of 30 percent of adjusted income, 10 percent of gross income, or the portion of welfare assistance designated for housing or the minimum rent established by HUD.
Housing Choice Voucher Program	www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm	Through tenant-based vouchers, provides rental subsidies for standard-quality units that are chosen by the tenant in the private market.
Homeownership Voucher Assistance	http://www.hud.gov/offices/pih/programs/hcv/homeownership/	A public housing agency (PHA), at its option, may provide monthly assistance to families that have been admitted to the Section 8 Housing Choice Voucher program in accordance with HUD regulations, that meet certain criteria, and that are purchasing homes in an amount that would otherwise have been provided to that family as tenant-based voucher assistance.
Project-Based Voucher Program	http://www.hud.gov/offices/pih/programs/hcv/project.cfm	Rental assistance is available for eligible families who live in specific housing developments or units.

Community Development Programs

Community Development Block Grants	http://www.hud.gov/offices/cpd/communitydevelopment/programs/entitlement/index.cfm#eligiblegrantees	CDBG are awarded to metropolitan cities and urban counties on a formula basis to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services.
Development Block Grants (Non-Entitlement) for States and Small Cities	http://www.hud.gov/offices/cpd/communitydevelopment/programs/stateadmin/index.cfm	Provides grants to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services to governments that are not metropolitan cities or part of an urban county.

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Community Development Block Grants (Section 108 Loan Guarantee)	http://www.hud.gov/offices/cpd/communitydevelopment/programs/108/index.cfm	Offers communities a source of financing for housing rehabilitation, economic development, and large-scale physical development projects.
Community Development Block Grants (Disaster Recovery Assistance)	http://www.hud.gov/offices/cpd/communitydevelopment/programs/dri/index.cfm	CDBG Disaster Recovery funds go to states and local governments in places that have been designated by the President of the United States as major disaster areas.
Community Development Block Grant Program Insular	http://www.hud.gov/offices/cpd/communitydevelopment/programs/insular/index.cfm	Provides annual grants to American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Marianas Islands to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services.
The HOME Program: HOME Investment Partnerships	http://www.hud.gov/offices/cpd/affordablehousing/programs/home/	Grants to states and units of general local government to implement local housing strategies designed to increase homeownership and affordable housing opportunities for low- and very low-income Americans.
Brownfields Economic Development Initiative (BEDI)	www.hud.gov/offices/cpd/economicdevelopment/programs/bedi/index.cfm	Grants may be awarded to CDBG recipients for redevelopment of brownfields, to be used in conjunction with Section 108 Loan Guarantee assistance for the same project.
Economic Development Initiative (“Competitive EDI”) Grants	www.hud.gov/offices/cpd/economicdevelopment/programs/edi/index.cfm	Grants awarded to CDBG recipients to directly enhance the security of Section 108 guaranteed loans or to improve the viability of the same Section 108 assisted project.

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Renewal Communities	http://www.hud.gov/offices/cpd/economicdevelopment/programs/rc/index.cfm	Tax incentives for renewal of economically disadvantaged areas. The HUD Secretary is authorized to designate up to 40 “renewal communities” from areas nominated by states and local governments; at least 23 must be in rural areas.
Rural Housing and Economic Development Program	http://www.hud.gov/offices/cpd/economicdevelopment/programs/rhed/index.cfm	Grants awarded to local rural nonprofit organizations, community development corporations, federally recognized Indian tribes, state housing finance agencies, state economic development, and community development agencies to meet rural communities’ housing and economic development needs.
Capacity Building for Community Development and Affordable Housing	www.hud.gov/offices/cpd/about/cpdta/index.cfm	Grants to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs. Grants only awarded to LISC, The Enterprise Foundation, Habitat for Humanity, and YouthBuild USA.
Cooperative Housing (Section 213)	http://www.hud.gov/offices/hsg/mfh/progdesc/coop213.cfm	Nonprofit corporations or trusts organized to construct homes for members of the corporation or beneficiaries of the trust; and qualified sponsors who intend to sell the project to a nonprofit corporation or trust are eligible to apply for federal mortgage insurance to finance cooperative housing projects.
Mark-to-Market Program	http://www.hud.gov/offices/hsg/omhar/	This program is designed to preserve long-term low-income housing affordability by restructuring FHA-insured or HUD-held mortgages for eligible multifamily housing projects.
Self-Help Housing Property Disposition	http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/laws/shop/	The program makes surplus federal properties available through sale at less than fair market value to states, their subdivisions and instrumentalities, and nonprofit organizations.

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HOPE VI	http://www.hud.gov/offices/pih/programs/ph/hope6/about/description.cfm	This program has been an important part of the transformation of public housing by encouraging public housing agencies (PHAs) to seek new partnerships with private entities to create mixed-finance and mixed-income affordable housing. In 2003, the HOPE VI program was expanded to assist local governments in the production of affordable housing in Main Street rejuvenation projects. The activities permitted under HOPE VI include, but are not limited to: the capital costs of demolition, major reconstruction, rehabilitation, and other physical improvements; the provision of replacement housing; management improvements; planning and technical assistance; and the provision of supportive services (including the funding, beginning in Fiscal Year 2000, of an endowment trust for supportive services).
Resident Opportunity and Self-Sufficiency (ROSS) Program	http://www.hud.gov/offices/pih/programs/ph/ross/	Under the ROSS program, the Secretary may make grants to public housing agencies (PHAs), recipients under the Native American Housing Assistance and Self-Determination Act (NAHASDA), resident management corporations (RMCs), resident councils or resident organizations, and nonprofit organizations supported by residents for the purposes of providing supportive services and resident empowerment activities to public and Indian housing residents, or to assist such residents in becoming economically self-sufficient.
Indian Community Development Block Grant (ICDBG) Program	www.hud.gov/offices/pih/ih/grants/icdbg.cfm	The ICDBG Program provides eligible grantees with direct grants for use in developing viable Indian and Alaska Native Communities, including decent housing, a suitable living environment, and economic opportunities, primarily for low and moderate income persons.
Federal Guarantees for Financing for Tribal Housing Activities (Title VI)	www.hud.gov/progdesc/fintrib1.cfm	This program authorizes HUD to guarantee financial obligations issued by Indian tribes or tribally designated housing entities (TDHEs) to pay for eligible affordable housing activities under the Indian Housing Block Grant program (IHBG).
Native Hawaiian Housing Block Grant (NHHBG) Program	http://www.hud.gov/offices/pih/ih/codetalk/onap/nhhbgprogram.cfm	This new program is patterned after the Indian Housing Block Grant (IHBG) program, but contains changes to address the housing needs and circumstances of Native Hawaiians. The NHHBG program authorizes HUD to make grants to the State of Hawaii's Department of Hawaiian Home Lands (DHHL) to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands. The DHHL must submit for HUD review a one-year and a 5-year housing plan containing the goals, mission, and methodology by which DHHL will accomplish its objectives during the grant period.

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<p>Fair Housing Assistance Program (FHAP) (State and Local Agencies Program)</p>	<p>http://www.hud.gov/offices/fheo/partners/FHAP/index.cfm</p>	<p>The right to equal opportunity in housing is ensured not only by the Fair Housing Act, but also by State and local laws. HUD provides FHAP grants annually on a noncompetitive basis to substantially equivalent State and local fair housing enforcement agencies.</p> <p>At the beginning of an agency's participation in the FHAP, we provide a flat amount of funds for capacity building. Following the period of capacity building, we will provide the agency with contributions funds for complaint processing, administrative costs, special enforcement efforts, training and other projects designed to enhance the agency's administration and enforcement of its fair housing law.</p>
<p>Fair Housing Initiatives Program (FHIP)</p>	<p>http://www.hud.gov/offices/fheo/partners/FHIP/fhip.cfm</p>	<p>The right to equal opportunity in housing is ensured not only by the Fair Housing Act, but also by State and local laws. HUD provides FHAP grants annually on a noncompetitive basis to substantially equivalent State and local fair housing enforcement agencies.</p> <p>At the beginning of an agency's participation in the FHAP, we provide a flat amount of funds for capacity building. Following the period of capacity building, we will provide the agency with contributions funds for complaint processing, administrative costs, special enforcement efforts, training and other projects designed to enhance the agency's administration and enforcement of its fair housing law.</p>
<p>Emergency Capital Repairs Program</p>	<p>http://www.hud.gov/offices/hsg/mfh/progdsc/ecrp.cfm</p>	<p>Grants provided for substantial emergency capital repairs to eligible multifamily projects that are owned by private nonprofit entities. The capital repair needs must relate to items that present an immediate threat to the health, safety, and quality of life of the tenants.</p>

Community Development Block Grants (Section 107)

<p>Historically Black Colleges and Universities (HBCUs) Program</p>	<p>http://www.oup.org/programs/aboutHBCU.asp</p>	<p>The HBCU program helps HBCUs to expand their role and effectiveness in addressing community development needs in their own localities, including revitalization, housing, and economic development, principally for persons of low- and moderate-income.</p>
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Hispanic Serving Institutions Assisting Communities (HSIAC) Program	http://www.oup.org/programs/aboutHSIAC.asp	The HSIAC program helps Hispanic Serving Institutions (HSIs) to expand their role and effectiveness in addressing community development needs in their localities, including revitalization, housing, and economic development, principally for persons of low- and moderate-income.
Alaska Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC)	http://www.oup.org/programs/aboutANNHIAC.asp	The Alaska Native/Native Hawaiian Institutions (AN/NHIs) program helps AN/NHIs to expand their role and effectiveness in addressing community development needs in their localities, including revitalization, housing, and economic development, principally for persons of low- and moderate-income.
Tribal Colleges and Universities Program (TCU)	http://www.oup.org/programs/aboutTCUP.asp	The TCU program assists TCUs in building, expanding, renovating, and equipping their own facilities.
Community Outreach Partnership Centers (COPC)	http://www.oup.org/programs/aboutCOPC.asp	The COPC program assists community colleges, colleges, and universities in establishing centers to carry out applied research and outreach activities addressing the problems of urban areas, in coordination with community-based organizations and local governments.
Community Development Work Study (CDWS) Program	http://www.oup.org/programs/aboutCDWSP.asp	The CDWS program assists colleges and universities, either directly or indirectly, or through area-wide planning organizations or states, in providing assistance to work study programs for economically disadvantaged and minority students in fields related to community development.

Programs to Combat Homelessness

Shelter Plus Care (S + C)	http://www.hud.gov/offices/cpd/homeless/programs/spusc/	Grants awarded to states and units of general local government for rental assistance, in combination with supportive services from other sources, to homeless persons with disabilities.
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Emergency Shelter Grants (ESG) Program	http://www.hud.gov/offices/cpd/homeless/programs/esg/index.cfm	Provides grants to help increase both the number and quality of emergency and transitional shelters for homeless individuals and families. Grantees use ESG funds to rehabilitate and operate these facilities, provide essential social services, and prevent homelessness. States, District of Columbia, Puerto Rico, metropolitan cities, urban counties, and U.S. territories are eligible.
Surplus Property for Use to Assist the Homeless (Title V)	www.hud.gov/offices/cpd/homeless/programs/t5/index.cfm	Makes suitable federal properties, which are categorized as unutilized, underutilized, excess, or surplus, available to states, local governments, and nonprofit organizations for use to assist homeless persons. HUD determines which properties are suitable for use to assist homeless persons. Health and Human Services Agency handles the applications from providers after suitable properties are released on the Federal Register.
Supportive Housing Program	http://www.hud.gov/offices/cpd/homeless/programs/shp/index.cfm	Grants offered through a competitive process for new construction, acquisition, rehabilitation, or leasing of buildings to provide transitional or permanent housing, as well as supportive services to homeless individuals and families; grants to fund a portion of annual operating costs; and grants for technical assistance.
Empowerment Zones	http://www.hud.gov/offices/cpd/economicdevelopment/programs/rc/index.cfm	Grants and tax incentives to locate businesses in, and hire residents of, economically disadvantaged areas.

Programs to Promote and Employment and Home Ownership Opportunities

Self-Help Homeownership Opportunity Program (SHOP)	http://www.ezrc.hud.gov/offices/cpd/affordablehousing/programs/shop/index.cfm	SHOP authorizes HUD to make competitive grants to national and regional nonprofit organizations and consortia that have experience in providing or facilitating self-help housing opportunities.
Single Family Property Disposition Program (Section 204(g))	http://www.hud.gov/offices/hsg/sfh/reo/reohome.cfm	Disposes of one-to-four family FHA properties (acquired by the FHA through foreclosure of an insured or Secretary-held mortgage or loan under the National Housing Act) in a manner targeted to expanding homeownership opportunities.

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Counseling for Homebuyers, Homeowners, and Tenants (Section 106)	http://www.hud.gov/offices/hsg/sfh/hcc/hcc_home.cfm	Homeless individuals and families, potential renters, renters, potential homebuyers, homebuyers, and homeowners may seek the assistance of a HUD-approved housing counseling agency to meet a housing need or resolve a housing problem.
Family Self-Sufficiency Program	http://www.hud.gov/offices/pih/programs/hcv/fss.cfm	Promotes the development of local strategies to coordinate public and private resources that help housing choice voucher program participants and public housing tenants obtain employment that will enable participating families to achieve economic independence Public housing agencies are eligible.
Indian Housing Block Grant (IHBG) Program	www.hud.gov/offices/pih/ih/grants/ihbg.cfm	The Indian Housing Block Grant Program (IHBG) is a formula grant that provides a range of affordable housing activities on Indian reservations and Indian areas. The block grant approach to housing for Native Americans was enabled by the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA).

Programs Designed to Assist Specific Populations (e.g. Children, the Elderly, Families Living with HIV/AIDS, Homewoners Facing Foreclosure)

Youthbuild	www.hud.gov/offices/cpd/economicdevelopment/programs/youthbuild/index.cfm	The Youthbuild program provides grants to public and private nonprofit entities to provide economically disadvantaged young adults with opportunities to obtain education, employment skills, and meaningful on-site work experience and to expand the supply of affordable housing for homeless and low- and very low-income persons.
Housing Opportunities for Persons with AIDS (HOPWA) Program	http://www.hud.gov/offices/cpd/aidshousing/programs/index.cfm	The HOPWA program provides formula allocations and competitively awarded grants to eligible states, cities, and nonprofit organizations to provide housing assistance and related supportive services to meet the housing needs of low-income persons and their families living with HIV/AIDS. These resources help clients maintain housing stability, avoid homelessness, and improve access to HIV/AIDS treatment and related care while placing a greater emphasis on permanent supportive housing.
Loss Mitigation	http://www.hud.gov/foreclosure/index.cfm	Helps homeowners with FHA-insured loans to effectively work with lenders to find creative solutions to avoid foreclosure.

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Graduated Payment Mortgage (GPM) (Section 245(a))	http://www.federalgrantswire.com/section-245-graduated-payment-mortgage-program.html	Enables a household with a limited income that is expected to rise to buy a home sooner by making mortgage payments that start small and increase gradually over time. All FHA-approved lenders may make GPMs available to persons who intend to use the mortgage property as their primary residence and who expect to see their income rise appreciably in the future.
Home Equity Conversion Mortgage (HECM) Program (Section 255)	http://www.hud.gov/offices/hsg/sfh/hecm/hecmabou.cfm	The Federal Housing Administration (FHA) mortgage insurance allows borrowers, who are at least 62 years of age, to convert the equity in their homes into a monthly stream of income or a line of credit.
Manufactured Homes Loan Insurance (Title I)	www.hud.gov/offices/hsg/sfh/title/manuf14.cfm http://www.hud.gov/offices/hsg/sfh/title/ti_about.cfm	Federal insurance of loans available to finance the purchase of manufactured homes. Any person able to make the cash investment and the loan payments is eligible to apply. However, the home must be the principal residence of the borrower.
Property Improvement Loan Insurance (Title I)	http://www.hud.gov/offices/hsg/sfh/title/title-i.cfm	Federal insurance of loans made available to finance property improvements. A person who is able to make loan payments and has at least a fifty percent ownership in the property to be improved is eligible to apply.
Good Neighbor Next Door	http://www.hud.gov/offices/hsg/sfh/reo/goodn/gnndabot.cfm	Provides law enforcement officers, teachers, firefighters, and emergency medical technicians with the opportunity to purchase homes located in revitalization areas at significant discount.
Multifamily Housing Service Coordinators	http://www.hud.gov/offices/hsg/mfh/progdesc/servicecoord.cfm	This program provides funding for service coordinators who assist elderly individuals and persons with disabilities, living in federally assisted multifamily housing and in the surrounding area, to obtain needed supportive services from community agencies. Independent living with assistance is a preferable, lower cost housing alternative to institutionalization for many frail older persons and persons with disabilities.

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Mortgage Insurance for Housing for the Elderly (Section 231)	www.hud.gov/offices/hsg/mfh/progdsc/renthsgeld231.cfm	Federal mortgage insurance made available to finance the construction or rehabilitation of rental housing for the elderly or handicapped.
Mortgage Insurance for Nursing Homes, Intermediate Care, Board & Care and Assisted-living Facilities (Section 232 and Section 232/223(f))	http://www.hud.gov/offices/hsg/mfh/progdsc/nursing_alcp232.cfm	Federal mortgage insurance made available to finance or rehabilitate nursing, assisted-living, intermediate care, or board and care facilities.
Healthy Homes and Lead Hazard Control	http://www.hud.gov/offices/lead/index.cfm	This program addresses childhood lead-based paint poisoning and other childhood diseases associated with housing, such as allergies and asthma from residential exposure to mold, skin reactions to pesticides, and carbon monoxide poisoning. It promotes preventive measures to correct multiple safety and health hazards in the home environment through several components.
Supportive Housing for the Elderly (Section 202) (Projects without project-based § 8 Assistance)	www.hud.gov/offices/hsg/mfh/progdsc/eld202.cfm	Capital advances are made to eligible private, nonprofit sponsors to finance the development of rental housing with supportive services for the elderly. The advance is interest free and does not have to be repaid so long as the housing remains available for very low-income elderly persons for at least 40 years. Project rental assistance covers the difference between the HUD-approved operating cost of the project and the tenants' contributions toward rent (usually 30 percent of monthly adjusted income).
Assisted-Living Conversion Program (ALCP)	www.hud.gov/offices/hsg/mfh/progdsc/alcp.cfm	Provides grants to private nonprofit owners of eligible developments to convert some or all of the dwelling units in the development into an assisted-living facility for the frail elderly.
Supportive Housing for Persons with Disabilities (Section 811) (projects without project-based § 8 Assistance)	www.hud.gov/offices/hsg/mfh/progdsc/disab811.cfm	Program provides assistance to expand the supply of housing with the availability of supportive services for persons with disabilities.

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Programs to Insure/Guarantee Loans

<p>Loan Guarantee Recovery Fund for Church Arson and Other Acts of Terrorism (Section 4)</p>	<p>http://fhasecure.gov/offices/cpd/economicdevelopment/programs/section4/index.cfm</p>	<p>Provides guarantees for loans to certain nonprofit organizations damaged by arson or terrorism.</p>
<p>One-to-Four-Family Home Mortgage Insurance (Section 203(b))</p>	<p>www.hud.gov/offices/hsg/sfh/ins/203b--df.cfm</p>	<p>Federal mortgage insurance is provided to finance homeownership and the construction and financing of housing. Any person able to meet the cash investment, mortgage payment, and credit requirements are eligible to apply. The program is generally limited to owner-occupants.</p>
<p>Mortgage Insurance for Disaster Victims (Section 203(h))</p>	<p>www.hud.gov/offices/hsg/sfh/ins/203h-dft.cfm</p>	<p>Federal mortgage insurance for victims of a major disaster who have lost their homes and are in the process of rebuilding or buying another home. Any person whose home has been destroyed or severely damaged in a presidentially declared disaster area is eligible to apply for mortgage insurance under this program, even if they were renting the property. The borrower's application for mortgage insurance must be submitted to an FHA-approved lending institution within one year of the President's declaration of the disaster.</p>
<p>Rehabilitation Mortgage Insurance</p>	<p>http://www.hud.gov/offices/hsg/sfh/203k/203k--df.cfm</p>	<p>Insures loans to finance the rehabilitation or purchase and rehabilitation of one- to four-family properties. Any person able to make the cash investment and the mortgage payments is eligible to apply.</p>
<p>Mortgage Insurance for Older, Declining Areas (Section 223(e))</p>	<p>http://www.communityinvestmentnetwork.org/nc/singlenews-item-states/article/mortgage-insurance-for-older-economically-declining-areas-section-223e/?tx_ttnews[backPid]=1079&cHash=53bbfc8f18</p>	<p>Mortgage insurance granted to purchase or rehabilitate housing in older, declining urban areas. Home or project owners ineligible for FHA mortgage insurance because property is located in an older, declining urban area are eligible to apply.</p>
<p>Mortgage Insurance for Condominium Units (Section 234(c))</p>	<p>http://www.hud.gov/offices/hsg/sfh/ins/234c--df.cfm</p>	<p>Federal mortgage insurance is available to finance the purchase of individual housing units in proposed or existing condominiums. All FHA-approved lenders may make condominium loans in approved projects for any creditworthy owner-occupant.</p>

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Adjustable Rate Mortgages (ARMs) (Section 251)	http://www.hud.gov/offices/hsg/sfh/ins/251--df.cfm	Federal mortgage insurance is available for adjustable rate mortgages (ARMs). All FHA-approved lenders may make adjustable rate mortgages and creditworthy applicants who will be owner-occupants may qualify for such loans.
Energy Efficient Mortgage Insurance	http://www.hud.gov/offices/hsg/sfh/eem/energy-r.cfm	Federal mortgage insurance made available to finance the cost of energy efficiency measures.
Insured Mortgages on Hawaiian Home Lands (Section 247)	http://www.hud.gov/offices/hsg/sfh/nsc/assn247.cfm	FHA insures loans made to native Hawaiians to purchase one- to four-family dwellings located on Hawaiian homelands. Regulations pertaining to these loans are fundamentally the same as regular Section 203(b) loans except that they are only available to Native Hawaiians on Hawaiian homelands.
Insured Mortgages on Indian Land (Section 248)	www.hud.gov/offices/hsg/sfh/ins/sfh248.cfm	FHA insures loans made to Native Americans to buy, build, or rehabilitate houses on Indian land. These loans are fundamentally the same as regular Section 203(b) loans except that they are only available to Native Americans on Indian land.
Mortgage Insurance for Manufactured Home Parks (Section 207)	http://www.huduser.org/resources/hudprgs/ProgOfHUD06.pdf	Investors, builders, developers, cooperatives, and others meeting HUD's requirements may apply to an FHA-approved lending institution after conferring with the local HUD office for federal mortgage insurance to finance construction or rehabilitation of manufactured home parks.
Mortgage and Major Home Improvement Loan Insurance for Urban Renewal Areas (Section 220)	www.hud.gov/offices/hsg/mfh/progdsc/renturbanhsg220.cfm	Investors, builders, developers, individual homeowners, and apartment owners are eligible to apply for federally insured loans used to finance mortgages for housing in urban renewal areas (areas in which concentrated revitalization activities have been undertaken by local government), or to alter, repair, or improve housing in those areas.

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<p>Mortgage Insurance for Rental and Cooperative Housing (Section 221(d)(3) and Section 221(d)(4))</p>	<p>www.hud.gov/offices/hsg/mfh/progdesc/rentcoophsg221d3n4.cfm</p>	<p>Mortgage insurance to finance rental or cooperative multifamily housing for moderate-income households, including projects designated for the elderly. Single Room Occupancy (SRO) projects are also eligible for mortgage insurance. Section 221(d)(3) and (4) are HUD’s major insurance programs for new construction or substantially rehabilitated multifamily rental housing. Section 221(d)(3) is available to public, nonprofit, and cooperative mortgagors. Section 221(d)(4) mortgages are available to profit-motivated sponsors.</p>
<p>Existing Multifamily Rental Housing (Section 207/233(f))</p>	<p>http://www.hud.gov/offices/hsg/mfh/progdesc/purchasefi223f.cfm</p>	<p>Section 207/233(f) insures mortgage loans to facilitate the purchase or refinancing of existing multifamily rental housing. These projects may have been financed originally with conventional or FHA insured mortgages.</p>
<p>Mortgage Insurance for Housing for the Elderly (Section 231)</p>	<p>www.hud.gov/offices/hsg/mfh/progdesc/renthsgeld231.cfm</p>	<p>Federal mortgage insurance made available to finance the construction or rehabilitation of rental housing for the elderly or handicapped.</p>
<p>Mortgage Insurance for Nursing Homes, Intermediate Care, Board & Care and Assisted-living Facilities (Section 232 and Section 232/223(f))</p>	<p>http://www.hud.gov/offices/hsg/mfh/progdesc/nursingalc232.cfm</p>	<p>Federal mortgage insurance made available to finance or rehabilitate nursing, assisted-living, intermediate care, or board and care facilities.</p>
<p>Supplemental Loans for Multifamily Projects (Section 241)</p>	<p>www.hud.gov/offices/hsg/mfh/progdesc/supplement241a.cfm</p>	<p>Federal mortgage loan insurance made available to finance improvements and additions to, and equipment for multifamily rental housing and healthcare facilities.</p>
<p>Hospitals</p>	<p>http://www.raonline.org/funding/funding_details.php?funding_id=95</p>	<p>Federal mortgage insurance is available to finance construction or rehabilitation of public or private nonprofit and propriety hospitals, including major movable equipment.</p>

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<p>Multifamily Mortgage Risk-Sharing Programs (Sections 542(b) and 542(c))</p>	<p>http://www.hud.gov/offices/hsg/mfh/progdesc/riskshare542c.cfm</p>	<p>Two multifamily mortgage credit programs under which Fannie Mae, Freddie Mac, and state and local housing finance agencies share the risk and the mortgage insurance premium on multifamily housing.</p> <p>Section 542(b) of the Housing and Community Development Act of 1992 authorizes HUD to enter into reinsurance agreements with Fannie Mae, Freddie Mac, qualified financial institutions (QFIs), and the Federal Housing Finance Board. The agreements provide for risk sharing on a 50-50 basis. Currently, only Fannie Mae and Freddie Mac have active risk-sharing programs with HUD.</p> <p>Section 542(c) enables HUD to carry out a program in conjunction with qualified state and local housing finance agencies (HFAs) to provide federal credit enhancement for loans for affordable multifamily housing through a system of risk-sharing agreements. Agreements provide for risk sharing between 10 percent and 90 percent.</p>
<p>Loan Guarantees for Indian Housing (Section 184)</p>	<p>www.hud.gov/progdesc/ins/ec184.cfm</p>	<p>Authorized under the Housing and Community Development Act of 1992, the Section 184 Indian Loan Program is designed to offer home ownership, property rehabilitation, new construction, and refinance opportunities for eligible individual Native Americans, tribes, and Indian Housing authorities.</p>
<p>Loan Guarantees for Native Hawaiian Housing (Section 184A)</p>	<p>http://www.hud.gov/offices/pih/ih/codetalk/onap/program184a.cfm</p>	<p>The purpose of the Section 184A loan is to provide access to sources of private financing on Hawaiian homelands. Section 184A permits HUD to guarantee 100% of the unpaid principal and interest due on an eligible loan. The use of the Section 184A Loan Guarantee Program is limited to owner-occupant single-family dwellings located on Hawaiian homelands.</p>
<p>Ginnie Mae I Mortgage-Backed Securities</p>	<p>www.ginniemae.gov</p>	<p>Ginnie Mae guarantees investors (security holders) the timely payment of principal and interest on securities issued by private lenders that are backed by pools of Federal Housing Administration (FHA), Veterans Affairs (VA), Rural Housing Service (RHS), and Public and Indian Housing (PIH) mortgage loans. The full faith and credit guarantee of the U.S. Government that Ginnie Mae places on mortgage-backed securities lowers the cost of, and maintains the supply of, mortgage financing for government-backed loans.</p>
<p>Ginnie Mae II Mortgage-Backed Securities</p>	<p>www.ginniemae.gov</p>	<p>Ginnie Mae guarantees investors (security holders) the timely payment of principal and interest on securities issued by private lenders that are backed by pools of Federal Housing Administration (FHA), Veterans Affairs (VA), Rural Housing Service (RHS), and Public and Indian Housing (PIH) mortgage loans. The full faith and credit guarantee of the U.S. Government that Ginnie Mae places on mortgage-backed securities lowers the cost of, and maintains the supply of, mortgage financing for government-backed loans. The Ginnie Mae II program complements the Ginnie</p>

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		Mae I program.
Ginnie Mae Multiclass Securities Program	www.ginniemae.gov	In 1970, Ginnie Mae made history when it pooled government mortgage loans together and created the first mortgage-backed security (MBS). Ginnie Mae and the capital markets have evolved since 1970, and now play a pivotal role in improving the affordability of housing for all Americans by increasing the availability of investment capital to the housing sector. In 1994, Ginnie Mae broadened its investor base for MBSs with the introduction of an innovative and more efficient vehicle, the Real Estate Mortgage Investment Conduit (commonly known in the industry as a REMIC). The mortgage market has matured to include a variety of REMIC securities, each with a broad array of features and each with a different risk-return profile. In July 2004, Ginnie Mae complemented its REMIC product line with the launch of its stripped mortgage-backed securities (SMBS) Trust vehicle. The SMBS Trust product adds another investment type to sophisticated investors in Ginnie Mae MBSs seeking better market liquidity and management of MBS prepayment risk. Callable securities, another one of Ginnie Mae's Multiclass Securities products, give investors the option to redeem previously issued securities, allowing greater hedging flexibility.
Ginnie Mae Platinum Securities Program	www.ginniemae.gov	Ginnie Mae Platinum Securities allow investors to combine Ginnie Mae MBS pools with uniform mortgage interest rates and original terms to maturity into a single security, backed by the full faith and credit of the United States Government. Investors then receive a single payment from the combined securities every month, rather than separate payments from each individual security. Because it lowers administrative costs and improves liquidity, particularly for small pools, this feature serves to make the Ginnie Mae Platinum Security attractive. Ginnie Mae Platinum Securities can be used in structured finance transactions, repurchase transactions, and general trading.

Fair Housing and Equal Opportunity Programs

Fair Housing Assistance Program (FHAP) (State and Local Agencies Program)	http://www.hud.gov/offices/fheo/partners/FHAP/index.cfm	<p>The right to equal opportunity in housing is ensured not only by the Fair Housing Act, but also by State and local laws. HUD provides FHAP grants annually on a noncompetitive basis to substantially equivalent State and local fair housing enforcement agencies.</p> <p>At the beginning of an agency's participation in the FHAP, we provide a flat amount of funds for capacity building. Following the period of capacity building, we will provide the agency with contributions funds for complaint processing, administrative costs, special enforcement efforts,</p>
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		training and other projects designed to enhance the agency's administration and enforcement of its fair housing law.
Fair Housing Initiatives Program (FHIP)	http://www.hud.gov/offices/fheo/partners/FHIP/fhip.cfm	<p>The right to equal opportunity in housing is ensured not only by the Fair Housing Act, but also by State and local laws. HUD provides FHAP grants annually on a noncompetitive basis to substantially equivalent State and local fair housing enforcement agencies.</p> <p>At the beginning of an agency's participation in the FHAP, we provide a flat amount of funds for capacity building. Following the period of capacity building, we will provide the agency with contributions funds for complaint processing, administrative costs, special enforcement efforts, training and other projects designed to enhance the agency's administration and enforcement of its fair housing law.</p>
Partnership for Advancing Technologies in Housing Initiative (PATH)	http://www.huduser.org/about/pdr_path.html	Analyzes the fair housing laws administered by a state or local fair housing agency for consistency with Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act). Assists state and local agencies that administer fair housing laws certified by HUD as “substantially equivalent” to the Fair Housing Act or Title VIII of the Civil Rights Act of 1968, as amended. This assistance includes support for complaint processing, training, technical assistance, data and information systems, and other fair housing projects. The program is designed to build coordinated intergovernmental enforcement of fair housing laws and provide incentives for states and localities to assume a greater share of the responsibility for administering fair housing laws.

Advocates should research how their particular state allocates HUD funds. Some states allow families to prorate assistance to help cover housing costs of qualified immigrants in “mixed families” (families that are made up of “qualified immigrants” and ineligible persons).

The tables below indicate the programs that are not covered by Section 214 and are available to all people without regard to their status.

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National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

Access to Health Care for Immigrant Victims of Sexual Assault¹²

By Leslye Orloff, Amanda Baran, and Phoebe Mounts

Immigrant victims of sexual assault face a myriad of health issues. Immigrant women are frequently unaware of, or do not realize the full extent of, their legal access and rights to health care. Eligibility rules are confusing and many front-line health workers and advocates for immigrant women are unaware of all of services available to immigrant victims. Many advocates, attorneys, and healthcare workers have not had the chance to be trained on the full range about the health options available to victims of domestic violence, sexual assault, and trafficking. Federal law governs access to some forms of physical and mental health services, while state laws can guarantee other types of access to these life-saving services.

¹ “This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.”

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.

Access to Health Care for Immigrant Victims of Sexual Assault

This chapter describes the range of services an immigrant victim of sexual assault can access through different programs and services of the health care system. The Health Care Charts³ contains state-by-state information that helps victims and their advocates identify what health services immigrant victims can access, depending on the State they live in and their immigration status. The four health care charts cover the following topics:

- Coverage for Forensic Costs for Undocumented Immigrants
- Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence
- Pre-Natal Care for Qualified and Non-Qualified Immigrants
- Emergency Medicaid for Non-Qualified Immigrants

Each chart presents a detailed overview of the availability and accessibility of health care services and coverage for qualified and unqualified immigrants. Instructions for understanding the charts are summarized below.

The chart *Coverage for Forensic Costs for Undocumented Immigrants*⁴ lists the state-by-state legal rights and procedures governing the provision of forensic examinations to victims of sexual assault. The chart is divided into three columns: State; Forensic Examination Laws; and the Process to Receive Payments for Examination Costs. When determining out whether a victim of sexual assault is eligible for a forensic exam, first identify the applicable state in which the exam will be sought. Next, identify the following factors that collectively assist in the determination of whether a sexual assault victim may access a forensic examination free of charge:

- In which state the sexual assault took place
- When, if at all, the victim reported the sexual assault crime
- Whether the jurisdiction provides Sexual Assault Nurse Examiners
- Whether the law requires payment for the examination and, if otherwise eligible, the process for reimbursement of costs associated with the exam.

The chart *Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence*⁵ is separated into two-sections – a mini-chart followed by a detailed chart for each U.S. state and territory setting forth the relevant provisions for eligibility, compensation, and the application process for crime victim compensation.⁶ It may be helpful to identify the following factors as addressed by the chart when determining a crime victim's eligibility for compensation of costs associated with the crime as well as to determine availability and accessibility of post-assault healthcare:

- The victim's immigration and residency status
 - Is the victim a qualified immigrant (e.g. lawful permanent resident, VAWA self-petitioner, refugee, asylee, trafficking victim)
 - Is the victim lawfully present (e.g. they have a case pending for legal status with the Department of Homeland Security (DHS), including a pending U-visa application)
- How long the immigrant has been in the country
- What the crime was and the involvement of the victim in the crime (e.g., victim, aiding a victim, attempting to prevent the crime)
- In which state the crime took place
- When, if at all, the victim reported the crime
- The relationship of the person applying for compensation to the crime victim
- Whether the victim cooperated with law enforcement

³ Available at <http://iwp.legalmomentum.org/public-benefits/health-care>

⁴ Available at http://iwp.legalmomentum.org/public-benefits/health-care/Ch17_Charts_Forensic-Exams-MANUAL-ES.doc/view

⁵ Available at: http://iwp.legalmomentum.org/public-benefits/health-care/17_Chart_PostAssaultHealthCare-MANUAL-ES.doc/view

⁶ All states operate compensation programs. According to the National Association of Crime Victim Compensation Boards, all states require the victim to report the crime except Vermont. Reporting times vary from 48 hours to several days to "a reasonable period." See <http://www.nacvcb.org/progdir.html>.

Access to Health Care for Immigrant Victims of Sexual Assault

- All expenses incurred as a result of the crime (e.g., medical, psychiatric, work loss, funeral expenses, rehabilitation costs)

The *Pre-Natal Care for Qualified and Non-Qualified Immigrants*⁷ chart identifies the following for each state: Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants; Coverage; and Eligibility/Application Process. The chart also explains the federal law controlling access to public benefits based on immigration status, and in addition identifies health care coverage for children immigrants. To determine whether a woman is entitled to coverage for pre-natal medical care, first identify the state in which she is trying to access care. Upon locating the state in the chart, consider the following questions as addressed by the chart when determining a woman or child's health care coverage options:

- The pregnant woman's immigration and residency status
 - Is the victim a qualified immigrant (e.g. lawful permanent resident, VAWA self-petitioner, refugee, asylee, trafficking victim)
 - Is the victim lawfully present (e.g. they have a case pending for legal status with the Department of Homeland Security (DHS), including a pending U-visa application)
- How long the immigrant woman has been in the country
- What specific care or treatment is required
- Whether the pregnant woman has applied for or received a social security number
- Whether the care for which coverage is sought constitutes emergency pre-natal care
- The age of the child or pregnant woman seeking health-care services
- The pregnant woman's income level

The *Emergency Medicaid for Non-Qualified Immigrants*⁸ chart provides an introductory discussion on the federal laws that define what constitutes an emergency medical condition, as well as discusses federal Medicaid eligibility requirements. While all states are constrained by federal law in their ability to provide public benefits to certain "non-qualified" immigrants, all states provide them coverage for emergency medical services. This is defined by federal law as any service necessary to protect life and safety. The state-by-state chart identifies the state variations in eligibility guidelines for emergency Medicaid programs. Specifically, the chart identifies the following for each state: State Laws Concerning Emergency Medicaid; Coverage; and Application Process. To determine eligibility status for emergency Medicaid, first identify the applicable state. Next, identify these following factors that will assist you in making the requisite eligibility determination:

- The applicant's medical condition
- When the medical condition arose
- Whether the condition for which treatment and coverage is sought constitutes an emergency medical condition as defined by federal and state law
- What specific services are sought and the costs incurred to treat the emergency medical condition
- Whether the applicant for aid has applied for or received a social security number
- The applicant's income level

In addition to the information provided by the state-by-state health charts, it is important to note that federal funded Community Health Centers and Migrant Health Centers provide services to underserved populations, which may include undocumented immigrants.⁹

The state, local, or federally funded or subsidized health care that each immigrant victim can access varies based upon her immigrant status or U.S. citizenship. Undocumented immigrant victims are guaranteed access

⁷ Available at: http://iwp.legalmomentum.org/public-benefits/health-care/17_Charts_Pre-Natal_Care_Chart-MANUAL-ES.doc/view

⁸ Available at: http://iwp.legalmomentum.org/public-benefits/health-care/17_Emergency-Medicaid-Chart-MANUAL-ES.doc/view

⁹ Department of Health and Human Services, Recovery Act: Health Centers: New Access Point Grant Awards, available at <http://www.hhs.gov/recovery/hrsa/applicant.html>. See *supra* Chapter 4, Access to Programs and Services That Can Help Victims of Sexual Assault.

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to some health care benefits as a matter of law. Legal immigrants and battered immigrants who are eligible under the Violence Against Woman Act (VAWA) have more access to public benefits and subsidized health care under federal and state laws than undocumented immigrants.

Health Care Reforms of 2010: The Patient Protection and Affordable Care Act¹⁰ and the Health Care Education Act of 2010¹¹ expand access to health care for some immigrants. These laws will over time improve the ability of many immigrant victims of sexual assault and domestic violence to receive treatment for their injuries, post-assault health care and prenatal care. This expanded access is accomplished in two different and important ways, by providing additional funding for federally qualified health centers and by providing some additional access to health care for immigrants who are “legally present” in the United States.

Expanded Funding for Federally Qualified Health Centers: The 2010 Health Care reforms provide significant additional funding for federally qualified health centers that will significantly expand the ability of community health centers to serve greater numbers of patients. Federally qualified health centers (FQHC) provide primary care to all persons without regard to ability to pay. These HHS funded health centers provide –

“comprehensive, culturally competent, quality primary health care services to medically underserved communities and vulnerable populations. Health centers are community-based and patient-directed organizations that serve populations with limited access to health care. These include low income populations, the uninsured, those with limited English proficiency, migrant and seasonal farmworkers, individuals and families experiencing homelessness, and those living in public housing.”¹²

Following the passage of 2010 health care reforms, all immigrant victims of sexual assault and domestic violence and all other immigrants remain eligible for the following:¹³

- Emergency health care under federal law
- Emergency Medicaid if low income
- Non-emergency health services provided by community health centers, migrant health centers, federally qualified health centers, and safety-net hospitals

These health care options are open to all undocumented immigrants, including immigrant victims. An undocumented immigrant victim of sexual assault would be eligible to receive emergency treatment for injuries that resulted from her sexual assault (with assistance from Emergency Medicaid if she is low income). For ongoing health care needs beyond what can be covered in her state under the Emergency Medicaid program, the victim could seek treatment from a community or migrant health center in her community.

Under the 2010 health care reform legislation undocumented immigrants (who are not lawfully present) are not allowed to purchase private health insurance at full cost through the insurance exchanges; are not eligible for premium tax credits or cost-sharing reductions; and are not eligible for Medicare, non-emergency Medicaid or the Child Health Insurance Program. Undocumented immigrants are exempt from the individual mandate to purchase health insurance.¹⁴ Children of undocumented parents will have access to health care under the following circumstances:

- U.S. citizen or lawfully present immigrant children are eligible to purchase health care insurance through the state insurance exchanges through the purchase of child-only coverage.

¹⁰ Pub. Law No. 111-148 (2010)

¹¹ Pub. Law No. 111-152 (2010)

¹² Health Resources and Management Administration, U.S. Department of Health and Human Services, Health Care Center Program: What is a Health Center, available at <http://bphc.hrsa.gov/about/>.

¹³ National Immigration Law Center, How Are Immigrants Included in Health Care Reform (April 2010) available at <http://www.nilc.org/immspbs/health/immigrant-inclusion-in-HR3590-2010-04-19.pdf>

¹⁴ National Immigration Law Center, How Are Immigrants Included in Health Care Reform (April 2010) available at <http://www.nilc.org/immspbs/health/immigrant-inclusion-in-HR3590-2010-04-19.pdf>

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- U.S. citizen and lawfully present immigrant children are eligible for premium tax credits and reduced cost-sharing.
- U.S. citizen and lawfully residing immigrant children may be eligible for Medicaid or CHIP in states that have elected to provide this coverage.¹⁵

Lawfully Present Immigrants: The Patient Protection and Affordable Health Care Act provide limited federal health care coverage to immigrants who are lawfully present in the United States. The term “lawfully present” immigrant includes, but is not limited to, “qualified immigrants” who have to some extent been eligible for Medicaid funded health care under prior law.¹⁶ In addition to lawful permanent residents and other “qualified immigrants” the term has been defined to include other immigrants who are in the U.S. lawfully, such as U-visa victims, persons who receive deferred action status, and spouses and children of U.S. citizens who have applied for lawful permanent residency.¹⁷ Lawfully present immigrants receive the following health care access under the 2010 health care reforms:¹⁸

- Lawfully present immigrants –
 - May purchase health care from the state health care insurance programs;
 - Are eligible for premium tax credits and cost-sharing reductions for health care;
 - Are eligible for temporary high-risk patient pools and “basic health plans” offered by their state;
 - Have no waiting periods before they may enroll in state insurance exchanges or before they may receive premium tax credits
 - Are subject to the individual mandate to obtain health insurance and related tax penalties for not obtaining health insurance unless exempt due to low-income or unless they meet other specific exemptions
- Current federal immigration restrictions on access to Medicaid continue including the five year bar that requires lawfully residing and low income immigrant adults to wait 5 years before being able to receive Medicaid funded health care.¹⁹

Children and pregnant women may be able to access Medicaid funding through the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA).²⁰ Beginning in April 2009, states have been able to choose to provide Medicaid and the Children’s Health Insurance Program (CHIP) benefits to lawfully residing children and pregnant women. In states that elect this option, lawfully present children and pregnant women are eligible for Medicaid and CHIP funded health care. However, in states that do not choose this election lawfully present immigrant children and pregnant women are subject to the 5 year bar and must wait five years before they can receive Medicaid or CHIP health insurance coverage.²¹

When states elect the option to provide Medicaid or CHIP funded health care to lawfully residing children and pregnant women under CHIPRA, examples of adult immigrant sexual assault victims who will be Medicaid eligible include noncitizen victims:

- Who either first entered the U.S. prior to August 22, 1996 or who have been lawful permanent residents for more than 5 years who are
 - Lawful permanent residents
 - Conditional permanent residents
 - Battered spouse waiver applicants
 - VAWA self-petitioners
 - VAWA cancellation applicants;

¹⁵ See examples of immigrant victims and their children who could qualify below.

¹⁶ Section 431(b) and (c) of PRWORA, 8 U.S.C. § 1641(b) and (c) (2000). See discussion Medicaid later in this chapter.

¹⁷ National Immigration Law Center, *FACTS ABOUT New State Option to Provide Health Coverage to Immigrant Children and Pregnant Women*, (April 2009), also available at <http://www.nilc.org/immspbs/cdev/ICHIA/ICHIA-facts-2009-04-01.pdf>. The Center for Medicare and Medicaid Services will issue regulations fully defining this category as CHIPRA is implemented.

¹⁸ National Immigration Law Center, *How Are Immigrants Included in Health Care Reform* (April 2010) available at <http://www.nilc.org/immspbs/health/immigrant-inclusion-in-HR3590-2010-04-19.pdf>

¹⁹ ¹⁹ National Immigration Law Center, *How Are Immigrants Included in Health Care Reform* (April 2010) available at <http://www.nilc.org/immspbs/health/immigrant-inclusion-in-HR3590-2010-04-19.pdf>

²⁰ Public Law No. 111-3, 2009 (H.R. 2).

²¹ ²¹ National Immigration Law Center, *How Are Immigrants Included in Health Care Reform* (April 2010) available at <http://www.nilc.org/immspbs/health/immigrant-inclusion-in-HR3590-2010-04-19.pdf>

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- Qualified immigrants
- Non-citizens who are pregnant who are
 - Lawful permanent residents
 - Conditional permanent residents
 - Battered spouse waiver applicants
 - VAWA self-petitioners
 - VAWA cancellation applicants
 - Qualified immigrants
 - U visa recipients and
 - Immigrants who have received deferred action status.

Examples of children who will be eligible for state funded health care without any 5 year waiting period under SCHIP when states elect to offer coverage under CHIPRA are under 21 year old children who are:

- VAWA self-petitioners
- VAWA cancellation of removal applicants
- Children included in their parents VAWA self-petition or cancellation of removal application
- Child trafficking victims
- Children of trafficking victims
- Child U-visa recipients
- Children of U-visa recipients
- Child who are granted deferred action from DHS
- Lawful permanent residents
- Qualified immigrants

Health Care Reform 2010 Verification Requirements

Immigrants who qualify for access to health insurance, Medicaid, and/or CHIP must provide verification of eligibility in order to purchase health care through the insurance exchanges or to access Medicaid or CHIP.

Health Insurance Exchange Verification: The verification requirements to for every person purchasing health insurance through the state health insurance exchange --

- Citizens: verification of citizenship conducted by the Social Security Administration
- Lawfully present immigrants: The Department of Homeland Security verifies proof of lawfully present status

Medicaid and CHIP Verification: The Medicaid and CHIP programs maintain the same health care verification requirements for citizens and legal immigrants under prior law.

- Citizens:
 - Are subject to the 2005 documentation of citizenship and identify requirements;
 - States have the option to verify through the Social Security Administration under CHIPRA
- Lawfully present immigrants are subject to benefits eligibility verification of legal immigration status through --
 - The Systematic Alien Verification for Entitlements (SAVE) system,²² or
 - Providing the benefits granting agencies copies of the prima facie determination letter or the approval notice in the victim's VAWA self-petitioning case or copies of an approval notice for a family based visa application (I-130) filed by the victim's abusive spouse together with evidence of abuse.
 - The agency may use a special fax-back verification system developed for verification of benefits eligibility of qualified battered immigrants with pending or approved cases as Violence Against Women Act (VAWA) self-petitioners²³

²² Any case that is protected by VAWA confidentiality will have not data about the case in the SAVE system as DHS is precluded by VAWA confidentiality laws from listing any information about any VAWA, T or U visa case in the SAVE system. The alternate verification system developed for VAWA immigration cases is described in, Interim Guidance on 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 .

²³ For a complete discussion on how to help an immigrant victim of sexual assault or domestic violence obtain benefits verification of benefits eligibility see the public benefits Chapter 16 of this manual.

Forensic Exams²⁴

If an immigrant victim of sexual assault enters the health care system following a sexual assault, she may need access to a forensic exam. Most states pay for forensic examinations that serve the purpose of gathering evidence that could be helpful in the prosecution of a crime against sexual assault perpetrators. The Violence Against Women Act of 1994 helped assure that forensic examinations became more available to rape victims. However, many state laws placed restrictions on access to forensic examinations that undermined VAWA's requirements that states that receive and distribute VAWA STOP (Services, Training, Officers and Prosecutors) grant funding should promote rather than inhibit access to forensic examinations for rape and sexual assault victims. VAWA 2005 fundamentally changed the laws regarding funding of forensic examinations barring states from access to federal VAWA funding unless state statutes and policies were changed to end the following practices:

- Requiring victims to seek reimbursement from insurance carriers;²⁵ or
- Requiring victims to participate in the criminal justice system, report crimes or cooperate with law enforcement.²⁶

States receiving VAWA STOP funding must bring their laws into compliance with these requirements by 2008. **Immigration status of the victim is not relevant and does not play any role in an immigrant victim's access to forensic examinations.**²⁷

The Violence Against Women Act and Victims Of Crime Act Grants as Source of Payment for Forensic Examinations in Sexual Assault Cases

²⁴ 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*

²⁵ 42 U.S.C. §3796gg-4(c)(2006). VAWA 2005 statutory changes were made to address the following problems. In many states sexual assault victims seeking examination and treatment who had a medical insurance policy were required to have their insurance be the initial source of payment. The states would only cover the remaining portion of the bill that is not covered by the insurance carrier. State statutes in Delaware, Illinois, Mississippi, Missouri, New Hampshire, and Pennsylvania all included provisions requiring that the victim's medical insurance carrier be billed. 11 Del. C. § 9019 (2007); 410 Ill. Stat. § 70/2 (2007); http://www.ago.state.ms/divisions/crime_victim/cvcinfo.php (last visited July 2, 2008); Mo. Ann. Stat 191.225 (2007); RSA 21-M:8-c (2007); 42 Pa. C.S.A. § 1726.1 (2007). This type of provision presented severe dangers for victims who are covered under their abusive spouse or parent's insurance policy. The abusive spouse or parent may cut off the victim's access to health insurance by deleting the victim and/or the children from his insurance coverage. Victims of sexual assault perpetrated by a stranger, acquaintances or employer often wish to hide the fact of the assault from their spouse or intimate partner. Victims fear that if their spouse or partner learns about the rape, he will blame her, abandon the relationship because she is considered dirty or unclean, or leave her and seek custody of the children. In other instances if the same person through whom the victim's medical insurance coverage has been obtained has sexually assaulted the victim, there is likelihood that the attacker would receive information about the victim's medical care. Insurance carriers routinely mail forms summarizing doctor visits and laboratory tests to the insured's mailing address, and a victim who resides with her attacker may be forced to share her mail with him. Most state statutes or policies provide little significant privacy protection for victims in this regard. New Hampshire provides an example of a state offering some limited protection. ²⁵ RSA 21-M:8-c (providing that the bill for the medical examination of a sexual assault victim shall not be sent or given to the victim or the family of the victim). The policy holds that "privacy of the victim shall be maintained to the extent possible during third party billings."

²⁶ 42 U.S.C. § 3796gg-4(d)(2006). VAWA 2005's amendments were modeled after state laws that had taken this approach. See e.g. Maine which is one of the few states that does not require a victim who received a forensic examination without charge to report the offense to a law enforcement agency. Me. Code Title 5 § 3360-M. Many other states took an opposite approach. Some states had statutory time constraints on reporting of the crime or occurrence of the examination include Indiana, Nevada, North Carolina, Oregon, and Wisconsin. Ind. Code 5-2-6.1-39(c) (2006); N.R.S. 449.244.1 (2007); N.C.G.S.A. § 143b-480.2 (2007); ORS 147 (2007); W.S.A. 939.03-08 (2007). Other states like Mississippi, provided that the victim may not be billed or held responsible for payment. Miss. Code § 99-37-25. If the "victim refuses to cooperate" with the investigation or prosecution of the case, the county that was responsible for paying the bill for the forensic exam may seek reimbursement from the victim. In Arkansas, one of the conditions for payment is that examination of the victim takes place within 72 hours of the attack, unless the victim is a minor. Ark. Code Ann. § 12-12-403 (2007). If the victim does not meet this deadline, the Crime Victims Reparations Board must find that the victim's failure to meet the requirement was for "good cause," otherwise the victim may be required to pay for the forensic exam.

²⁷ 42 U.S.C. §§3796gg-4(d)(2006) makes no mention of immigration status.

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Currently all 50 states and Washington, D.C., as well as American Samoa, Guam, North Mariana Islands, Puerto Rico, and U.S. Virgin Islands receive both VAWA STOP grants and Victims of Crime Act (VOCA) grants.

VAWA provides incentives for states and other governmental entities to cover the costs of forensic examinations, thereby relieving victims of this burden. According to VAWA, any state receiving money through the STOP Formula Grant Program requires grantees to incur the full out-of-pocket cost of forensic medical examinations of sexual assault victims.²⁸ VAWA allows states to implement any type of payment procedure that includes at least one of the following options:

- Provide the exam free of charge;
- Arrange for victims to receive the exam free of charge; or
- Reimburse the victims for the full cost of the exam.

States opting to reimburse victims must also ensure that:

- the reimbursement covers the full cost of the exam, without any deductible requirement or limit on the amount of reimbursement;
- the reimbursing entity gives victims the opportunity to apply for reimbursement for at least one year following the exam;
- the reimbursement is provided no later than 90 days after written notification of the victim's expense;
- the entity providing the examination informs all victims about the reimbursement policies at the time of the exam; and
- victims with limited or no English proficiency must be provided with information about the exam and reimbursement policies, and translated versions of the written materials routinely provided in English should be available.²⁹

Additionally, states have the option of using VOCA Victim Compensation Grant Program funds to pay for exams or reimburse victims. While VOCA does not require governments to reimburse sexual assault victims for examination costs in order to receive funds, the states may use the VOCA funds for this purpose, at their own discretion.

Programs and service providers that receive federal funds such as VAWA STOP grants and VOCA grants must abide by nondiscrimination provisions in federal law, which states that:

“no person in any state shall, on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with, any program or activity receiving federal financial assistance, pursuant to federal statutes and regulations³⁰

Taken together the provisions listed above mean that immigrant and Limited English Proficient (LEP) victims of sexual assault should have the same access to forensic examinations with payments for the exam made through VAWA, VOCA or other government funding, as any other victim of sexual assault, without regard to the victim's immigration status or English language proficiency.

²⁸ 42 U.S.C. §§ 3796gg-1(d)(2), -4 (2000).

²⁹ 42 U.S.C. § 2796gg- 4 (2000); 67 Fed. Reg. 5,258, 5,262 (Feb. 5, 2002).

³⁰ Department of Justice, Final Program Guidelines, <http://www.ojp.usdoj.gov/ovc/welcovc/scad/guides/vaguide.htm> (last updated December 28, 2004), the quote concludes by citing: Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d (2000), and Department of Justice Nondiscrimination Regulations, 28 C.F.R. Part 42, Subparts C, D, E, and G (2006); Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, *et seq.* (2000); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (2000); Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* (2000) and Department of Justice regulations on disability discrimination, 28 C.F.R. Part 35 and Part 39 (2006); Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681-1683 (2000); and the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, *et seq.* (2000).

Access to Health Care for Immigrant Victims of Sexual Assault

Primary Source of Payment for Forensic Examinations in Sexual Assault Cases: State-by-State Analysis

The following discussion provides an overview of the state-by-state detailed information in the forensic exam chart is available at: http://iwp.legalmomentum.org/public-benefits/health-care/Ch17_Charts_Forensic-Exams-MANUAL-ES.doc/view. The majority of states have passed legislation outlining procedures and designating an entity responsible for providing the cost of forensic exams in sexual assault cases.³¹ Various states have passed additional legislation providing that sexual assault victims should never be billed for the cost of the examination.³² For example, these states may require that the state's law enforcement agency or Victims' Compensation Board pay for the forensic medical examinations of victims. Most of these states require that the hospital performing forensic examinations apply directly to the local law enforcement agency or Victims' Compensation Board for reimbursement.

In the few states that bill victims directly, the hospital or examination provider is required to inform victims of how to receive reimbursement from the Victims' Compensation Board or is required to assist victims in filing an application. Most of the states that do not have legislation setting out who will pay the cost for the forensic examination and instead follow well-established and publicized local procedures. For example, in Hawaii, victims may apply to the Crime Victim Compensation Commission of the Public Health Department of the State of Hawaii for reimbursement.³³

The scope of the medical examination and medical treatment for which the state will pay varies from state to state. Most states include language in their statutes or policies stating that costs directly associated with the initial forensic medical examination will be covered or reimbursed. However, follow-up examinations, prescribed medications, and psychological treatment may not necessarily be included. Many states allow victims to apply directly to a Victims' Compensation Program for reimbursement of these and other additional costs. Maine's statutes, for example, provide that its Victims' Compensation Fund shall furnish the costs of treatment for pregnancy and sexually transmitted diseases (STDs) in addition to the initial forensic medical examination.³⁴ Delaware's statutes specifically authorize that the covered cost includes treatment for the prevention of venereal disease and one follow-up visit.³⁵ Victims may apply for reimbursement for other costs. In Mississippi, hospitals are not permitted to bill the victim for the initial examination and in cases where further medical treatment has been billed to the victim, the statute states that the victim should be given information about the availability of victim compensation and the procedure for applying for reimbursement.³⁶

Other jurisdictions, including Connecticut, Iowa, Kentucky, Maryland, Pennsylvania, South Carolina, and Vermont, as well as the U.S. Virgin Islands, affirmatively provide for some treatment costs beyond forensic examination.³⁷ Puerto Rico³⁸ and Tennessee³⁹ provide for the cost of treatment, and additionally allow for some amount of payment for lost wages to be recovered if the victim provides proof of the loss.

However, at the other end of the spectrum there are significant limitations on the assistance provided to victims, sexual assault victims include the following examples. Texas law enforcement agencies are not required to pay for treatment of the injuries of sexual assault victims.⁴⁰ In West Virginia, treatment of injuries and testing for pregnancy and diseases "may not" be paid from the allocated fund.⁴¹

³¹ See, e.g., Pennsylvania's Crime Victim's Act (12 P.S. § 11.101 *et seq.*) (providing for submission of a claim to the Office of Victims' Services by a hospital or licensed health care provider).

³² See, e.g., Alaska (AS 18.68.040) and South Dakota (S.D. Codified Laws § 22-22-26), where billing of sexual assault victims for forensic examinations is prohibited.

³³ Haw. Rev. Stat. § 351-62 (2007).

³⁴ Me. Code Title 5 § 3360-M (2007).

³⁵ 11 Del. C. § 9019 (2007).

³⁶ Miss. Code § 99-37-25 (2007).

³⁷ See <http://www.jud.state.ct.us/crimevictim/#Program> (last visited July 2, 2008); Iowa Code Title XVI, subtitle 3, § 915.80 *et seq.* (2007); Ky. Rev. Stat. Ann. § 346.130 (2007); Md. Code Ann., Crim. Proc. § 11-810 (2007); 18 P.S. § (11.707(b) (2007); South Carolina Code § 16-3-1180 (2007); Vermont Statutes § 13.167.5351 (2007); Virgin Island Code 34.7.165 (2007).

³⁸ See Compensation Table at http://www.justicia.gobierno.pr/rs_template/v2/CompVic/CV_Tabla.html (last visited July 2, 2008).

³⁹ See Application for compensation at <http://www.treasury.state.tn.us/injury/application.pdf> (last visited July 2, 2008).

⁴⁰ Tex. Code Crim. Proc. Art. 56.06 (2007).

⁴¹ W.VA Code § 61-8B-16 (2007).

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Effect of rules for forensic examinations on immigrant victims

VAWA 2005's requirements that states receiving STOP funding have up to 2008 to end law enforcement reporting and cooperation requirements in connection with the provision forensic examinations are particularly helpful to immigrant victims. State laws that connected payment for forensic examinations with law enforcement reporting, and/or set deadlines by which reports to law enforcement must be made created significant barriers making it more difficult for undocumented immigrant sexual assault and rape victims. Undocumented immigrant victims often fear that reporting to law enforcement and cooperating in criminal prosecutions will lead to discovery of their undocumented immigration status and deportation. Abusers, traffickers, and crime perpetrators often threaten undocumented immigrant victims with deportation if they report the sexual assault or family violence. For many undocumented immigrant victims fear of deportation keeps them from obtaining a forensic examination and post-assault health care.

To counter these fears, advocates, health care providers and attorneys working with immigrant victims need to know that forensic medical exams and emergency Medicaid are equally accessible to undocumented immigrant victims, to immigrant victims with legal immigration status, and to citizens. According to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, health care and social services providers are not required to ask about and/or report immigration status of victims seeking health care service as a victim of sexual assault, domestic violence, trafficking, or victims of other criminal activity.⁴²

Government benefits workers are legally allowed to ask about the immigration status of only the person applying to receive benefits for him or herself.⁴³ Government benefits staff may ask questions about the social security number and immigration status of a person not applying for benefits only after they first disclose to the individual how the government will use the information, including whether or not the information will be reported to immigration authorities.⁴⁴ Law enforcement officials are not required by federal law to inquire into the immigration status of victims.

Law enforcement officials in some local jurisdictions have written agreements with the Attorney General deputizing specific officials to enforce immigration laws.⁴⁵ These are called section 287(g) agreements. As of June 2008, 47 jurisdictions have Memoranda of Agreement (MOA) with DHS.⁴⁶ Section 287(g) officers must receive specialized training from DHS and are responsible for complying with all immigration laws, including enforcement and compliance with VAWA confidentiality.⁴⁷ State laws cannot supersede federal laws on immigration matters.⁴⁸

⁴² Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996) (hereinafter, IIRIRA).

⁴³ Department of Health and Human Services and Department of Agriculture, Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits (2000), at <http://www.hhs.gov/ocr/nationalorigin/triagency.html>.

⁴⁴ Department of Health and Human Services and Department of Agriculture, Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits (2000), at <http://www.hhs.gov/ocr/nationalorigin/triagency.html>.

⁴⁵ Section 287(g) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1357(g) (2000) (hereinafter INA). Section 287(g)(10) further states that this section does not require states or municipalities to seek a similar agreement to allow their employees to report undocumented immigrants or otherwise cooperate with the immigration authorities.

⁴⁶ See the ICE website for an up-to-date list: http://www.ice.gov/partners/287g/Section287_g.htm.

⁴⁷ Leslye Orloff, "Legal Protections for Immigrant Victims of Violence Against Women: Family, Law, Immigration Relief and VAWA Confidentiality." Presentation for the Mecklenburg County Court, Family Court and Criminal Court Judges. Charlotte, North Carolina. August 30, 2007

⁴⁸ Michael Wishnie, *Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism*, 76 N.Y.U. L. Rev. 493, 532 (2001). See, e.g., *De Canas v. Bica*, 424 U.S. 351, 354 (1976) ("The power to regulate immigration is unquestionably exclusively a federal power."); *Chae Chan Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 609 (1889) (stating that federal immigration power is "incapable of transfer" and "cannot be granted away"); *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1876) ("The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States.").

Advocates and attorneys working with immigrant victims should assess a victim's eligibility for VAWA, T, or U visa immigration status as soon as possible. This may help counter the victim's fears about deportation and threats of deportation made by abusers, traffickers, and crime perpetrators. Victims who qualify for relief as VAWA self-petitioners, as crime victims (U visa), or trafficking victims (T visa) may be more willing to cooperate in criminal investigations or prosecutions if they can attain legal immigration status. Victims who know they can qualify for legal immigration status may be more willing to report sexual assaults. It is important to review both eligibility for VAWA, T-visa, or U-visa immigration relief and the red flags check list contained in the *Introduction to Immigration Relief and Glossary* in this manual. Advocates should consult with immigration experts who have experience working with immigrant victims before victims apply for VAWA immigration relief. If any red flags exist in the case, victims need to be represented by an experienced immigration attorney.

Every state provides a system, though procedures vary widely, so that victims of sexual assault may be compensated for the costs of their forensic medical examinations. With the state-by-state charts⁴⁹ victims and victims' advocates can assess the manner in which their state handles the cost of these exams, and assess if an immigrant survivor can safely access these programs for payment of exams. Safety is a concern for victims because some state requirements, such as crime reporting and insurance company payments, need to be considered when assessing the safety of a sexual assault victim who gets a forensic medical examination through these programs. The charts will also assist in exploring what additional subsidized health care and mental health treatment each immigrant victim is eligible to receive based on her citizenship or immigration status.

Victims and victims' advocates should also seek information from the appropriate state authority or crime victims' compensation organization on payments for forensic examinations, and then carefully review the state specific policies. The U. S. Department of Justice's Office on Violence Against Women maintains a website that consolidates this information that can help guide victims to the appropriate authority:

- <http://www.ojp.usdoj.gov/state.htm> (This page includes a clickable map that leads to a page listing the contact information for the appropriate crime victim compensation agency in each state.)
- <http://www.ojp.usdoj.gov/vawo/faqforensic.htm> (This page lists the answers to frequently asked questions about payment requirements for a forensic exam from the STOP Formula Grant Program.)

PRWORA, Emergency Medicaid, and Victims of Sexual Assault

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),⁵⁰ restricted non-citizen eligibility for a wide range of public benefits programs, including Temporary Assistance for Needy Families (TANF), food stamps, Supplemental Security Income (SSI), Medicaid, and the State Child Health Insurance Program (SCHIP). It also gave states broad new authority to set social welfare policy for immigrants. Despite significantly reducing access to benefits for non-citizens, PRWORA contained provisions that preserved access to services necessary to protect life or safety.⁵¹ Emergency Medicaid was explicitly listed as a program required to be available to all persons without regard to their immigration status.⁵² Under federal law, Emergency Medicaid is a service necessary to protect life or safety, as a matter of law.⁵³ This

⁴⁹ Available at <http://iwp.legalmomentum.org/public-benefits/health-care>

⁵⁰ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (PRWORA) P.L. No. 104-193.

⁵¹ Specification of Community Programs Necessary for the Protection of Life or Safety Under Welfare Reform Legislation. AG Order 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996). See also Leslye E. Orloff, Leandra Zarnow and Yris Cornwall, *Facilitating Access to TANF for Battered Immigrants: A Pilot Training Manual for TANF Eligibility Workers* (HHS Funded Training Manual: Legal Momentum, 2001).

⁵² Section 401(b) of PRWORA, 8 U.S.C. § 1611(b) (2000); Emergency medical assistance must be provided to all immigrants regardless of their status. Emergency Medicaid is available in all cases where the patient needs treatment for medical conditions with acute symptoms that could jeopardize the patient's health, impair body functions, or cause dysfunction of any bodily organ or part. 42 U.S.C. § 1396(b)(v)(3) (2000). This definition includes all labor and delivery.

⁵³ Specification of Community Programs Necessary for the Protection of Life or Safety Under Welfare Reform Legislation. Specification of Community Programs Necessary for the Protection of Life or Safety Under Welfare Reform Legislation. AG Order 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996).

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means that undocumented immigrants cannot be turned away from services that can be paid for by Emergency Medicaid.

Every state has enacted an Emergency Medicaid program. Despite constraints imposed by federal law on states' ability to provide public benefits to certain types of "non-qualified" immigrants,⁵⁴ all states must provide all immigrants coverage for emergency medical services. While program features and restrictions vary somewhat across the states, for purposes of Emergency Medicaid, the law in most states' borrows essential definitions and restrictions from federal law, creating a degree of conceptual uniformity. Since the federal PRWORA mandates the provision of emergency benefits to nonqualified immigrants, most states have borrowed the federal definition of "emergency medical condition" in order to ensure their compliance.

Most states provide basic Emergency Medicaid coverage that includes emergency labor and delivery, and many states will also cover normal labor and delivery under Emergency Medicaid.⁵⁵ Some states offer some more expansive healthcare coverage for low-income persons or undocumented immigrants. For example, California offers "Medi-Cal" benefits for patients needing emergency medical care, as well as for those requiring long-term care.⁵⁶ Medi-Cal covers inpatient and outpatient care, with a broad spectrum of services: pharmacy, radiology, laboratory, dialysis and dialysis-related care. However, the care offered is limited. Medi-Cal coverage does not include continuation of services or follow-up care after the emergency is resolved. California also offers cancer screening and treatment for low-income and undocumented immigrants.

Similarly, the District of Columbia offers additional healthcare to supplement Medicaid coverage. "DC Healthy Families Expansion"⁵⁷ is offered for immigrant children and "DC Healthcare Alliance"⁵⁸ is offered for both children and adults. Both programs are comprehensive and extend coverage significantly beyond what is covered under Medicaid's "emergency medical condition."

The types of medical services states cover under Emergency Medicaid's definition of "emergency medical condition" includes the following examples from state statutes:

- In Vermont, the definition of "emergency medical condition" specifically references harm to *mental health* as well as physical health,⁵⁹ but mental health is not covered for non-qualified immigrants.⁶⁰
- "Emergency medical condition" in Michigan can include in-patient medical detoxification for substance abuse in a life threatening situation.⁶¹
- In Louisiana, pharmacists can release a seventy-two hour supply of a drug without prior approval if the pharmacist or the prescribing physician determines and endorses that an emergency situation exists.⁶²
- Arizona's statute limits its coverage to "current medical condition," but goes on to provide that, although an initial injury may be stabilized, such stabilization does not necessarily mark the end of the emergency medical condition.⁶³

⁵⁴ States can opt to provide benefits to "non-qualified" immigrants using state funds and many states have chosen to fund health care and other benefits for immigrants with state funds. For a list of public benefits programs in each state, see state-by-state listings available at: <http://iwp.legalmomentum.org/ovw-grantee-technical-assistance/frequently-asked-questions/public-benefits/state-public-benefits>. These charts provide assistance in determining the range of benefits (state or federally funded) available to immigrant victims of sexual assault in your state.

⁵⁵ See, e.g., Idaho Admin. Code § 16.03.01.250 (2007) and Kan. Econ. & Employment Support Man. § 2690 (2007).

⁵⁶ Cal. Welf. & Inst. Code §14007.5.

⁵⁷ DC Income Maintenance Administration Policy Manual, Part IV §7.4.2.

⁵⁸ http://www.dc.gov/mayor/health_care/index.htm (last visited Nov. 5, 2007).

⁵⁹ Code of Vermont, Section M103.3.A (2007).

⁶⁰ Code of Vermont, Section M170.8(a).

⁶¹ Michigan Department of Community Health, Medical Services Administration Bulletin MSA 05-61 (2005).

⁶² Louisiana Medicaid Program Provider Manual 37.5.4 (2007).

⁶³ Az. Health Care Cost Containment System Medical Policy Manual, Ch. 1100 (2007).

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Other state statutes only provide very basic health coverage under “emergency medical condition.”

- New Mexico’s statute explicitly states that psychiatric, psychological and rehabilitative services are *not* covered, and surgical procedures and unscheduled emergency procedures are excluded as well.⁶⁴
- The Arkansas statute specifically delineates what is not covered to include the worsening of chronic conditions, because it is not considered acute, and, therefore, is excluded.⁶⁵

Immigrant victims of sexual assault need help from advocates, health care providers, prosecutors, police, and attorneys to access the full range of Emergency Medicaid funding available in each state. Assistance from trained professionals can help ensure that immigrant victims of sexual assault are able to access the full range of medical treatment available to them for the injuries, trauma, and STDs they may have contracted as a result of an assault. According to a representative study of women living in the United States, 1 in 5 women has experienced an attempted or completed sexual assault.⁶⁶ Immigrant women in the United States account for more than 1 in 10 females in the United States.⁶⁷ Studies conducted in immigrant Latina and Asian communities have found that immigrant women have a higher rate of sexual assault than reported by U.S. residents as a whole (30-50% versus 25%, respectively).⁶⁸ For months or years following sexual assault, immigrant victims may experience difficulty in recovering and re-establishing a sense of safety as they struggle to adapt to a new country, culture and language.⁶⁹ When immigrant victims of sexual assault and domestic violence receive immediate and necessary medical care, they can begin healing sooner.

Who Qualifies for Emergency Medicaid?

All immigrants, regardless of immigration status, qualify for care and services necessary for the treatment of an *emergency medical condition* (excluding organ transplants).⁷⁰

State Residency

State residency is a requirement for non-qualified⁷¹ immigrants applying for federal Emergency Medicaid benefits. According to the State Medicaid Manual, “in some cases an alien in a currently valid non-immigrant classification may meet the State rules” for residency.⁷² By statute, Congress designated the Attorney General of the United States as the government official responsible for determining what “programs necessary to protect life or safety” were to be open to all persons without regard to immigration status.⁷³ Emergency Medicaid is one of several programs that are considered “necessary to protect life or safety,” and are open to

⁶⁴ New Mexico Administrative Code 8.325.10.9 (2003).

⁶⁵ Arkansas Medical Services Policy Manual 6780 (2003).

⁶⁶ Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence against Women: Findings from the National Violence against Women Survey*. Washington DC: Department of Justice, National Institute of Justice (2000). Report NCJ 183781.

⁶⁷ Census 2000 Briefs, The Foreign Born Population: 2000, U.S. Census Bureau (2000), available at <http://www.census.gov/prod/2003pubs/c2kbr-34.pdf>.

⁶⁸ Anita Raj & Jay Silverman, *Intimate Partner Violence against Immigrant Women: The Roles of Immigrant Culture, Context, and Legal Status*, 8 *Violence Against Women* 367, 367-98 (2002); Andrea Hazen & Fernando Soriano, *Experience of Interpartner Violence Among U.S. Born, Immigrant and Migrant Latinas*, National Institutes of Justice, September 2005.

⁶⁹ Susan H. Vickers, *Beyond the Criminal Justice System: Transforming Our Nations Response to Rape*, *Victim Rights Law Center* 68 (2003).

⁷⁰ Section 401(b) of PRWORA, 8 U.S.C. § 1611(b) (2000); Emergency medical assistance must be provided to all immigrants regardless of their status. Emergency Medicaid is available in all cases where the patient needs treatment for medical conditions with acute symptoms that could jeopardize the patient’s health, impair body functions, or cause dysfunction of any bodily organ or part. 42 U.S.C. § 1396(b)(v)(3) (2000).

⁷¹ A “qualified immigrant” is an immigrant who under PRWORA, as amended by IIRIRA, is legally entitled to access federal public benefits. Non-qualified immigrants are immigrants (both lawful and undocumented) who have not specifically been granted access to federal public benefits. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 3009 et seq., §§ 401, 401, 403, 411, 412, 431.

⁷² U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *State Medicaid Manual* § 3211.10 (1997).

⁷³ Specification of Community Programs Necessary for the Protection of Life or Safety under Welfare Reform Legislation. AG Order 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996).

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all documented and undocumented immigrants.⁷⁴ In addition to being open to undocumented immigrants, Emergency Medicaid helps documented non-citizens, including, but not limited to: non-citizens holding valid Employment Authorization Cards (“EAD” cards) as well as those in valid status as visitors, foreign students, and certain work-authorized non-immigrants.⁷⁵

Even undocumented immigrants who entered the U.S. unlawfully or who violated terms of their immigration visas may establish state residency.⁷⁶ The state residency requirement governs the state in which immigrant victims can seek Emergency Medicaid treatment. Advocates working with immigrant victims will need to help victims identify in which state they can apply for and receive Emergency Medicaid to cover their emergency health care needs related to sexual assault or domestic violence.

State family court case law on residency related to family court jurisdiction can be helpful in figuring out residency for Emergency Medicaid.⁷⁷ Court jurisdiction over a party in a divorce action principally depends upon whether the party is domiciled in, or is a resident of, a particular jurisdiction.⁷⁸

Immigration Status and Residency

In determining whether a party intends to establish residency or domicile in a particular state, the court will examine the intent of the party seeking the divorce, rather than any potential adverse action by a third party, such as the Department of Homeland Security⁷⁹ (DHS). Both documented and undocumented immigrants can establish residency for family court purposes.⁸⁰

Many immigrants live and work in the United States and intend to make the United States their permanent home, despite the fact that they may not currently have a legal immigration status and DHS permission to live and work permanently in the United States.⁸¹ This can be especially true for immigrant victims of domestic violence, who have been dependent on their abusers for status and may not have known about the immigrant remedies under VAWA.

⁷⁴ For a full list of programs open to both documented and undocumented immigrants, See Specification of Community Programs Necessary for the Protection of Life or Safety under Welfare Reform Legislation. AG Order 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996).

⁷⁵ U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, State Medicaid Manual § 3211.10 (1997).

⁷⁶ See, e.g., *St. Joseph's v. Maricopa County*, 142 Ariz. 94, 688 P.2d 986 (1984).

⁷⁷ In divorce cases, the majority of jurisdictions require the party seeking a divorce to satisfy a threshold residency requirement before their courts will adjudicate a divorce action. See, e.g., *Blair v. Blair*, 643 N.E.2d 933, 935 (Ind. Ct. App. 1994). Some states require their courts to have jurisdiction over the party seeking divorce. See, e.g., Idaho Code Ann. § 32-701 (2004); Iowa Code § 598.6 (2004); Mass. Gen. Laws ch. 208, § 5 (2004). Other states only require jurisdiction over either one of the parties in the divorce. See, e.g., Ala. Code § 30-2-5 (2003); Ariz. Rev. Stat. Ann. § 25-312 (2004); Ark. Code Ann. §9-12-307 (2004); Cal Fam. Code § 2320 (Deering 2007). However, at least one jurisdiction does not have a residency requirement at all. See *State v. Adams*, 522 P.2d 1125, 1132 (Alaska 1974).

⁷⁸ The meanings of the term “domicile” and “residence” may differ from one jurisdiction to the next. A review of case law demonstrates that these terms essentially have the same meaning, and in many jurisdictions are interchangeable. See, e.g., *Caheen v. Caheen*, 172 So. 618 (Ala.1937); *Lake v. Bonham*, 716 P.2d 56 (Ariz. Ct. App. 1986). *But see Garrison v. Garrison*, 246 N.E.2d 9, 11 (Ill. App. Ct. 1946) (holding that “residence” does not mean “domicile” but instead denotes permanent abode). Generally, in order for a party to establish his or her domicile or residency in maintaining a divorce action in a particular jurisdiction, he or she must be *physically present* in that jurisdiction and must also *intend to remain indefinitely*, or permanently, in that jurisdiction. See, e.g., *Perito v. Perito*, 756 P.2d 895 (Alaska 1988); *J.F.V. v. O.W.V.*, 402 A.2d 1202 (Del. 1979); *Williams v. Williams* 328 F. Supp. 1380 (V.I. 1971). However, in some jurisdictions, a party may still establish domicile or residency without physical presence in the jurisdiction, as long as that party has the intent to return to that particular jurisdiction to live. See, e.g., *Abou-Issa v. Abou-Issa*, 189 S.E.2d 443 (Ga. 1972); *Gasque v. Gasque*, 143 S.E.2d 811 (S.C. 1965).

⁷⁹ The agency formerly known as Immigration and Naturalization Services (INS) and later as the Bureau of Citizenship and Immigration Services (BCIS) under the administration of the Department of Homeland Security was recently renamed the U.S. Citizenship and Immigration Services (USCIS). See *In re Hanano*, 2001 Va. Cir. LEXIS 169, at *10 (holding that domicile depends upon the intent of the party rather than the potential action of a third party such as the INS).

⁸⁰ Amanda Barren et al., *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (Leslye E. Orloff and Kathleen Sullivan eds., Legal Momentum 2004).

⁸¹ Almost one-third of the 8.8 million U.S. legal permanent residents currently residing in the U.S. (approximately 2.8 million persons) were formerly undocumented immigrants in the United States. Michael E. Fix and Passel, Jeffrey S., *Immigration and Immigrants: Setting the Record Straight*, May 1, 1994, p. 29 <http://www.urban.org/url.cfm?ID=305184>.

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Courts consistently have held that immigration status or lack thereof does not preclude an individual from establishing domicile or residency for purposes of maintaining an action in family court.⁸² In *Hanano v. Alassar*, the Court found that, despite the plaintiff's current immigration status as a non-immigrant authorized to live and work in the United States in an international organization, she was not precluded from establishing that she was an actual *bona fide* resident and domiciliary in order to establish a divorce action.⁸³ The court held that, in determining whether a party intends to establish residency, courts must look to the intent of the party, rather than any potential adverse action by a third party, such as the United States Citizenship and Immigration Service (USCIS).⁸⁴

Similarly, in *Williams v. Williams*, the court held that non-residents are not precluded from obtaining domicile, noting that individuals "need not intend to remain in a place unto death to acquire domicile."⁸⁵ This court found that the fact that non-residents admitted temporarily to the United States had declared their intent to return to their home country as part of their immigration visas did not preclude a finding of domicile. Instead, even an individual who contemplates staying for only a brief period of time may acquire domicile.⁸⁶ The only necessary element to finding domicile is the intent to make a home somewhere until some reason unrelated to the divorce makes it desirable or necessary to leave.⁸⁷

The fact that an immigrant requesting family court assistance may not be in the United States legally or does not have permanent legal immigration status in the United States is not indicative of whether he or she qualifies for legal immigration status, will qualify in the future, or is likely to be deported now or any time in the future. This means that immigration status or non-citizen status does not preclude an immigrant from gaining access to divorce courts because the court's focus of inquiry is on his or her intent to establish residence in that state, not immigration status.⁸⁸

In working with immigrant victims who are in the United States legally on an unexpired tourist visa or who are living in the United States on special non-immigrant visa for foreign nationals (G-4 visas),⁸⁹ advocates and attorneys may need to take additional steps to assure that state residency for purposes of Emergency Medicaid is established.⁹⁰ In a sexual assault or rape case, advocates working with immigrants on tourist, diplomatic, or international organization visas should review the state-by-state charts to determine if any other state might be the victim's state of residency for Emergency Medicaid purposes. If the state the victim is currently in is the only state that could be the victim's residency for Emergency Medicaid purposes, advocates should inform state officials that emergency health care is needed and that the health care must be provided. Advocates should try first to secure payment for these services through Emergency Medicaid and as a back up be prepared to help the immigrant sexual assault victim file to obtain coverage for the health care expenses through VOCA.

Federal Government Exclusive Decision Making Authority Over Immigration Status

⁸² *Dick v. Dick*, 18 Cal. Rptr. 2d 743 (Cal. Ct. App. 1993); *Rzeszotarski v. Rzeszotarski*, 296 A.2d 431 (D.C. 1972); *Nicholas v. Nicholas*, 444 So. 2d 1118 (Fla. Dist. Ct. App. 1984); *Goschalk v. Goschalk*, 138 A.2d 774 (N.J. Super. Ct. App. Div. 1958); *Das v. Das*, 603 A.2d 139 (N.J. Super. Ct. Ch. Div. 1992); *Cocron v. Cocron*, 373 N.Y.S.2d 797 (N.Y. Sup. Ct. 1975); *In re Marriage of Pirouzkar*, 626 P.2d 380, (Or. Ct. App. 1981); *Sinha v. Sinha*, 491 A.2d 899 (Pa. Super. Ct. 1985); *Bustamante v. Bustamante*, 645 P.2d 40 (Utah 1982); *In re Hanano*, 2001 Va. Cir. LEXIS 169 at *10; *Williams*, 328 F. Supp. 1380.

⁸³ *In re Hanano*, 2001 Va. Cir. LEXIS 169 at *10.

⁸⁴ *In re Hanano*, 2001 Va. Cir. LEXIS 169 at *10.

⁸⁵ *Williams*, 328 F. Supp. 1380 at 1384.

⁸⁶ *Williams*, 328 F. Supp. 1380 at 1384.

⁸⁷ *Williams*, 328 F. Supp. 1380 at 1384.

⁸⁸ However, non-citizens residing in the United States on special non-immigrant visas for foreign nationals (G-4 visa) and working for international organizations must take additional steps to establish residency. Under the special non-immigrant visas for foreign nationals, non-citizens deny residency in order to avail themselves the special financial benefits offered to World Bank employees who are non-resident foreign nationals on temporary visas. Therefore, these individuals cannot claim residency for family court purposes. *Williams*, 328 F. Supp. 1380 at 1384.

⁸⁹ *Williams*, 328 F. Supp. 1380 at 1384.

⁹⁰ In one North Carolina case, the State Medicaid agency denied emergency Medicaid benefits to an individual who was in the U.S. on an unexpired tourist visa. *Okale v. North Carolina Dep't of Health and Human Services*, 570 S.E.2d 741(N.C. Ct. App. 2002). The court said that a person holding a tourist visa by definition could not have the requisite intent to reside in the state. *Okale v. North Carolina Dep't of Health and Human Services*, 570 S.E.2d 741(N.C. Ct. App. 2002). See also, *Salem Hosp. v. Comm'r of Pub. Welfare*, 574 N.E. 2d 385 (Mass. 1991).

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Immigration laws are interpreted separately from divorce laws, jurisdictional requirements,⁹¹ and state residency requirements for purposes of Emergency Medicaid. A state determination of state residency for Emergency Medicaid or family law purposes has no effect on decisions by the DHS or by an immigration judge in any immigration case.⁹² State government findings of state residency for Emergency Medicaid purposes will not help an immigrant attain any form of immigration status for which they would not otherwise qualify.

If state officials raise concerns that findings of state residency for purposes of Emergency Medicaid may in some way control whether an undocumented victim of sexual assault will receive legal immigration status in a VAWA, U visa (crime victim), or T visa (trafficking victim) case, the advocate or attorney should point out that state administrative agency rulings and state court findings cannot determine outcomes under immigration law. Regulation of immigration is exclusively a federal power and overrides any action by a state court or legislature.⁹³ Since immigration falls within the exclusive jurisdiction of the federal government, a state's finding that an immigrant victim has residency in the case for purposes of accessing Emergency Medicaid cannot, as a matter of law, determine the outcome of an immigration case. See state by state emergency Medicaid charts⁹⁴ for more information about federal versus state laws and immigration.

What Constitutes an Emergency Medical Condition?

For victims of sexual assault, the immediate questions are:

- (1) what is covered for immigrant victims of sexual assault under the definition of “emergency medical condition” in state Medicaid statutes; and
- (2) how can immigrant victims gain access to all necessary and available medical care that will aide them best in physical, psychological and emotional recovery?

An “emergency medical condition” is defined in the §1903(v)(3) of the Social Security Act as:

A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (a) placing the patient's health in serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any organ or part.⁹⁵

⁹¹ *Rajapaksha v. Jayaweera*, 5 N. Mar. I. 87, 89 (N. Mar. I. 1997).

⁹² *Rajapaksha v. Jayaweera*, 5 N. Mar. I. 87, 89 (N. Mar. I. 1997).

⁹³ Michael Wishnie, *Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism*, 76 N.Y.U. L. Rev. 493, 509 (2001). Immigration law derives its authority from the Naturalization Clause of the Constitution. The textual requirement of the clause, that there be a single naturalization rule that is “uniform . . . throughout the United States,” has been interpreted to establish federal exclusivity. *Id.* at 544, n. 215. The Supreme Court, to the extent that it has considered the nature of immigration power, has repeatedly concluded that this power cannot be transferred to the states. *Id.* at 532. See, e.g., *De Canas v. Bica*, 424 U.S. 351, 354 (1976) (“The power to regulate immigration is unquestionably exclusively a federal power.”); *Chae Chan Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 609 (1889) (stating that federal immigration power is “incapable of transfer” and “cannot be granted away”); *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1876) (“The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States.”). The total exclusivity of federal immigration is a fairly recent occurrence. Prior to the Immigration Act of 1990, state court judges had the authority, with a Judicial Recommendation Against Deportation (JRAD), to recommend against deportation. Lisa Fine, *Preventing Miscarriages of Justice: Reinstating the Use of “Judicial Recommendations Against Deportation,”* 12 Geo. Immigr. L.J. 491, 506 (1998). In an effort to consolidate and regulate federal immigration power, Congress repealed the JRAD in 1990 and ended the ability of the individual state court judges to directly affect the outcome of immigration cases. The revocation of JRAD eliminated the power of state court judges to get involved in and materially control immigration matters. Furthermore, by removing JRAD authority from state court judges, Congress indicated its intention to empower the federal government with exclusive control over immigration. State officials making state residency determinations, whether in family court for purposes of divorce or state government workers for benefits purposes, do not control immigration cases.

⁹⁴ Available at: http://iwp.legalmomentum.org/public-benefits/health-care/17_Emergency-Medicaid-Chart-MANUAL-ES.doc/view

⁹⁵ 42 U.S.C. § 1396b(v)(3)(A)-(C) (2004).

There is also a federal regulation⁹⁶ requiring that the condition must have had a “sudden onset;” however, the Medicaid Act does not contain this language.⁹⁷ In nearly every state, the condition for which treatment is sought must be severe and acute, such that the absence of immediate attention may lead to placing the patient’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of a bodily organ or part.⁹⁸

There is no definitive federal rule on when an emergency condition ends for the purposes of cutting off the Emergency Medicaid. However, there are some Court rulings that can provide guidance. In 2003, five plaintiffs from Arizona were treated for emergency medical conditions, and the state agency concluded that the emergency medical conditions had ceased when their conditions had been stabilized and they had been transferred from an acute ward to a rehabilitative type ward.⁹⁹ The court concluded that even though a patient’s initial injury is stabilized, the emergency medical condition may not have ended. The court found that the focus must be on whether the patient’s medical condition was acute and of sufficient severity that the absence of immediate medical treatment could result in (1) placing the patient’s health in serious jeopardy, (2) serious impairment to bodily functions, or (3) serious dysfunction of any bodily organ or part, which are the three consequences set forth under the statutory language.¹⁰⁰

Similarly, in another case, a patient who presented to the hospital’s emergency room with weakness and numbness in the lower extremities was diagnosed with cancer and underwent surgery. All charges incurred after the initial hospitalization were denied payment on the basis that this was not treatment of an emergency medical condition.¹⁰¹ The provider argued that all treatment rendered was for an emergency medical condition, as defined by state and federal law, because the patient’s cancer was rapidly progressing in a life-threatening manner.¹⁰² The appellate court determined that the lower court should have assessed whether the absence of the continued medical services could be expected to result in one of the three consequences outlined in the Medicaid statute.¹⁰³

However, in a different case, undocumented persons who suffered serious traumatic head injuries were not entitled to payment of their expenses for the ongoing care of chronic conditions following initial emergency treatment, because such care did not qualify as an emergency medical condition.¹⁰⁴ That court found that while the patients’ sudden and severe head injuries initially satisfied the plain meaning of Section 1903(v)(3), the continuous and regimented care subsequently provided to them did not constitute emergency medical treatment pursuant to the statute.¹⁰⁵

What Procedures Must Be Followed for Qualification?

The procedures for receiving aid vary, several states require or allow individuals to be preauthorized as Emergency Medicaid participants prior to the receipt of services. Others refuse to accept applications without a detailed description of the emergency service required, thereby eliminating the possibility of advance authorization. It is important that applicants check their state’s rules to determine what steps must be taken in order to qualify for Emergency Medicaid, as failure to follow the proper procedures and meet the stated deadlines may prevent eligibility and place the full financial burden for all services on the applicant. Note that under federal guidelines, non-qualified immigrants who are eligible for Emergency Medicaid do **not** need to

⁹⁶ 42 C.F.R. § 440.255(b)(1) (2006).

⁹⁷ See Jane Perkins, *Medical Coverage of Emergency Medical Conditions*, Clearinghouse Rev. Journal of Poverty Law and Policy, September-October 2004, 384, 384-392.

⁹⁸ There have been several cases dealing with the issue of the type and/or duration of medical services covered by emergency Medicaid. In *Lewis v. Thompson*, 252 F.3d 567 (2d Cir. 2001), the Second Circuit determined that the Welfare Reform Act’s denial of prenatal care to non-qualified immigrants had a rational basis and did not violate equal protection. Importantly, the court also held that citizen children of non-qualified pregnant women are eligible for Medicaid on the same basis as children of citizen mothers.

⁹⁹ *Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System*, 75 P.3d 91 (Ariz. 2003).

¹⁰⁰ *Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System*, 75 P.3d 91 (Ariz. 2003).

¹⁰¹ *Luna v. Div. of Social Services*, 589 S.E.2d 917 (N.C. Ct. App. 2004).

¹⁰² *Luna v. Div. of Social Services*, 589 S.E.2d 917 (N.C. Ct. App. 2004).

¹⁰³ *Luna v. Div. of Social Services*, 589 S.E.2d 917 (N.C. Ct. App. 2004).

¹⁰⁴ *Greenery Rehab. Group, Inc. v. Hammon*, 150 F.3d 226 (2d Cir. 1998).

¹⁰⁵ *Greenery Rehab. Group, Inc. v. Hammon*, 150 F.3d 226 (2d Cir. 1998).

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furnish Social Security numbers.¹⁰⁶ Many states specify that no Social Security number is required. However, a California court did hold that the state Department of Health could require applicants to declare whether they are U.S. citizens or nationals, or immigrants with “satisfactory immigration status.”¹⁰⁷

The definition of “emergency medical condition,” as provided by Medicaid, may actually provide broad medical coverage for immigrant victims of sexual assault. Depending on the jurisdiction, some state statutes allow a large degree of latitude in determining what is an “emergency medical condition.” As the above case studies demonstrate, an injury is covered if it is “a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in”:

- (a) Placing the patient’s health in serious jeopardy;
- (b) Serious impairment to bodily functions; or
- (c) Serious dysfunction of any organ or part.¹⁰⁸

In order to qualify for coverage, the injury need only meet one of the enumerated categories provided in the definition. A well-reasoned argument could go a long way for a client who is a victim of sexual assault. It could mean screening for STDs and pregnancy, mental health counseling, and follow-up visits.

The Emergency Medical Treatment and Active Labor Law¹⁰⁹

The Emergency Medical Treatment and Active Labor Act (EMTALA)¹¹⁰ is also often referred to as the federal “antidumping” statute. This law protects persons without health insurance from being denied life-saving medical treatment. EMTALA applies to any hospital with an emergency room participating in Medicare. It requires that any time a person comes to the emergency room for help, the hospital makes a determination of whether that person has an emergency medical condition or is in active labor. If so, the hospital must provide treatment sufficient to stabilize the condition. In addition, the law requires that patients whose emergency medical condition has stabilized not be transferred without the written certification of the physician on duty that the medical benefits of transfer outweigh the increased health risks to the individual due to lack of availability of medical treatment. These protections can be very important for victims of sexual assault and domestic violence who have low-income, lack health insurance, or are immigrants who do not otherwise qualify for Medicaid-funded health care.

Other provisions of EMTALA require that hospitals have:

- Policies of nondiscrimination in the provision of specialized care;
- No delays in examination and treatment;
- No retaliation against physicians refusing to transfer a patient still undergoing an unstabilized emergency medical condition;
- Hospital policies ensuring compliance with the law; and
- Provide notice alerting individuals of --
 - Their rights to examination and treatment; and
 - Whether the hospital participates in Medicare.

EMTALA also provides for penalties including loss of the right to participate in Medicare, and fines up to \$50,000, against hospitals and doctors who do not comply with EMTALA’s requirements.

¹⁰⁶ U.S. Department of Health and Human Services, The Centers for Medicare and Medicaid Services, State Medicaid Manual § 3211.9 (1997).

¹⁰⁷ *Crispin v. Coye*, 27 Cal. App. 4th 700, 34 Cal Rptr. 2d 10 (1994).

¹⁰⁸ 42 U.S.C. § 1396b(v)(3)(A)-(C) (2004).

¹⁰⁹ Claudia Schlosberg, *Immigrant Access to Health Benefits: A Resource Manual* 19-20 (Doreena Wong ed., The Access Project and National Health Law Program 2002).

¹¹⁰ 42 U.S.C. §1395dd (2007).

Community Health Centers (Federally Funded Qualified Health Centers)

Pursuant to the Omnibus Budget Reconciliation Act of 1990 the federal government provides grants to Federally Qualified Health Centers¹¹¹ (FQHCs), otherwise known as Community Health Centers.

Community health centers and migrant health centers fill the gap for many sexual assault and domestic violence victims who cannot otherwise access health care services. Community health centers are local, non-profit, community-owned health care providers serving low income and medically underserved communities. The national network of health centers provides high-quality, affordable primary care and preventive services, and often provide on-site dental, pharmaceutical, mental health, and substance abuse services. More importantly, the FQHCs improve access to care for millions of Americans regardless of their insurance status or ability to pay. It is through community health centers that victims who do not qualify for Medicaid can receive health care.

To find a federally qualified community health center in your community go to the website of the Health Resources and Services Administration at the U.S. Department of Health and Human Services. <http://hrsa.gov/gethealthcare/index.html> Under “Find a Health Center” enter a zip code and the website will list the address, phone number and e-mail address for all of the federally qualified health centers near that zip code.

Approximately 20 million people are served by federally qualified community health centers nationwide each year.¹¹² That number continues to grow. The Patient Protection and Affordable Care Act of 2010¹¹³ will enable federally qualified community health centers to serve nearly 20 million additional patients by 2015.¹¹⁴ Approximately 50% of health center patients live in economically depressed inner city communities, and the other half resides in rural areas. Nearly 70% of health center patients have family incomes at or below poverty (\$15,206 annual income for a family of three in 2003).¹¹⁵ Moreover, almost 40% of health center patients are uninsured and another 36% depend on Medicaid, much higher than the national rates of 12% and 15%, respectively.¹¹⁶ Two-thirds of health center patients are members of racial and ethnic minorities.¹¹⁷ Health centers remove common barriers to care by serving communities who otherwise confront financial, geographic, language, cultural, and other barriers, making them different from most private, office-based physicians. The health centers are located in high-need areas, as identified by the federal government as having elevated poverty, higher than average infant mortality, and where few physicians practice. They are open to all residents, regardless of insurance or immigration status, and provide free or reduced cost care based on ability to pay. They tailor their services to fit the special needs and priorities of their communities, and provide services in a linguistically and culturally appropriate setting.

For many patients, the health center may be the only source of health care services available. In fact, the number of uninsured patients at health centers is rapidly growing. It is estimated that approximately 3.9 million were uninsured in 1998, compared to over 5.9 million today. FQHCs provide access to health services by underserved populations unable to pay for health services. Underserved populations include groups that face barriers to accessing health services because:

- They are unable to pay for them;
- Of language access for LEP individuals;
- Of cultural obstacles;

¹¹¹ Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508 § 4161 (1990). For more information on FQHCs, see Claudia Schlosberg, *Immigrant Access to Health Benefits: A Resource Manual* 19-20 (Doreena Wong ed., The Access Project and National Health Law Program 2002).

¹¹² Eli Y. Adashi, M.D., H. Jack Geiger, M.D., and Michael D. Fine, M.D., *Health Care Reform and Primary Care — The Growing Importance of the Community Health Center*, New England Journal of Medicine (April 28, 2010) available at <http://healthcarereform.nejm.org/?p=3377&query=home>

¹¹³ Public Law No: 111-148, March 23, 2010

¹¹⁴ Id.

¹¹⁵ Bureau of Primary Health Care, Uniform Data System (2003).

¹¹⁶ Bureau of Primary Health Care, Uniform Data System (2003).

¹¹⁷ Bureau of Primary Health Care, Uniform Data System (2003).

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- Undocumented immigration status; or
- The community lacks the resources to provide for them.

Such communities include undocumented immigrants, seasonal agricultural workers, the homeless, and public housing residents, among others. Health Centers who receive FQHC grants are open to all persons in the United States with no restrictions on immigration status. FQHC funded health centers must provide basic health services and services that help ensure access to basic health and social services.¹¹⁸ Such services include:¹¹⁹

- Primary care;
- Diagnostic, laboratory, and radiological services;
- Prenatal care;
- Post-assault health care;
- Cancer and other disease screening;
- Well child services;
- Immunizations against vaccine-preventable diseases;
- Screening for elevated blood lead levels, communicable diseases and cholesterol;
- Eye, ear and dental screenings for children;
- Family planning services;
- Preventive dental services;
- Emergency medical and dental services; and
- Pharmaceutical services.

The range of services provided to persons they serve include: case management; referrals; outreach, transportation, and interpretive services; health education; and help applying for Medicaid and other federal public benefits. For more information about Community Health Centers, visit the official National Association of Community Health Centers website at <http://www.nachc.com/>. To find a community health center in your area, visit <http://ask.hrsa.gov/pc/>.

VOCA and Post-Assault Health Care

Victims Of Crime Act (VOCA)

The Federal Victims of Crime Act established a Crime Victims Fund that provides grants to states for eligible crime victim compensation programs. If states meet certain requirements, this federal funding can be obtained to compensate victims of crimes through programs administrated by the states and U.S. territories.¹²⁰ A compensation program qualifies as eligible crime victim compensation program if:

1. The program is operated by the state and offers compensation to victims and the survivors of victims of criminal violence (including sexual assault, domestic violence, and trafficking) for:
 - a. (i) medical expenses attributed to a physical injury related to compensable crime, including expenses for mental health counseling;
 - b. (ii) lost wages attributable to a physical injury resulting from a compensable crime; and
 - c. (iii) funeral expenses attributable to a death resulting from a compensable crime;
2. The program promotes victim cooperation with reasonable requests from law enforcement;

¹¹⁸ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, *available at* <http://www.hhs.gov/ocr/immigration/bifsltr.html> (date revised Jan. 30, 2001).

¹¹⁹ HEALTH RESOURCES AND SERVICES ADMINISTRATION, U.S. DEP'T OF HEALTH AND HUMAN SERV., SUMMARY OF KEY HEALTH CENTER PROGRAM REQUIREMENTS *available at* <http://www.bphc.hrsa.gov/about/requirements.htm>

¹²⁰ See 42 U.S.C. §10602 (2000), and discussion of relevant federal law below.

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3. The grants will not supplant state funds otherwise available for victim compensation;
4. The program makes compensation awards to victims who are nonresidents of the state on the basis of the same criteria used to make awards to victims who are residents of the state;
5. The program provides compensation to victims of federal crimes occurring within the state on the same basis as compensation to victims of state crimes;
6. The program provides compensation to residents of the state who are victims of crimes occurring outside the state if:
 - a. (i) the crimes would be compensable crimes had they occurred inside that state; and
 - b. (ii) the places the crimes occurred in are states not having eligible crime victim compensation programs;
7. The program does not deny compensation to any victim because of that victim's familial relationship to the offender, or, because of the sharing of a residence by the victim and the offender. Funding may, however, be denied under program rules, if it would result in unjust enrichment of the offender; and
8. The program does not provide compensation to any person who has been convicted of an offense under federal law and during any time period that the convicted person is delinquent in paying a fine, other monetary penalty, or restitution imposed for the offense.

In general a “compensable crime” includes motor vehicle accidents resulting from driving while intoxicated, domestic violence, and any crime where the victim suffers death or personal injury, including assault, battery, child abuse, reckless driving, murder, robbery, sexual assault, kidnapping, or other violent crimes. Each state and territory has a victim's compensation program. Most of these programs provide compensation to victims of crimes that occur in that state. Generally a victim must suffer physical (bodily) injury, emotional injury, economic loss, or some combination of these.

Many of the programs extend certain types of compensation to relatives of the victim, such as counseling, or, where the crime results in a death, coverage of funeral and burial expenses. Often, relatives or even non-relatives that paid for medical care of a victim, can be compensated for those costs. Some states also extend benefits to those who prevent or attempt to prevent a crime.

Most states provide compensation to:

- State residents, or nonresidents, if the crime occurred in the state;¹²¹ and
- State residents, if the crime occurred in another state, and there is no comparable compensation available from that other state.

Several states also provide compensation to:

- State residents for crimes committed outside of the country, in an act of international terrorism, or mass violence.

Virtually all states¹²² provide access to VOCA funded services and VOCA crime victims funding to any immigrant without regard to immigration status (qualified immigrants, non-qualified immigrants, documented,

¹²¹ The non-resident coverage under VOCA can be very important for immigrant victims of sexual assault who may be having difficulty proving state residency for purposes of accessing emergency Medicaid payments for emergency health care.

¹²² Except Alabama and Nevada. See Al. Admin. Code § 262-X-4-.02(13), (14) (2007); N.R.S. § 217.210 (2007).

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undocumented) when the immigrant has been a crime victim in, or is a resident of, the state. Some states have application procedures that make it difficult for undocumented immigrant victims of sexual assault and domestic violence to access VOCA funded crime victim assistance. For example, several states ask for a social security number as part of the process of applying for VOCA victim compensation. However, often these states will process an application and provide compensation, even if the social security number is not available with an advocate's assistance. Among the very few states where compensation is not provided to non-qualified immigrants, one will permit compensation if the crime victim is also a victim of human trafficking.¹²³

To access VOCA funding, states generally require¹²⁴ that the crime be reported to law enforcement officials within a certain time period – often 72 hours. However, many states permit a crime to be reported later for good cause,¹²⁵ and some permit late reporting if the victim was a juvenile.¹²⁶ It is not necessary that the crime at issue be solved, prosecuted or that the accused is convicted. To receive VOCA funding, however, states generally require that the victim cooperate with law enforcement officials in investigating the crime, and that the victim be innocent, e.g., not involved in the crime, and not incarcerated at the time of the crime.

Compensation is available for a wide variety of financial costs. Most often this includes medical costs, such as physician services, hospital care, dental services, prescription drugs, and mental health treatment. For victims of sexual assault, compensated medical care can include STDs and HIV/AIDS screening/treatment, pregnancy testing, hepatitis screening, contraception, and pre-natal care.

Most states provide compensation for loss of income and funeral/burial costs. Many states also provide compensation for travel for court appearances or for medical treatment, rehabilitation, crime scene clean-up, necessary moving/relocation costs, necessary home security or modifications, limited attorneys fees, and replacement costs for the work the victim is no longer able to perform, e.g., housekeeping or child care. A few states compensate for lost, stolen, or damaged property. Very few states compensate for pain and suffering.

Most states have limits on how much will be reimbursed in each category, as well as a limit on total compensation. Most also consider this compensation of last resort, i.e., compensation will not be provided if the costs are reimbursable by insurance or other federal or state funded public benefits.

Emergency benefits can often be provided, if the victim would suffer substantial hardship without immediate compensation. Emergency awards generally range from \$500 to \$1500.

¹²³ Alabama and Nevada do not provide compensation to non-qualified immigrants. Al. Admin. Code § 262-X-4-.02(13), (14); N.R.S. § 217.210. However, Alabama Administrative Code states that claimants/victims who are certified by federal authorities as victims of human trafficking are eligible for compensation benefits regardless of immigration status. Al. Admin. Code § 262-X-4-.02(13), (14).

¹²⁴ Requirement of timely notification of the law enforcement or other agencies:
Alabama (72 hours), Alaska (5 days), Arizona (72 hours), Arkansas (72 hours), Colorado (72 hours), Connecticut (5 days), Delaware (72 hours), District of Columbia (7 days), Florida (72 hours), Georgia (72 hours), Hawaii (72 hours), Idaho (72 hours), Illinois (72 hours; but 7 days for sex crimes), Indiana (48 hours), Iowa (72 hours), Kansas (72 hours), Kentucky (48 hours), Louisiana (72 hours), Maine (5 days), Maryland (48 hours), Massachusetts (5 days), Michigan (48 hours), Minnesota (30 days) Mississippi (72 hours), Missouri (48 hours), Montana (72 hours), Nebraska (72 hours), Nevada (72 hours if victim wishes to qualify for coverage of initial emergency care; otherwise 5 days), New Hampshire (5 days), New Jersey (3 months), New Mexico (30 days; but 180 days for sexual assaults), New York (7 days), North Carolina (72 hours; but 7 days for sexual assaults), North Dakota (72 hours), Ohio (72 hours), Oklahoma (72 hours), Oregon (72 hours), Pennsylvania (72 hours), Rhode Island (10 days), South Carolina (48 hours), South Dakota (5 days), Tennessee (48 hours), Texas (should be reported within a reasonable period of time), Virginia (5 days), Washington (1 year), West Virginia (72 hours), Wisconsin (5 days), Wyoming (should be reported as soon as possible), Guam (should be reported "without undue delay"), Puerto Rico (4 days), and Virginia Island (24 hours).

¹²⁵ States that permit a crime to be reported later for good cause:
Alabama, Alaska (the incident must be reported within 5 days of the time when a report could have been reasonably made), Arizona, Arkansas, Connecticut (the crime should be reported within 5 days of the time when a report could have reasonably been made), Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Missouri, Montana, Nevada (5-day reporting period required unless there is an explanation as to why the victim was unable to notify authorities), New Hampshire (5-day reporting period required unless there is a reasonable explanation for not doing so), Oregon, Pennsylvania, South Carolina, South Dakota (the crime must have been reported within 5 days of the time it became reasonable to report), Tennessee, Virginia and West Virginia.

¹²⁶ States that permit a crime to be reported later if victim is minor:
Iowa, Maine, Missouri, New Mexico, North Dakota, Pennsylvania and Tennessee.

To obtain compensation, victims must generally file an application in the particular state that the crime occurred or that the victim resides. The application for VOCA funding will need to be filed with the agency that administers the program. Time limits for filing vary, but are generally one to three years from the time of the crime. There are usually allowances for good cause that enable an application to be submitted at a later time. Applications are then reviewed and a decision granting or denying benefits is issued. Most states have an appeal process that may be used if the victim's request is denied.

Medicaid and State Child Health Insurance Programs (SCHIP) Funding For Pre-Natal Care and Post-Assault Health Care

Only certain immigrants will qualify to access non-Emergency Medicaid. Medicaid is the largest public health insurance program in the country. It was created to provide health care to certain groups of low-income persons. The program is operated jointly by the federal government and by state governments. Basic requirements concerning eligibility, coverage, quality of care, and administration of funded programs are defined by the federal government.

PRWORA¹²⁷ provides that only “qualified immigrant”¹²⁸ permitted access to federal and state public benefits, including Medicaid.¹²⁹

“Qualified immigrants” eligible to receive Medicaid are:¹³⁰

- Legal permanent residents (including conditional permanent residents)¹³¹ (for the first 7 years in the United States);
- Refugees¹³² (for the first 7 years in the United States);
- Asylees¹³³ (for the first 7 years in the United States);
- Persons granted withholding of deportation¹³⁴ (for the first 7 years in the United States);
- Persons granted cancellation of removal;
- Cuban/Haitian entrants¹³⁵ (for the first 7 years in the United States);
- Victims of Trafficking¹³⁶ (for the first 7 years in the United States);
- Veterans of certain United States military actions;

¹²⁷ P.L. No. 104-193.

¹²⁸ The statute uses the term “qualified alien.”

¹²⁹ To access Medicaid, an immigrant must sign a declaration under penalty of perjury that the applicant has satisfactory immigration status, and must provide documentation. However, non-applicants living in the household or family unit do not have to provide their Social Security Numbers when their documented family member applies for Medicaid. To require non-applicants to provide this information violates the Privacy Act of 1974. *Policy Guidance Regarding Inquiries into Citizenship, Immigration Status, and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF) and Food Stamp Benefits*, September 21, 2000, at: www.hhs.gov/ocr/immigration/triagency.html. See also, Claudia Schlosberg, *Immigrant Access to Health Benefits: A Resource Manual* (Doreena Wong ed., The Access Project and National Health Law Program 2002).

¹³⁰ Section 431(b) and (c) of PRWORA, 8 U.S.C. § 1641(b) and (c) (2000).

¹³¹ Conditional permanent residents are spouses of U.S. citizens who at the time of obtaining resident status were married less than two years. Therefore, USCIS issues a “green card,” which expires two years after their residency interview, and the immigrant spouse must submit a second application to remove the conditions on her residence status 90 days before her card expires. For a full discussion of immigration options for battered immigrants with conditional residence status see Chapter 3 of this manual.

¹³² Admitted under § 207 of INA.

¹³³ Admitted under § 208 of INA.

¹³⁴ Either § 243(h) of the INA in effect prior to April 1, 1997, or § 241(b)(3) of INA.

¹³⁵ As defined in § 501(e) of the Refugee Education Assistance Act of 1980.

¹³⁶ Section 107(b)(1) of the Trafficking Victims Protection Act of 2000.

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- Person granted conditional entry;¹³⁷
- Amerasians¹³⁸ (for the first 5 years in the United States);
- Persons paroled into the United States for a year or more;¹³⁹
- Persons who have been battered or subject to extreme cruelty by a U.S. citizen or legal permanent resident spouse or parent, with pending or approved VAWA cases (self-petitions or cancellation of removal) or certain family-based immigrant petitions before DHS; and
- Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or legal permanent resident other parent, who have pending or approved VAWA cases (self-petitions or cancellation of removal) or certain family-based petitions before DHS.¹⁴⁰

Immigrants Who First Entered the U.S. After August 22, 1996 Are Subject To A Five (5) Year Bar On Access to Medicaid Unless Exempt

Immigrants who first entered the U.S. after August 22, 1996 must wait until 5 years after the date that they became a “qualified immigrant” to gain access to non-emergency Medicaid. The following is a list of the only post August 22, 1996 immigrants who may access Medicaid funded health care because they are exempt from the 5-year bar:

- Refugees;
- Asylees;
- Victims of Trafficking;
- Amerasians;
- Cuban/Haitian entrants;
- Veterans and immigrants on active military duty, their spouses (and unremarried surviving spouses), and their unmarried children under the age of 21 (includes Filipino, Hmong, and Highland Lao);
- Immigrants granted withholding of deportation; and
- Certain immigrants without sponsors.

Under PRWORA, immigrants who do not fall into the categories enumerated above, including undocumented immigrants, are considered “non-qualified aliens.” “Non-qualified aliens” can receive only limited federal and state public benefits. However, there are exceptions made on a state-by-state basis. Although PRWORA severely limited what public benefits a state can provide to non-qualified immigrants, PRWORA explicitly allows states to provide additional state funded benefits, if state laws were enacted after August 22, 1996 to affirmatively provide eligibility.

Federal law grants to state governments, the ability to determine which types of health care services will be covered under Medicaid as well as the categories of persons who will qualify to receive Medicaid funded health care in the state. As a result of this flexibility, Medicaid programs vary greatly from state to state. States can provide additional services under their Medicaid programs beyond the list of programs available

¹³⁷ Under § 203(a)(7) of INA in effect before April 1, 1980.

¹³⁸ Pub. L. No. 104-193 § 403, 110 Stat. 2265. An immigrant is eligible for benefits under Public Law 97-359 as the Amerasian child or son or daughter of a United States citizen if there is reason to believe that the immigrant was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982, and was fathered by a United States citizen. Such an immigrant is eligible for classification under sections 201(b), 203(a)(1), or 203(a)(3) of INA as the Amerasian child or son or daughter of a United States citizen, pursuant to section 204(f) of INA. 8 C.F.R. § 204.4 (2007).

¹³⁹ Under § 212 of INA.

¹⁴⁰ Section 431(c) of PRWORA; VAWA self-petitioners must also prove that there is a substantial connection between the battery or extreme cruelty and the need for public benefit sought and that the battered immigrant or child no longer resides in the same household as the abuser. For more detailed information, see the Public Benefits Chapter of this Manual.

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through the federal Medicaid program. States can also choose to extend state funded medical assistance to individuals who may not qualify for Medicaid.¹⁴¹

When immigrant victims of sexual assault or domestic violence are Medicaid eligible, there are numerous forms of post-assault Medicaid covered health care they can receive including:

- hospital care;
- post-rape health care;
- maternal health care;
- pre-natal care;
- post-assault health care;
- nursing home care;
- physician services;
- laboratory and x-ray services;
- family planning services;
- health center and rural health center services;
- nurse midwife and nurse practitioner services; and
- Early Periodic Screening, Diagnosis and Treatment (EPSDT), a comprehensive children’s health benefit package.

For qualified immigrants who satisfy Medicaid and other state-specific eligibility requirements, a package of services that includes pre-natal care is generally available, including early risk assessment, health promotion and medical monitoring. For non-qualified immigrants, in many states, emergency medical care may be the only route for them to receive pre-natal care or services. But, while emergency medical services do include labor and delivery, “emergency services” generally do not include any non-emergency pre-natal services.

SCHIP

SCHIP is the State Children’s Health Insurance Program, which was enacted in 1997.¹⁴² The program provides funding to states for health insurance for uninsured, targeted low-income children. To qualify, children’s family incomes must be lower than state specified guidelines. Children must be under the age of 19, must not be eligible for Medicaid, and must not have other health insurance coverage. SCHIP provides coverage for all children born in the United States. Immigrant children are also eligible for SCHIP coverage if they are “qualified immigrants.” To determine whether an immigrant child is a “qualified immigrant” look to the discussion under Medicaid above.¹⁴³

Stories Illustrating The Importance Of Access to Emergency and Non-Emergency Health Care For Immigrant Victims of Sexual Assault

1. Rosa’s Story

Rosa came to the United States two years ago through her work. She works at her brother’s restaurant as a server. Rosa met Javier at the restaurant, and they began dating. After Javier and Rosa had been together for one month, Javier and Rosa were at Rosa’s apartment spending some time together. Javier had mentioned to Rosa that he didn’t like her spending more time with her friends than with him. The conversation quickly became heated. Javier made it clear that he did not want Rosa spending any time around any other men. Rosa tried explaining that she was just friends with these men. As the situation escalated, Javier moved closer and

¹⁴¹ California, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and the District of Columbia all cover the medically needy.

¹⁴² The Balanced Budget Act of 1997, Pub. L. No. 105-33.

¹⁴³ SCHIP authorization expired on Oct. 1, 2007, and was reauthorized by Congress. However, the legislation was vetoed by President G.W. Bush on Oct. 3, 2007. 153 Cong. Rec. H11203 (daily ed. Oct. 3, 2007).

closer to Rosa and he grabbed her arms. Rosa tried saying anything to neutralize the situation, but Javier had been drinking, so he was past the point of being reasonable. Suddenly, Javier pushed Rosa down on the sofa, and screamed, “You’re mine...AND NOT ANYONE ELSE’S!” Javier raped Rosa. Despite Rosa and Javier dating for a month, they had never had sex. At the hospital, Rosa was concerned that she may have contracted an STD or that she may become pregnant. Tests confirm that Javier gave Rosa Chlamydia.

Rosa’s Access To Emergency Medicaid and Forensic Testing

Rosa is an undocumented immigrant victim of sexual assault, requiring pregnancy and STD testing, and treatment as a result of her assault. Under Federal law’s definition of “emergency medical condition,” medical treatment and care must be provided to Rosa free of cost to treat her Chlamydia. Absent an immediate diagnosis and treatment, it can be reasonably expected that Rosa will suffer from serious impairment to bodily functions or serious organ dysfunction due to Chlamydia. Chlamydial organisms travel upward into the uterus, where they infect the endometrium.¹⁴⁴ When Chlamydia ascends further to the fallopian tubes and ovaries, it produces a condition known as pelvic inflammatory disease (PID).¹⁴⁵ PID has emerged as a major cause of infertility and ectopic pregnancy among women of childbearing age.¹⁴⁶ Should Rosa have become pregnant as a result of the rape, she may also pass the infection to her newborn during delivery.¹⁴⁷ A particular strain of Chlamydia causes an uncommon STD called lymphogranuloma venereum (LGV), which is characterized by swelling and inflammation of the lymph nodes in the groin. Other complications may follow if LGV is not treated at this stage.¹⁴⁸ Other species, Chlamydia pneumoniae and Chlamydia psittaci, cause pneumonia and pneumonitis.¹⁴⁹

Under Emergency Medicaid, Rosa’s pregnancy and STD tests (including HIV/AIDS) are covered as an “emergency medical condition,” because in the absence of such tests, Rosa may not receive proper treatment, which could affect her body, and ultimately her life and wellbeing. In order to treat STDs, a physician must administer the appropriate diagnostic test; therefore, diagnostic tests and subsequent treatment go hand-in-hand. Many STDs manifest with acute symptoms, and can cause irreparable bodily harm and damage. If not diagnosed and treated immediately, women may suffer infertility or complications during pregnancy, and other diseases and viruses may manifest. Rosa’s injuries and resulting Chlamydia can be treated under the definition of an “emergency medical condition.” To determine the steps that Rosa needs to take to get health coverage for her pregnancy and STD testing, refer to the “Emergency Medicaid for Non-Qualified Aliens” chart¹⁵⁰ and look up Rosa’s state. In addition, Rosa may benefit from looking up her state specific information in both the “Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence”¹⁵¹ chart and

¹⁴⁴ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>.

¹⁴⁵ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>.

¹⁴⁶ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>.

¹⁴⁷ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>.

¹⁴⁸ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>.

¹⁴⁹ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>.

¹⁵⁰ Available at: http://iwp.legalmomentum.org/public-benefits/health-care/17_Emergency-Medicaid-Chart-MANUAL-ES.doc/view

¹⁵¹ Available at: http://iwp.legalmomentum.org/public-benefits/health-care/17_Chart_PostAssaultHealthCare-MANUAL-ES.doc/view

the chart on “Coverage for Forensic Costs for Undocumented Immigrants.”¹⁵² These charts can help her to determine the medical costs for which she may be able to receive coverage or reimbursement.

2. *Surabhi’s Story*

Surabhi has lived in the United States for six years. At first it was difficult for her to adjust to living in the United States, because she missed her close friends back home in India, but her family told her that living in the United States was best for her because she would be able to receive a good education.

Recently, Surabhi decided to take one course at a local community college. Through school, she has met several new friends. Her friends invited her to a party at one of the off-campus fraternities. Surabhi was very excited to go to this party with her new friends, especially since she had been told that the “in” crowd always attends fraternity parties.

At the party, one of the fraternity members offered her a drink. Surabhi is not a big drinker, but she noticed that everyone else was drinking, so she took the drink. Twenty minutes later, she walked around the house trying to find a bathroom. She was not feeling so well. Unable to find a bathroom, she walked into a bedroom and sat down for a moment. As she sat down, four fraternity members came into the room laughing while they asked her how she was feeling. Shortly after, Surabhi passed out. The four fraternity members then gang-raped her.

Subsidized Health Care and Help for Surabhi

Emergency Medicaid

At the hospital, it was determined that Surabhi would need immediate surgery due to internal bleeding and other injuries caused by the brutal rape. Physicians believed that Surabhi had been drugged. To confirm this, they ran a test to see if any date rape drugs were present in her blood. Severely traumatized by the experience, Surabhi will require months of mental health counseling, as she is unable to cope with her brutal rape.

Surabhi’s surgery is covered as an “emergency medical condition,” because without the surgery she would die due to loss of blood and internal injuries to her organs. Her condition was acute enough that it necessitated emergency surgery.

Similar to Rosa’s story above, any tests for date rape drugs and STDs can be covered as an emergency medical condition. This is because those diagnostic tests are the first prong in establishing a course of medical care and treatment, if Surabhi has contracted any virus or disease. STDs such as Chlamydia, gonorrhea, and syphilis can cause irreparable bodily harm if they go undiagnosed and untreated.

Mental health counseling should also be covered as an emergency medical condition. Without it, Surabhi could develop depression and shut down physically, emotionally and mentally. The most common long-term effects of sexual assault and rape are the invisible ones. The immediate symptoms of rape trauma include having unpredictable and intense emotions. Victims may have (1) an exaggerated startle response (jumpy), (2) memories and intrusive thoughts about the assault, and (3) nightmares, difficulty sleeping, and difficulty concentrating.¹⁵³ The long-term psychological effects of rape can include: post-traumatic stress syndrome and rape trauma syndrome; obsessive compulsive disorder; eating disorders; self-injury; self-blame; panic attacks;

¹⁵² Available at: http://iwp.legalmomentum.org/public-benefits/health-care/Ch17_Charts_Forensic-Exams-MANUAL-ES.doc/view

¹⁵³ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>

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flashbacks; body memories; and sleeping disorders.¹⁵⁴ The four major symptoms of Rape-related Post Traumatic Stress Disorder are:

- Re-experiencing the trauma (uncontrollable intrusive thoughts about the rape);
- Social withdrawal;
- Avoidance behaviors (a general tendency to avoid any thoughts, feelings, or cues); and
- Irritability, hostility, rage, and anger.¹⁵⁵

According to the National Women’s Study,

Nearly one-third of all rape victims develop rape trauma syndrome sometime during their lifetimes. Rape trauma syndrome is diagnosed by a mental health professional when the biological, psychological and social effects of trauma are severe enough to have impaired a survivor’s social and occupational functioning.¹⁵⁶

In many cases these effects can be life long if the victim does not get immediate support and care. Without immediate and consistent mental health counseling, Surabhi’s physical and mental wellbeing may be placed in serious jeopardy or that she may suffer further impairment. Thus, advocates and attorneys working with victims like Surabhi should review the state by state health care charts to determine whether your state could cover mental health treatment for rape victims under Emergency Medicaid and whether other options are available these options might include VOCA funded mental health care or mental health care offered through a local federally funded community health clinic or a non-profit victim services agency in your area.¹⁵⁷ The chart will also assist Surabhi in applying for coverage for her emergency medical conditions. In addition, Surabhi may find it helpful to consult both the “Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence” chart and the chart on “Coverage for Forensic Costs for Undocumented Immigrants.” These charts can help her to determine the medical costs for which she may be able to receive coverage or reimbursement.

3. Adjana’s Story

Adjana and her husband have enjoyed living in the United States for the past two years. Living in a neighborhood with several other Bosnian immigrants and friends, Adjana really feels a sense of comfort and community. Lately, Adjana’s husband has mentioned wanting to start a family. He says that he would like to hear little children running around their house and filling rooms with laughter. Adjana, on the other hand, would like to wait longer because she would like to save more money.

One night, Adjana and her husband were discussing having children. Her husband became very upset when Adjana said that she wanted to save more money because she didn’t think that they could support a baby right now. Her husband was instantly insulted. He felt that Adjana was saying that he was not capable of providing for his family. This wounded his pride. Adjana tried apologizing, but her husband truly believed that she meant to insult him. She tried physically distancing herself from her husband, but before she could, he grabbed her and threw her down a flight of stairs. She could not move and tearfully pleaded with him to leave her alone, but he only responded, “Maybe tonight we should start a family.” Her husband then raped her.

Adjana suffered from a broken leg, fractured hand and a concussion. At the hospital, a physician immediately set her leg and fitted a device on her hand that would hold the bones in place while they healed.

¹⁵⁴ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>

¹⁵⁵ The National Center for Victims of Crime. *Sexual Assault*, available at [http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=\(September 2006\)](http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=(September 2006)).

¹⁵⁶ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>

¹⁵⁷ For more information see the Public Benefits Chapter in this Manual.

Access to Health Care for Immigrant Victims of Sexual Assault

The physician told her that she also needed to go to physical therapy for her leg and hand two times per week for eight weeks in order to gain full mobility, dexterity and balance. Without physical therapy and follow up treatment, Adjana would experience physical deficit for the rest of her life.

Adjana's emergency room visit is covered as an emergency medical condition, because her leg, hand, and concussion caused her acute pain and suffering. Without treatment, her symptoms and injuries would not improve. Likewise, Adjana's 24-hour stay at the hospital for concussion observation is covered, because she could have suffered complications such as memory loss, seizure, or aneurysm without observation and treatment.

It can also be reasonably argued that physical therapy for Adjana is covered under Medicaid's definition of "emergency medical condition" because her acute and severe injuries are a direct result from being raped. Without physical therapy, she cannot achieve a full recovery. If Adjana doesn't receive physical therapy then her muscles may dystrophy and her leg and hand may be permanently disabled or irreparably harmed.

The chart "Emergency Medicaid for Non-Qualified Aliens"¹⁵⁸ may assist Adjarena to determine what medical expenses may be covered as emergency medical conditions, including her injuries and pregnancy testing if that is something in which she is interested. Additionally, she may find helpful state-specific information in the two charts entitled "Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence chart, and "Coverage for Forensic Costs for Undocumented Immigrants". Like for Rosa and Surabhi, these charts can help her to determine the medical costs for which she may be able to receive coverage or reimbursement.

¹⁵⁸ Available at http://iwp.legalmomentum.org/public-benefits/health-care/17_Emergency-Medicaid-Chart-MANUAL-ES.doc/view

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Emergency Medicaid for Non-Qualified Aliens

By Legal Momentum and Morgan Lewis, LLP

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Introduction and General Guidelines

Recognizing the importance of ensuring that all residents are able to receive necessary emergency medical care, every state has enacted some sort of emergency Medicaid program. While states are constrained by federal law in their ability to provide public benefits to certain types of “non-qualified” aliens, all states provide them coverage for emergency medical services. While program features and restrictions vary somewhat across the states, most have borrowed essential definitions and restrictions from federal law. Thus, there is some degree of conceptual uniformity. For example, because the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”) allows the provision of only emergency benefits to nonqualified aliens, most states have borrowed the federal definition of “emergency medical condition” in order to ensure their compliance.

Who Qualifies for Emergency Medicaid?

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”), P.L. 104-193, provides that only “qualified aliens” are permitted access to federal and state public benefits, including Medicaid. A “qualified alien” is one who falls into one of the following nine categories:

1. Aliens lawfully admitted for permanent residence under the INA;(Note that aliens who entered the U.S. after the date of PRWORA, August 22, 1996, are subject to a 5 year bar or waiting period on the receipt of benefits.)
2. Refugees admitted under § 207 of the INA;

3. Asylees admitted under § 208 of the INA;
4. Cuban or Haitian Entrants as defined in § 501(e) of the Refugee Education Assistance Act of 1980;
5. Aliens granted parole for at least one year under § 212(d)(5) of the INA;
6. Aliens whose deportation is being withheld under either § 243(h) of the INA in effect prior to April 1, 1997, or § 241(b)(3) of the INA, as amended;
7. Aliens granted conditional entry under § 203(a)(7) of the INA in effect before April 1, 1980;
8. Battered aliens who meet the conditions set forth in § 431(c) of PRWORA;
9. Victims of a severe form of trafficking, in accordance with § 107(b)(1) of the Trafficking Victims Protection Act of 2000.

Under the PRWORA, aliens who do not fall into the categories enumerated above, including undocumented immigrants, are considered “non-qualified aliens.” “Non-qualified aliens” can receive only limited federal and state public benefits. However, they may receive Medicaid benefits for care and services necessary for the treatment of an emergency medical condition (excluding organ transplants), provided that they meet all other general Medicaid requirements except those related to immigration status.

State residency is one of the federal Medicaid eligibility requirements that non-qualified aliens must meet in order to receive emergency Medicaid benefits. According to the State Medicaid Manual, “in some cases an alien in a currently valid non-immigrant classification may meet the State rules” for residency (see “Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, State Medicaid Manual (1997), Section 3211.10.) The State Medicaid Manual indicates that non-citizens holding valid Employment Authorization Cards (“EAD” cards) as well as those in valid status as visitors, foreign students, and certain work-authorized non-immigrants may be eligible for emergency Medicaid. However, note that in Okale v. North Carolina Department of Health and Human Services, 570 S.E. 2nd 741 (N.C. Ct. App. 2002), the state Medicaid agency of North Carolina denied emergency Medicaid benefits to an individual who was in the U.S. on an unexpired tourist visa. The court took the position that a person holding a tourist visa by definition could not have the requisite intent to reside in the state. Okale, 570 S.E. 2d at 741. See also, Salem Hospital v. Commissioner of Public Welfare, 574 N.E. 2nd 385 (1991.) On the other hand, state residency may be established even by individuals who enter the U.S. illegally or without inspection (see, e.g., St. Joseph’s v. Maricopa County, 142 Ariz. 94, 688 P. 2nd. 986 (1984).)

What Constitutes an Emergency Medical Condition?

“Emergency medical condition” is defined at §1903(v)(3) of the Social Security Act (“SSA”) (42 U.S.C. §1396b(v)(3)) as a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (1) placing the patient's health in serious jeopardy, (2) serious impairment to bodily functions, or (3) serious dysfunction of any bodily organ or part. Although the PRWORA

severely limits what public benefits a state can provide to non-qualified aliens, it allows states to provide additional state funded benefits if state laws enacted after August 22, 1996 affirmatively provide for such eligibility. There is also a federal rule requiring that the condition must have had a “sudden onset,” however, the Medicaid Act does not contain this language. See *Medical Coverage of Emergency Medical Conditions* by Jane Perkins, in Clearinghouse Review Journal of Poverty Law and Policy September-October 2004.

In nearly every state, the condition for which treatment is sought must be severe and acute, such that the absence of immediate attention may lead to either placing the patient’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of a bodily organ or part.

There have been several cases dealing with the issue of the type and/or duration of medical services covered by emergency Medicaid. In *Lewis V. Thompson*, 252 F. 3rd 567 (2nd. Cir. 2001,) the Second Circuit determined that the Welfare Reform Act’s denial of pre-natal care to non-qualified aliens had a rational basis and did not violate equal protection. The court also held that citizen children of non-qualified pregnant women are eligible for Medicaid on the same basis as children of citizen mother.

There is no definitive rule on when an emergency condition ends for the purposes of cutting off emergency Medicaid. In *Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System*, 75 P.3rd. 91, 2003 (Ariz. 2003), five plaintiffs were treated for emergency medical conditions, and the state agency concluded that the emergency medical conditions had ceased when their conditions had been stabilized and they had been transferred from an acute ward to a rehabilitative type ward. The court concluded that even though a patient’s initial injury is stabilized, the emergency medical condition may not have ended. The court found that the focus must be on whether the patient’s medical condition was acute and of sufficient severity that the absence of immediate medical treatment could result in (1) placing the patient’s health in serious jeopardy, (2) serious impairment to bodily functions or (3) serious dysfunction of any bodily organ or part, the three consequences set for under the statutory language. Similarly, in *Luna v. Division of Social Services* , 589 S.E.2d 917, 2004, a patient who presented to the hospital’s emergency room with weakness and numbness in the lower extremities was diagnosed with cancer and underwent surgery. All charges incurred after the initial hospitalization were denied payment on the basis that this was not treatment of an emergency medical condition. The provider argued that all treatment rendered was for an emergency medical condition, as defined by state and federal law, because the patient's cancer was rapidly progressing in a life-threatening manner. The appellate court determined that the lower court should have assessed whether the absence of the continued medical services could be expected to result in one of the three consequences outlines in the Medicaid statute. However, in *Greenery Rehabilitation Group, Inc. v. Hammon*, 2d Cir., Nos. 97-6236 97-6238, July 28, 1998, undocumented aliens who suffered serious traumatic head injuries were not entitled to payment of their expenses for the ongoing care of chronic conditions following initial emergency treatment because such care did not qualify as an emergency medical condition. The court found that, while the patients' sudden and severe head injuries initially satisfied the plain meaning of Sec. 1902(v)(3), the continuous and regimented care subsequently provided to them did not constitute emergency medical treatment pursuant to the statute.

[HERE LEGAL MOMENTUM MAY WISH TO ADD SOME OF ITS ANECDOTAL INFORMATION REGARDING WHAT QUALIFIES AS AN EMERGENCY MEDICAL CONDITION]

What Procedures Must be Followed for Qualification?

The procedures for receiving such aid vary significantly as well. Several states require or allow individuals to be preauthorized as emergency Medicaid participants prior to the receipt of services. Others refuse to accept applications without a detailed description of the emergency service required; thereby eliminating the possibility of advance authorization. It is important that applicants check their state’s rules to determine what steps must be taken in order to qualify for emergency Medicaid, as failure to follow the proper procedures and meet the stated deadlines may prevent eligibility and place the full financial burden for all services on the applicant. Note that under federal law, non-qualified aliens who are eligible for emergency Medicaid need not furnish Social Security numbers. Many states specify that no Social Security number is required. However, in *Crispin v. Croye*, 27 Cal. App. 4th 700, 34 Cal. Rptr. 2d 10 (1st Dist. 1994), a California court held that the state Department of Health could require applicants to declare whether they are US citizens or nationals, or aliens with “satisfactory immigration status.”

State ¹	State Laws Concerning Emergency Medicaid	Coverage	Application Process
Alabama	<p>“Non-qualifying aliens are eligible only for emergency services for treatment of emergency medical conditions.” 560-X-25-.05(1)(d).</p> <p>The applicant for aid “is required to furnish his Social Security Number or verification that he has made application for one.” 560-X-25-05(j).</p>	<p>Emergency services are “those medical services which are necessary to prevent the death or serious impairment of the health of a recipient and which, because of the threat to the life or health of the recipient, necessitates the use of the most accessible services available and equipped to furnish such services.” 560-X-29-.01(5).</p>	<p>The Alabama Medicaid Agency certifies eligibility for emergency services for aliens.</p> <p>http://www.Medicaid.alabama.gov/documents/apply/2A-General/2A-1_Eligibility_Summary-11-05_LS.pdf</p> <p>Childbirth expenses can be billed directly to Medicaid by the provider. Alabama Provider Manual 28.2.11.</p> <p>http://www.Medicaid.state.al.us/billing/provider_manual.01-06.aspx</p> <p>The provider manual has several provisions for dealing with</p>

¹ The information contained in this chart is based upon a review of the statutes and regulations of jurisdictions published before June 1, 2006, as well as interpretive advice obtained from representatives of various state agencies. State officials contacted for this survey may take the position that their views are unofficial and therefore non-binding

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State ¹	State Laws Concerning Emergency Medicaid	Coverage	Application Process
			applicants without social security numbers. Provider Manual, 3.1.3 (eligibility verification).
Alaska	<p>“A citizenship declaration is not required for an alien applying for treatment of an emergency medical condition (Section 5600) or for a newborn child receiving newborn coverage (Section 5330). Medical Assistance Manual 5011.</p>	<p>“Emergency Medical Condition” means “the individual has, after sudden onset, a medical condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> - placing the patient’s health in serious jeopardy; - serious impairment of bodily functions; - serious dysfunction of any bodily organ or part. <p>“Coverage is limited to the treatment of emergency medical conditions.” Manual, 5600.</p> <p>An emergency medical condition does not include care and services related to either an organ transplant procedure or routine prenatal or postpartum care. Manual, 5600A.3.</p>	<p>A caseworker issues the recipient an identification card authorizing treatment after verifying his or her eligibility. Provider Manual, 5600D.</p> <p>The eligibility requirements considered by the caseworker are: “1. Meet the financial and non-financial eligibility requirements for the category of Medicare appropriate for the individual; 2. Be a resident of Alaska; 3. Meet the definition of alien; and 4. Have received treatment for an emergency condition. Manual, 5600B.</p> <p>There is no requirement to verify citizenship/alien status or to verify the social security number. Manual, 5600C. See also Manual, 5011-8C. (“Because they will not be issued a SSN, they are not required to provide or apply for one.”)</p> <p>“A new application is required for each separate occurrence of an emergency medical condition that requires treatment. Manual, 5600D.</p>
Arizona	<p>A.R.S. 36-3903.03 provides that a noncitizen who does not claim and provide verification of qualified alien status, but is otherwise entitled to Medicaid may receive only emergency services as provided under Section 1903(v) of the Social Security Act.</p>	<p>The Arizona Health Care Cost Containment System (AHCCCS) Medical Policy Manual (Chapter 1100) provides that the term “emergency medical condition” “refers to a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including extreme pain)</p>	<p>Application is by mail, with subsequent eligibility review. A social security number is not required for emergency coverage only.</p> <p>For more information, the AHCCCS Policy and Eligibility</p>

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State ¹	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>Undocumented immigrants may apply for coverage in the same manner as other Arizona residents and must meet income and residency requirements, but will only be entitled to coverage for emergency services.</p>	<p>such that the absence of immediate medical attention could reasonably be expected to result in:</p> <ol style="list-style-type: none"> 1. Placing the patient’s health in serious jeopardy 2. Serious impairment to bodily functions, or 3. Serious dysfunction of any bodily organ or part. <p>The focus must be on the person’s “current medical condition” (which must be manifesting itself by sufficiently severe, acute symptoms) and whether that condition satisfies the above criteria when service is rendered. Although an initial injury may be stabilized, such stabilization does not necessarily mark the end of the emergency medical condition.</p>	<p>Manuals are available at:</p> <p>http://www.ahcccs.state.az.us/Publications/GuidesManuals/</p>
Arkansas	<p>A non-qualified alien under the provisions of PRWORA who resides in Arkansas is eligible only for emergency medical services, and only if all other Medicaid eligibility requirements such as income and resource limits are met.</p> <p>References:</p> <p>http://www.arkansas.gov/dhs/dco/Medicaid%20Eligibility.PDF</p> <p>http://www.arkansas.gov/dhs/webpolicy/Medical%20Services/MS%206700.htm</p>	<p>To be eligible for emergency Medicaid, the applicant must have, or must have had within the last 3 months, an emergency medical condition.</p> <p>Emergency medical condition is defined as a medical condition, including labor and delivery, manifesting itself by acute symptoms of such severity, such that the absence of immediate medical attention could reasonably be expected to result in at least one of the following:</p> <ul style="list-style-type: none"> • Placing the patient's health in serious jeopardy • Serious impairment of bodily function • Serious dysfunction of 	<p>Before eligibility can be determined, the existence of an emergency medical condition must be verified by a physician's statement that the alien met the statutory conditions. Having a physician's statement that the individual will die without medical treatment does not, in and of itself, constitute an emergency. The eligibility determination must include a determination of whether the condition is acute or chronic. Verification that medical expenses were incurred for treatment of the condition must also be presented</p> <p>Payment for emergency services is limited to the day treatment was initiated and the following period of time in which the necessity for emergency services existed. (E.g. the date of</p>

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State ¹	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>http://www.Medicaid.state.ar.us/</p> <p>For more information on the Arkansas Department of Human Services, go to:</p> <p>http://www.state.ar.us/dhs/homepage.html</p>	<p>any bodily part or organ</p> <p>Emergency services are defined as services provided in a hospital, clinic, office or other facility equipped to furnish the required care after the onset of an emergency medical condition.</p> <p>To qualify as an emergency, the medical condition must be acute. It must have a sudden onset, a sharp rise and last a short time. If the individual's condition is chronic (ongoing), such as cancer, AIDS, end-stage renal disease, etc., it is not considered acute and does not meet the definition of an emergency. The worsening of a chronic condition is not considered acute, and does not qualify for emergency services. Federal policy specifically disqualifies care and services related to an organ transplant procedure.</p> <p>Labor and delivery services are covered, including normal deliveries.</p>	<p>admission through the date of discharge from the hospital.) The date the alien first sought treatment is considered the first day of the emergency, regardless of the duration of the condition.</p> <p>For more Information on eligibility and enrollment, call 800-428-8988 or contact the regional DHHS (Department of Health and Human Services) office. A listing may be found at:</p> <p>http://www.arkansas.gov/dhhs/NewDHS/CountyOffice/DHSCountyOffices.htm</p>
California	<p>In California, non-qualified aliens may obtain restricted Medi-Cal benefits if they meet California income and residency requirements. Coverage includes medical care for an emergency medical condition and for long-term care.</p> <p>The income and residency requirements for emergency care are the same as those for general Medi-Cal eligibility.</p> <p>The relevant California law will provide for inpatient and outpatient emergency care and long-term care for</p>	<p>An emergency medical condition is one with acute, severe symptoms, such as severe pain. It is considered an emergency medical condition if failure to get immediate medical attention would:</p> <ul style="list-style-type: none"> • endanger the patient's health; • seriously impair bodily functions; or • cause serious dysfunction to a body organ or body part. <p>Patients that are eligible for emergency Medi-Cal coverage can receive inpatient and outpatient care by a physician or</p>	<p>To receive these Medi-Cal benefits, a patient must be a resident of California. No specific period of residency is required, but the patient must have the intent to stay in California indefinitely. County welfare departments determine residency. Patients must also meet certain income requirements. See, Cal. Welf. & Inst. Code §§ 14007 and 14007.1.</p> <p>Patients can receive benefits (i.e. payment to the service provider) after the emergency treatment has been provided. Alternatively, California has a pre-approval process. Thus, persons who would qualify for</p>

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	<p>eligible patients. See Cal. Welf. & Inst. Code §§ 14007.5(d) and 14007.65(b).</p> <p>Cancer Screening and Treatment</p> <p>California provides state funding for low-income, uninsured or underinsured women who are residents of California to receive free breast cancer screening if at least 40 years old and free cervical cancer screening if at least 25 years old. Funding is also provided for breast cancer screening for men of any age. If cancer is detected, cancer treatment is available through the Breast and Cervical Cancer Treatment Program. See Cal. Health & Safety Code §§ 104150, <i>et seq.</i></p>	<p>other appropriate provider necessary to treat the emergency medical condition. Inpatient/outpatient care can include pharmacy, radiology, laboratory, dialysis and dialysis-related services. See, the Medi-Cal Medical Services Provider Manual, Part 1.</p> <p>Coverage does not include continuation of services or follow-up care after the emergency is resolved.</p> <p>Medi-Cal also covers long-term care.</p> <p>Cancer Screening and Treatment</p> <p>The Breast and Cervical Cancer Treatment Program covers breast and/or cervical cancer treatment and related services for up to 18 months for breast cancer treatment and 24 months for cervical cancer treatment.</p>	<p>emergency medical treatment can apply in advance and obtain a card to indicate they are eligible for restricted Medi-Cal coverage, which can be used for emergency treatment.</p> <p>All acute level inpatient days (except an emergency admission for labor and delivery) continue to require authorization via a <i>Treatment Authorization Request</i> (“TAR”) from the appropriate Medi-Cal field office. Admissions for labor and delivery require authorization after the first two days (for a vaginal delivery) or the first three days (for a cesarean section delivery) of the patient’s stay.</p> <p>Applicants must file a simplified application with their county. No social security number is required for emergency medical coverage under Medi-Cal.</p> <p>The application for a card to receive restricted Medi-Cal benefits may be submitted at any time. See, Cal. Welf. & Inst. Code §14011.2(c).</p> <p>Cancer Screening and Treatment</p> <p>To obtain free cancer screening, a woman (or man for breast cancer) must earn less than 200% of the federal poverty level, be over 40 for breast cancer screening or over 25 for cervical cancer screening and be either uninsured or underinsured. There is no age limit for male screening for breast cancer. A Recipient Eligibility Form must be completed at the doctor’s</p>

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State ¹	State Laws Concerning Emergency Medicaid	Coverage	Application Process
			office which is signed by both the patient and the provider and maintained in the patient's medical record. The doctor submits the form electronically.
Colorado	Health Care Policy and Financing Staff Manual Volume 8, § 8.100.53 states that non-qualified immigrants who meet all other requirements for any category of Medicaid may receive emergency only benefits.	<p>Coverage includes those services that treat conditions (including emergency labor and delivery) manifesting themselves by acute symptoms of sufficient severity (including severe pain) such that the absence of medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> • placing the patient's health in serious jeopardy; • serious impairment to bodily function; or • serious dysfunction of any bodily organ or part. 	<p><u>Emergency medical condition other than labor and delivery:</u> A non-citizen who is otherwise eligible for a category of Medicaid must submit an application for emergency medical services at the time of the emergency or thereafter. According to the rules at 8.100.53, a physician shall make a written "non-citizen emergency Medicaid statement" certifying the presence of an emergency medical condition when the services are provided. This documentation must be submitted with the application. If it is apparent to the technician that the service was provided for a condition that is not an emergency medical condition as defined in the rule, the application must be denied. As with all Medicaid applications, the date of eligibility may be backdated up to three months prior to the date of the application if the emergency medical services were provided during that period of time and they met other eligibility criteria. Emergency medical assistance must be terminated after the services were provided. Labor and delivery are considered emergency medical conditions. For labor and delivery, a different application process is required as stated below.</p> <p><u>Labor and delivery:</u> When a county technician receives an application from a non-citizen pregnant woman, the technician will need to first look at her due date. If her due date is</p>

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			<p>approximately within two months from the date of your review of the application, you may process her application for emergency Medicaid prior to her due date. If the due date is beyond approximately two months, you must deny her with the new denial reason code that there is no emergency. The new reason code does mention that if pregnant, she can reapply two months before her due date.</p> <p>For additional information, please contact: Colorado Department of Health Care Policy and Financing (303) 866-3513 1(800) 221-3943</p>
Connecticut	<p>An individual determined ineligible for Medicaid solely because s/he does not meet the citizenship/alienage requirement is potentially eligible for emergency medical assistance under Connecticut's emergency Medicaid program.</p>	<p>Emergency Medicaid coverage is limited to treatment required after the sudden onset of a medical emergency. The acute symptoms of the condition must be sufficiently severe that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.</p> <p>Emergency Medicaid does NOT pay for treatment of chronic conditions, even if the condition has the potential to be life threatening. For example, a person with a heart condition that may lead to a heart attack unless it is treated cannot get Emergency Medicaid UNTIL there is a heart attack or sudden onset of a medical emergency.</p> <p>Emergency Medicaid covers labor</p>	<p>Emergency Medicaid can never be pre-approved. Instead the medical bill for the treatment of the emergency is submitted for review by a Medical Review team at the CT Dept. of Social Services.</p> <p>Immigration status is NOT a factor for Emergency Medicaid eligibility. Any person, regardless of legal immigrant status can be eligible for Emergency Medicaid if he/she meets income and asset limits.</p>

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		<p>and delivery for pregnant women who do not have health insurance and who meet Medicaid income and asset limits. It does not cover prenatal care. However, if the pregnant woman has complications to her pregnancy or if the unborn baby is at risk, then Emergency Medicaid will cover the cost of care.</p> <p>Likewise, Emergency Medicaid will cover the cost of an abortion if the mother's life is in danger, but not if the abortion is an elected procedure.</p>	
Delaware	<p>Undocumented aliens are not eligible for full Medicaid coverage, but remain eligible for emergency services and labor and delivery only.</p> <p>Undocumented aliens are either aliens that were never legally admitted to the United States for any period of time, or were admitted for a limited period of time and did not leave the United States when the period of time expired.</p> <p>To be eligible for Emergency Medicaid, the individual must meet all eligibility requirements for a specific Medicaid eligibility group. The individual does NOT have to meet the requirement concerning a declaration of satisfactory immigration status and verification of that status</p> <p>Delaware's Administrative</p>	<p>An emergency is defined as:</p> <ul style="list-style-type: none"> - a sudden serious medical situation that is life threatening; <p>OR</p> <ul style="list-style-type: none"> - a severe acute illness or accidental injury that demands immediate medical attention or surgical attention; AND - without the treatment a person's life could be threatened or the person could suffer serious long lasting disability. <p>Emergency ambulance services to transport these individuals to and from the services defined above are also covered.</p> <p>The following services are not covered:</p> <ul style="list-style-type: none"> - any service delivered in a setting other than an acute care hospital emergency room or an acute care inpatient hospital - any service (such as pharmacy, transportation, office visit, lab or x-ray, home health) that precedes or is subsequent to a covered emergency service. The only exception is that ambulance transportation that is directly 	<p>For Additional Information contact:</p> <p>Delaware Medical Assistance Program</p> <p>Customer Support 1-800-372-2022</p> <p>The Division of Social Services The Lewis Building 1-800-372-2022</p>

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State ¹	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>Code</p> <p>Title 16; 14360 Treatment of a Medical Emergency</p>	<p>related to the emergency is covered under the Emergency Medicaid</p> <ul style="list-style-type: none"> - organ transplants - long term care or rehabilitation - routine prenatal and post partum care 	
<p>District of Columbia</p>	<p>Individuals who would be eligible for Medicaid but for their immigrant status are eligible for Emergency Medicaid services. To be covered, one's medical condition must be severe and acute.</p> <p>DC Healthy Families Expansion Coverage</p> <p>In addition to Emergency Medicaid services, non-qualified immigrant <u>children</u> may qualify for locally-funded medical assistance through DC Healthy Families Expansion Coverage, a funding-capped program that can serve approximately 800 children. Children eligible for "Expansion Coverage" must be ineligible for standard Medicaid because of their immigration status. They must meet all other non-financial requirements in the Medicaid program, except provision of a Social Security number. Their income must be below 200% of the Federal Poverty Level.</p> <p>A waiting list is put in place when requests for the program exceed the program's capacity.</p>	<p>Coverage includes those services that treat conditions (including emergency labor and delivery) manifesting themselves by acute symptoms of sufficient severity (including severe pain) such that the absence of medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> • placing the patient's health in serious jeopardy; • serious impairment to bodily function; or • serious dysfunction of any bodily organ or part. <p>DC Healthy Families Expansion Coverage</p> <p>DC Healthy Families provides to immigrant <u>children</u>:</p> <ul style="list-style-type: none"> • Doctor visits • Immunizations (shots) • School physicals • Emergency care • Hospital Stays • Prescription medicines • Prenatal care • Labor and delivery • Vision care and glasses • Dental care • Family planning • Transportation to doctor appointments • Home health care • Durable medical equipment • Health education 	<p>To qualify for Emergency Medicaid coverage, a person must meet all eligibility requirements for DC's Medicaid program, except the citizen/alien status and Social Security number requirements.</p> <p>To be eligible for program benefits, a person must be a resident of the District of Columbia. However, no durational residency requirement is imposed.</p> <p>Individuals must fill out the Medical Assistance Combined Application for DC. The application asks for immigrant status. Non-qualified immigrants should mark "OTHER" in the status box. The application states explicitly that this information is confidential and no further questions will be asked about the applicant's immigration status.</p> <p>The form may be found at: http://dhs.dc.gov/dhs/lib/dhs/pdfs/ima/ima_combined_app_(eng)_v24_091305.pdf</p> <p>The form should be brought to the applicant's area Service Center. To find the nearest Service Center, call (202) 724-</p>

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	<p>DC HealthCare Alliance</p> <p>The DC HealthCare Alliance (HCA) program is designed to provide medical assistance to needy DC residents who are not eligible for Medicaid, including both qualified and non-qualified aliens. Individuals must be residents of DC, have no health insurance and have a family income equal to or below 200% of the Federal Poverty Level.</p> <p>HCA provides comprehensive health services, including preventative, primary, acute and chronic care services such as clinic services, emergency care, immunizations, in-patient and out-patient hospital care, physician services and prescription drugs. Services are free.</p> <p><i>See also</i> D.C. Code §§ 4-201.01-4-221.01, particularly §4-20.24; 22 D.C. Municipal Regulations Chapter 33; Department of Human Services IMA Policy Manual; and DC HealthCare Alliance Manual. Additional information may be searched for at http://fast.dc.gov/match.aspx.</p>	<p>services</p> <ul style="list-style-type: none"> • Mental health services • Drug and alcohol treatment • Other health care needs <p>DC HealthCare Alliance</p> <p>HCA provides:</p> <ul style="list-style-type: none"> • Preventive Care (checkups, diet and nutrition) • Health screenings (tests) • Prescription drugs • Dental services (cleanings or fillings) • Family planning services (birth control) • Urgent and emergency care (emergency room) • Immunizations (shots) • Prenatal care (pregnancy) • Well child care (checkups for children) • Wellness programs (eating well and staying healthy) • Hospital care (medical, surgical, and GYN) 	<p>5506. The form may also be mailed to 645 H St., NE, Washington, DC 20002. Help can be found at (202) 724-5506. Free interpreters are available.</p> <p>If approved, the applicant may also be reimbursed for some emergency medical bills from the past three months.</p> <p>DC Healthy Families Expansion Coverage</p> <p>A child eligible for “Expansion Coverage” must enroll in managed care and be eligible for standard Medicaid services. However, the child cannot receive Medicaid services on a fee-for-service basis prior to enrolling in managed care. A child eligible for “Expansion Coverage” is not eligible for retroactive eligibility and cannot qualify for benefits by spending down income with medical bills.</p> <p>Individuals must fill out a DC Healthy Families application. Applications may be obtained by calling 1 (888) 557-1116, picking one up at Giant, Safeway, CVS, Rite Aid, or a library, or at: http://app.doh.dc.gov/services/healthy_families/healthy_families_02_26_04.shtm.</p> <p>DC HealthCare Alliance</p> <p>To be eligible for program benefits, a person must be a presently living in DC voluntarily and not for a temporary purpose and have no</p>

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			<p>current intention of moving out of DC. The individual does not need to be a U.S. citizen or a qualified alien. Application for and verification of Social Security numbers is not required. The individual must have no health insurance and have a family income equal to or below 200% of the Federal Poverty Level.</p> <p>The following persons are <u>not</u> eligible for HCA:</p> <ul style="list-style-type: none"> • persons eligible for Medicaid, • persons receiving Medicare Part A or Part B benefits, • fugitive felons, • probation or parole violators, • persons penalized for misrepresenting their residence to receive assistance in two or more states, • persons who refuse to provide information needed to determine their eligibility <p>Individuals must fill out an application. If approved, the applicant will receive a membership card. Once enrolled, the individual must fill out a form every 12 months to prove continued eligibility. Forms may be filled out at the following locations:</p> <ul style="list-style-type: none"> • DC General, 1900 Massachusetts Avenue SE • Greater Southeast Hospital, 1310 Southern Avenue SE

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			<ul style="list-style-type: none"> • Congress Heights Clinic, 3720 M. L. King, Jr. Avenue SE • Anacostia Clinic, 1328 W Street SE • Hunt Place Clinic, 4130 Hunt Place NE • Woodridge Clinic, 2146 24th Place NE • Walker-Jones Clinic 1100 First Street NW • Southwest Community Center, 850 Delaware Avenue SW <p><i>See also</i> Department of Human Services IMA Policy Manual, DC HealthCare Alliance Manual.</p>
Florida	<p>Under F. S. A. § 409.904, Florida authorizes payment of medical assistance and related services for low-income individuals who meet all other requirements for Medicaid except citizenship. Eligibility begins on the first day of the emergency and is limited in duration to the period of the emergency. Florida Administrative Code, § 65A-1.702(2)(c).</p>	<p>Florida Medicaid regulations (F. S. A. § 409.901) define an "emergency medical condition" to be:</p> <p>(a) A medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain or other acute symptoms, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <ol style="list-style-type: none"> 1. Serious jeopardy to the health of a patient, including a pregnant woman or a fetus. 2. Serious impairment to bodily functions. 3. Serious dysfunction of any bodily organ or part. <p>(b) With respect to a pregnant</p>	<p>Service providers will provide the required documentation after services are rendered. All provider claims must be accompanied by documentation of the emergency nature of the service, except for labor and delivery, which is payable without additional documentation, provided that an emergency indicator is entered on a claim form.</p> <p>Non-qualified immigrants who receive emergency services but are subsequently billed may obtain Medicaid authorization after treatment by submitting proof from a medical professional stating that the treatment was due to an emergency condition.</p>

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		<p>woman:</p> <ol style="list-style-type: none"> 1. That there is inadequate time to effect safe transfer to another hospital prior to delivery. 2. That a transfer may pose a threat to the health and safety of the patient or fetus. 3. That there is evidence of the onset and persistence of uterine contractions or rupture of the membranes. <p>Florida’s Medicaid Provider General Handbook includes a section under “Emergency Medicaid for Aliens” which explains that the program “reimburses for emergency services provided to aliens who meet all Medicaid eligibility requirements except for citizenship or alien status.” The Handbook defines “emergency” using the same text as the first paragraph of Florida’s Medicaid regulations (F. S. A. § 409.901(a), without including § 409.901(b)).</p> <p>The Handbook further provides that “[e]ligibility can be authorized only for the duration of the emergency. Medicaid will not pay for continuous or episodic services after the emergency has been alleviated.”</p>	
Georgia	An individual determined ineligible for Medicaid solely because s/he does not meet the citizenship/alienage requirement is potentially eligible for emergency medical assistance under PRWORA.	Coverage for emergency Medicaid is limited to “emergency medical conditions” as defined in federal law 1903(v) of the Social Security Act and 42 CFR 440.255.	To receive emergency Medicaid a physician must determine the need for an emergency medical service and verify that the service has been rendered. The physician must verify the emergency medical services by completing DMA Form 526. “Physician’s Statement for

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	<p>References:</p> <p>http://www.odis.dhr.state.ga.us/3000_fam/3480_medicaid/MANUALS/2215.doc</p> <p>http://www.odis.dhr.state.ga.us/3000_fam/3480_medicaid/MANUALS/2054.doc</p>		<p>Emergency Medical Assistance,” or another written statement.</p>
<p>Guam</p>	<p>Guam does not have any state regulations relating to the provision of emergency Medicaid.</p> <p>Guam Regulations provide that no funds appropriated from the General Fund of the government of Guam, or any fund where the revenues deposited therein are of local origin, may be used to provide public assistance to any person who is not a U.S. citizen or a permanent resident alien of the United States and registered as such with the United States Immigration and Naturalization Service. For the purposes of this section only, the term ‘public assistance’ is defined as assistance provided through one or more of the following programs administered by the Department of Public Health and Social Services:</p> <p>(a) General Assistance</p> <p>(b) Aid to Families with Dependent Children</p> <p>(c) Medically Indigent Program</p>		

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	<p>(d) Medicaid</p> <p>Funds appropriated from the General Fund, or from other funds collected locally, shall be used in support of the provision of services to individuals who are not U.S. Citizens or permanent resident aliens of the United States, but are citizens of a state in Free Association with the United States, only upon the event that the Governor of Guam enters into a valid contract with either an instrumentality of the government of the United States or the governments of the Freely Associated States (being the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands). The terms of said contract must, at a minimum, establish the immediate reimbursement to Guam of all costs associated with the financial impact of the Compacts of Free Association of the various Freely Associated States listed herein, such impact to be defined and quantified by the government of Guam.</p> <p>See 10 Guam Admin. R. & Regs. § 2201.1 (2006).</p>		
Hawaii	<p>Hawaii’s Med-quest program makes special provision for emergency medical assistance to “illegal aliens” if all other categorical and financial eligibility requirements are met. Hi. A.D.C. § 17-1723-1, 3.</p> <p>The purpose of this program</p>	<p>Coverage is limited to the care necessary to address the emergency condition as defined in the previous column.</p> <p>Such individuals may receive emergency services if there is a “medical condition, including emergency labor and delivery, manifesting itself in acute symptoms of sufficient severity</p>	<p>Applicants for emergency care may receive a temporary Hawaii Med-Quest identification card. Hi. A.D.C. § 17-1711-17.</p> <p>Information may be obtained through the Med-Quest Division of the Department of Human Services. The most convenient way to obtain this information is at</p>

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	<p>is to provide emergency coverage to “aliens who do not qualify for non-emergency related medical assistance[.]” Hi. A.D.C. § 17-1723-1, 3.</p> <p>The only criteria waived under the provisions of this section is that an individual be either a U.S. citizen or legal permanent resident alien.</p>	<p>such that the absence of immediate medical attention could be expected to result in</p> <p>(1) Placing the patient's health in serious jeopardy.</p> <p>(2) Serious impairment to bodily functions.</p> <p>(3) Serious dysfunction to any bodily organ or part.”</p> <p>Hi. A.D.C. § 17-1723-5(b).</p> <p>Organ transplants are specifically excluded. Otherwise, medical care is provided through the existing fee-for-service program. Hi. A.D.C. § 17-1723-6.</p>	<p>http://www.hawaii.gov/dhs/health/medquest or http://www.medquest.us/.</p> <p>No social security number is required to receive emergency services. Hi. A.D.C. §17-1723-5(b)(4).</p>
Idaho	<p>Individuals who are not U.S. citizens or qualified non-citizens are eligible for emergency medical services if they meet all other conditions of eligibility for a Title XIX or XXI Medicaid program (Idaho Administrative Code 16.03.01.240 (Eligibility for Health Care Assistance for Families and Children – Individuals Who Do Not Meet the Citizenship or Qualified Non-Citizen Requirements)) and are residents of Idaho. Idaho Administrative Code 16.03.01.210 (Eligibility for Health Care Assistance for Families and Children – Residency)</p> <p>The usual requirement that a person have a social security number in order to receive</p>	<p>The Idaho Administrative Code does not define either “emergency medical assistance” or “emergency medical services.” Idaho Administrative Code 16.03.09.010.20 (Medicaid Basic Plan Benefits – Definitions – Emergency Medical Condition) defines “emergency medical condition” as “a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:</p> <ul style="list-style-type: none"> - Placing the health of the individual, or, with respect to a pregnant woman, the health of the woman or unborn child, in serious jeopardy; - Serious impairment to bodily functions; or - Serious dysfunction of 	<p>The State of Idaho does not publish details relating to the eligibility determinations or applying for emergency medical assistance. Idaho Administrative Code 16.03.01.110 provides that a person seeking coverage must complete and sign an application for healthcare assistance and certify that the information provided on the form is truthful. In addition, a Health Questionnaire must be submitted together with the application. The application and Health Questionnaire are available on the website of the Idaho Department of Health and Welfare at: http://www.healthandwelfare.idaho.gov. The application contains some general instructions and statements. An applicant should contact the Idaho Department of Health and Welfare prior to concluding that coverage is unavailable based on the general information in the application. An applicant should</p>

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	<p>benefits is waived in the case of an emergency medical condition suffered by a non-qualified alien due to the inability of a non-qualified alien to be issued a social security number. Idaho Administrative Code 16.03.01.250. (Eligibility for Health Care Assistance for Families and Children – Emergency Medical Condition)</p>	<p>any bodily organ or part.</p> <p>The Department of Health and Welfare determines if a condition meets the criteria of an “emergency condition.” (Idaho Administrative Code 16.03.01.205)</p> <p>An emergency medical condition is deemed to include labor and delivery, but not pre-natal care or post-partum care. (Idaho Administrative Code 16.03.01.250 (Eligibility for Health Care Assistance for Families and Children – Emergency Medical Condition) and Idaho Health and Welfare Department Manual – Health Coverage (Medicaid) for Families and Children)</p> <p>The eligibility of non-qualified non-citizens to receive emergency medical assistance is limited to the date(s) of the emergency condition. Idaho Administrative Code 16.03.01.240.01 (Individuals Who Do Not Meet the Citizenship or Qualified Non-Citizen Requirements – Limited Eligibility and Emergency Medical Condition)</p>	<p>call the Department to find out where to submit the application and questionnaire at 1-800-926-2588.</p> <p>When a person has (or believes he or she has) an emergency medical condition and goes to the hospital or other licensed health care facility, the hospital or health care facility should help the person to complete the application and other required paperwork and should submit it to the Idaho Department of Health and Welfare. (Telephone call with the Idaho Department of Health and Welfare, August 9, 2006) A determination as to coverage will be made by the Bureau of Medicaid Policy and Reimbursement.</p>
Illinois	<p>Illinois provides for emergency medical care for any individual, regardless of immigration status, so long as the income standards and eligibility standards are met. 89 Ill. A.C. § 120.310(b).</p> <p>The Illinois Department of Human Service's 'Cash, Food Stamp, and Medical Manual,' section PM I-03-04, titled Emergency</p>	<p>Emergency services may be provided if they are “required after the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:</p> <p>A. placing the non-citizen’s health in serious jeopardy;</p> <p>B. serious impairments to bodily functions; or</p>	<p>Under the Department of Human Services Medical Assistance Programs, the Department pays participating providers for treatment for emergency medical conditions.</p> <p>Coverage for an emergency medical condition can only be authorized after the services are provided. Eligibility cannot be authorized for a future period.</p> <p>The person applying for</p>

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	<p>Medical for Non-citizens⁷ provides that non-citizens with an emergency medical need may qualify for Assist or AABD Medical. They do not have to be lawfully admitted for permanent residency or reside in the U.S. with the knowledge and approval of the Bureau of Citizenship and Immigration Services (BCIS). They also do not need a Social Security Number. They must meet all income, asset, and other rules of the AABD Medical or Assist programs.</p> <p>Section PM 06-05-00, titled Emergency Medical for Ineligible Non-citizens provides that individuals who are not eligible for medical benefits because they do not meet the citizenship requirement, may qualify for medical for emergencies. They must meet all the program requirements for Parent Assist, KidCare Assist, KidCare Moms and Babies, or AABD Medical, except for a Social Security Number and verification of immigration status. People who meet these requirements are called ineligible non-citizens and, unless pregnant, are only eligible for short-term medical coverage for emergency care. Ineligible non-citizens are ineligible for cash and regular medical benefits, including organ transplants.</p>	<p>C. series dysfunction of any organ or part.</p> <p>89 Ill. A.C. § 120.310(b)(3).</p> <p>Illinois generally provides coverage for medical services related to the emergency medical condition. <u>See</u> 89 Ill. A.C. § 140.3-7. However, organ transplants are not covered. 89 Ill. A.C. § 140.2(a)(7).</p> <p>The Illinois Department of Human Service's 'Cash, Food Stamp, and Medical Manual,' section PM 06-05-00 provides that medical coverage is given only to the person with the emergency medical condition.</p> <p>Chronic conditions and terminal illness do not meet the requirement for emergency medical coverage. Need for long term care services does not qualify the person for emergency medical coverage. The person must also have an emergency medical condition as defined above.</p> <p>Coverage for an emergency medical condition is very limited. Only medical care that is strictly of an emergency nature, such as treatment in an emergency room, or treatment in a critical care unit or intensive care unit, meets this requirement.</p> <p>Eligibility for payment of services lasts only until the emergency condition is stabilized. The period of time for which services are authorized cannot be more than</p>	<p>emergency medical benefits must need, or have received, emergency medical services in the month of application or during the 3 months before the month of application. An ineligible noncitizen who comes to Illinois solely to receive medical care does not qualify. Medical coverage is given only to the person with the emergency medical condition; other family members are not eligible.</p> <p>Non-citizens who are lawfully admitted for permanent residency may receive emergency medical during the 5-year period that they are disqualified from receiving ongoing benefits. The following 2 groups of children age 18 and younger are eligible for KidCare Assist, KidCare Share, and KidCare Premium: children lawfully admitted for permanent residence on or after 08/22/96; and children who are permanently residing under color of law (PRUCOL).</p> <p>A pregnant ineligible noncitizen who does not meet the Parent Assist or KidCare Assist eligibility requirements, may still be eligible for KidCare Moms and Babies (see PM 06-09-00).</p>

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		<p>30 consecutive days.</p> <p>In those rare situations where the emergency medical condition extends beyond 30 consecutive days, contact the Illinois Department of Public Aid, Bureau of Medical Eligibility Policy, at 217-557-7158 for guidance.</p> <p>For more information see: http://www.dhs.state.il.us/ts/cfsmm/onenet.aspx?item=19608</p>	
Indiana	<p>Indiana makes provision for emergency care to “nonresidents” if the “onset” of the medical condition occurred in Indiana and the individual meets the other standards of the ordinarily applicable assistance plan. This coverage is provided through package E of the Hoosier Healthwise Plan.</p> <p>Under the state’s Hospital Care for the Indigent Program (Ind. Code §§ 12-16-7.5-1.2, et seq.) which applies to payments for health service other than Medicaid, the state of Indiana “is not responsible under the hospital care for the indigent program for the payment of any part of the costs of providing care in a hospital to an individual who is not either . . . a citizen of the United States [or] a lawfully admitted alien.</p>	<p>An emergency condition is defined as a “medical condition that was manifested by symptoms of sufficient severity that the absence of immediate medical attention would probably result in any of the following:</p> <ul style="list-style-type: none"> (1) Placing the individual’s life in jeopardy. (2) Serious impairment to bodily functions. (3) Serious dysfunction of any bodily organ or part. <p>Ind. Code §§ 12-16-3.5-1, 5.2.</p> <p>The Indiana Health Coverage Programs Provider Manual explains that claim forms must specifically designate the services as rendered in an emergency situation.</p> <p>“Labor and delivery services are . . . considered emergency medical conditions.” IHCPPM chap. 2 § 3.</p>	<p>The Hoosier Health Care member identification card and enrollment information may be obtained through regional enrollment centers or from the Hoosier Healthwise website. The instructions at this site are quite clear.</p> <p>The most efficient way to obtain information is the Hoosier Healthwise help line at 1-800-889-9949.</p>

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Iowa	<p>Under Iowa Administrative Code/Human Resources Department §§ 441-75.11(2), (4), non-qualified immigrants who meet general Medicaid income and residency requirements are eligible for care and services that are necessary for the treatment of an emergency medical condition. Non-qualified immigrants are those who are not lawfully residing in the United States, as well as those who entered the United States after 8/22/1996 and have not overcome PRWORA’s five year bar.</p> <p>As defined in § 441-75.11(1) and expanded in the Iowa Medicaid Enterprise manual, “care and services necessary for the treatment of an emergency medical condition” means “services provided in a hospital, clinic, office or other facility that is equipped to furnish the required care after the sudden onset of an emergency medical condition.”</p> <p>To receive Medicaid benefits, an applicant must be a resident of Iowa and meet certain income requirements. County welfare departments determine residency. No period of residency is required as a condition of eligibility, however the applicant (an adult over 21) must be living in Iowa with the intent to remain permanently or indefinitely</p>	<p>As defined in § 441-75.11(1) the term "emergency medical condition" means “a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <ul style="list-style-type: none"> (1) Placing the patient's health in serious jeopardy. (2) Serious impairment to bodily functions. (3) Serious dysfunction to any bodily organ or part.” <p>Payment for treatment of an emergency medical condition is limited to: (1) inpatient or outpatient hospital services, (2) physicians services, and (3) services of an independent diagnostic laboratory or x-ray facility. Medicaid only pays for the 3 days of care beginning with the date the patient presented for treatment of the emergency condition, regardless of the length of time the emergency condition exists.</p>	<p>If a provider believes that an individual may be eligible for Medicaid emergency benefits, the provider refers him or her to the local Department of Human Services office. The local office will verify the emergency through the use of Form 470-4299, <i>Verification of Emergency Health Care Services</i>, which is submitted by the applicant, but also includes a section to be completed and signed by the provider wherein the emergency care is described.</p> <p>Once the Department determines that the person is eligible for emergency services, it issues a special <i>Medical Assistance Eligibility Card (Limited Benefits)</i>, Form 470-2188, to the person. The person has to present this card to the providers of emergency care, and the providers can then submit a claim for Medicaid payment. This card, which is violet, is issued monthly to each eligible member.</p>

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	<p>in Iowa, or living in Iowa with a job commitment or seeking employment (whether or not currently employed).</p>		
<p>Kansas</p>	<p>The Kansas Department of Social and Rehabilitation Services (SRS) provides emergency medical assistance to unqualified non-citizens and undocumented aliens under the “SOBRA” program established under the Kansas Economic and Employment Support Manual (KEESM) §2691.</p> <p>The Policy Memo “EES Policy No. 00-12-03,” states that SOBRA entitles otherwise eligible individuals who are non-qualifying legal immigrants, as well as undocumented aliens, to emergency medical services that are necessary for the treatment of the emergency medical conditions in accordance with federal requirements under PRWORA.</p>	<p>The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <ol style="list-style-type: none"> (1) Placing the patient's health in serious jeopardy. (2) Serious impairment to bodily functions. (3) Serious dysfunction to any bodily organ or part. <p>Emergency Medicaid services are limited to emergency services and subsequent inpatient hospital services related to the emergency until the patient is stabilized, including any related physician services. No other services are to be covered. (KEESM §2691)</p> <p>The coverage is for approved emergency medical conditions, determined based on analysis of the individual’s medical condition as well as the location in which treatment of the condition was provided. Only the SOBRA program manager in the Health Care Policy Division, Medical/Medicaid (HCP) or designated fiscal agent staff may determine whether a condition constitutes an emergency.</p>	<p>To receive SOBRA benefits, an applicant must meet the general eligibility requirements of KEESM §2100 except for the SSN requirements of KEESM §2130 and the alienage provisions of KEESM §2140.</p> <p>A medical form (Form MS-2156) is used to capture the information regarding the condition. The completed MS-2156 form and required supporting documentation obtained from the medical provider shall be set to the fiscal agent for decision. The MS-2156 form is required for each emergent episode, except for labor and delivery.</p> <p>Episodes regarding women who have recently delivered may be analyzed for eligibility without the MS-2145 form. However, any payment for services other than routine labor and delivery will require an MS-2156 form to establish emergency, including the requirement of a live or still birth verification.</p> <p>A medical card is issued locally covering the month(s) in which the emergency service was rendered and specifically designated “for emergency services only.”</p> <p>Although no residency requirement appears in KEESM §2100, Kansas Family Medical</p>

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			<p>Assistance Manual (KFMAM) §2051 requires that a client for medical programs be a resident of the state. A resident is defined as one who is living in the state voluntarily and not for a temporary purpose. However, residence can be established for persons who are living in the state with a job commitment or who are seeking employment in the state, including temporary stays such as migrant works, and for family members living with them.</p> <p>See following link for more information:</p> <p>http://www.da.ks.gov/hpf/medicalpolicy/MedicalAssistance/BasicEligibilityRequirementHealthBenefitPrograms.htm</p>
Kentucky	<p>According to the Department for Community Based Services, Division of Family Support Operation Manual, Volume 1, MS 2075, any alien who does not meet the qualified alien requirements for ongoing medical assistance, may be eligible for time-limited medical assistance due to an “emergency medical condition.” (See also 907 Ky. Admin. Regs. 1:011 §5(12)(b))</p> <p>To receive the emergency medical assistance benefits, the applicant must be a resident of Kentucky and meet certain income requirements. Aliens currently in this country on a temporary visa, including students and tourists, may also be eligible for time-</p>	<p>The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <ol style="list-style-type: none"> (1) Placing the patient's health in serious jeopardy. (2) Serious impairment to bodily functions. (3) Serious dysfunction to any bodily organ or part. <p>Eligible individuals are entitled to medical care and services, including limited follow up, necessary for the treatment of the emergency medical condition as certified by the attending physician or other appropriate</p>	<p>To apply, a social security number may be provided but is not required. If the applicant does not have a social security number, a pseudo-number will be assigned by the Kentucky Automated Management Eligibility System (KAMES).</p> <p>The emergency medical condition must be verified by a written statement from the medical provider containing information about the details of the condition and whether the medical provider considers the condition to be an emergency medical condition. (Operation Manual, Vol. 1, MS 2075)</p> <p>The emergency medical condition must have occurred in the month of the application or within the 3 months prior to the application. (907 Ky. Admin.</p>

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	<p>limited emergency Medicaid coverage, if technical and financial eligibility requirements are met. (Operation Manual, Vol. 1, MS 2075)</p>	<p>provider. (907 Ky. Admin. Regs. 1:011 §5(12)(b))</p> <p>Normal delivery of a baby is considered an emergency and is covered. Coverage period includes the month of delivery and the following month; however, the individual is not eligible for postpartum coverage. (Operation Manual, Vol. 1, MS 2075)</p>	<p>Regs. 1:011 §5(12)(b)(3))</p> <p>Time-limited emergency Medicaid coverage includes the first day of the month in which the emergency medical condition begins and continues through the following month. (907 Ky. Admin. Regs. 1:011 §5(12)(b)(4))</p> <p>The Division of Family Support Operation Manual is available at:</p> <p>http://manuals.chfs.ky.gov/dcbs_manuals/DFS/index_dfs.asp</p>
Louisiana	<p>Undocumented immigrants are eligible for “emergency services” if they, apart from citizenship and lack of Social Security Number, would qualify for Medicaid.</p> <p>No officer, employee, or member of the medical staff of a hospital licensed by the Department of Health and Hospitals shall deny emergency services available at the hospital to a person diagnosed by a licensed physician as requiring emergency services because the person is unable to establish his ability to pay for the services or because of race, religion, or national ancestry.</p> <p>For more information:</p>	<p>An “emergency medical condition” is after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. Emergency Medical Services do not include any organ transplant procedure or routine prenatal or postpartum care.</p> <p>“Emergency Services” are services that are usually and customarily available at the respective hospital and that must be provided immediately to stabilize a medical condition which, if not stabilized, could reasonably be expected to result in the loss of the person's life, serious permanent disfigurement or loss or impairment of the function of a bodily member or</p>	<p>Louisiana DHH’s interpretation has been that aliens qualify emergency hospital services, which requires an after-the-fact Medicaid for application and review for “emergency.”</p> <p>For more information: Medicaid in Louisiana</p>

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	<p>24 LR 601</p> <p>La. R.S. 40:2113.4</p> <p>La. R.S. 40:2113.6</p>	<p>organ, or which is necessary to provide for the care of a woman in active labor if the hospital is so equipped and, if the hospital is not so equipped, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.</p> <p>Pharmacists can release a 72 hour supply of a drug without prior approval if they or the prescriber determine and endorse that an emergency situation exists.</p>	
Maine	<p>MaineCare: The Social Security Act provides Medicaid coverage for emergency medical care for ineligible aliens who meet all eligibility requirements for a federally funded Medicaid program except citizenship/alien status. Coverage is for the specific emergency only.</p> <p>MaineCare Benefits Manual: http://www.maine.gov/sos/cec/rules/10/ch101.htm</p> <p>MaineCare Member Handbook: http://mainegov-images.informe.org/bms/pdfs_doc/mainecare%20member%20handbook/summer_06_rev4.pdf</p>	<p>MaineCare coverage for emergency services for undocumented non-citizens extends only to those services necessary to stabilize the emergency condition. MaineCare does not cover any further treatment or rehabilitation resulting from the emergency even though such treatment may be necessary.</p> <p>An emergency medical condition is defined as follows:</p> <p>After sudden onset, the medical condition (including emergency labor and delivery) manifests itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> • Placing the patient’s health in serious jeopardy; or • Serious impairment to bodily functions; or • Serious dysfunction of any bodily organ or part. <p>All labor and delivery is considered an emergency for</p>	<p>Providers should contact the local Family Support Division office and identify the services and the nature of the emergency. State staff identify the emergency nature of the claim and add or deny coverage for the period of the emergency only. Claims are reimbursed only for the eligibility period identified on the recipient's eligibility file.</p>

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		purposes of this eligibility provision.	
Maryland	<p>In Maryland, undocumented immigrants may obtain emergency services if they meet income and residency requirements. Md. Code Regs. 10.09.24.05.</p> <p>The income and residency requirements are the same as those general requirements for Medicaid eligibility. No period of residency is required as a condition of eligibility; however, the applicant must have the intent to remain indefinitely in Maryland. Md. Code Regs. 10.09.24.05.</p>	<p>Emergency services are services provided by a licensed medical practitioner after the onset of a medical condition manifesting itself by symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected by a prudent layperson, possessing average knowledge of health and medicine, to result in: (1) placing health in serious jeopardy; (2) serious impairment to bodily functions; (3) serious dysfunction of any bodily organ or part; (4) or development or continuance of severe pain. Md. Code Regs. 10.09.24.02. Emergency services include labor and delivery.</p> <p>Typically applicants receive retroactive coverage; however, in limited circumstances (e.g., cancer, dialysis, and end stage renal disease) there may be coverage for limited ongoing treatment.</p>	<p>Applicants must file an application with the Local Department of Social Services (“LDSS”) in the city or county where they live. No social security number is required for emergency medical coverage.</p> <p>A card is not issued because coverage is generally limited to payment for emergency medical services that have already been received. The Department of Health and Mental Hygiene (DHMH) determines if the services received were emergency in nature.</p> <p>To locate an LDSS see: http://www.dhmh.state.md.us/ma/dss/index.html</p>
Massachusetts	<p>In Massachusetts, undocumented immigrants may obtain MassHealth Limited benefits if they meet the requirements for MassHealth Standard (e.g., classification, income, and residency requirements, but not citizenship) and have an emergency medical condition.</p> <p>No period of residency is required as a condition of eligibility; however, the applicant must have the intent to remain indefinitely in Massachusetts. 130</p>	<p>MassHealth Limited only provides services for treatment of a medical condition (including labor and delivery) that manifests itself by acute symptoms of sufficient severity that the absence of immediate medical attention reasonably could be expected to result in: (1) placing the member’s health in serious jeopardy, (2) serious impairment to bodily functions, (3) serious dysfunction of any bodily organ or part. 130 Mass. Code Regs. 450.105(G). Organ transplants are not covered services. 130 Mass. Code Regs. 450.105(G).</p>	<p>To receive MassHealth Limited benefits, an applicant must submit a Medical Benefit Request (“MBR”) to any MassHealth Enrollment Center or MassHealth Outreach worker at a designated outreach site. 130 Mass. Code Regs. 502.001. No social security number is required for medical coverage under MassHealth Limited.</p> <p>Coverage begins on the 10th day before the date the MBR is received. 130 Mass. Code Regs. 505.008. Thus, patients can receive benefits (i.e. payment to the service provider) after the</p>

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	Mass. Code Regs. 503.002.		emergency treatment has been provided. Alternatively, Massachusetts has a pre-approval process. Persons who would qualify for emergency medical treatment can apply in advance and obtain a card to indicate they are eligible for restricted MassHealth Limited, which can be used for emergency treatment.
Michigan	In Michigan, undocumented immigrants may obtain emergency Medicaid benefits if they meet Michigan income and residency requirements that are identical to those for general Medicaid eligibility. <i>See Mich. Comp. Laws § 400.06</i>	<p>An emergency medical condition means the sudden occurrence of serious symptoms, such as severe pain or mental disorientation. It is considered an emergency medical condition if failure to get immediate medical attention would:</p> <ul style="list-style-type: none"> • endanger the patient’s health; • seriously impair bodily functions; or • cause serious dysfunction to a body organ or body part. <p>Patients that are eligible for coverage can receive inpatient and outpatient care from a physician or other appropriate provider that is necessary to treat the emergency medical condition.</p> <p>Inpatient/outpatient care can include laboratory and x-ray services, medical supplies, mental health stabilization, pharmacy, and medical detoxification for substance abuse only if life-threatening. Coverage does not include continuation of services or follow-up care after the emergency is resolved.</p> <p>For more information see:</p>	<p>To receive these Medicaid benefits, an individual must be a resident of Michigan. No specific period of residency is required, but the patient must have the intent to stay in Michigan indefinitely or entered with a job commitment or to look for work. The Michigan Department of Human Services (“MDHS”) determines eligibility for Medicaid benefits.</p> <p>For more information see:</p> <p>http://www.michiganlegalaid.org/MPLP/Issues/mplpissue.2006-04-13.5315793175</p> <p>Patients can receive benefits (i.e. payment to the service provider) after the emergency treatment has been provided. Alternatively, Michigan has a pre-approval process. Thus, persons who would qualify for emergency medical treatment can apply in advance and obtain a card to indicate they are eligible for Emergency Services Only coverage, which can be used for emergency treatment.</p> <p>Applicants must file a simplified application with their county. No social security number is required for emergency medical</p>

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		<p>http://www.michigan.gov/documents/MSA_05-61_142996_7.pdf</p> <p>Michigan Medicaid Provider Manual, Emergency Services Only Medicaid Program, at http://www.mdch.state.mi.us/dch-medicaid/manuals/MedicaidProviderManual.pdf</p>	<p>coverage under Medicaid.</p> <p>The application for a card to receive Emergency Services Only Medicaid benefits may be submitted at any time.</p> <p>See Michigan Medicaid Provider Manual, Beneficiary Eligibility, at http://www.mdch.state.mi.us/dch-medicaid/manuals/MedicaidProviderManual.pdf</p>
Minnesota	<p>In Minnesota, undocumented immigrants may obtain Medicaid benefits through the Medical Assistance program if they meet Minnesota income and residency requirements, and have an emergency medical condition. See Min. Stat. § 256B.06, Subd. 4(g).</p> <p>The income and residency requirements are the same as those general requirements for Medicaid eligibility.</p> <p>The relevant Minnesota law will provide for inpatient and outpatient care for eligible patients. See Min. Stat. § 256B.0625; Minnesota Health Care Provider Manual, <i>Emergency Medical Assistance</i> at http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/DHS_id_000094.hcsp</p>	<p>Patients that are eligible for coverage can receive inpatient and outpatient care, by a physician or other appropriate provider, that is necessary to treat an “emergency medical condition.” See Min. Stat. § 256B.06, Subd. 4(h).</p> <p>A qualifying emergency medical condition may be either a short-term, acute condition (including labor and delivery) or an ongoing chronic condition. For short-term emergencies, eligibility exists for the duration of the emergency only and may begin or end mid-month. Emergency medical assistance for services related to chronic conditions meeting the emergency definition may continue indefinitely.</p> <p>For more information see:</p> <p>http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/dhs_id_008922.hcsp#ema</p> <p>Emergency medical services may include inpatient and outpatient hospital care, emergency</p>	<p>To receive these Medicaid benefits, an individual must be a Minnesota resident and meet the income and asset eligibility requirements; however, non-resident immigrants may receive certain benefits under state-funded medical assistance. See Min. Stat. § 256B.06.</p> <p>Applicants must file a simplified application with their county. Applications are reviewed and a notice will be sent to the applicant within 45 days of filing, unless the applicant is pregnant in which case notice will be provided within 15 days. See Min. Stat. § 256B.08.</p> <p>Medical assistance may pay for medical bills going back up to three months before an application is filed.</p> <p>For more information and the application see:</p> <p>http://dhs.state.mn.us/main/groups/healthcare/documents/pub/dhs_id_006918.hcsp</p>

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		<p>transportation, laboratory services, medical equipment and supplies, rehabilitative therapy, mental health services.</p> <p>For more information see:</p> <p><i>See Min. Stat. § 256B.0625; Minnesota Health Care Provider Manual, Emergency Medical Assistance</i> at http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/DHS_id_000094.hcsp</p>	
Mississippi	<p>An alien who is not lawfully admitted for permanent residence in the US or permanently residing in the US under color of law (“nonqualified alien”) is not eligible for Medicaid <i>except</i> emergency services. Nonqualified aliens must otherwise meet eligibility requirements, <i>i.e.</i>, federally mandated income and resource standards.</p> <p>http://www.dom.state.ms.us/CHIP/chip.html</p>	<p>The term "emergency medical condition" means the sudden onset of a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <ol style="list-style-type: none"> (1) Placing the patient's health in serious jeopardy; (2) Serious impairment to bodily functions; or (3) Serious dysfunction to any bodily organ; or part. <p>Specifically excepted from this definition are care and services related to either an organ transplant procedure or routine prenatal or post-partum care.</p> <p>Labor and delivery are the only</p>	<p>Inquiries regarding eligibility for coverage of emergency services under Medicaid may be by contacting the regional Medicaid office. A listing may be found at:</p> <p>http://www.dom.state.ms.us/CHIP/chip.html</p> <p>Unqualified aliens need not be verified through SAVE (Systematic Alien Verification for Entitlements) Program.</p> <p>Questions regarding eligibility may also be directed to:</p> <p>Mississippi Division of Medicaid Eligibility Division 1-800-421-2408</p>

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		<p>emergency services predetermined to be covered by Medicaid. All other conditions must be submitted to the Eligibility Department of the Mississippi Medicaid office for case-by-case review and approval.</p>	
Missouri	<p>The Social Security Act provides Medicaid coverage for emergency medical care for ineligible aliens, who meet all eligibility requirements for a federally funded Medicaid program except citizenship/alien status. Coverage is for the specific emergency only.</p>	<p>An emergency medical condition is defined as follows:</p> <p>After sudden onset, the medical condition (including emergency labor and delivery) manifests itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> • Placing the patient’s health in serious jeopardy; or • Serious impairment to bodily functions; or • Serious dysfunction of any bodily organ or part. <p>Labor and delivery is considered an emergency for purposes of this eligibility provision.</p>	<p>Providers should contact the local Family Support Division office and identify the services and the nature of the emergency. State staff identifies the emergency nature of the claim and approves or denies coverage for the period of the emergency only. Claims are reimbursed only for the eligibility period identified on the recipient’s eligibility file.</p>
Montana	<p>For additional information contact, Public Information Officer, Montana Department of Health & Human Services 406.444.2596</p>	<p>Emergency Medicaid covers persons who experience an emergency including life threatening illness or extreme pain and covers such person until they are stable. Emergency Medicaid covers labor and delivery; in addition, it covers prenatal care if a doctor determines that the pregnancy is high risk.</p>	<p>A person can apply at the local office of public assistance. If a person is hospitalized with an emergency condition, a hospital social worker will aid that person in applying for emergency Medicaid coverage.</p>
Nebraska	<p>Nebraska provides medical assistance to qualified immigrants, regardless of their date of entry, though deeming applies. This decision requires the state to pay the full cost of the</p>	<p>All emergency services are covered regardless of immigration status.</p> <p>Medical condition with acute symptoms that could lead to</p>	<p>Nebraska has a presumption of Medicaid eligibility for all pregnant women. Thus a woman need only demonstrate that she is pregnant and be 185% below the federal poverty line.</p>

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	<p>Medicaid for those individuals who arrived after August 22, 1996.</p> <p>Under some circumstances undocumented immigrant women and children can become qualified for benefits if they are the victims of abuse and:</p> <ol style="list-style-type: none"> 1. The abused woman/parent is married to a Lawful Permanent Resident or she is married to a U.S. citizen, or the abused child is the child or step-child or a U.S. citizen or Lawful Permanent Resident, AND 2. She and/or the child is battered by a <i>member of the household</i>, not necessarily by the U.S. citizen or LPR spouse/parent, AND 3. She and/or the child has a <i>pending</i> or <i>approved</i> self-petition or family based petition filed by her husband or the abused child's father or step-father, AND 4. She and/or the child need benefits because of the abuse, AND 5. She and/or the child either no longer live with the batterer or plan to leave when they get benefits. <p>Emergency services include labor and delivery and any emergency. This covers all pregnant women regardless</p>	<p>serious injury or health risks are covered.</p> <p>The SCHIP program covers all pre-natal care for the unborn child. Nebraska considers unborn children citizens for the purposes of Medicaid coverage. Thus, medical care for the child and mother are covered, at least as relating to the pregnancy.</p> <p>There is no monetary cap on prenatal services.</p>	<p>A pregnant woman can be treated, and then apply with Nebraska's Department of Health and Human Services.</p> <p>For other emergencies, application may be made after receipt of treatment.</p>

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	<p>of status, provided the woman is below 185% of the federal poverty level. Coverage also includes prenatal care regardless of status.</p> <p>http://www.neappleseed.org/oldsite/nac/PFP/WDPP/WeIfBrochures/ImmigrantWelfRights.htm</p>		
Nevada	<p>Nevada provides only emergency services to undocumented aliens.</p> <p>Adults must be NV residents. Income cannot exceed 133% of Federal Poverty Level. Resources cannot exceed \$2000.</p> <p>Different standards apply for families and children. See: http://www.hrsa.gov/reimbursement/states/Nevada-Eligibility.htm</p>	<p>An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; • serious impairment of bodily functions; or • serious dysfunction of a bodily organ or body part. <p>Nevada’s emergency care only provides emergency room treatment.</p>	<p>Applicants must apply for emergency Medicaid after emergency services are provided.</p>
New Hampshire	<p>There are limited emergency medical services available for some non-qualified aliens, and a Department of Health and Human Services District Office should be contacted for specific cases.</p> <p>http://www.dhhs.state.nh.us/DHHS/MEDASSISTELIG/ELIGIBILITY/medical-general-financial.htm</p> <p>Under the MCPW program: qualifications:</p> <ul style="list-style-type: none"> - Income cannot exceed 185% of the federal poverty 	<p>An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; • serious impairment of bodily functions; or • serious dysfunction of a bodily organ or body part. 	<p>An applicant for Medical Assistance should</p> <ol style="list-style-type: none"> 1) Visit a DHHS District Office and speak with a DHHS worker who will assist the applicant through the application interview process; and 2) Provide copies of any information that may be needed <p>http://www.dhhs.state.nh.us/DHHS/MEDASSISTELIG/ELIGIBILITY/default.htm</p> <p>Applicants, including pregnant women already receiving services at certain community agencies, such as hospitals, well</p>

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	<p>income limits.</p> <p>- No resource limit.</p> <p>Contact the Medicaid Program by phone:</p> <p>Description Phone Number Hours</p> <p>Main Number 603-271-5254 8-4:30 M-F</p> <p>Toll Free Number 800-852-3345 x5254 8-4:30 M-F</p> <p>TDD Number 800-735-2964 8-4:30 M-F</p> <p>Street Address:</p> <p>97 Pleasant Street Concord, NH 03301</p> <p>Mailing Address:</p> <p>NH DHHS Office of Medicaid Business & Policy Medicaid Program 129 Pleasant Street Concord, NH 03301-3857</p>		<p>child or prenatal clinics or Women Infant & Children clinics may apply at those sites for Healthy Kids or Medical Coverage for Pregnant Women. Applications for Healthy Kids and Medical Coverage for Pregnant Women (MCPW) may also be filed by mail.</p> <p>http://www.dhhs.state.nh.us/DHHS/MEDASSISTELIG/ELIGIBILITY/default.htm</p> <p>The DHHS district office contact information can be found at http://www.dhhs.nh.gov/DHHS/Contact+Directory/default.htm.</p> <p>Medicaid applicants, pregnant women and non-citizens are assessed by the Division of Family Assistance, Office of Program Operations, Dept. of Health and Human Services for their financial eligibility and all non-financial eligibility.</p> <p>http://www.dhhs.nh.gov/DHHS/MEDASSISELIG/default.htm</p> <p>If you disagree with any decision the Division of Family Assistance makes on your case, you may request an Administrative Appeals hearing.</p> <p>http://www.dhhs.nh.gov/DHHS/MEDASSISELIG/default.htm</p> <p>- procedures for the administrative appeal can be found at http://www.dhhs.nh.gov/DHHS/MEDASSISELIG/default.htm</p>

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			<p>Pregnant women applying at Department of Health and Human Services district offices as well as to pregnant women applying at non-district office sites shall be given a "presumptive eligibility period" as provided in 42 U.S.C. 1396r-1. (RSA. TITLE XII.167.68.II.(c))</p> <p>If the pregnant woman is eligible for and receiving medical assistance on the day her pregnancy ends, continue her medical assistance for 60 days post-partum without regard to any other eligibility criteria. Terminate 60 day post-partum medical assistance on the last day of the month in which the 60th day falls.</p> <p>If the pregnant woman is eligible for and receiving medical assistance on the day her child is born, continue medical assistance for the newborn for up to 1 year, as long as the child lives with the mother and one of the following applies:</p> <ul style="list-style-type: none"> · the mother remains eligible for medical assistance, or · the mother would be eligible if she were pregnant. <p>(http://www.hrsa.gov/reimbursement/states/New-Hampshire-Eligibility.htm)</p>
New Jersey	An alien who meets all Medicaid eligibility requirements (residency, income, resources) except citizenship/alien status may be eligible for Medicaid coverage for the treatment of an emergency medical	<p>“Emergency medical condition” is defined as:</p> <p>1. one of sudden onset that manifests itself by acute symptoms of sufficient severity (including severe pain) such that</p>	<p>Application process for the Medical Emergency Payment Program for undocumented residents:</p> <p>1. Inform the hospital office staff that you wish to apply for this program.</p>

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	<p>condition only. (Medicaid Only Manual. N.J.A.C. 10:71-3.3.(e). p.17-18)</p> <p>A “Resident” is defined as “a person who is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom.” (Medicaid Only Manual. N.J.A.C. 10:71-3.5.(a). p.20)</p>	<p>the absence of immediate medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> i. Placing the patient's health in serious jeopardy; ii. Serious impairment to bodily functions; or iii. Serious dysfunction of any bodily organ or part. <p>2. An emergency medical condition includes all labor and delivery for a pregnant woman. It does not include routine prenatal or post-partum care.</p> <p>3. Services related to an organ transplant procedure are not covered under services available for treatment of an emergency medical condition. (Medicaid Only Manual. N.J.A.C. 10:71-3.3.(e). p.17-18)</p> <p>NJ FamilyCare Any applicant in a “qualified” immigrant status is able to apply for NJ FamilyCare, regardless of the date that they entered the United States. They do not have to wait five years to be eligible. “Qualified” status includes: - An applicant under the Violence Against Women Act (http://www.njfamilycare.org/pages/rest_who.html)</p>	<p>2. If an application form is available, you will be asked to fill it out immediately.</p> <p>3. If an application is not available, the staff member will notify the County Board of Social Services that you are interested in applying.</p> <p>4. After the emergency medical treatment, the applicant must call the County Board of Social Services to schedule an interview.</p> <p>5. Bring any bills that you received for emergency treatment with you to the County Board interview.</p> <p>6. For emergency services to be covered, an application must be completed with 3 months of the date services were provided. (http://www.njfamilycare.org/pages/rest_who.html)</p> <p>Medicaid: How to Apply - Medicaid hotline Monday through Friday, 8:30 to 4:30 (800) 356-1561</p> <p>A list of the County Board of Social Services: http://www.state.nj.us/humanservices/CWALIST.pdf</p>
New Mexico	The State’s Medicaid program will pay for necessary emergency services provided to undocumented aliens who reside in the State and meet the requirements for Medicaid eligibility.	Medicaid requires that the individual have, after sudden onset, a medical condition (including emergency labor and delivery) that involves acute symptoms that are so severe that if immediate medical attention is not provided: (1) the individual’s health will be placed in serious	The individual must complete an application at the local county income support division office (ISD) and provide information that proves that he or she meets the eligibility requirements. The ISD will determine the individual’s eligibility after the individual has received

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	<p>The State’s definition of “emergency” includes the Medicaid eligibility requirements outlined above as well as any condition that if left untreated would lead to the individual’s death.</p> <p>A determination of coverage is made by the Medical Assistance Division or its designee.</p> <p>For more information, see: 8.325.10.9, 8.325.10.13, 8.325.10.14, and 8.325.10.16 NMAC (2006); 42 CFR 440.255(c).</p> <p>For information regarding eligibility categories, see: http://www.state.nm.us/hsd/mad/pdf_files/GeneralInfo/Eligpamphlet.pdf</p>	<p>jeopardy; (2) the individual will suffer serious impairment to his or her bodily functions; or (3) the individual will suffer serious dysfunction to a bodily organ or part.</p> <p>Medicaid will cover medical services that are necessary to treat and/or evaluate an “emergency.” Only emergency medical services provided in the State are covered. Services that are not covered include:</p> <ul style="list-style-type: none"> • long term care; • organ transplants; • rehabilitation services; • surgical procedures, including scheduled cesarean section, other than unscheduled emergency procedures; • psychiatric or psychological services; • durable medical equipment or supplies; • eyeglasses; • hearing aids; • outpatient prescriptions; • podiatry services; • prenatal care; • well child care; • routine dental care; • routine dialysis services; • medical service provided by a border or out-of-state provider; • non-emergency transportation; and • preventive care. <p>For more information, see: 8.325.10.15 NMAC (2006)</p>	<p>emergency services.</p> <p>The individual must apply for Medicaid coverage at the ISD office no later than the last day of the third month following the month in which he or she received emergency medical services.</p> <p>The individual must notify the provider regarding whether or not their Medicaid coverage was approved or denied.</p> <p>If the individual misses the deadline to apply for Medicaid coverage, or if coverage is denied, the individual must pay the provider’s bill.</p> <p>For more information, see: 8.325.10.12 and 8.325.10.16 NMAC (2006)</p>
New York	An undocumented immigrant may receive medical assistance for care and services needed to treat an emergency medical condition.	An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to	An undocumented immigrant must meet all eligibility requirements, including state residency. However, no specific term of residency is required.

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	<p>For more information, see: NY Social Services Law § 122(1)(e) (2006)</p>	<p>get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; • serious impairment of bodily functions; or • serious dysfunction of a bodily organ or body part. <p>Coverage may vary based on the local district where services are sought and that district’s interpretation of “emergency medical condition.”</p> <p>Coverage does not include care or services related to organ transplants.</p> <p>For additional information, see the following Administrative Directive:</p> <p>http://www.health.state.ny.us/health_care/Medicaid/publications/docs/adm/04adm-7.pdf</p>	<p>To apply for coverage, undocumented immigrants must submit the following form to their Local Department of Social Services:</p> <p>http://www.health.state.ny.us/health_care/Medicaid/publications/docs/adm/04adm-7atte1.pdf</p>
North Carolina	<p>Under NC Family and Children’s Medicaid MA-3330, a non-qualified alien who meets the N.C. residency requirement (living in N.C. with the intent to remain) as well as the financial eligibility requirement for Medicaid (i.e. for a family of 3, within 185% of the Federal Poverty Level) can receive Medicaid for emergency medical services if she is a caretaker for a child who is eligible for Medicaid or (under NC Adult Medicaid) has a permanent disability,</p>	<p>The NC Adult Medicaid Manual, MA-330 (B), defines the term “emergency medical services,” as inclusive of labor and delivery, (including by Caesarean section) and treatment after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in the following:</p> <ol style="list-style-type: none"> (1) Placing the patient’s health in serious jeopardy, or (2) Serious impairment to bodily 	<p>The North Carolina Division of Medical Assistance (DMA) is the state agency responsible for the NC Medicaid program and for providing authorization for Medicaid-covered services; however, the North Carolina Department of Social Services (DSS) county-level offices are responsible for determining applicant’s eligibility and maintaining recipient eligibility and managed care files.</p> <p>A non-qualified or qualified alien can receive emergency medical services through MAF, assuming she meets the</p>

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	<p>deemed as such by the North Carolina Department of Social Services (DSS).</p> <p>The 2 main ways in which a non-qualified alien can receive Medicaid coverage for emergency medical services include Adult Medicaid and Medicaid Assistance for Families (MAF).</p> <p>Medicaid Assistance for Families covers those who are the caretaker for a Medicaid eligible child. A non-qualified alien can qualify to receive emergency medical services through MAF, assuming she meets the residency and income requirements, if she was the caretaker of a child that was eligible for Medicaid (usually meaning that he/she was born in the U.S.) during the time when she needed emergency medical services.</p> <p>Adult Medicaid provides coverage for emergency medical services only to those who meet the income and residency requirements as well as have a permanent disability as deemed as such by DSS. Adult Medicaid is available to both qualified and non-qualified aliens.</p> <p>The 5-year disqualification period does not apply to qualified aliens applying only for emergency Medicaid.</p> <p>Under NC Adult Medicaid Manual, MA- 2504(IV)(E), refugees and asylees, Cuban and Haitian Entrants, trafficking victims, and</p>	<p>functions, or (3) Serious dysfunction of any bodily organ or part.</p> <p>As a general rule, once the emergency medical condition is stabilized, even if it remains serious or results in death, it is no longer deemed to be an emergency and thus a basis for continued emergency Medicaid coverage. For this reason, emergency labor and delivery services, for example, do not include postpartum care.</p>	<p>residency and income requirements, if she was the "caretaker" of a child that was eligible for one of the Medicaid programs during the time when she needed emergency medical services. The child does not need to have been receiving Medicaid but would need to have been eligible for Medicaid in order for the caretaker to be eligible for the emergency Medicaid.</p> <p>In order to be eligible to receive coverage for emergency medical services through Adult Medicaid, one must meet the income and residency requirements as well as have a permanent disability as deemed as such by DSS. Adult Medicaid is available to both qualified and non-qualified aliens.</p> <p>At some hospitals in North Carolina, there are social workers or Medicaid workers able to assist qualified or non-qualified aliens with the process of completing paperwork and applying for emergency Medicaid coverage. Thus, patients seeking such coverage should ask a hospital staff member if there are any social workers or Medicaid workers who could assist them.</p> <p>In order to apply for MAF or Adult Medicaid, a patient should visit the DSS office in her county and ask to speak to a case worker about filling out an application.</p>

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	<p>aliens whose deportation is being withheld are exempt from the 5-year mandatory disqualification period and may receive <u>full Medicaid</u> if otherwise eligible.</p>		
North Dakota	<p>Undocumented immigrants may obtain North Dakota Medicaid benefits if they meet income and residency requirements, and have an emergency medical condition not related to an organ transplant.</p> <p>Income and residency requirements mirror those for general Medicaid eligibility.</p> <p>Undocumented aliens are exempt from the requirement to furnish social security numbers and verify alien status.</p> <p>Certain aliens lawfully admitted for a short period of time are ineligible for coverage, presumably because they do not meet the residency requirement. These include:</p> <ul style="list-style-type: none"> • Foreign government representatives on official business, • Visitors, • Foreign students, and • Temporary workers including agricultural 	<p>An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; • serious impairment of bodily functions; or <p>serious dysfunction of a bodily organ or body part.</p> <p>Inpatient and outpatient care is covered for eligible patients. N.D. Admin. Code § 75-02-02.</p>	<p>North Dakota residency is necessary, though no term is specified. The patient must have the intent to stay in North Dakota permanently or indefinitely or must have entered the state with a job commitment or seeking employment. Patients must also meet certain income and asset requirements. County social service agencies determine eligibility. See N.D. Admin. Code § 75-02-02.1.</p> <p>Patients may seek benefits, such as payment to the service provider, after emergency treatment is provided.</p>

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	<p>workers. See N.D. Admin. Code § 75-02-02.1-18.</p>		
Ohio	<p>Alien Emergency Medical Assistance</p> <p>Provides coverage for treatment of an emergency medical condition for certain individuals who do not meet the Medicaid citizenship requirements. Ohio Administrative Code 5101:1-41-20. http://www.uhcanohio.org/newsletter/reports/fact_immigrant.html</p> <p>The individual must be a non-qualified alien, optional qualified alien, or a qualified alien within the five year period of ineligibility for Medicaid. Ohio Administrative Code 5101:1-41-20.</p>	<p>An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; • serious impairment of bodily functions; or • serious dysfunction of a bodily organ or body part. <p>Labor and delivery are covered.</p>	<p>Individual that received treatment must submit an application for medical assistance for each emergency medical assistance episode. However, the individual is not required to participate in a face-to-face interview, submit verification of a social security number, or submit verification of immigration/alien status.</p>
Oklahoma	<p>Provides coverage for treatment of an emergency medical condition for certain individuals who do not meet the Medicaid citizenship requirements. Oklahoma Administrative Code § 317:35-5-25.</p> <p>Non-qualified aliens and illegal aliens are eligible for emergency Medicaid. Ineligible aliens (foreign students, visitors, temporary workers) are not eligible for emergency Medicaid. Oklahoma Administrative Code § 317:35-5-25(a).</p> <p>For additional information,</p>	<p>An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; • serious impairment of bodily functions; or • serious dysfunction of a bodily organ or body part. <p>Labor and delivery are covered.</p>	<p>Preauthorization is required for payment of emergency medical services rendered to non-qualified and illegal aliens.</p> <p>The care provider must indicate on the Notification of Needed Medical Services form whether the care provided was an emergency. Oklahoma Administrative Code § 317:35-3-3.</p>

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	<p>contact Oklahoma Healthcare Authority, Legal Division, Howard Pallotta, General Counsel at (405) 522-7300.</p>		
Oregon	<p>Under Oregon Administrative Rule 410-120-1210(2)(f), non-qualified aliens that are not eligible for other Medicaid programs due to their immigration status are eligible for Citizen Alien-Waived Emergency Medical Assistance (CAWEM). CAWEM coverage is limited to emergency services, including labor and delivery.</p>	<p>CAWEM clients are only eligible for emergency medical care, including childbirth. Diagnostic services and on-going medical treatment, including prenatal and postnatal care, are not covered.</p> <p>Under Oregon Administrative Rule 410-120-1210(3)(f), the CAWEM Benefit Package provides emergency medical services and labor and delivery services as follows:</p> <p>(A) A CAWEM client is eligible for services only after sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: placing the patient’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;</p> <p>(B) The following services are not covered for CAWEM clients, even if they are seeking emergency services:</p> <ul style="list-style-type: none"> (i) Prenatal or postpartum care; (ii) Sterilization; (iii) Family Planning; (iv) Preventive care; (v) Organ transplants and 	<p>To qualify for CAWEM coverage, a person must meet all the non-financial and financial eligibility requirements for Oregon’s medical assistance programs (excluding the Children’s Health Insurance Program (CHIP), which has a higher income standard), except the citizen/alien status and Social Security number requirements.</p> <p>The individual must be a resident of Oregon with the intent to remain in Oregon. There is no minimum amount of time a person must live in Oregon to be a resident. CAWEM clients do not need a Social Security number or verification that they have applied for one.</p> <p>Individuals can apply at any time, not just when they have an emergent need. Once eligibility is determined and the case is opened, the client is eligible for six months. The client will get a Medical Care Identification (ID) good for emergency services. The ID contains the following statement, “CAWEM-Emergency Services Coverage is limited to emergency medical services. Labor and delivery for pregnant women are considered an emergency.” The client should reapply for the ID card every six months to maintain eligibility. A new application is required.</p>

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		<p>transplant-related services;</p> <p>(vi) Chemotherapy;</p> <p>(vii) Hospice;</p> <p>(viii) Home Health;</p> <p>(ix) Private Duty Nursing;</p> <p>(x) Dialysis;</p> <p>(xi) Dental Services provided outside of an Emergency Department Hospital setting;</p> <p>(xii) Outpatient drugs or over-the-counter products;</p> <p>(xiii) Non-emergency Medical Transportation;</p> <p>(xiv) Therapy services;</p> <p>(xv) Durable Medical Equipment and medical supplies;</p> <p>(xvi) Rehabilitation services.</p> <p><i>See also</i> Oregon Department of Human Services CAWEM Program Manual and Oregon Administrative Rule 461-135-1070.</p>	<p>The client's ID is confirmation of eligibility for medical services, subject to the limitations contained in Oregon Administrative Rules and appropriate individual medical provider rules.</p> <p>Under Oregon Administrative Rule 410-120-1140, there are three different types of IDs by which eligibility can be confirmed:</p> <p>(a) Form OMAP 1417 - Office of Medical Assistance Programs (OMAP) ID. This is a computer-generated notice that is mailed to the client once a month or anytime there is a change to the case (e. g., address change);</p> <p>(b) Form OMAP 1086 - Temporary ID. The responsible branch office issues this handwritten form;</p> <p>(c) Form WMMID1C-A - Temporary ID. This is a computer-generated form that is signed by an authorized person in the responsible branch office.</p> <p>It is the responsibility of the medical provider to verify that the individual receiving medical services is, in fact, an eligible individual on the date of service for the service provided and whether OMAP is responsible for reimbursement. The provider assumes full financial risk in serving a person not identified as eligible or not confirmed by OMAP as eligible for the service provided on the date(s) of</p>

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			<p>service.</p> <p>The ID is not transferable, and is valid only for the individual(s) listed on the card.</p> <p>Eligibility is verified either:</p> <p>(a) From the ID, which shows the dates on which the client is eligible and indicates each client’s benefit package; or</p> <p>(b) If a patient identifies him or herself as eligible, but does not have a valid ID, the provider may either:</p> <p>(A) Contact the OMAP Automated Information System (AIS), which is available on the Internet or via telephone;.</p> <p>(B) Providers who have contracted with an Electronic Eligibility Verification Service (EEVS) vendor can access client eligibility data 24 hours a day, 7 days a week; or</p> <p>(C) Providers may contact the local Department of Human Services (DHS) branch office during regular working hours to confirm eligibility if the information is not available electronically.</p> <p><i>See also</i> Oregon Department of Human Services CAWEM Program Manual and Oregon Administrative Rule 461-135-1070.</p>
Pennsylvania	A lawful temporary alien, undocumented alien or illegal alien may receive	An “Emergency Medical Condition” is a medical condition with acute symptoms of such	To receive Medical Assistance benefits, an individual, or a third-party authorized by power

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	<p>Pennsylvania Medical Assistance to cover an Emergency Medical Condition if he or she meets all other requirements for Medical Assistance. 55 Pa. Code § 150.11; Pennsylvania Department of Public Welfare (DPW) <i>Medical Assistance Bulletin</i> 99-88-05 (April 13, 1988); <i>Pennsylvania Medicaid Eligibility Handbook</i>, Section 322.32 (available at www.dpw.state.pa.us/policymanuals/manuals/bop/ma.) See also <i>A Guide For Determining Your Eligibility For Free Health Care Coverage Through Medical Assistance (MA)</i>, published by the Pennsylvania Health Law Project (available at www.phlp.org/healthprograms.asp) (hereafter <i>PaHLP Guide</i>).</p>	<p>severity, including severe pain, that, without immediate attention, the result will be: (i) the patient’s health is in serious jeopardy; (ii) serious impairment to bodily functions; or (iii) serious dysfunction of any body organ or part. An Emergency Medical Condition includes labor and delivery services but does not include care and services related to organ transplant procedures. 55 Pa. Code § 150.11; <i>Medicaid Eligibility Handbook</i>, Section 322.32. See also 55 Pa. Code § 1101.21.</p> <p>Coverage extends only to Emergency Medical Conditions, as defined by regulation. See Relevant State Laws, <i>supra</i>.</p> <p>For labor and delivery services, the County Assistance office will authorize Medical assistance beginning the date active labor begins and ending the date delivery is complete and the mother and child are stabilized. There is no post-partum coverage.</p> <p>A child born to an alien mother whose delivery and labor were covered by Medical Assistance is eligible for Medical Assistance for one year from the date of birth under the same conditions as a child born to a citizen. <i>Medicaid Eligibility Handbook</i>, Sections 322.32 and 338.41.</p>	<p>of attorney to act on the individual’s behalf (e.g. a hospital or medical provider), must submit an application to the County Assistance Office. 55 Pa. Code §§ 123.72 and 123.82; <i>Medicaid Eligibility Handbook</i>, Section 304.1. Application can be made on-line at www.compass.state.pa. The alien must verify that an emergency medical condition exists by providing a written statement from a medical provider. The written statement must: (i) identify the Emergency Medical Condition; (ii) specify that the medical treatment was necessary because of the medical condition; and (iii) provide a date on which the emergency is expected to end. 55 Pa. Code § 150.11; <i>Medicaid Eligibility Handbook</i>, Section 322.32.</p> <p>The applicant must be a resident of Pennsylvania and meet needs based (income) criteria. 62 P.S. §§ 432.2 and 432.4; 55 Pa. Code § 148.1; <i>Medicaid Eligibility Handbook</i>, Sections 323.1, <i>et seq</i>. An alien in need of Emergency Medical Services is not required to: (i) sign a Citizenship/Alienage Declaration form; (ii) verify alien status; or (iii) verify his/her Social Security number. 55 Pa. Code § 150.11; <i>Medicaid Eligibility Handbook</i>, Section 322.32. See <i>PaHLP Guide</i>, p. 5 (“Undocumented aliens have been able to obtain Emergency Medical Care with no INS problems.”)</p> <p>The County Assistance office determines whether or not an applicant is eligible for Medical Assistance Services. If the applicant is determined eligible, DPW issues a Medical Services Eligibility card. 55 Pa. §</p>

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Puerto Rico	Research has revealed no emergency Medicaid program for non-qualified aliens in Puerto Rico.		
Rhode Island	<p>Section 12-25-19 (2006) of the General Laws of Rhode Island provides that every health care facility that has an emergency medical care unit shall provide to every person prompt life saving medical care treatment in an emergency, and a sexual assault examination for victims of sexual assault without discrimination on account of economic status or source of payment, and without delaying treatment for the purpose of a prior discussion of the source of payment unless the delay can be imposed without material risk to the health of the person. R.I. Gen. Laws § 23-17-26 (2006).</p> <p>Section 42-12.3-4 of the General Laws of Rhode Island establishes a payor of last resort program for comprehensive health care for children until they reach nineteen (19) years of age, to be known as "RIte track". This expands Medicaid coverage through expanded family income disregards for children, until they reach nineteen (19) years of age, whose family income levels are up to two hundred fifty percent (250%) of the federal poverty level; provided, however, that health care coverage under this section shall also be</p>		<p>A person can go to a local DHS office to apply or can print a copy of the application and apply by mail. (www.dhs.ri.gov) The applications are in English and Spanish.</p> <p>If one is applying for RIte Care and you is not a U.S. citizen, information about one's immigration status will be necessary.</p> <ul style="list-style-type: none"> • The receipt of RIte Care will not affect your immigration papers, your ability to become a citizen, or your ability to become a legal permanent resident.

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	<p>provided without regard to the availability of federal financial participation to a noncitizen child lawfully residing in the United States and to a noncitizen child residing in Rhode Island, provided that the child satisfies all other eligibility requirements, and (effective January 1, 2007) is receiving medical assistance on or before December 31, 2006.</p>		
<p>South Carolina</p>	<p>Undocumented immigrants receive emergency service in South Carolina only under the federal regulations.</p> <p>See, http://www.scjustice.org/Brochures%20for%20Web%202009/Health/Emergency%20Medicaid%20for%20Immigrants%202009.pdf</p>	<p>Emergency Medicaid only covers very serious emergencies that put one’s health or body in danger. The Department of Health & Human Services determines whether an emergency is serious enough to be covered by Emergency Medicaid on a case-by-case basis.</p> <p>Labor and delivery of a baby would be covered by Emergency Medicaid, but prenatal care is not.</p> <p>A heart attack or stroke would probably be covered, but a black eye or a broken ankle would likely not.</p> <p>Emergency Medicaid does not cover organ transplants.</p>	<p>Applicants must meet with a DHHS caseworker to fill out the formal application. Neither the service provider nor DHHS must inquire about immigration status. A Social Security Number is not required.</p>
<p>South Dakota</p>	<p>Pub. L. No. 104-193 requires emergency medical treatment coverage for non-qualified aliens.</p> <p>South Dakota Statute 26-6-1 authorizes the Department of Social Services to provide medical services on behalf of persons having</p>	<p>An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; 	<p>South Dakota Administrative Rule 67:46:01:11 provides that, subject to certain exceptions (none of which relate to aliens), “an individual desiring medical assistance under this article or someone acting on that individual’s behalf, must submit a completed, written, and signed application for assistance to the department.”</p>

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	<p>insufficient income and resources to meet the necessary costs thereof. . . in accordance with rules which the secretary of social services shall promulgate . . . and may include (6) Such other requirements as may be necessary to obtain federal financial participation in the medical assistance program.” Since Pub. L. No. 104-193 requires emergency coverage for aliens, S.D. Stat. 26-6-1 authorizes the Department of Social Services to implement rules allowing emergency treatment of undocumented aliens, although no specific rules on that topic have been promulgated.</p> <p>Emergency medical assistance may be available regardless of citizenship, immigration status, or having a social security number.”</p> <p>http://dss.sd.gov/formspubs/docs/</p>	<ul style="list-style-type: none"> • serious impairment of bodily functions; or • serious dysfunction of a bodily organ or body part. 	
Tennessee	<p>TennCare</p> <p>An alien who is not lawfully admitted for permanent residence in the US or permanently residing in the US under color of law (“nonqualified alien”) is not eligible for Medicaid <i>except</i> emergency services. Nonqualified aliens must otherwise meet eligibility requirements, <i>i.e.</i>, income</p>	<p>The term "emergency medical condition" means the sudden onset of a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <p>(1) Placing the patient's health in</p>	<p>The Department of Human Services (DHS) takes applications from nonqualified aliens requiring emergency services. Due to the emergency nature of the services available to nonqualified aliens, it is expected that most applications will be made after the services are rendered. DHS contacts the TennCare Office of the Medical Director if there is a question about whether the service needed by the nonqualified alien</p>

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	<p>and resource standards.</p>	<p>serious jeopardy;</p> <p>(2) Serious impairment to bodily functions; or</p> <p>(3) Serious dysfunction to any bodily organ; or part.</p> <p><i>Quick Guide to TennCare Services,</i> http://state.tn.us/sos/rules/1200/1200-13/1200-13-13.20100903.pdf</p>	<p>qualifies as an emergency. DHS is responsible for making eligibility determinations, providing eligibility notice and appeal rights. TennCare Office of the Medical Director is responsible for determining the presence/absence of an emergency. TennCare Division of Information Services is responsible for the enrollment of nonqualified aliens into the system.</p> <p><i>DHS Office Locator,</i> http://www.state.tn.us/humanser/st_map.htm</p>
<p>Texas</p>	<p>In Texas, undocumented immigrants may obtain Medicaid benefits if they meet Texas income, asset and certain other eligibility requirements, and also have an “emergency medical condition.” <i>See</i> 1 Tex. Admin. Code § 354.2101.</p> <p>Applicants for emergency medical condition Medicaid benefits must meet requirements established for the <i>Medically Needy and Children and Pregnant Women Programs</i>, except for the citizenship and residence requirement. <i>See</i> 1 Tex. Admin. Code § 354.2103. This means that applicants must be (1) pregnant women who meet certain income and asset eligibility limits, (2) children under age 19 who meet certain income and asset eligibility limits or (3) adult caretakers of dependent children meeting the requirements for Temporary Assistance for Needy Families (TANF) who also meet certain</p>	<p>An emergency medical condition is one with acute, severe symptoms, such as severe pain. It is considered an emergency medical condition if failure to get immediate medical attention would:</p> <ul style="list-style-type: none"> • endanger the patient’s health; • seriously impair bodily functions; or <p>cause serious dysfunction to a body organ or body part. <i>See</i> 1 Tex. Admin. Code § 354.2103.</p> <p>Patients that are eligible for coverage can receive inpatient and outpatient care, by a physician or other appropriate provider, that is necessary to treat the emergency medical condition. Inpatient/outpatient care may include pharmacy, laboratory, radiology, pathology, labor, delivery and newborn care.</p> <p>Coverage does not include continuation of services or follow-up care after the emergency medical condition is</p>	<p>To receive these Medicaid benefits, an individual is not required to be a U.S. citizen or a resident of Texas, but must meet the other Medicaid eligibility requirements for <i>Medically Needy and Children and Pregnant Women Programs</i>. <i>See</i> 1 Tex. Admin. Code § 354.2103.</p> <p>Applicants must file a simplified application with their local office of the Texas Health and Human Services Commission. <i>See</i> 1 Tex. Admin. Code §§ 354.1556, 75.</p> <p>For more information and an application see:</p> <p>http://www.dads.state.tx.us/forms/h1010-b/h1010-b.pdf</p>

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	<p>income and asset eligibility limits. <i>See</i> 1 Tex. Admin. Code §§ 354.1555–58, 354.1574-77.</p>	<p>stabilized.</p> <p>For more information see:</p> <p>Texas Medicaid Provider Procedures Manual, <i>Texas Medicaid Services</i> at http://www.tmhp.com/TMHP_File_Library/Provider_Manuals/TMP_PPM/Archive%202006%20TMP/2006%20TMPPM.pdf</p>	
Utah	<p>The Utah Medicaid Agency administers the emergency Medicaid program for alien residents who would qualify for another Medicaid program except for the requirement to be either a U.S. citizen or legal, permanent resident.</p> <p>Persons who may be eligible include: temporary entrants such as students, visitors, exchange visitors, and aliens granted legal temporary residence and undocumented aliens.</p> <p>Income and asset limits are based on the program the person would otherwise be eligible for if the person was a U.S. citizen or legal, permanent resident.</p> <p><i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, available at http://health.utah.gov/medicaid/provhtml/emergency_medical.html.</p>	<p>Emergency shall mean a medical condition for which the absence of immediate medical attention could reasonably be expected to result in death or permanent disability to the person, or in the case of a pregnant woman, to the unborn child. Emergency services shall be those rendered from the moment of onset of the emergency condition, to the time the person’s condition is stabilized at an appropriate medical facility, or death results. The definition of emergency services shall include labor and delivery services, but not prenatal or post-partum services. Emergency services shall not include prolonged medical support, medical equipment, or prescribed drugs which are required beyond the point at which the emergency condition has been resolved. Emergency services also shall not include long term care or organ transplants.</p> <p><i>See</i> Utah Medicaid Provider Manual, at 13-7 (Apr. 2005), available at http://health.utah.gov/medicaid/manuals/pdfs/Medicaid%20Provider%20Manuals/Section%20I%20(All%20Providers)/Archive/2008/SectionI-1-08.pdf.</p>	<p>Individuals who qualify only for Emergency Services have a special card issued by Medicaid which states “EMERGENCY SERVICES”. The client is eligible only for the restricted scope of emergency service defined by the Social Security Act and Medicaid’s definition of emergency as noted above. These services are covered only until the condition is stabilized. A condition is stabilized when the severity of illness and the intensity of service is such that the patient can leave the facility. Services rendered subsequent to the patient leaving the facility, such as follow-up visits, follow-up treatment or visits scheduled in the future, are not covered by this program.</p> <p>Only labor and delivery services are paid for the Emergency Services client without documentation and review. Prenatal and post-partum services ARE NOT covered for a non-citizen. Physicians and certified nurse midwives may use only the non-global delivery codes specified in SECTION 2 of the Utah Medicaid Provider Manual for Physician Services and for Certified Nurse Midwife Services.</p> <p><i>See</i> Utah Medicaid Provider</p>

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		<p>Coverage is limited to the month in which the emergency occurred. <i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, available at http://health.utah.gov/medicaid/provhtml/emergency_medical.html.</p>	<p>Manual, at 13-7 (Apr. 2005), available at http://health.utah.gov/medicaid/manuals/pdfs/Medicaid%20Provider%20Manuals/Section%20I%20(All%20Providers)/Archive/2008/SectionI-1-08.pdf.</p> <p>Medicaid does not report undocumented aliens who apply for Emergency Medicaid to immigration authorities. <i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, available at http://health.utah.gov/medicaid/provhtml/emergency_medical.html.</p>
Vermont	<p>In Vermont, an individual who does not meet the citizenship requirement is eligible for emergency services, provided such care and services are not related to either an organ transplant procedure or routine prenatal or post-partum care, if both of the following conditions are met:</p> <p>1. The non-citizen has, after sudden onset, a medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious:</p> <ul style="list-style-type: none"> . jeopardy to the patient's health, . impairment of bodily functions, or . dysfunction of any bodily organ or part. 	<p>“Emergency services” means health care items and services furnished or required to evaluate and treat an emergency medical condition. <i>See</i> Vt. Medicaid Regulations, Soc. Welfare 95-49, § M103.3(A)(14). “Emergency medical condition” means the sudden and, at the time, unexpected onset of an illness or medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by the prudent layperson, who possess an average knowledge of health and medicine, to result in:</p> <ul style="list-style-type: none"> a. placing the member's physical or mental health in serious jeopardy; or b. serious impairment to bodily functions; or c. serious dysfunction of any bodily organ or part. 	<p>Any individual who wants Medicaid must file a Medicaid application with the Department for Children and Families:</p> <p>Vermont Department for Children and Families 103 South Main Street Waterbury, VT 05676-1201</p> <p>1-800-287-0589 or 1-802-241-2100</p>

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	<p>2. The non-citizen must meet all other eligibility requirements for Medicaid except verification of alien status and, for illegal non-citizens, verification of a social security number. <i>See</i> Vt. Admin. Code 12-3-211:4177.</p>	<p><i>See</i> Vt. Medicaid Regulations, Soc. Welfare 95-49, § M103.3(A)(13).</p>	
Virginia	<p>In Virginia, unqualified aliens are eligible for Medicaid coverage of emergency medical care only. This care must be provided in a hospital emergency room or as an inpatient in a hospital. The Virginia Department of Medical Assistance Services or a local department of social service determines both whether services are considered emergency services and the period of coverage.</p> <p>Emergency services are defined as emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in: 1. Placing the patient's health in serious jeopardy; 2. Serious impairment of bodily functions; or 3. Serious dysfunction of any bodily organ or part. <i>See</i> 12 Va. Admin. Code § 30-50-310(B).</p> <p>For purposes of this definition, emergency treatment of a medical</p>	<p>If the applicant is found eligible and is certified for emergency services, eligibility exists only for the period of coverage certified by Virginia Department of Medical Assistance Services or a local department of social services staff on the Emergency Medical Certification form, # 032-03-628.</p> <p>Once an eligibility period is established, additional requests for coverage of emergency services within 6 months will not require a new Medicaid application. However, each request for Medicaid coverage of an emergency service or treatment requires a new, separate certification and a review of the alien's income and resources and any change in situation that the alien reports. An emergency services alien must file a new Medicaid application after the 6-month eligibility period is over if he/she receives an emergency service and wants Medicaid coverage for that service. <i>See</i> Va. Dep't Social Serv., Medical Assistance Manual, Vol. XIII TN#75, § M0220.700, <i>available at</i> http://www.dss.virginia.gov/files/division/bp/medical_assistance/manual_transmittals/manual/m02.pdf.</p>	<p>Submit application to local department of social services</p> <p>For contact information for local departments of social services, see http://www.dss.virginia.gov/localagency/</p>

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	<p>condition does not include care and services related to either an organ transplant procedure or routine prenatal or postpartum care. <i>See</i> 12 Va. Admin. Code § 30-50-310(B).</p>		
Washington	<p>In Washington, undocumented immigrants who have a condition that meets the definition of emergency medical condition may obtain Alien Emergency Medical (AEM) benefits if they would be eligible for other state Medicaid programs except for the citizenship or alien status requirements. <i>See</i> Wash. Admin. Code § 388-438-0110; Wash. Admin. Code § 388-438-0115.</p> <p>A person is not eligible for the AEM program if they entered the state specifically to obtain medical care. Wash. Admin. Code § 388-438-0110.</p> <p>For more information see: https://fortress.wa.gov/dshs/f2ws03esaapps/onlinecso/ali-enemergencymedical.asp</p>	<p>"Emergency medical condition" means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (1) placing the patient's health in serious jeopardy; (2) serious impairment to bodily functions; or (3) serious dysfunction of any bodily organ or part. Wash. Admin. Code § 388-500-0005.</p> <p>Covered services under the AEM are limited to those necessary for treatment of the person's emergent medical condition. AEM does not cover: organ transplants; prenatal care (except for labor and delivery); school-based services; personal care services; waiver services; or nursing facility services. <i>See</i> Wash. Admin. Code § 388-438-0110; Wash. Admin. Code § 388-438-0115.</p>	<p>Under this program, certification is only valid for the period of time the person is receiving services under the established criteria. <i>See</i> Wash. Admin. Code § 388-438-0115.</p> <p>A person can apply for AEM benefits at the local community services office or online.</p> <p>To locate a local community services office see: https://fortress.wa.gov/dshs/f2ws03esaapps/onlinecso/findservice.asp</p> <p>For more information on the online application: https://fortress.wa.gov/dshs/f2ws03esaapps/onlineapp/introduction_1.asp</p> <p>For more information on the application process: http://www1.dshs.wa.gov/esa/ezmanual/Sections/AppsFiling.htm</p>
West Virginia	<p>In West Virginia, illegal/ineligible aliens who meet the residence and other Medicaid eligibility criteria will be eligible for Medicaid only for treatment of an emergency medical</p>	<p>An emergency medical condition is defined as a situation where the illegal/ineligible alien has, after sudden onset, a medical condition (including emergency labor and delivery) showing acute symptoms of sufficient severity</p>	<p>Applications from or on behalf of these aliens must be made within 30 days of the need for emergency medical care. <i>See</i> W.Va. Income Maintenance Manual, ch. 16, § 16.6(H)), <i>available at</i></p>

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	<p>condition.</p> <p>To be eligible for emergency services, an illegal/ineligible alien must meet the income, asset and deprivation considerations (except for alien status) of either AFDC Medicaid or SSI and diagnosed as having a emergency medical condition. <i>See</i> W.Va. Income Maintenance Manual, ch. 16, § 16.6(H), available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_16/ch16_6.pdf.</p>	<p>(including severe pain) such that the absence of reasonable medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> • placing the patient’s health in serious jeopardy • serious impairment to bodily functions or • serious dysfunction of any bodily organ or part <p>Coverage may not be related to either an organ transplant procedure or routine prenatal or postpartum care.</p> <p><i>See</i> W.Va. Income Maintenance Manual, ch. 18, § 18.9, available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_18/ch18_9.pdf.</p> <p>Eligibility for emergency Medicaid coverage ends on the day that the medical emergency ends.</p>	<p>http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_16/ch16_6.pdf.</p> <p>In order to obtain benefits, an application form on OFS-2 is required. The application may be signed by the illegal/ineligible alien or his or her representative. The illegal/ineligible alien or his or her representative must also submit to an interview. This must be submitted within a reasonable period of time as agreed upon with the case worker. When the verification is received and the illegal/ineligible alien is eligible for benefits, medical coverage is retroactive to the date of the medical emergency.</p> <p><i>See</i> W.Va. Income Maintenance Manual, ch. 1, § 1.17, available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_01/ch1_17.pdf.</p>
Wisconsin	<p>In Wisconsin, ineligible aliens may be eligible for emergency services if other Medicaid eligibility requirements are met. <i>See</i> Wis. Medicaid Fact Sheet, available at http://www.dhs.wisconsin.gov/Medicaid/Publications/p-10055.pdf.</p>	<p>An emergency means a medical condition where lack of immediate medical attention results in:</p> <ul style="list-style-type: none"> • Serious risk to the patient’s health; or • Serious harm to bodily functions; or • Serious dysfunction of a bodily organ or part. <p><i>See</i> Wis. Medicaid Fact Sheet, available at http://www.dhs.wisconsin.gov/Medicaid/Publications/p-10055.pdf.</p>	<p>For most emergency services, application for reimbursement is made after-the-fact. The applicant may get a form from the medical provider stating that emergency treatment was given. This form may be included with one’s application, but is not strictly necessary.</p> <p>Applications are received at the local county/tribal human or social services agency.</p>

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		<p>Emergency Medicaid begins on the first day medical care is received, and ends when one's condition is no longer an emergency. <i>See</i> Badgercare Plus and Wisconsin Medicaid — Emergency Services, <i>available at</i> http://www.dhs.wisconsin.gov/medicaid/Publications/p-10072.pdf.</p>	<p>Non-citizens are not required to provide a SSN or information about their immigration status to receive emergency Medicaid.</p> <p>Pregnant women may apply for emergency Medicaid one month before their due date. Coverage continues until 60 days after the delivery date.</p> <p>Pregnant women who qualify for emergency Medicaid are also likely to qualify for BadgerCare Prenatal care. For more information on BadgerCare see: http://www.badgercareplus.org/.</p> <p><i>See</i> Badgercare Plus and Wisconsin Medicaid — Emergency Services, <i>available at</i> http://www.dhs.wisconsin.gov/medicaid/Publications/p-10072.pdf.</p>
Wyoming	<p>EqualityCare</p> <p>EqualityCare is a state public health insurance program designed to help pay for certain health care services and is available to both qualified and non-qualified aliens.</p> <p>Individuals who are non citizens and meet all eligibility requirements under an EqualityCare group, except for citizenship, identity and social security number, may be eligible for Emergency Services. <i>See</i> http://health.wyo.gov/healthcarefin/medicaideligibility/</p>	<p>“Emergency” means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:</p> <p>(i) Placing the patient's health in serious jeopardy;</p> <p>(ii) Serious impairment to bodily functions; or</p> <p>(iii) Serious dysfunction of any bodily organ or part.</p> <p><i>See</i> Wy. Medicaid Rules, ch. 26, § 4 (tt), <i>available at</i> http://soswy.state.wy.us/RULES/6252.pdf.</p>	<p>EqualityCare</p> <p>Applicants obtain an application and submit it to their local Department of Family Services (DFS) office. Applications can be obtained through a DFS office or at a Public Health office, Women, Infants and Children office, or various doctors' offices. <i>See generally</i> Wy. Stat. Ann. § 42-4-106.</p> <p>Applications will be reviewed by a benefit specialist who will determine eligibility. Applicants who are eligible for EqualityCare will receive a letter explaining the coverage. Applicants who are determined to be ineligible will receive a</p>

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	<p>WYECWhoiseligible.html Emergency hospital services are those necessary to prevent the death of serious impairment of an individual. <i>See</i> 42 C.F.R. § 440.170(e); Wy. Medicaid Rules, ch. 26, § 4 (vv), <i>available at</i> http://soswy.state.wy.us/Rules/RULES/6252.pdf.</p>	<p>Benefits are limited to emergency services such as labor and delivery. Other emergency services may be covered from the time treatment is first given for a condition until that same condition is no longer considered an emergency. These services must be determined as an emergency by EqualityCare's fiscal agent. A co-payment may be required for adults 21 years of age or older on EqualityCare's Emergency Services program.</p> <p><i>See</i> http://health.wyo.gov/healthcarefin/medicaideligibility/EmergencyServices.html.</p> <p>Coverage questions may be answered by calling the EqualityCare Client Help Line at 1-800-251-1269. For emergency services coverage, the emergency center would need to diagnose the situation an emergency in over for the medical bills to be covered.</p>	<p>letter explaining the reason for the denial. <i>See generally</i> Wy. Stat. Ann. § 42-4-106.</p> <p>Applicants may appeal a denial, change or termination of EqualityCare benefits by requesting an administrative hearing within 30 days of being notified of the denial, change or termination. The request for an administrative hearing should be made on the back of the notice and mailed or hand delivered to the applicant's local DFS office. <i>See generally</i> Wy. Stat. Ann. § 42-4-108.</p> <p>If a request for medical services was denied by the Office of Medicaid, a request for an administrative hearing must be made in writing and include the individual's name, address and the reason for the hearing request. The hearing request should be mailed to: Office of Medicaid, 2300 Capitol Avenue, Cheyenne, WY 82002.</p> <p>Requests for administrative hearings will be reviewed, and if a hearing is granted, notice will be sent regarding the date and time of the hearing.</p>
Utah	<p>The Utah Medicaid Agency administers the emergency Medicaid program for alien residents who would qualify for another Medicaid program except for the requirement to be either a U.S. citizen or legal, permanent resident.</p> <p>Persons who may be eligible include: temporary entrants</p>	<p>Emergency shall mean a medical condition for which the absence of immediate medical attention could reasonably be expected to result in death or permanent disability to the person, or in the case of a pregnant woman, to the unborn child. Emergency services shall be those rendered from the moment of onset of the emergency condition, to the time the person's condition is stabilized at an appropriate</p>	<p>Individuals who qualify only for Emergency Services have a special card issued by Medicaid which states "EMERGENCY SERVICES". The client is eligible only for the restricted scope of emergency service defined by the Social Security Act and Medicaid's definition of emergency as noted above. These services are covered only until the condition is stabilized. A condition is stabilized when</p>

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	<p>such as students, visitors, exchange visitors, and aliens granted legal temporary residence and undocumented aliens.</p> <p>Income and asset limits are based on the program the person would otherwise be eligible for if the person was a U.S. citizen or legal, permanent resident.</p> <p><i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, available at http://health.utah.gov/medicaid/provhtml/emergency_medical.html.</p>	<p>medical facility, or death results. The definition of emergency services shall include labor and delivery services, but not prenatal or post-partum services. Emergency services shall not include prolonged medical support, medical equipment, or prescribed drugs which are required beyond the point at which the emergency condition has been resolved. Emergency services also shall not include long term care or organ transplants.</p> <p><i>See</i> Utah Medicaid Provider Manual, at 13-7 (Apr. 2005), available at http://health.utah.gov/medicaid/manuals/pdfs/Medicaid%20Provider%20Manuals/Section%20I%20(All%20Providers)/Archive/2008/SectionI-1-08.pdf.</p> <p>Coverage is limited to the month in which the emergency occurred. <i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, available at http://health.utah.gov/medicaid/provhtml/emergency_medical.html.</p>	<p>the severity of illness and the intensity of service is such that the patient can leave the facility. Services rendered subsequent to the patient leaving the facility, such as follow-up visits, follow-up treatment or visits scheduled in the future, are not covered by this program.</p> <p>Only labor and delivery services are paid for the Emergency Services client without documentation and review. Prenatal and post-partum services ARE NOT covered for a non-citizen. Physicians and certified nurse midwives may use only the non-global delivery codes specified in SECTION 2 of the Utah Medicaid Provider Manual for Physician Services and for Certified Nurse Midwife Services.</p> <p><i>See</i> Utah Medicaid Provider Manual, at 13-7 (Apr. 2005), available at http://health.utah.gov/medicaid/manuals/pdfs/Medicaid%20Provider%20Manuals/Section%20I%20(All%20Providers)/Archive/2008/SectionI-1-08.pdf.</p> <p>Medicaid does not report undocumented aliens who apply for Emergency Medicaid to immigration authorities. <i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, available at http://health.utah.gov/medicaid/provhtml/emergency_medical.html.</p>
Vermont	<p>In Vermont, an individual who does not meet the citizenship requirement is eligible for emergency services, provided such care and services are not related</p>	<p>“Emergency services” means health care items and services furnished or required to evaluate and treat an emergency medical condition. <i>See</i> Vt. Medicaid Regulations, Soc. Welfare 95-49,</p>	<p>Any individual who wants Medicaid must file a Medicaid application with the Department for Children and Families:</p>

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	<p>to either an organ transplant procedure or routine prenatal or post-partum care, if both of the following conditions are met:</p> <p>1. The non-citizen has, after sudden onset, a medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious:</p> <ul style="list-style-type: none"> . jeopardy to the patient's health, . impairment of bodily functions, or . dysfunction of any bodily organ or part. <p>2. The non-citizen must meet all other eligibility requirements for Medicaid except verification of alien status and, for illegal non-citizens, verification of a social security number. <i>See</i> Vt. Admin. Code 12-3-211:4177.</p>	<p>§ M103.3(A)(14). “Emergency medical condition” means the sudden and, at the time, unexpected onset of an illness or medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by the prudent layperson, who possess an average knowledge of health and medicine, to result in:</p> <ul style="list-style-type: none"> a. placing the member's physical or mental health in serious jeopardy; or b. serious impairment to bodily functions; or c. serious dysfunction of any bodily organ or part. <p><i>See</i> Vt. Medicaid Regulations, Soc. Welfare 95-49, § M103.3(A)(13).</p>	<p>Vermont Department for Children and Families 103 South Main Street Waterbury, VT 05676-1201</p> <p>1-800-287-0589 or 1-802-241-2100</p>
Virginia	<p>In Virginia, unqualified aliens are eligible for Medicaid coverage of emergency medical care only. This care must be provided in a hospital emergency room or as an inpatient in a hospital. The Virginia Department of Medical Assistance Services or a local department of social service determines both whether services are considered emergency services and the period of</p>	<p>If the applicant is found eligible and is certified for emergency services, eligibility exists only for the period of coverage certified by Virginia Department of Medical Assistance Services or a local department of social services staff on the Emergency Medical Certification form, # 032-03-628.</p> <p>Once an eligibility period is established, additional requests for coverage of emergency</p>	<p>Submit application to local department of social services</p> <p>For contact information for local departments of social services, see</p> <p>http://www.dss.virginia.gov/localagency/</p>

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	<p>coverage.</p> <p>Emergency services are defined as emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in: 1. Placing the patient's health in serious jeopardy; 2. Serious impairment of bodily functions; or 3. Serious dysfunction of any bodily organ or part. <i>See</i> 12 Va. Admin. Code § 30-50-310(B).</p> <p>For purposes of this definition, emergency treatment of a medical condition does not include care and services related to either an organ transplant procedure or routine prenatal or postpartum care. <i>See</i> 12 Va. Admin. Code § 30-50-310(B).</p>	<p>services within 6 months will not require a new Medicaid application. However, each request for Medicaid coverage of an emergency service or treatment requires a new, separate certification and a review of the alien's income and resources and any change in situation that the alien reports. An emergency services alien must file a new Medicaid application after the 6-month eligibility period is over if he/she receives an emergency service and wants Medicaid coverage for that service. <i>See</i> Va. Dep't Social Serv., Medical Assistance Manual, Vol. XIII TN#75, § M0220.700, available at http://www.dss.virginia.gov/files/division/bp/medical_assistance/manual_transmittals/manual/m02.pdf.</p>	
Washington	<p>In Washington, undocumented immigrants who have a condition that meets the definition of emergency medical condition may obtain Alien Emergency Medical (AEM) benefits if they would be eligible for other state Medicaid programs except for the citizenship or alien status requirements. <i>See</i> Wash. Admin. Code § 388-438-0110; Wash. Admin. Code § 388-438-0115.</p>	<p>"Emergency medical condition" means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (1) placing the patient's health in serious jeopardy; (2) serious impairment to bodily functions; or (3) serious dysfunction of any bodily organ or part. Wash. Admin. Code § 388-500-0005.</p> <p>Covered services under the AEM</p>	<p>Under this program, certification is only valid for the period of time the person is receiving services under the established criteria. <i>See</i> Wash. Admin. Code § 388-438-0115.</p> <p>A person can apply for AEM benefits at the local community services office or online.</p> <p>To locate a local community services office see: https://fortress.wa.gov/dshs/f2ws03esaapps/</p>

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	<p>A person is not eligible for the AEM program if they entered the state specifically to obtain medical care. Wash. Admin. Code § 388-438-0110.</p> <p>For more information see: https://fortress.wa.gov/dshs/f2ws03esaapps/onlinecso/alienemergencymedical.asp</p>	<p>are limited to those necessary for treatment of the person's emergent medical condition. AEM does not cover: organ transplants; prenatal care (except for labor and delivery); school-based services; personal care services; waiver services; or nursing facility services. <i>See</i> Wash. Admin. Code § 388-438-0110; Wash. Admin. Code § 388-438-0115.</p>	<p>onlinecso/findservice.asp</p> <p>For more information on the online application: https://fortress.wa.gov/dshs/f2ws03esaapps/onlineapp/introduction_1.asp</p> <p>For more information on the application process: http://www1.dshs.wa.gov/esa/ezmanual/Sections/AppsFiling.htm</p>
West Virginia	<p>In West Virginia, illegal/ineligible aliens who meet the residence and other Medicaid eligibility criteria will be eligible for Medicaid only for treatment of an emergency medical condition.</p> <p>To be eligible for emergency services, an illegal/ineligible alien must meet the income, asset and deprivation considerations (except for alien status) of either AFDC Medicaid or SSI and diagnosed as having a emergency medical condition. <i>See</i> W.Va. Income Maintenance Manual, ch. 16, § 16.6(H), available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_16/ch16_6.pdf.</p>	<p>An emergency medical condition is defined as a situation where the illegal/ineligible alien has, after sudden onset, a medical condition (including emergency labor and delivery) showing acute symptoms of sufficient severity (including severe pain) such that the absence of reasonable medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> • placing the patient's health in serious jeopardy • serious impairment to bodily functions or • serious dysfunction of any bodily organ or part <p>Coverage may not be related to either an organ transplant procedure or routine prenatal or postpartum care.</p> <p><i>See</i> W.Va. Income Maintenance Manual, ch. 18, § 18.9, available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_18/ch18_9.pdf.</p>	<p>Applications from or on behalf of these aliens must be made within 30 days of the need for emergency medical care. <i>See</i> W.Va. Income Maintenance Manual, ch. 16, § 16.6(H), available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_16/ch16_6.pdf.</p> <p>In order to obtain benefits, an application form on OFS-2 is required. The application may be signed by the illegal/ineligible alien or his or her representative. The illegal/ineligible alien or his or her representative must also submit to an interview. This must be submitted within a reasonable period of time as agreed upon with the case worker. When the verification is received and the illegal/ineligible alien is eligible for benefits, medical coverage is retroactive to the date of the medical emergency.</p>

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		<p>8_9.pdf.</p> <p>Eligibility for emergency Medicaid coverage ends on the day that the medical emergency ends.</p>	<p>See W.Va. Income Maintenance Manual, ch. 1, § 1.17, available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_01/ch1_17.pdf.</p>
Wisconsin	<p>In Wisconsin, ineligible aliens may be eligible for emergency services if other Medicaid eligibility requirements are met. See Wis. Medicaid Fact Sheet, available at http://www.dhs.wisconsin.gov/Medicaid/Publications/p-10055.pdf.</p>	<p>An emergency means a medical condition where lack of immediate medical attention results in:</p> <ul style="list-style-type: none"> • Serious risk to the patient’s health; or • Serious harm to bodily functions; or • Serious dysfunction of a bodily organ or part. <p>See Wis. Medicaid Fact Sheet, available at http://www.dhs.wisconsin.gov/Medicaid/Publications/p-10055.pdf.</p> <p>Emergency Medicaid begins on the first day medical care is received, and ends when one’s condition is no longer an emergency. See Badgercare Plus and Wisconsin Medicaid — Emergency Services, available at http://www.dhs.wisconsin.gov/medicaid/Publications/p-10072.pdf.</p>	<p>For most emergency services, application for reimbursement is made after-the-fact. The applicant may get a form from the medical provider stating that emergency treatment was given. This form may be included with one’s application, but is not strictly necessary.</p> <p>Applications are received at the local county/tribal human or social services agency.</p> <p>Non-citizens are not required to provide a SSN or information about their immigration status to receive emergency Medicaid.</p> <p>Pregnant women may apply for emergency Medicaid one month before their due date. Coverage continues until 60 days after the delivery date.</p> <p>Pregnant women who qualify for emergency Medicaid are also likely to qualify for BadgerCare Prenatal care. For more information on BadgerCare see: http://www.badgercareplus.org/.</p> <p>See Badgercare Plus and Wisconsin Medicaid — Emergency Services, available at http://www.dhs.wisconsin.gov/m</p>

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			edicaid/Publications/p-10072.pdf .
Wyoming	<p>EqualityCare</p> <p>EqualityCare is a state public health insurance program designed to help pay for certain health care services and is available to both qualified and non-qualified aliens.</p> <p>Individuals who are non citizens and meet all eligibility requirements under an EqualityCare group, except for citizenship, identity and social security number, may be eligible for Emergency Services. <i>See</i> http://health.wyo.gov/healthcarefin/medicaideligibility/WYECWhoiseligible.html</p> <p>Emergency hospital services are those necessary to prevent the death of serious impairment of an individual. <i>See</i> 42 C.F.R. § 440.170(e); Wy. Medicaid Rules, ch. 26, § 4 (vv), <i>available at</i> http://soswy.state.wy.us/Rules/RULES/6252.pdf.</p>	<p>“Emergency” means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:</p> <p>(i) Placing the patient's health in serious jeopardy;</p> <p>(ii) Serious impairment to bodily functions; or</p> <p>(iii) Serious dysfunction of any bodily organ or part.</p> <p><i>See</i> Wy. Medicaid Rules, ch. 26, § 4 (tt), <i>available at</i> http://soswy.state.wy.us/Rules/RULES/6252.pdf.</p> <p>Benefits are limited to emergency services such as labor and delivery. Other emergency services may be covered from the time treatment is first given for a condition until that same condition is no longer considered an emergency. These services must be determined as an emergency by EqualityCare's fiscal agent. A co-payment may be required for adults 21 years of age or older on EqualityCare's Emergency Services program.</p> <p><i>See</i> http://health.wyo.gov/healthcarefin/medicaideligibility/EmergencyServices.html.</p> <p>Coverage questions may be answered by calling the</p>	<p>EqualityCare</p> <p>Applicants obtain an application and submit it to their local Department of Family Services (DFS) office. Applications can be obtained through a DFS office or at a Public Health office, Women, Infants and Children office, or various doctors' offices. <i>See generally</i> Wy. Stat. Ann. § 42-4-106.</p> <p>Applications will be reviewed by a benefit specialist who will determine eligibility. Applicants who are eligible for EqualityCare will receive a letter explaining the coverage. Applicants who are determined to be ineligible will receive a letter explaining the reason for the denial. <i>See generally</i> Wy. Stat. Ann. § 42-4-106.</p> <p>Applicants may appeal a denial, change or termination of EqualityCare benefits by requesting an administrative hearing within 30 days of being notified of the denial, change or termination. The request for an administrative hearing should be made on the back of the notice and mailed or hand delivered to the applicant's local DFS office. <i>See generally</i> Wy. Stat. Ann. § 42-4-108.</p> <p>If a request for medical services was denied by the Office of Medicaid, a request for an administrative hearing must be made in writing and include the individual's name, address and</p>

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State ¹	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		<p>EqualityCare Client Help Line at 1-800-251-1269. For emergency services coverage, the emergency center would need to diagnose the situation an emergency in over for the medical bills to be covered.</p>	<p>the reason for the hearing request. The hearing request should be mailed to: Office of Medicaid, 2300 Capitol Avenue, Cheyenne, WY 82002.</p> <p>Requests for administrative hearings will be reviewed, and if a hearing is granted, notice will be sent regarding the date and time of the hearing.</p>

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Coverage for Forensic Costs for Undocumented Immigrants

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This information is current as of September 17, 2007. It is intended to provide an overview regarding health benefits and victim compensation for each state. Victims in need of legal advice should contact their local domestic violence/sexual assault program for referrals.

Introduction

Recognizing the importance of having evidence to prosecute criminal actions against perpetrators of sexual assault and in light of the federal goal of encouraging states to bear the costs of forensic examinations that help the police locate and prosecute victims of sexual assault, most states pay for forensic examinations necessary to prosecute the perpetrators of sexual assaults. In general, states require the victim to report the crime, sometimes within a specified period of time after the assault, and a majority of the states provide that the forensic examination must be for the purpose of gathering evidence for the prosecution of a crime. The immigration status of the victim is not relevant.

Generally, the victim who reports the sexual assault is not billed for the cost of the examination. Payment is made by the law enforcement agency, the county or the Victims' Compensation Board. In some states, the victim's insurance may be used for the examination. If the victim is billed for the examination, the state provides a mechanism for reimbursement.

In those jurisdictions with Sexual Assault Nurse Examiners, the victim can request that an examination be provided by a Sexual Assault Nurse Examiner at no cost to the victim, generally even if the victim does not report the crime.

In a fewer number of states, the victim does not need to report the crime to obtain an examination. The immigration status of the victim is not relevant in those states.

Victims must pay close attention to the requirements in the particular state in which they were assaulted, particularly the need to report the crime and the time period within which the crime must be reported, to avoid being billed for the forensic examination. A few states will pay the cost of an examination incurred by a resident who is assaulted in a different state when such state will not pay for the forensic examination.

There follows a summary of the federal law that encourages states to pay for forensic examinations and a chart that sets forth a state-by-state summary of the laws or procedures governing the provision of forensic examinations to victims of sexual assault.

Relevant Federal Laws

The Violence Against Women Act of 2004 created a grant program known as STOP (Service, Training, Officers, and Prosecutors) where states receive grants to develop and strengthen law enforcement and prosecution strategies to combat violent crimes against women. In order to receive STOP grants the state or local government must incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault (see 42 U.S.C. §3796gg-4). A state or local government is deemed to assume the full out-of-pocket costs if it (1) provides such exams to the victim free of charge, (2) arranges for the victim to obtain the exam free of charge, or (3) reimburses the victim for the costs of the exam if (i) the reimbursement covers the full cost of the exam, (ii) the victim is permitted at least one year to apply for reimbursement, (iii) the victim is reimbursed within 90 days after written notification of the expense, and (iv) the victim is provided with notice at the time of the exam regarding how to obtain reimbursement.

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
Alabama	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made within 72 hours after the assault unless good cause for a later report is found • The victim does not pay for the examination. The Division of Criminal Justice pays for the examination. <p>Victim compensation is governed by Ala. Code § 15-23. The law was passed in 1984 and has been amended several times. E.g., Alabama Crime Victims Compensation Commission (“ACVCC”) Annual Report (http://www.acvcc.state.al.us/downloads/annualreport05.pdf) contains both the statutory provisions and the administrative code.</p> <p>Ala. Code § 15-23-8 provides that the “commission may award compensation for economic loss arising from criminally injurious conduct.” In 1995, the law was modified to authorize the commission to “provide for the cost of medical examinations for the purpose of gathering evidence and treatment for preventing venereal disease in sexual abuse crimes and offenses.” Ala. Code § 15-23-5 (24).</p>	<p>The examination costs should be automatically charged to the Division of Criminal Justice.</p> <p>The toxicology costs should be automatically charged to the Division of Scientific Services within the Department of Public Safety.</p> <p>For additional information, please contact:</p> <p>The Office of Victim Services 860-747-3994 800-822-8428</p>

¹ The information contained in this chart is based upon a review of the statutes and regulations of jurisdictions published before June 1, 2006, as well as interpretive advice obtained from representatives of various state agencies. State officials contacted for this survey may take the position that their views are unofficial and therefore non-binding

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Alaska	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The sexual examination kit is provided at no charge to health care providers. <p>Billing of sexual assault victims for forensic examinations is prohibited. Immigration status is not relevant.</p> <p>AS. 18.68.040 of the Alaska Statutes states as follows: “A law enforcement agency, health care facility, or other entity may not require a victim of sexual assault under AS 11.41.410-11.41.425 who is 16 years or older to pay, directly or indirectly, through health insurance or other means, for the costs of examination of the victim necessary for (1) collecting evidence using the sexual assault examination kit under AS 18.68.010 or otherwise; or (2) determining whether a sexual assault has occurred.”</p> <p>http://www.legis.state.ak.us/cgi-bin/folioisa.dll/stattx05/query=*/doc/{t8751}?</p>	<p>No process required – billing prohibited. Note: AS 18.68.010 provides that the sexual assault examination kits will be provided at no charge to health care providers.</p>
Arizona	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for forensic examinations that are for law enforcement purposes. The county in which the sexual assault occurred pays for the examination. <p>Arizona law provides that any medical expenses arising out of the need to secure evidence that a person has been the victim of a sexual assault shall be paid by the county in which the offense occurred. A.R.S. § 13-1414. Under this statute, counties reimburse costs of the forensic examination; other costs (e.g., hospital exam charges) are not reimbursed and remain the</p>	<p>Claims for examination costs are submitted on standard forms by forensic examination providers to the county in which the offense occurred. Detectives must have provided prior approval for forensic exams for reimbursement, and a law enforcement case number associated with the report of the assault is included with the submission. The victim is not billed for forensic examination charges.</p>

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	<p>responsibility of the victim, but may be recoverable under Arizona’s Victim Compensation law.</p> <p>The law provides for reimbursement without regard to citizenship or immigration status, and therefore both qualified and non-qualified immigrants are eligible.</p>	
Arkansas	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made within 72 hours after the assault unless the victim is a minor or good cause for a later report is found • The victim does not pay for the examination. The Crime Victims Reparations Board may reimburse the medical provider. <p>Ark. Code Ann§ 12-12-403. Examinations and treatment -- Payment</p> <p>(a) All licensed emergency departments shall provide prompt, appropriate emergency medical-legal examinations for sexual assault victims.</p> <p>(b) All victims shall be exempted from the payment of expenses incurred as a result of receiving a medical-legal examination provided the following conditions are met:</p> <p>(1) The assault must be reported to a law enforcement agency; and</p> <p>(2) (A) The victim must receive the medical-legal examination within seventy-two (72) hours of the attack.</p> <p>(B) However, the seventy-two-hour time limitation may be waived if the victim is a minor or if the Crime Victims Reparations Board finds that good cause exists for the failure to provide</p>	<p>Ark. Code Ann§ 12-12-404. Reimbursement of medical facility -- Rules and regulations</p> <p>(a) The Crime Victims Reparations Board may reimburse any medical facility or licensed health care provider that provides the services outlined in this subchapter for the reasonable cost for such services.</p> <p>(b) The board is empowered to prescribe minimum standards, rules, and regulations necessary to implement this subchapter. These shall include, but not be limited to, a cost ceiling for each claim and the determination of reasonable cost.</p>

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	<p>the exam within the required time.</p> <p>(c) (1) A medical facility or licensed health care provider that performs a medical-legal examination shall submit a sexual assault reimbursement form, an itemized statement which meets the requirements of 45 C.F.R. 164.512(d), as it existed on January 2, 2001, directly to the board for payment.</p> <p>(2) The medical facility or licensed health care provider shall not submit any remaining balance after reimbursement by the board to the victim.</p> <p>(3) Acceptance of payment of the expenses of the medical-legal examination by the board shall be considered payment in full and bars any legal action for collection.</p>	
California	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The local governmental agency pays for the examination. <p>A victim of a sexual assault is entitled to receive a medical examination for the purpose of gathering evidence for possible prosecution of the assailant. There is no charge to the victim for the exam. All costs related to the exam are treated as local costs and charged to the local governmental agency in whose jurisdiction the offense was committed. The victim can obtain such an exam at no cost regardless of her immigration status. Cal. Penal Code §13823.95. Accordingly, both qualified and non-qualified immigrants are eligible.</p> <p>A victim is to be informed that he or she may refuse to consent to a physical examination for evidence of a sexual assault, including collection of physical evidence, and that a refusal is not a ground for denial of treatment for injuries and for possible pregnancy and STDs, if the person wishes to obtain such treatment.</p>	<p>Health care providers must submit bills for the examination costs to the law enforcement agency in the jurisdiction in which the alleged offense was committed. Cal. Penal Code §13823.95.</p> <p>For more information see:</p> <p>www.ag.ca.gov/victimservices</p>

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	<p>The physical examination consists of inspection of body, clothes, for injuries or foreign materials, examination of mouth, vagina, cervix, penis, anus and rectum as required, and documentation of injuries.</p> <p>Collection of evidence includes, collection of clothing worn during assault, foreign materials, swabs and slides from mouth, vagina, rectum and penis, the victim's blood and urine samples for toxicology purposes, reference specimens, baseline gonorrhea culture, syphilis serology and specimens for a pregnancy test.</p> <p>Post-coital contraception shall be offered to a female victim of sexual assault, and provided to the victim if she requests it. See Cal. Penal Code §13823.11(e), and California Attorney General's Office Women's Rights Handbook, Chapter 7.</p> <p>For more information see:</p> <p>http://ag.ca.gov/publications/womansrights/cht.htm</p>	
Colorado	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime should be reported to law enforcement officials within 72 hours, but this requirement may be waived for good cause. • The victim does not pay for the examination. The local governmental agency pays for the examination. <p>Any direct cost associated with the collection of forensic evidence from the victim shall be paid by the referring or requesting law enforcement agency. (C.S.R. 18-3-407.5)</p>	<p>Colorado's Coalition Against Sexual Assault will also cover the costs of a medical exam for sexual assault victims if for some reason the local law enforcement or victim compensation boards fail to cover the expenses.</p> <p>They can be reached at:</p> <p>Colorado Coalition Against Sexual Assault PO Box 300398 Denver, CO 80203-0398 Phone: 303-861-7033 / 1-877-37-CCASA (22272) Fax: 303-832-7067 Email: info@ccasa.org</p>
Connecticut	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within 	<p>The examination costs should be automatically charged to the Division of</p>

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	<p style="text-align: center;">which the assault must be reported.</p> <ul style="list-style-type: none"> • The victim does not pay for the examination. The Division of Criminal Justice pays for the examination. <p>The examination costs of a victim of sexual assault, when the examination is performed to gather evidence, cannot be charged directly or indirectly to the victim. (C.G.S.A. §19a-112a(e))</p> <p>The examination costs include the costs of testing for pregnancy, sexually transmitted diseases and prophylactic treatment.</p> <p>The costs associated with a toxicology screening of a victim of sexual assault cannot be charged directly or indirectly to the victim.</p>	<p>Criminal Justice.</p> <p>The toxicology costs should be automatically charged to the Division of Scientific Services within the Department of Public Safety.</p> <p>For additional information, please contact:</p> <p>The Office of Victim Services 860-747-3994 800-822-8428</p>
Delaware	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The Compensation Fund pays for the examination. However, the hospital or medical facility performing the exam may seek to recover the costs associated with the exam from the victim's insurance carrier. If the hospital recovers less than 100% of the cost of the exam from the victim's insurance carrier then the hospital may seek reimbursement from the compensation fund. <p>The Delaware Victim Compensation Board will pay for the cost of a forensic medical examination done for the purpose of gathering evidence that may be used in the prosecution of a sexual offense.</p> <p>Forensic medical examination is defined as a medical diagnostic procedure examining for physical trauma and determining penetration, force or lack of consent.</p>	<p>The hospitals and healthcare professionals are required to provide the forensic medical examinations free of charge to the victims of sexual offenses. The hospital will then seek reimbursement from the Compensation Fund</p> <p>The victim of the sexual offense shall not be required to pay any out-of-pocket costs associated with the forensic examination and shall not be required to file an application with Compensation Board.</p> <p>For additional information, please contact:</p> <p>Delaware Violent Crimes Compensation Board 240 N. James Street, Suite 203 302-995-8383</p> <p>Delaware Hotline 1-800-464-4357 (in state) 1-800-273-9500 (out of state)</p>

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	<p>The cost of the examination includes the collection of all evidence required in the sexual offense evidence kit and may also include the following:</p> <ul style="list-style-type: none"> - the physician’s fee for the collection of the patient history, physical, collection of specimens, treatment for the prevention of venereal disease, including one return follow-up visit; - emergency department expenses, including emergency room fees and costs of pelvic trays; and - laboratory expenses including testing for sperm, pregnancy and sexually transmitted diseases. <p>11 Del. C. § 9019</p>	
District of Columbia	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status but the assault must have occurred in D.C. or the victim must be a resident of D.C • A report to the authorities must be made within 7 days after the assault. In cases of sexual assault, seeking medical treatment is sufficient. In cases of domestic violence, requesting a civil Restraining Order is sufficient. • A claim for compensation must be made within one year of the assault to the Crime Victims Compensation Program (CVCP) or within one year of learning of the CVCP. <p>There is no separate program specifically for the coverage of forensic costs for victims of sexual assault. Forensic exams are paid for through the Crime Victims Compensation Program.</p> <p>Victims of crime, and secondary victims (e.g. people who legally assume the obligation or voluntarily pay for a victim’s expenses) may receive compensation from the Crime Victims Compensation Program (CVCP) if the crime</p>	<p>Both qualified and non-qualified aliens are eligible for the CVCP. People eligible for compensation include victims of violent crime and people who legally assume the obligation or voluntarily pay for a victim’s expenses.</p> <p>Eligibility requirements include:</p> <ul style="list-style-type: none"> • A claim for compensation must be filed within one year after the crime or one year after learning of the CVCP. • The victim must have been injured in the District of Columbia or be a resident of DC. • A police report must have been filed within seven days of the crime. In cases of sexual assault, seeking medical treatment is sufficient. In cases of domestic violence, requesting a civil Restraining Order is sufficient. • The claimant must have reasonably provided information to and cooperated with requesting law

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	<p>occurred in DC or the victim is a resident of DC.</p> <p>The Crime Victims Compensation Office does not review the immigration status of victims. Both qualified and non-qualified immigrants are eligible for the CVCP.</p> <p><i>See also</i> D.C. Code §§ 4-501-4-508.</p>	<p>enforcement agencies.</p> <ul style="list-style-type: none"> • The claimant cannot have participated in, consented to, or provoked the crime. • The award cannot unjustly enrich the offender. <p>Applications for compensation are available at:</p> <ul style="list-style-type: none"> • The Crime Victim’s Compensation Program office located in Suite 203 of DC Superior Court Building A, at 515 5th Street, NW • http://mpdc.dc.gov/mpdc/frames.asp?doc=/mpdc/lib/mpdc/serv/victims/pdf/victimscomp.pdf&group=1523 • DC Metropolitan Police Department and Capitol/Park Police Stations • DC Area Hospital Emergency Rooms • The Victim/Witness Assistance unit of the US Attorney’s Office <p>This form must be completed and mailed to, and further information may be sought from:</p> <p>Crime Victim’s Compensation Office Superior Court Building A 515 5th Street, NW, Suite 203 Washington, DC 20001 (202) 879-4216 http://mpdc.dc.gov/mpdc/cwp/view.a.1241.q.539157,mpdcNav_GID,1523,mpdcNav,l.asp</p> <p>The form does ask for a Social Security number, but it will not be asked for if it is not filled in. The Crime Victim’s Compensation Office does not review immigration status.</p>
Florida	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within 	<p>Reimbursement forms used by Florida’s Crime Victims Services office are generally maintained by emergency rooms and other</p>

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	<p>which the assault must be reported.</p> <ul style="list-style-type: none"> The victim does not pay for the examination if the victim reports the assault. Florida’s Crime Victims Services Office pays for the examination. <p>Florida’s Crime Victims Services office, through its Sexual Battery Examination Program, pays for medical expenses connected with an initial forensic examination of a victim who reports a violation of Florida’s sexual assault or lewdness (child molestation) laws. F. S. A. 960.28(2).</p> <p>Florida law expressly precludes a medical provider from directly or indirectly billing a victim (or the victim’s parent or guardian if the victim is a minor). F.S.A. § 960.28(1) & (2).</p> <p>It is the policy of Florida’s Crime Victim Services office to reimburse forensic exam costs without regard to citizenship or immigration status, and therefore both qualified and non-qualified immigrants are eligible.</p> <p>Information received or maintained by the Crime Victims Services office identifying an alleged victim for purposes of payment of medical expenses is confidential and exempt from state laws providing access to public records. F. S. A. § 960.28(4).</p>	<p>forensic exam providers, and are also available to police officers.</p> <p>Payment is limited to medical expenses not to exceed \$250, and may not be made unless a law enforcement officer certifies in writing that the initial forensic physical examination is needed to aid in the investigation of an alleged sexual offense and that the claimant is the alleged victim of the offense. F.S.A. § 960.28(2).</p>
Georgia	<ul style="list-style-type: none"> There are no eligibility restrictions based on immigration status. The victim must report the assault immediately. The victim does not pay for the examination. The local law enforcement agency pays. <p>Ga. Code Ann. §§ 16-6-1 and 16-6-2 provide that the victim of rape or forcible sodomy should contact a local police department or other law enforcement agency immediately and a police officer will come and take a report and collect evidence. An officer will take the victim to the</p>	<p>Georgia law does not provide a process for the submission of medical bills.</p>

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	<p>hospital for a medical examination. The law requires that the police department or law enforcement agency investigating the crime pay for the medical examination to the extent of the cost for the collection of evidence of the crime. The law does not specify any restrictions with respect to the immigration status of the victim.</p>	
Guam	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. . The Crime Victims’ Compensation Commission pays. <p>The Criminal Injuries Compensation Commission may appoint an impartial licensed physician to examine any person applying for compensation for injuries resulting from a crime, and the fees for the examination shall be paid from funds appropriated for expenses of administration. 9 Guam Code Ann. § 86.35 (1998).</p>	<p>The Code does not provide the mechanism by which such expenses will be reimbursed.</p>
Hawaii	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made within 72 hours after the assault unless good cause for a later report is found if payment by the Crime Victims’ Compensation Commission is sought. • The victim does not pay for the examination. The Crime Victims’ Compensation Commission pays. <p>Unlike some other states, Hawaii does not have a special statute covering payment for forensic exams. The Crime Victim Compensation statute, however, specifically provides coverage for any hospital or medical expenses and allows for billing directly to the provider. Haw. Rev. Stat. § 351-61. Sexual assault is included in the list of crimes for which compensation may be</p>	<p>A CVCC representative explained that county administrative units generally handle reimbursement to hospitals for forensic examinations and related services. Most of the time, the alleged victim will not receive a bill. If the medical provider has difficulty obtaining reimbursement, the CVCC has, and frequently does, provide payment. The CVCC witness agreed that the statute is not clear on this point.</p> <p>If the CVCC reimbursement process is used for some reason, a person seeking reimbursement must fill out an application form, which may be obtained directly from the CVCC or from its website. Following review of that application, compensation may be awarded for all expenses incurred in connection with the crime, including medical examinations. A CVCC application must be</p>

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	<p>received. Haw. Rev. Stat. § 351-32.</p> <p>A representative of the Crime Victims’ Compensation Commission (CVCC) explained that forensic examinations are generally covered through county administrative units, which work cooperatively with the CVCC and other state bodies.</p> <p>The statute does not discuss immigration status, nor do any of the applicable definitions address this issue. Instead, “resident” is defined broadly to include “every” individual who “intends to permanently reside in this State” or who “has a permanent abode in State.” Haw. Rev. Stat. § 351-2. A CVCC representative stated emphatically that immigration is not a relevant consideration.</p>	<p>filed within eighteen months of the incident unless there is good cause for delay. Haw. Rev. Stat. § 351-62(a). In addition, the incident itself must be reported within 72 hours unless there is “good cause” for delay. See Haw. A.D.C. § 23-605-2. “Good cause” usually requires “mental, physical, or legal impairment”—that is, an actual inability to file a report and application. Failure to understand the law, negligence, and incarceration do not qualify as good cause. Haw. A.D.C. § 23-605-2.</p> <p>Information on the CVCC process (including application forms) is available at 1-800-587-1143 or www.hawaii.gov/cvcc. The CVCC can also provide information on different crisis and treatment facilities and county medical providers.</p>
Idaho	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made within 72 hours after the assault unless there is good cause. • The victim of a sexual assault pays for the examination. The Idaho Crime Victims Compensation Program will reimburse the victim after all third party sources of payment have met their obligations. • The victims of other crimes do not pay for examinations directed or authorized by a law enforcement agency. The law enforcement agency pays. <p>When the victim of any alleged crime is directed or authorized by a law enforcement agency to receive a medical examination for the purpose of gathering evidence for use by a law enforcement agency in the investigation of prosecution of a crime, the costs of the examination will be paid for by the law enforcement agency – not the victim – except in cases of a sexual assault. (Idaho Code § 19-5303)</p> <p>When the victim has allegedly been sexually assaulted, the costs of any forensic or medical examinations, which must be performed by a</p>	<p>The Idaho Industrial Commission provides on its website a reimbursement form for sexual assault examinations. These forms should be available at hospitals and other licensed medical facilities that perform sexual assault examinations and should be provided to a victim of a sexual assault for completion by the victim and a member of the law enforcement agency that directed or authorized the examination. Portions of the reimbursement form must be completed by a law enforcement agent. If the reimbursement form is provided at a licensed medical facility, the normal process would be for that facility to submit the form to the IIC. If not, the victim must submit the reimbursement form within one year of the date of service. (Telephone call with Idaho Industrial Commission on August 7, 2006, and, see www.iic.idaho.gov/cv/cvsexassault.htm)</p> <p>Reimbursement from the IIC comes only after all other third party sources of payment have met their obligations.</p> <p>For additional information, see www.iic.idaho.gov/cv/cvsexassault.htm</p>

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	<p>licensed medical facility and trained practitioner for the purposes of gathering evidence for a possible prosecution, will be reimbursed by the Idaho Industrial Commission under the Idaho Crime Victims Compensation Program – after any collections from any third party who has liability. (Idaho Code §§ 19-5303 and 72-1019(2))</p> <p>NOTE: Because the cost of a forensic exam relating to an alleged sexual assault is payable under the Idaho Crime Victims Compensation Program, the maximum dollar amount of benefits payable to a victim who applies for further benefits under the Program will be reduced by the cost of the forensic exam. (Telephone call with Idaho Industrial Commission on August 7, 2006)</p> <p>A victim does not have to be a resident of Idaho, a U.S. citizen or a qualified immigrant in order for a forensic exam to be charged to a law enforcement agency or the IIC, as applicable. (Telephone call with Idaho Industrial Commission on August 7, 2006)</p>	
Illinois	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The state distributes sexual assault evidence collection kits to hospitals. <p>The Sexual Assault Survivors Emergency Treatment Act requires provision of emergency hospital services to all alleged sexual assault victims. 410 Ill. Stat. § 70/2. Illinois law specifically provides for medical examinations and related laboratory tests, including those to be used as evidence in a criminal proceeding. The medical provider is to maintain the results of these tests and provide them to law enforcement officials upon the alleged victim’s request. 410 Ill. Stat. § 70/5. In addition, the same law creates a statewide sexual assault evidence collection program to arrange for the distribution of sexual assault evidence collection</p>	<p>If the alleged victim is not otherwise eligible to receive the services under the Illinois Public Aid Code or through insurance, the provider must furnish services without charge and will be reimbursed by the state of Illinois. 410 Ill. Stat. § 70/7. ICASA noted, however, that some victims have received bills when reimbursement has not been received promptly by the medical provider.</p> <p>Information may be obtained from ICASA at 1-217-753-4117 or at their website, http://www.icasa.org. The website includes a list of crisis centers.</p>

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	<p>kits to hospitals and collection and analysis of the results. 410 Ill. Stat. § 70/6.4.</p> <p>There is no reference to immigration status. Discussion with both the Attorney General’s office and the Illinois Coalition Against Sexual Assault (ICASA) confirmed that immigration status should not be relevant.</p>	
Indiana	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported although additional forensic services may be billed to a victim or an insurer if the victim does not report the crime within 96 hours and cooperate with law enforcement. • The victim does not pay for the examination. The state pays. <p>The Emergency Services to Sex Crime Victims Act requires provision of services and procedures to alleged sexual assault victims. Ind. Code § 16-21-8-1, 3. Recent amendments (effective July 1, 2006) specifically provide that such services include “forensic medical exams,” which are defined as procedures for acquiring evidence that may be used in a criminal proceeding. Ind. Code § 16-18-2-139.5.</p> <p>(“Additional forensic services,” including pregnancy testing and STD testing, may also be received without charge. Ind. Code § 16-21-8-1, 3; Ind. Code § 16-18-2-1.8.)</p> <p>Immigration status is not addressed, and a representative of the Indiana Crime Victims’ Compensation Committee (CVCC) confirmed that this is not a factor.</p>	<p>The statute and administrative code do not provide for a reporting time limit or cooperation in order to receive a forensic medical examination without charge. Ind. Code § 5-2-6.1-39(b), § 16-21-8-5. Victims are not to be billed for these procedures even if the hospital does not receive reimbursement promptly. (Additional forensic services, however, may be billed to a victim or an insurer if the victim does not report the crime within 96 hours and cooperate with law enforcement. Ind. Code 5-2-6.1-39(c)).</p> <p>Providers are reimbursed through various procedures by the state of Indiana or local agencies, depending on the circumstances. Ind. Code § 16-21-8-6, § 5-2-6.1-39.</p>
Iowa	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. 	<p>Payment is made out of the state-sponsored Victim Compensation Fund. To obtain payment, health care providers submit bills, including the appropriate paperwork and</p>

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	<ul style="list-style-type: none"> The victim does not pay for the examination. The Victim Compensation Program pays regardless of whether the victim reports the crime to law enforcement. <p>Iowa law provides that the cost of a medical examination of a victim for the purpose of gathering evidence and the cost of treatment of a victim for the purpose of preventing venereal disease will be paid for by the state-sponsored Victim Compensation Fund. As such, screening and treatment for STDs, HIV/AIDS and hepatitis, a pregnancy test and post-coital birth control, are provided through the forensic examination program.</p> <p>No distinction is made concerning the immigration status of the victim. In addition, treatment costs are covered even if the woman refuses to have an evidence examination - - in fact, costs are covered even if the woman chooses not to file a report with law enforcement.</p> <p>Sexual assault victims have the right to petition the court for an order requiring the convicted offender to submit to an HIV-related test.</p>	<p>coding, to the Department of Justice Crime Victim Compensation Program.</p>
Kansas	<ul style="list-style-type: none"> There are no eligibility restrictions based on immigration status. There is no specific time period within which the assault must be reported. The victim does not pay for the examination as long as the examination is requested by a law enforcement officer. The county where the assault occurred pays. <p>A victim of a sexual assault is entitled to receive a medical examination for the purpose of gathering evidence for possible prosecution of the assailant. There is no charge to the victim for the exam if requested by any law enforcement officer and with the written consent of the reported victim. The victim's immigrant status is not a factor. Accordingly, both qualified and non-qualified immigrants are</p>	<p>Costs of conducting the examination of the victim are to be charged to and paid by the county where the alleged offense was committed. The county may charge the defendant for the costs. (Kan. Stat. Ann. §65-448)</p> <p>http://www.accesskansas.org/ksag/Crime/victims_comp_program.htm</p>

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	eligible. (Kan. Stat. Ann. §65-448)	
Kentucky	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported but the victim must report an assault by the victim’s spouse. • The victim does not pay for the examination as long as the examination is requested by a law enforcement officer. The Crime Victims’ Compensation Board pays. <p>A victim of a sexual assault is entitled to receive a medical examination to gather physical evidence of the assault. The medical examination includes, but not limited to, basic treatment and evidence gathering services and laboratory tests, if appropriate. The medical examination is available at no cost upon the request of any peace officer or prosecuting attorney with a written consent of the reported victim, or upon the request of the reported victim. (Ky. Rev. Stat. Ann. §216B.400)</p> <p>The victim can obtain such an exam at no cost regardless of her immigration status. Accordingly, both qualified and non-qualified immigrants are eligible.</p>	<p>Health care providers must submit bills for the examination costs to the Crime Victims’ Compensation Board and no charge is to be made to the victim of sexual assault examination.</p> <p>For more information see:</p> <p>http://chfs.ky.gov/dhss/cadv/rsa_default.htm</p>
Louisiana	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim need not report the assault. • The victim does not pay for the examination. The parish governing authority pays for the examination to secure crime scene evidence. <p>The Louisiana Foundation Against Sexual Assault (“LAFASA”) stated that there is no uniformity across the state in coverage of forensic examination. In jurisdictions with Sexual Assault Nurse Examiners (“SANE”), the victim requests their services and the SANE performs the examination. If there is no SANE, then the coroner must perform the exam. The LAFASA representative said that there are</p>	<p>The bills for the medical expenses associated with the medical examination and the collection of medical evidence should be tendered to the coroner for payment. The coroner in turn may present the bill to the parish governing authority for payment. The victim has the responsibility for payment for medical treatment excluding the forensic examinations.</p>

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	<p>instances in which the victim has received a bill for the forensic exam.</p> <p>The legislature has recently convened a Sexual Assault Task Force to provide statewide protocol for collection forensic evidence and payment for the examinations.</p> <p>A forensic medical examination for a victim of sexual assault is considered an expense associated with the collection and securing of crime scene evidence. Payment for this examination by the parish governing authority is mandated by state law. All other expenses related to these crimes are eligible for reimbursement by the board at 100 percent, subject to the provisions of the Crime Victims Reparations Act and its administrative rules. Louisiana Admi. Code § 22:XIII.503</p> <p>A victim of a sexual assault is entitled to decide whether or not to report the alleged sexual assault. If the victim does not wish to report the incident, the victim shall be examined and treated as a regular emergency room patient. Tests and treatments exclusive to a rape victim shall be explained to the victim along with the costs for such tests. The patient shall decide whether or not such tests shall be conducted. If the patient does not wish to report the incident, the hospital's duties, beyond medical treatment, shall be limited to the collection of tests, procedures or samples that may serve as potential evidence.</p> <p>Hospitals have a mandatory duty to provide medical treatment and examination to sexual assault victims. This does not vary with immigration status.</p> <p>The coroner "or his designee" is required to perform a medical examination of the victim when the case is under police investigation. The coroner should appoint every licensed hospital in the jurisdiction as the "designee" for the</p>	

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	<p>performance of medical examinations.</p> <p>Attorney General Opinion 89-78 http://www.ag.state.la.us/ShowDoc.asp?DocID=11346</p> <p>Attorney General Opinion 94-499 http://www.ag.state.la.us/ShowDoc.asp?DocID=14397</p> <p>Louisiana Revised Statute § 40:2109.1</p>	
Maine	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The Victim’s Compensation Board pays for the examination <p>Me. Code Title 5 §3360-M. Payment for forensic examinations for alleged victims of gross sexual assault as defined in Maine Revised Statute 17-A.11, 253, including a compelled sexual act or a sexual act with a person who is not 14 or older.</p> <ol style="list-style-type: none"> 1. PAYMENT. The Victims’ Compensation Board (board) shall pay the costs of forensic examinations for alleged victims of gross sexual assault from the Victims' Compensation Fund. The board shall track expenditures for forensic examinations separately from all other expenditures. Forensic examination payments are not subject to any other provision of this chapter. 2. FORENSIC EXAMINATION. The board shall determine by rule what a forensic examination may include for purposes of payment. An examination must include at least all services directly related to the gathering of forensic evidence and related testing and treatment for pregnancy and sexually transmitted diseases. The board shall pay a licensed hospital or 	<p>PROCESS FOR PAYMENT. A licensed hospital or licensed health care practitioner that performs forensic examinations for alleged victims of gross sexual assault shall submit a bill to the board directly for payment of the forensic examinations. The hospital or health care practitioner that performs a forensic examination shall take steps necessary to ensure the confidentiality of the alleged victim's identity. The bill submitted by the hospital or health care practitioner may not identify the alleged victim by name, but must be assigned a tracking number that corresponds to the forensic examination kit. The tracking number may not be the alleged victim's social security number. The hospital or health care practitioner that performs the examination may not bill the alleged victim or the alleged victim's insurer, nonprofit hospital or medical service organization or health maintenance organization for payment of the examination. The alleged victim is not required to report the alleged offense to a law enforcement agency.</p>

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	<p>licensed health care practitioner the actual cost of the forensic examination up to a maximum of \$ 500.</p> <p>3. OTHER REIMBURSEMENT. The fact that forensic examinations are paid for separately through the Victims' Compensation Fund does not preclude alleged victims of gross sexual assault from seeking reimbursement for expenses other than those for the forensic examination. A victim seeking reimbursement from the Victims' Compensation Fund for expenses other than the forensic examination is subject to all other provisions of this chapter.</p>	
Maryland	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported • The victim does not pay for the examination. The Department of Health and Mental Hygiene pays for the examination. <p>A victim of an alleged rape of sexual offense is entitled to receive (1) a physical examination for the purpose of gathering evidence as to the alleged crime; (2) emergency hospital treatment and follow-up medical testing for up to 90 days after the initial physical examination; and (3) up to 5 hours of professional time to gather information and evidence as to the alleged sexual abuse by a physician, qualified hospital health care personnel, or a mental health professional. There is no charge to the victim for the covered services. Md. Code Ann., Health-General § 15-127. The victim can obtain the covered services at no cost regardless of her immigration status. Accordingly, both qualified and non-qualified immigrants are eligible.</p>	Health care providers must submit bills for the examination costs to the Department of Health and Mental Hygiene. Md. Code Ann., Health-General § 15-127.
Massachusetts	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported • The victim does not pay for the examination. The Sexual Assault 	<p>An individual must access SANE services in hospitals designed as SANE sites by the Massachusetts Department of Public Health.</p> <p>For more information or to local a SANE site</p>

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	<p>Nurse Examiner’s program pays for the examination.</p> <p>The Sexual Assault Nurse Examiner’s (SANE) program is a Massachusetts Department of Public Health Program that provides access to Nurse Examiners who are specifically trained in evidence collection and court testimony for cases of rape and sexual assault. There is no charge for this service. The examination is free and provided regardless of immigration status.</p> <p>A victim may be entitled to reimbursement for medications and other treatment through Victim’s Compensation.</p> <p>Emergency contraception shall be offered to a female victim of sexual assault, and provided to the victim if she requests it. Mass. Gen. Laws ch. 111, § 70E.</p>	<p>see: http://www.mass.gov/dph/fch/sane/index.htm</p>
Michigan	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made generally within 48 hours after the assault and the victim must cooperate with law enforcement. • The victim can be reimbursed from the Crime Victims Services Commission for the cost of the examination if an application is filed within one year of the date of the assault, the date the victim turned 18 or the date after discovery by a law enforcement agency that injuries previously determined to be accidental or of unknown origin were incurred as a result of a crime. <p>If a person tells a physician or other member of a hospital’s staff that within the preceding 24 hours the person has been the victim of criminal sexual conduct, the attending health care personnel must immediately inform the person of the availability of a “sexual assault evidence kit” and, with the person’s consent perform, the</p>	<p>The victim may seek reimbursement of the cost of the administration of a “sexual assault evidence kit” by filing an application with the Crime Victims Services Commission, if the person meets the eligibility requirements. See Mich. Comp. Laws §18.361.</p> <p>For more information see: http://www.michigan.gov/mdch/0,1607,7-132-2940_3184---,00.html</p>

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	<p>procedures required by the sexual assault evidence kit can be provided to the victim. See 1978 Mich. Pub. Act 368; Mich. Comp. Laws §333.21527.</p> <p>A victim is eligible to receive compensation for the costs of a forensic examination from the Crime Victims Services Commission if the crime occurred or is attempted in Michigan, if the crime occurred to a Michigan resident outside of Michigan and that jurisdiction does not have a crime victim reparations law covering the resident's injury or death, or if the person is a Michigan resident who is injured in another country by a crime involving an act of international terrorism. See Mich. Comp. Laws § 18.361, Sec. 1(c). The victim must complete an application and file it with the Crime Victim Services Commission, which is empowered by statute to administer funds received under VOCA grants and state assessments. See Mich. Comp. Laws § 18.353, Sec. 3(j).</p> <p>A police report must generally be made within 48 hours and the victim must reasonably cooperate with law enforcement and (absent good cause) the application must be filed within one year from: the date of the crime; the date the victim turned eighteen (18); or the date after discovery by a law enforcement agency that injuries previously determined to be accidental, or unknown origin, or resulting from natural causes, were incurred as a result of a crime. See Mich. Comp. Laws §18.355.</p> <p>There is a charge to the victim for the exam regardless of immigration status. However, the victim can obtain compensation for the exam by filing an application with the Crime Victims Services Commission, if the person meets the eligibility requirements. See Mich. Comp. Laws §18.361. Pending legislation would require the health care provider to seek reimbursement of the cost of administering the sexual assault evidence kit.</p> <p>For more information see:</p>	

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	<p>http://www.michigan.gov/mdch/0,1607,7-132-2940_3184---,00.html</p>	
Minnesota	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim need not report the assault. • The victim does not pay for the examination. The county in which the assault occurred pays for the examination unless the victim authorizes the county to seek reimbursement from the victim's insurer. <p>The Forensic examination shall be paid for by the county in which the criminal sexual assault occurred. The costs include rape kit examinations, tests for sexually transmitted diseases, and pregnancy status. A county may seek insurance reimbursement from the victim's insurer only if authorized by the victim. <i>See</i> Min. Crim. Code § 609.35.</p> <p>The victim is not required to report the offense to law enforcement or pursue prosecution of the offender for the victim to be eligible for county payment for the examination.</p> <p>There are no specified restrictions based upon immigration status. <i>See</i> Min. Crim. Code § 609.35. Accordingly, both qualified and non-qualified immigrants are eligible.</p> <p>For more information see:</p> <p>http://www.ojp.state.mn.us</p>	<p>The victim may file an application for reimbursement with the Crime Victims Reparations Board for any costs not covered by the county, if the person meets the eligibility requirements. <i>See</i> Min. Stat. 611A.52, Subd. 8.</p> <p>For more information see:</p> <p>http://www.ojp.state.mn.us</p>
Mississippi	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported • The victim does not pay for the examination. The Division of Victim 	<p>The Division of Victim Compensation is authorized, in its discretion, to make application for and comply with such requirements as may be necessary to qualify for any federal funds as may be available as a result of services rendered to crime victims</p>

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	<p>Compensation pays for the examination.</p> <p>Miss. Code § 99-37-25. Payment by Division of Victim Compensation of costs associated with medical forensic examination and sexual assault evidence collection</p> <p>When a person is brought into a doctor's office, a hospital or a medical clinic in this state by a law enforcement agency as the victim of an alleged rape or sexual assault, or comes into a doctor's office, a hospital or a medical clinic in the state alleging rape or sexual assault against the person which results in a criminal investigation, the bill for the medical forensic examination and the preparation of the sexual assault evidence collection kit will be sent to the Division of Victim Compensation, Office of the Attorney General.</p> <p>The Division of Victim Compensation shall pay for the medical examination conducted for the procurement of evidence to aid in the investigation and prosecution of the alleged offense. Such payment shall be limited to the customary and usual hospital and physician charges for such services in the area. Such payment shall be made by the Division of Victim Compensation directly to the health care provider. No bill for the examination will be submitted to the victim, nor shall the medical facility hold the victim responsible for payment. However, if the victim refuses to cooperate with the investigation or prosecution of the case, the Division of Victim Compensation may seek reimbursement from the victim. The victim may be billed for any further medical services not required for the investigation and prosecution of the alleged offense. In cases where the damage caused by the alleged sexual assault requires medical treatment or diagnosis in addition to the examination, the patient will be given information about the availability of victim compensation and the procedure for applying for such compensation.</p>	<p>under Section 99-37-25.</p>

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Missouri	<p><input type="checkbox"/> There are no eligibility restrictions based on immigration status.</p> <p><input type="checkbox"/> There is no specific time period within which the assault must be reported but the victim must file the report of examination with the prosecuting attorney of the county in which the assault occurred.</p> <p><input type="checkbox"/> The victim does not pay for the examination. The Department of Health and Senior Services pays for the examination.</p> <p>Mo. Ann. Stat. 191.225. Costs of medical examination of certain crime victims.</p> <p>The department of health and senior services shall make payments to hospitals and physicians, out of appropriations made for that purpose, to cover the cost of the medical examination not covered by insurance, Medicare or Medicaid of persons who may be a victim of the crime of rape or a victim of a crime, if:</p> <p>(1) The victim or the victim's guardian consents in writing to the examination;</p> <p>(2) The report of the examination is made on a form approved by the attorney general with the advice of the department of health and senior services; and</p> <p>(3) The report of the examination is filed by the victim with the prosecuting attorney of the county in which the alleged incident occurred.</p> <p>References: Victim of the crime of rape as defined in section 566.030, RSMo. Victim of a crime as defined in chapter 566, RSMo, or sections 568.020, 568.050, 568.060, 568.080, 568.090, 568.110, and 568.175, RSMo.</p>	Reasonable hospital and physicians charges for eligible examinations shall be billed to and paid by the department of health and senior services.
Montana	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim need not report the assault but Montana’s forensic rape examination program (“FREPP”) pays for the examination only if the victim has an examination within 72 hours of the assault. 	The healthcare provider applies for reimbursement by submitting a FREPP Claim Form, a Patient Information Form, an itemized bill, and a copy of the medical records to FREPP no later than 90 days from the date of the forensic exam.

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	<ul style="list-style-type: none"> The victim does not pay for the examination as long as the examination is within 72 hours of the assault. The FREPP pays for the examination. <p>Montana’s forensic rape examination payment program (FREPP) provides direct payment to healthcare providers for forensic rape examinations of victims who have an exam within 72 hours of the assault, even if they choose not to report the crime to law enforcement.</p> <p>FREPP pays the cost of a sexual assault examination up to a maximum of \$600.</p> <p>Sexual assault victims cannot be billed for costs, fees, or charges associated with a forensic rape examination and may decline to use their private insurance or any other payment sources, including Medicaid or Medicare. However, medical services provided to a victim as a result of any physical injuries that may have occurred at the time of the sexual assault may be billed to the victim.</p> <p>The 2005 Montana Legislature’s House Bill 577 (amending MCA §§ 2-15-2014 and 46-15-411).</p>	<p>These forms, along with more information about FREPP, can be found at http://doj.state.mt.us/victims/forensicrapeexaminationpaymentprogram.asp.</p>
Nebraska	<p>There are no eligibility restrictions based on immigration status. The victim must report the assault. The victim does not pay for the examination as long as the examination is within 72 hours of the assault. The law enforcement agency investigating the reported sexual assault pays.</p> <p>The full out-of-pocket cost or expense that may be charged to a sexual assault victim in connection with a forensic medical examination shall be paid for by the law enforcement agency of a political subdivision if such law enforcement agency is the primary investigating law enforcement agency investigating the reported sexual assault.</p> <p>Neb. Rev. St. § 13-607.</p>	<p>The statute calls for the costs of the examination to be paid for by the primary investigating law enforcement agency. There is not a centralized, standardized process for handling these costs.</p>

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Nevada	<ul style="list-style-type: none"> • The victim must be a qualified immigrant. • There is no specific time period within which the assault must be reported but the victim must file the report. • The victim does not pay for the examination as long as the examination is within 72 hours of the assault. The county in which the sexual assault occurred pays. <p>N.R.S. 449.244.1 provides that any costs incurred by a hospital for a forensic examination of a victim of a sexual offense must not be charged directly to the victim, but must be charged to the county in whose jurisdiction the offense was committed.</p>	<p>Costs for initial emergency care are billed by the health care provider directly to the county in whose jurisdiction the offense was committed.</p>
New Hampshire	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. If the victim’s insurance doesn’t pay for the examination, the department of justice pays. <p>Most hospitals participate in the Sexual Assault Nurse Examiner Program (SANE). A SANE is a specially trained Registered Nurse who provides complete care to the sexual assault victim. The victim should request that a SANE be called if possible. (A Legal Handbook for Women in New Hampshire. Chap.5. Abusive Behaviors – Sexual Assault, p.56)</p> <p>(http://www.nh.gov/csw/; accessed August 8, 2006)</p> <p>The emergency room in any public hospital must give the victim emergency medical care, even if the victim is an undocumented immigrant or does not have insurance. The victim can request that the hospital provide an interpreter or other accommodation, if necessary. (A Legal Handbook for Women in New Hampshire. Chap.5. Abusive Behaviors – Sexual Assault, p.56)</p> <p>(http://www.nh.gov/csw/; accessed August 8, 2006)</p>	<p>The bill for the medical examination of a sexual assault victim shall not be sent or given to the victim or the family of the victim.</p> <p>(RSA 21-M:8-c)</p>

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	<p>If a physician or a hospital provides any physical examination of a victim of an alleged sexual offense to gather information and evidence of the alleged crime, these services shall be provided free to the individual. (RSA 21-M:8-c)</p> <p>http://www.gencourt.state.nh.us/rsa/html/I/21-M/21-M-mrg.htm;accessed August 8, 2006)</p> <p>After submitting the appropriate paper work, the physician or hospital shall be reimbursed for the cost of such examination by the department of justice to the extent such costs are not the responsibility of a third party under a health insurance policy or similar third party obligation. (RSA 21-M:8-c)</p> <p>http://www.gencourt.state.nh.us/rsa/html/I/21-M/21-M-mrg.htm;accessed August 8, 2006)</p> <p>What kind of services are covered?</p> <p>1) The sexual assault exam includes tests for the sexually transmitted diseases:</p> <ul style="list-style-type: none"> - Trichomonas - Chlamydia - Gonorrhea <p>(On a case by case basis; NOT standard procedure for all sexual assault exams)</p> <p>The victim can request that these tests are conducted as part of the exam.</p> <p>2) An antibiotic medication may be offered as a preventative measure. The medication usually is administered before the patient leaves the hospital.</p> <p>3) A baseline pregnancy test is done at the hospital to determine the victim's eligibility for emergency pregnancy prevention (the "morning after pill"). The victim should make sure to receive the medication while he/she is in the hospital, otherwise the expense may not be covered as part of the exam.</p> <p>4) Although an HIV test can be done at the time</p>	

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	<p>of the sexual assault medical exam, it is NOT routinely part of the exam.</p> <ul style="list-style-type: none"> - If the victim chooses to have a separate and confidential HIV test done at the hospital, the results will become part of his/her hospital record. - The HIV test done at hospital is a baseline test and will determine if victim was infected prior to the assault. It will not indicate if the offender infected the victim. - You also may be eligible for HIV post-exposure prophylactic medication. - The hospital can provide you with anonymous testing sites throughout New Hampshire where you can have the test results documented by a number rather than by your name. - The local sexual assault crisis center or NH HELPLINE (800-852-3388) also can provide the victim with the telephone numbers for anonymous or confidential testing sites in his/her area <p>The local crisis center can</p> <ol style="list-style-type: none"> a) arrange for immediate funding for some post-sexual assault medications. b) provide victim with referrals for a physician or clinic in his/her area for additional or follow-up testing. <p>For the nearest crisis center – New Hampshire Statewide Sexual Assault Hotline 800-277-5570 (800-735-2964 TDD/VOICE)</p> <p>(A Legal Handbook for Women in New Hampshire. Chap.5. Abusive Behaviors – Sexual Assault, p.57)</p> <p>(http://www.nh.gov/csw/; accessed August 8, 2006)</p>	
New Jersey	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • Sexual assault must be reported within 5 days of the incidents. • The victim does not pay for the 	

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	<p>examination. The Prosecutor’s Office will make the New Jersey Sexual Assault Forensic Evidence Collection Kit available to the emergency department of every acute care hospital in its county.</p> <p>Who is eligible?</p> <p>The opportunity to undergo a sexual assault medical forensic examination will be offered to all victims who are at least 13 years of age and disclose a sexual assault within 5 days of when the incident occurred. Victims who present more than 5 days after the assault will not routinely undergo a sexual assault medical forensic examination.</p> <p>Victims who present at a medical facility more than 5 days after the assault occurred and/or victims who present within 5 days but decline a sexual assault medical forensic examination must be evaluated and treated for any emergent medical needs. These victims must be advised that they are still entitled to rape care advocacy services and law enforcement intervention.</p> <p>What rights do the victims have?</p> <p>Every adolescent or adult victim of sexual assault has the right to consent or decline a sexual assault medical forensic examination. No sexual assault medical forensic examination will be performed without the express consent of the victim, regardless of the wishes of any Sexual Assault Response Team (SART) member, hospital staff member or the victim’s parents, guardian, spouse, family or friends.</p> <p>In the situation where the victim is unable to consent due to temporary mental incapacity, no medical forensic examination will be done until the victim is able to personally consent to the exam. In cases where the victim is unable to consent due to permanent mental incapacity, the consent of the victim’s medical proxy will be obtained prior to the initiation of the examination. For purposes of this document,</p>	

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	<p>“medical proxy” refers to the individual designated by the patient or recognized by the health care facility as able to consent to care for that patient.</p> <p>What test kit will be used? All sexual assault medical forensic examinations performed in New Jersey, including those performed at agencies that are not SART participants, should utilize a New Jersey Sexual Assault Forensic Evidence Collection Kit. The Prosecutor’s Office will make evidence collection kits available to the emergency department of every acute care hospital in its county.</p> <p>What kind of tests are covered (free of charge)? A victim who is seen at a participating facility will not be charged any fee for services that are directly associated with the sexual assault medical forensic examination. These services include: routine medical screening, medications for prophylaxis of some sexually transmitted infections, pregnancy tests and emergency contraception, supplies, equipment, and use of space.</p> <p>Incidents of adult sexual assault that do not involve the use of a weapon or result in certain injuries, see N.J.S.A. 2C:58-8, are not required to be reported to any law enforcement agency by hospital personnel. An adult victim of sexual assault who is eligible for SART services has the option of obtaining those services without reporting the incident to law enforcement.</p> <p>Victims requiring emergency health care services beyond the scope of the forensic examination may be charged according to hospital policy for any services provided. Victims will be informed of the services of the Victims of Crime Compensation Board and given an application form.</p> <p>Source: Attorney General Standards for Providing Services to Victims of Sexual Assault,</p>	

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	<p>2nd Ed. New Jersey Department of Law & Public Safety, Division of Criminal Justice, December 2004</p> <p>(http://www.state.nj.us/lps/dcj/agguide/standards/standardssartsane.pdf)</p>	
<p>New Mexico</p>	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The examination must be performed within 5 days of the crime. The victim must file a police report within 180 days of the crime if compensation will be sought through the Crime Victims Reparation Commission. • The victim does not pay for the examination as long as the examination is obtained within 5 days of the crime and the victim files the police report within 180 days of the crime. <p>Free exams are available through any of nine Sexual Assault Nurse Examiners (“SANE”) Units in the State. Additionally, a physician using a forensic kit can perform the exam. In either case, the exam must be performed within 5 days of the crime.</p> <p>There is no requirement pertaining to immigration status/citizenship or residency. Also, the victim is not required to file a police report (so long as compensation is not being sought through the Crime Victims Reparation Commission).</p> <p>SANE will also reimburse up to \$150 in related medical costs to any facility that provides medical services to a victim. To cover further costs, a victim may seek reimbursement or compensation by applying to the Crime Victims Reparation Commission.</p> <p>In practice, it appears that most victims should be able to access a free exam without being billed. However, if the victim bears the cost of the exam, the law provides that reimbursement</p>	<p>Exams may be received free of charge at any SANE Unit.</p> <p>To apply for reimbursement or compensation through the Crime Victims Reparation Commission, a victim may submit an application. This application must be filed with within two (2) years of the crime. Additionally, the victim must file a police report within 180 days of the crime.</p> <p>For more information, see: http://www.state.nm.us/cvrc/brochure/broc7.html</p>

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	<p>must cover the full cost of the exam, without any deductible or limit on the amount reimbursed. The victim is entitled to apply for reimbursement for up to one year from the date of the exam. Reimbursement is provided not later than 90 days after the State receives written notification of the expense the victim incurred. All victims must receive information at the time of the exam regarding how to seek reimbursement</p> <p>For more information, see: N.M. Stat. Ann. § 29-11-7 (2006)</p>	
New York	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported to ensure payment for the exam. • The victim will be asked to use the victim’s private insurance benefits to pay for the examination but the victim may refuse. The Crime Victims Board will pay if the insurance carrier does not. <p>A sexual assault survivor can receive a free medical examination that will gather evidence of the assault in a manner suitable for use in a court of law. There is no requirement pertaining to immigration status.</p> <p>At a minimum, specific services covered by the forensic exam reimbursement fee include forensic examiner services, related hospital or healthcare facility services, and related laboratory tests and pharmaceuticals.</p> <p>While an assault survivor will be asked to use their private insurance benefits to pay for the examination, the survivor must be advised orally and in writing that he or she may decline to provide such information if she believes that providing the information would substantially interfere with her personal privacy and safety. The survivor will be advised that providing such</p>	<p>The Crime Victims Board will reimburse any accredited hospital, accredited sexual assault examiner program, or licensed health care provider that provides forensic exams to sexual assault survivors. Such provider must bill the Board directly.</p> <p>The survivor is not required to file an application with the Crime Victims Board or follow through with prosecution to ensure payment for the exam.</p> <p>For more information, see: NY Executive Law § 631 (2006) and http://cvb.state.ny.us/FRE.htm</p>

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	<p>information may provide additional resources to provide services to other survivors.</p> <p>For more information, see: NY Executive Law § 631 (2006) and http://cvb.state.ny.us/FRE.htm</p>	
<p>North Carolina</p>	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • In order for the Rape Victims Assistance Program to cover the forensic costs, a report to the authorities must be made and the examination must be performed within 5 days after the assault unless the requirements are waived for good cause. • The victim does not pay for the examination as long as the examination is reported and obtained within the required time periods. <p>N.C.G.S.A. § 143b-480.2 provides that following a sexual assault the Assistance Program for Victims of Rape and Sex Offenses will pay the full cost of the forensic examination.</p> <p>Under N.C.G.S.A. § 143b-480.2 "forensic medical examination" means an examination provided to a sexual assault victim by medical personnel who gather evidence of a sexual assault in a manner suitable for use in a court of law. The examination should include an examination of physical trauma, a patient interview, and a collection and evaluation of evidence.</p> <p>Additionally, assistance not to exceed fifty dollars (\$50.00) shall be provided to victims to replace clothing that was held for evidence tests.</p>	<p>Under N.C.G.S.A. § 143b-480.2, the following criteria must be met for forensic costs to be covered:</p> <ul style="list-style-type: none"> • The assault must have been reported to law enforcement within five (5) days of the incident; • The forensic medical examination must have been performed within five (5) days of the assault; • The bill must be submitted within six months of the date of service rendered. <p>Note: These five-day requirements may be waived for good cause.</p> <p>Under N.C.G.S.A. § 143b-480.2, the Rape Victims Assistance Program will pay the expenses for the forensic exam directly to the service provider. Thus, the victim does not need to interact with the Division of Victims Compensation Services.</p> <p>Service providers submitting claims for forensic costs must obtain the name of the investigating law enforcement agency where the report was completed and submit this document with an itemized statement indicating the services rendered. Providers can obtain claim forms and related information from the North Carolina Dept. of Crime Control & Public Safety, Division of Victims Compensation Services in Raleigh, N.C., 1-800-826-6200 (within NC) or (919) 733-7974. For more information see:</p> <p>http://www.nccrimecontrol.org</p> <p>Under N.C.G.S.A. § 143b-480.2, payment for</p>

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		the cost of the forensic medical examination shall be paid to the provider no later than 90 days after receiving the required written notification of the victim's expense.
North Dakota	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the victim must report the assault but a health care worker must report any suspected sexual assault. • The victim does not pay for the examination. Third party payers or the North Dakota Crime Victims' Compensation Program pays. <p>A victim of a sexual assault is entitled to receive a medical examination for the purpose of gathering evidence for possible prosecution of the assailant. A health care provider is never supposed to directly bill a victim for the examination. The facility is to first bill third-party payers. If none, the North Dakota Crime Victims' Compensation Program has a practice of covering the cost of the examination, however, there is no statute or order providing they must do so. The program will reimburse a medical provider regardless of a victim's immigration status. Accordingly, both qualified and non-qualified immigrants are eligible.</p> <p>Post-coital contraception is handled in the same manner as the forensic examination.</p> <p>For more information, see North Dakota Sexual Assault Evidence Collection Protocol:</p> <p>http://www.ndcaws.org/assault/2004%20CASA ND%20Protocol%20-%20final.pdf</p>	<p>Health care providers must first submit bills to a third party payer if available. If not, the victim applies to the North Dakota Crime Victims' Compensation Program, and upon approval, the medical provider is reimbursed for the examination costs.</p> <p>For more information see:</p> <p>www.state.nd.us/docr/parole/victim_home.htm</p>
Ohio	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported • The victim does not pay for the examination. The reparations fund 	The hospital shall submit requests for payment to the attorney general on a monthly basis, through a procedure determined by the attorney general and on forms approved by the attorney general. Ohio Revised Code §

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	<p>pays for the examination</p> <p>The Ohio Treasury established the reparations fund to, among other things, fund the expense of sex offense examinations for the purpose of gathering evidence for potential prosecution of the offender and the costs of administering DNA specimen collection and analysis. Ohio Revised Code § 2743.191(A)(1).</p> <p>Each hospital in Ohio that offers emergency services is required to have on staff a physician, a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife available on call twenty-four hours each day for the examination of persons reported to any law enforcement agency to be victims of sexual offenses. Medical facilities are required to inform victims of available venereal disease, pregnancy, medical, and psychiatric services. Ohio Revised Code § 2907.29.</p> <p>The program does not distinguish victims based on immigration or alien status.</p> <p>The Sexual Assault Forensic Exam Program (SAFE) reimburses hospitals up to \$532 per rape kit completed for the purpose of gathering evidence for possible prosecution and in compliance with established state protocol. http://www.ag.state.oh.us/victim/index.asp</p> <p>For additional information, call Beth Malkiss, Bureau of Health Promotion and Risk Reduction at (614) 466-8960.</p>	<p>2907.28(A)(2)</p> <p>The cost of a medical examination of a sexual assault victim for the purpose of gathering physical evidence for potential prosecution of the offender, including the cost of prescribed antibiotics, will be paid by the reparations fund. Ohio Revised Code § 2907.28(A).</p> <p>A victim of sexual assault or the victim’s insurer will not be billed or charged directly or indirectly for any costs incurred by a hospital or emergency facility for conducting a medical examination and testing of the victim in order to gather physical evidence for possible prosecution. Ohio Revised Code § 2907.28(B)</p> <p>[</p>
Oklahoma	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported • The victim may seek reimbursement in an amount up to \$250 for the examination. <p>Forensic examinations are funded by the Crime</p>	<p>Applications submitted and approved by the district attorney or assistant district attorney before payment will be made. Oklahoma Statutes §142.20(D).</p> <p>The hospital emergency room should have the victim complete the “Victim Verification” section of the Application for</p>

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	<p>Victims Compensation Program through the Sexual Assault Examinations Fund.</p> <p>A victim of a sexual assault is entitled to receive a medical examination for the procurement of evidence to aid in the investigation and prosecution of a sexual assault offense and provide the victim medications. Oklahoma Statutes §142.20(A).</p> <p>The program does not distinguish between victims, regardless of immigration or alien status.</p> <p>Victims can receive compensation for medical costs up to \$250 for the forensic examination (which can be paid directly to the service provider) and \$50 for medications. However, should the victim/guardian pay the examination costs out of pocket, a social security number is required to be provided on the application in order to be reimbursed.</p>	<p>Payment of Sexual Assault Examination.</p> <p>The attending nurse (or a qualified nurse) should complete the “Examining Physician or SANE Nurse Verification” section of the application.</p> <p>The hospital should complete the “Medical Facility Information” section of the application and attach to the application an itemized statement for each provider applying for payment.</p> <p>The application must be forwarded to the District Attorney of the county in which the crime was committed (to the attention of “Victim Witness Coordinator”). The District Attorney’s Office will forward the application to the Oklahoma Crime Victims Compensation Program.</p> <p>Oklahoma District Attorneys Council 421 N.W. 13th, Suite 290 Oklahoma City, OK 73103 Local: (405)264-5000 Fax: (405)264-5099</p>
Oregon	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim does not pay for the examination as long as the sexual assault occurred in Oregon and the examination is obtained within 84 hours of the assault or a partial medical examination is obtained within 168 hours of the sexual assault. • The victim does not pay for the examination as long as the examination has been performed within the required time period. The Sexual Assault Victims Emergency Medical Response Fund pays for the examination <p>The Sexual Assault Victims Emergency Medical</p>	<p>An “eligible victim” for the purposes of accessing the SAVE Fund is a person who has self-identified or been identified by another as a victim of a sexual assault that occurred in Oregon and who receives a “complete medical examination” within 84 hours of the assault or a “partial medical examination” within 168 hours (seven days) of the sexual assault</p> <p>The victim must complete submit a completed application form to the victim’s medical service provider. A copy of the form may be found at: http://www.doj.state.or.us/crimev/pdf/sa_funfinal.pdf. To obtain payment from the</p>

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	<p>Response Fund (SAVE Fund) provides dollars to pay for sexual assault medical exams, forensic exams, STD prophylaxis and emergency contraception for any victim of a sexual assault that occurred within Oregon, regardless of ability to pay. There is no restriction based on Oregon residency or immigration status, and the Crime Victims Assistance Section does not review the immigration status of victims. In addition, the SAVE Fund application does not ask for social security numbers. Both qualified and non-qualified immigrants are eligible.</p> <p>The SAVE Fund pays for any of or all the elements of a “Complete” Medical Assessment, which includes the collection of forensic evidence and must be conducted within 84 hours of the assault; and for any of or all the elements of a “Partial” Medical Assessment which does not include the collection of forensic evidence and must be conducted within 7 days of the assault.</p> <p>Examples of services not covered by the SAVE Fund include: treatment of injuries, DNA testing, HIV testing, laboratory testing of blood for any purpose, and prescriptions filled off-site of the location of the medical examination.</p> <p><i>See also</i> Oregon Administrative Rules 137-084-0001 - 137-084-0030, temporary provisions relating to medical assessments for victims of sexual assaults compiled as a note preceding Oregon Revised Statute 147.0005, and http://www.doj.state.or.us/crimev/sex_aslt_vtms_emrf.shtml.</p>	<p>SAVE Fund, the medical services provider must submit the form to the Oregon Department of Justice within one year.</p> <p>Further information may be found at:</p> <p>Crime Victims’ Compensation Program Department of Justice 1162 Court St. NE Salem, Oregon 97301-4096 Telephone (503) 378-5348 TDD (503) 378-5938 FAX (503) 378-5738 http://www.doj.state.or.us/crimev/sex_aslt_vtms_emrf.shtml</p>
Pennsylvania	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • Pennsylvania’s Crimes Victims Act will pay for the medical examination if the victim does not have or does not want to use the victim’s insurance. <p>The cost of a forensic rape examination or other</p>	<p>Under the Crime Victims Act (18 P.S. § 11.707), a hospital or other licensed health care provider may submit a claim for reimbursement for the cost of a forensic rape examination if the cost is not covered by insurance or if the victim requests that the insurance carrier not be billed. Upon the filing of a claim, the Office of Victims’ Services shall promptly notify the prosecutor of the county where the crime is alleged to have occurred. The reimbursement, where</p>

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	<p>physical examination conducted for the purpose of gathering evidence in any criminal investigation and prosecution under provisions of Pennsylvania’s Crimes Code relating to sexual offenses and the cost to provide medications prescribed to the victim shall not be charged to the victim. 42 Pa. C.S.A. § 1726.1.</p> <p>Although 42 Pa. C.S.A. § 1726.1 provides that Pennsylvania’s Crime Victims Act (18 P.S. § 11.101 <i>et seq.</i>) will pay for the medical examination “if the appropriate insurance is not available,” the Crime Victims Act provides reimbursement for forensic rape examinations if the cost is not covered by insurance or “if the victim requests that the insurance carrier not be billed.” 18 P.S. § 11.707. Apparently, allowing the victim to request reimbursement (a change resulting from an amendment made in 2002) addresses confidentiality/retaliation concerns where the victim is covered by the assailant’s insurance and the insurance company may provide an explanation of benefits to the assailant.</p>	<p>applicable, shall be at a rate set by the Office of Victims’ Services. The cost of a forensic rape examination and the cost of medications prescribed to the direct victim shall not be charged to the victim. <i>Id.</i> A sexual assault or rape victim need not be an applicant for any other compensation under the Crime Victims Act. <i>Id.</i></p>
Puerto Rico	<ul style="list-style-type: none"> • The victim must be a legal resident and must have a Social Security number. • The victim must report the assault within 96 hours after the assault and cooperate with the authorities. • The victim does seek compensation under the Crime Victims Compensation Act within 6 months of the assault, unless there is just cause. <p>No specific statutes except for compensation under Crime Victims Compensation Act as described, in relevant part, below.</p> <p>The following victims of crime may receive compensation:</p> <ul style="list-style-type: none"> (a) legal residents of Puerto Rico; (b) nonresident persons if their resident jurisdiction does not provide for compensation under a Federal Crime Victims Compensation Act; (c) persons related to the victim by legal or 	<p>The victim must</p> <ul style="list-style-type: none"> (a) complete an application and file it with the Crime Victims Compensation Office; (b) report to the officers of public law and order the commission of the criminal conduct within ninety-six (96) hours following the delinquent act, unless there is just cause for the delay; (c) cooperate with the corresponding authorities in the phases of solving and prosecuting the persons responsible for the commission of the crime. The continuous availability of the victim will be verified through reports filed by the officers to the Crime Victims Compensation Office; (d) claim the benefits within six (6) months following the date of the commission of the crime, unless there is just cause. 25 L.P.R.A. §981(f) and (g) and Law 3 of 2006.

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	<p>consensual ties, consanguinity or affinity up to the second degree or who depend on the victim for more than 50% of his/her subsistence expenses;</p> <p>(d) persons suffering from acts of terrorism under certain circumstances. 25 L.P.R.A. §981.</p> <p>The compensable crimes or attempted crimes include: rape (sexual aggression); kidnapping; lascivious acts; violence; child abuse. 25 L.P.R.A. §981(d) and Law No. 3 of 2006.</p> <p>The compensation payable depends on the date of the crime: (1) Crimes committed before 21 August 03 receive a maximum of \$3,000 per person and \$5,000 per family; (2) crimes committed between 21 August 03 and 04 January 06 receive a maximum of \$4,000 person and \$6,000 per family; (3) crimes committed after 05 January 06 receive a maximum of \$6,000 per person, \$15,000 per family and \$25,000 for catastrophic or permanent injury. Compensation is provided for:</p> <p>(a) reasonable expenses incurred for medical treatment, including chiropractic, rehabilitation, hospitalization services and medical care, including ambulance service, medication, medical equipment, and transportation expenses for medical appointments and treatments;</p> <p>(b) reasonable expenses for psychological, psychiatric treatment, including transportation and medical expenses;</p> <p>(c) income the victims would have earned if he/she had not suffered the injury.</p> <p>See compensation table: www.justicia.gobierno.pr/rs_template/v2/CompVic/CV_Tabla.html</p> <p>Deductions on compensation may be made if the victim or dependants have received compensation from another source. 25 L.P.R.A. §981(i). Mental anguish and suffering are not compensable. 25 L.P.R.A. §981(h).</p> <p><u>Important:</u> While the law does not appear to</p>	<p>A minor or disabled claimant must be represented by his/her parents, custodian or guardian. 25 L.P.R.A. §981(g).</p> <p>The application should include all medical reports available regarding the injury and any other information required by regulations. 25 L.P.R.A. §981(g).</p> <p>The application should be accompanied by the following information:</p> <p>(a) photo I.D. of the victim and claimant;</p> <p>(b) copy of the social security card(s) of the victim and claimant;</p> <p>(c) birth certificate or passport; evidence of legal residence of the victim or claimant, if an alien;</p> <p>(d) marriage or death certificate, as applicable;</p> <p>(e) evidence of loss of income;</p> <p>(f) evidence of compensatory benefits received from any other source;</p> <p>(g) medical evidence of the incapacity of the victim to work;</p> <p>(h) police report of the crime;</p> <p>(i) other documents to evidence expenses incurred as a result of the crime.</p> <p>In an emergency, where the victim's physical injury is obvious, the Office may relax the requirement for the victim to file an application, until the victim's emergent needs have been attended to.</p> <p>See website for forms and instructions: www.justicia.gobierno.pr/rs_template/v2/CompVic/CV_TDoc.html</p>

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	<p>place any restriction on the immigration status of the victim; the instructions to the application form, require evidence of legal residence.</p> <p>Funding comes from both the state and federal government.</p>	
Rhode Island	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. If the victim has no insurance, the facility will pay for the examination. <p>Every health care facility that has an emergency medical care unit shall provide to every person prompt life saving medical care treatment in an emergency, and a sexual assault examination for victims of sexual assault without discrimination on account of economic status or source of payment, and without delaying treatment for the purpose of a prior discussion of the source of payment unless the delay can be imposed without material risk to the health of the person. R.I. Gen. Laws § 23-17-26.</p>	<p>The Rhode Island Crime Victim Compensation Program provides victims of violent crimes, including sexual assault, with financial assistance for such expenses as medical bills, loss of earnings and funeral expenses, up to \$25,000. The crime must be reported to law enforcement authorities within 10 days and the victim must apply for compensation within three years from the date of the crime.</p> <p>FAQs: http://www.treasury.ri.gov/crimevictim/faq.php</p> <p>CVC Application: http://www.treasury.ri.gov/crimevictim/download.php</p>
South Carolina	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made. • The victim does not pay for the examination. The South Carolina Crime Victim’s Compensation Fund pays if the offense occurred in South Carolina. <p>South Carolina Code, § 16-3-1350 provides that South Carolina must ensure that a victim of criminal sexual conduct in any degree, criminal sexual conduct with a minor in any degree, or child sexual abuse must not bear the cost of his or her routine medicolegal exam following the assault if the victim has filed an incident report</p>	<p>A licensed health care facility, may file a claim for reimbursement directly to the South Carolina Crime Victim's Compensation Fund if the offense occurred in South Carolina. SC Code Ann. § 16-3-1350.</p> <p>For more information see: http://www.oep.sc.gov/sova/compensation.html</p>

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	<p>with a law enforcement agency. These exams must include treatment for venereal disease, and must include medication for pregnancy prevention if indicated and if desired. SC Code Ann. § 16-3-1350.</p> <p>For more information see: http://www.oepp.sc.gov/sova/new/billing.html</p>	
<p>South Dakota</p>	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made. • The victim does not pay for the examination. The county in which the alleged sexual assault occurred pays for the examination. <p>Billing of sexual assault victims for forensic examinations is prohibited. Bill is paid by the county where the alleged rape occurred. To qualify, however, the assault must be reported to the state.</p> <p>The relevant statute from South Dakota states as follows: “If a physician, hospital, or clinic examines a victim of an alleged rape or sexual offense to gather information or evidence about the alleged crime, the examination shall be provided without cost to the victim if the alleged offense is reported to the state. The physician, hospital, or clinic shall be paid for the cost of the examination by the county where the alleged rape or sexual offense occurred, which shall be reimbursed by any defendant if convicted. S.D. Codified Laws § 22-22-26.</p> <p>http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=22-22-26&Type=Statute</p>	<p>Must report assault to the state. If so reported, the examination is provided without cost to the victim. The examination provider is reimbursed by the county (or the defendant if convicted of the assault).</p>
<p>Tennessee</p>	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim may seek reimbursement 	<p>Applications may be made by completing the form found at: http://www.treasury.state.tn.us/injury/application.pdf</p>

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	<p>for out of pocket expenses under the Criminal Injuries Compensation Program.</p> <ul style="list-style-type: none"> Sexual assault victims are permitted to seek reimbursement under the Criminal Injuries Compensation Program for out-of-pocket expenses incurred as the direct result of personal injuries sustained by a criminal offense, including medical expenses (including the cost of a forensic exam following a sexual assault), lost wages, pain and suffering. <p>A victim of a sexually-oriented crime shall be entitled to forensic medical examinations without charge to the victim. No bill for the examination shall be submitted to the victim, nor shall the medical facility hold the victim responsible for payment. All claims for forensic medical examinations are eligible for payment from the criminal injuries compensation fund, created under § 40-24-107. The victims shall not be required to report the incident to law enforcement officers or to cooperate in the prosecution of the crime in order to be eligible for payment of forensic medical examinations. A claim for compensation under this section shall be filed no later than one (1) year after the date of the examination by the health care provider that performed the examination, including a hospital, physician, SANE program, Child Advocacy Center, or other medical facility. T.C.A. 29-23-118</p>	<p>or by contacting:</p> <p>State of Tennessee Criminal Injuries Compensation Program Division of Claims Administration 502 Deaderick Street Nashville, TN 37243-0202 p - (615) 741-2734 f - (615) 532-4979</p>
Texas	<ul style="list-style-type: none"> To receive compensation for costs associated with the examination, the victim must be either a resident of Texas or a U.S. resident who is victimized in Texas or a Texas resident who is victimized in another state or country that does not have a compensation fund. A report to the authorities must be made within a reasonable period of time but not so late as to interfere with or hamper the investigation and prosecution of the crime and the victim must also reasonably cooperate with law enforcement. The victim may seek reimbursement in 	<p>The victim may file an application for reimbursement with the Crime Victims Compensation Program for any costs not covered, if the person meets the eligibility requirements. <i>See</i> Tex. Const. Art. 1, § 31; Tex. Code Crim. Proc. Art. 56.31.</p> <p>For more information see:</p> <p>https://www.oag.state.tx.us/victims/about_comp.shtml</p>

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	<p>an amount up to \$700 for the examination. In addition, the law enforcement agency that requests a medical examination of a victim of an alleged sexual assault will pay the costs of the evidence collection kit. The law enforcement agency may apply to the Attorney General for reimbursement.</p> <p>In order for a victim be eligible to receive compensation for the costs associated with a forensic exam from the Crime Victims Compensation Program in Texas, the victim must be a resident of Texas who is victimized in Texas, a U.S. resident who is victimized in Texas or a Texas resident who is victimized in another state or country that does not have a compensation fund.</p> <p>The victim must file a police report within a reasonable period of time, but not so late as to interfere with or hamper the investigation and prosecution of the crime. <i>See</i> Tex. Code Crim. Proc. Art. 56.37. The victim must also reasonably cooperate with law enforcement. <i>See id.</i></p> <p>The victim must complete an application and file it with the Office of the Attorney General, Crime Victims’ Compensation Program, which is responsible for the administration of the Compensation to Victims of Crime Fund which receives funds from state offender assessments, state donations, and VOCA funds. <i>See</i> Tex. Const. Art. 1, Sec. 31; Tex. Code Crim. Proc. Art. 56.31. The application must be filed within three years of the date of the crime. <i>See</i> Tex. Code Crim. Proc. Art. 56.37. The time period for filing an application may be extended for good cause, including the age of the victim or the physical or mental incapacity of the victim. <i>See</i> Tex. Code Crim. Proc. Art. 56.37.</p> <p>Crime Victims’ Compensation will reimburse “reasonable costs” associated with forensic sexual assault examinations of victims of alleged sexual assaults in an amount not to exceed \$700.00 in the aggregate. A law enforcement agency that requests a medical examination of a victim of an alleged sexual assault or other sex</p>	

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	<p>offense for use in the investigation or prosecution of the offense shall pay the costs of the evidence collection kit. Law enforcement agencies may apply to Attorney General for reimbursement. This does not require a law enforcement agency to pay any costs of treatment for injuries. <i>See</i> Tex. Code Crim. Proc. § 56.06. Evidence collected may not be released unless the survivor of the offense or a legal representative of the survivor signs a written consent to release the evidence. <i>See</i> Tex. Gov't. Code Ann. § 420.031.</p> <p>There are no specified restrictions based upon immigration status. <i>See</i> Tex. Gov't. Code Ann. § 420.031. Accordingly, both qualified and non-qualified immigrants are eligible.</p> <p>For more information see:</p> <p>http://www.oag.state.tx.us/victims/cvc.shhtml</p>	
Utah	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made. • The victim does not pay for the examination. The Utah Office of Crime Victim Reparations (“CVR Office”) will pay up to \$600 for the examination and the CVR Office may pay additional amounts. <p>Utah law provides that the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by the Utah Office of Crime Victim Reparations (“CVR Office”) in the amount of \$300.00 without photo documentation and up to \$600.00 with a photo examination. The CVR Office may also pay for the cost of medication and up to 85% of the hospital expenses. Utah Admin. Code Rule R270-1.</p> <p>Utah agency guidelines provide the following guidance for payments for sexual assault</p>	<p>The Utah Office of Crime Victim Reparations may reimburse any licensed health care facility that provides services for sexual assault forensic examinations. The CVR Office also may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.</p> <p>For more information: http://www.crimevictim.utah.gov/</p>

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	<p>forensic examinations:</p> <ol style="list-style-type: none"> 1. A sexual assault forensic examination shall be reported to law enforcement. 2. Victims shall not be charged for sexual assault forensic examinations. 3. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations. 4. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations. 5. CVR may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault. 6. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider. 7. The application or billing for the sexual assault forensic examination must be submitted to CVR within one year of the examination. 8. The billing for the sexual assault forensic examination shall: <ol style="list-style-type: none"> a. identify the victim by name, address, date of birth, Social Security number, telephone number, patient number; b. indicate the claim is for a sexual assault forensic examination; and c. itemize services and fees for services. 9. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before CVR Trust Fund monies are used. Pursuant to Subsection 63-25a-411(i), the Director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a 	

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	<p>collateral source.</p> <p>10. Evidence will be collected only with the permission of the victim or the legal guardian of the victim. Permission shall not be required in instances where the victim is unconscious, mentally incapable of consent or intoxicated.</p> <p>11. Restitution for the cost of the sexual assault forensic examination may be pursued by the CVR office.</p> <p>12. Payment for sexual assault forensic examinations shall be considered for the following:</p> <p>a. Fees for the collection of evidence, for forensic documentation only, to include:</p> <ul style="list-style-type: none"> i. history; ii. physical; iii. collection of specimens and wet mount for sperm; and iv. treatment for the prevention of sexually transmitted disease up to four weeks. <p>b. Emergency department services to include:</p> <ul style="list-style-type: none"> i. emergency room, clinic room or office room fee; ii. cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease; iii. serum blood test for pregnancy; and iv. morning after pill or high dose oral contraceptives for the prevention of pregnancy. <p>13. The victim of a sexual assault that is requesting payment by CVR for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the CVR office.</p> <p>http://www.crimevictim.utah.gov/Documents/Provider%20Information/Sexual%20Assault%20C</p>	

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State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
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Vermont	<ul style="list-style-type: none"> • Free counseling, testing, preventative treatment and support services for HIV infection prevention are available for sexual assault survivors. • There are no eligibility restrictions based on immigration status. • A report to the authorities does not have to be made to obtain reimbursement for the examination. • The Vermont Center for Crime Victim Services pays for the services. <p>Vermont law provides compensation to crime victims, including reimbursement for uninsured expenses of rape exams, HIV testing, and counseling and emotional support. If you report the rape and are not insured, you can apply to the Victims Compensation Program for the cost of the initial exam, any followup, examinations, and treatment.</p> <p>13 Vermont Statutes Annotated Chapter 167.</p>	<p>Crime victims should contact:</p> <p>Vermont Center for Crime Victim Services Victims Compensation Program 58 South Main St., Suite 1 Waterbury, VT 05676-1599 (802) 241-1250 FAX: (802) 241-1253 1-800-750-1213 (in-state only); 1-800-845-4874 (TTY, in-state only)</p> <p>http://www.ccvvs.state.vt.us/joomla/index.php?option=com_content&task=view&id=41&Itemid=33</p>
Virginia	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The Commonwealth of Virginia pays for the examination. <p>Virginia law provides that all medical fees involved in the gathering of evidence for all criminal cases where medical evidence is necessary to establish a crime has occurred, and for cases involving abuse of children under the age of 18, shall be paid by the Commonwealth of Virginia.</p> <p>Va. Code § 19.2-165.1.</p>	<p>Virginia law provides that the costs of medical exams for crime victims shall be paid out of the appropriation for criminal charges, provided that any medical evaluation, examination, or service rendered be performed by a physician or facility specifically designated by the attorney for the Commonwealth in the city or county having jurisdiction of such case for such a purpose. If no such physician or facility is reasonably available in such city or county, then the attorney for the Commonwealth may designate a physician or facility located outside and adjacent to such city or county.</p> <p>Where there has been no prior designation of such a physician or facility, such medical fees shall be paid out of the appropriation for criminal charges upon authorization by the attorney for the Commonwealth of the city or county having jurisdiction over the case. Such authorization may be granted prior to or within 48 hours after the medical evaluation,</p>

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		<p>examination, or service rendered.</p> <p>Upon conviction of the defendant in any such case, the court shall order that the defendant reimburse the Commonwealth for payment of such medical fees.</p> <p>Va. Code § 19.2-165.1</p>
Virgin Islands	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made. • The victim does not pay for the examination. The Victim’s Compensation Fund pays for the examination. <p>Virgin Islands Code, 34 V.I.C. § 206, provides that the Government of the Virgin Islands shall ensure that alleged victims of criminal sexual conduct, in any degree, or child sexual abuse shall not bear the cost of the routine medicolegal exam following the assault, provided the victim has filed an incident report with the U.S. Virgin Islands Police Department. These exams shall include treatment for venereal disease, and shall include medication for pregnancy prevention if indicated and if desired. 34 V.I. Code Ann. § 206.</p>	<p>Virgin Islands Code, 34 V.I.C. § 206, provides that a licensed health care facility, may file a claim for reimbursement directly to the Virgin Islands Criminal Victims Compensation Commission. The Virgin Islands Criminal Victims Compensation Commission shall reimburse eligible health care facilities directly. 34 V.I. Code Ann. § 206.</p>
Washington	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The Washington State Crime Victim’s Compensation Program pays for the examination. <p>A victim of a sexual assault is entitled to receive a medical examination for the purpose of gathering evidence for possible prosecution of the assailant. There is no charge to the victim</p>	<p>Health care providers must submit bills for the examination costs to the Washington State Crime Victim’s Compensation. Wash. Rev. Code § 7.68.170.</p>

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	<p>for the exam. Wash. Rev. Code § 7.68.170; Wash. Admin. Code 296-30-170. The victim can obtain such an exam at no cost regardless of her immigration status. Accordingly, both qualified and non-qualified immigrants are eligible.</p> <p>Emergency contraception shall be offered to a female victim of sexual assault, and provided to the victim if she requests it. Wash. Rev. Code § 70.41.350; Wash. Admin Code 246-320-286.</p>	
West Virginia	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim does not pay for the examination as long as the examination is obtained within a reasonable time after the assault. • The victim does not pay for the examination. The forensic medical examination fund pays for the examination. <p>In West Virginia, when any person alleges that he or she has been the victim of a sexual assault, the prosecuting attorney shall pay a licensed medical facility the cost of the forensic medical examination on the following conditions and in the following manner: (i) the payment shall cover all reasonable, customary and usual costs of the forensic medical exam; (ii) the costs of additional non-forensic procedures performed by the licensed medical facility, including, but not limited to, prophylactic treatment, treatment of injuries, testing for pregnancy and testing for sexually transmitted diseases, may not be paid from the fund, and (iii) the exam must have been conducted within a reasonable time of the alleged violation. W. Va. Code § 61-8B-16. The statute does not distinguish between the eligibility of qualified and non-qualified immigrants.</p>	<p>The licensed medical facility must apply for payment for the costs of a forensic medical examination from the fund within a reasonable time of the examination. The licensed medical facility must certify that the forensic medical examination was performed and may submit a statement of charges to the West Virginia Prosecuting Attorneys Institute for payment from the fund. No licensed medical facility may collect the costs of a forensic medical examination from the alleged victim or from the alleged victim's insurance coverage, if any. An alleged victim of sexual assault is not required to participate in the criminal justice system or to cooperate with law enforcement in order to be provided a forensic medical examination. W. Va. Code § 61-8B-16.</p>
Wisconsin	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim does not pay for the examination as long as the examination is obtained within 5 days 	<p>Two programs for paying for Forensic Exams:</p> <ul style="list-style-type: none"> • CVC (Crime Victims Compensation) will reimburse for

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State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>of the assault and reimbursement is requested within 1 year of the assault.</p> <ul style="list-style-type: none"> The victim does not pay for the examination as long as the examination is obtained and the request for reimbursement is made within the required time frames. The Sexual Assault Forensic Exam covers the examination if the victim does not notify the victim's insurance or the police. <p>Victims of sexual assault can make an application for reimbursement of medical expenses if they report the assault to the police within five days and make the application within one year of the assault. Wis. Stat. ch. 949 (Crime Victim Compensation and Sexual Assault Forensic Exam Compensation).</p>	<p>forensic exams (and other expenses) if the victim reports crime to police and to her health insurance. CVC is available for undocumented aliens.</p> <ul style="list-style-type: none"> Victim must fill out report the crime within five days and apply within a year. Out of pocket expenses will be reimbursed by CVC. SAFE (Sexual Assault Forensic Exam) covers the cost of the exam and laboratory testing. This option is available if the victim chooses to not notify her insurance or the police. SAFE is available for undocumented aliens. The hospital, at the victim's discretion, will bill CVC directly for the SAFE. By doing so, she relinquishes her right to any reimbursement for other expenses not associated with the forensic exam. <p>There is no requirement that victims be notified of either of these options.</p> <p>SAFE: http://www.doj.state.wi.us/cvs/CVCompensation/safefund.asp</p> <p>CVC Application: http://www.doj.state.wi.us/cvs/CVCompensation/Compensation_Brochure.asp</p>
Wyoming	<ul style="list-style-type: none"> There are no eligibility restrictions based on immigration status. The victim does not pay for the examination as long as the examination is arranged by a law enforcement agency with the victim's consent. The victim does not pay for the examination as long as the examination is arranged by a law enforcement agency with the victim's consent. <p>A victim of a sexual assault, regardless of immigration status, is entitled to receive a medical examination by a licensed health care provider, arranged by a law enforcement agency</p>	<p>Costs of any examination relating to the investigation or prosecution of a sexual assault should be billed to and paid by the investigating law enforcement agency.</p> <p>Wyo. Stat. Ann. § 6-2-309.</p>

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	<p>with the victim’s consent, after the agency receives a report of sexual assault. The examination may include a medical examination and treatment, evidence collection and evaluation, and appropriate referrals for follow-up treatment and services,</p> <p>Upon consent of the victim to release the results of the examination, the evidence, record and reports shall be delivered to the law enforcement agency.</p> <p>Wyo. Stat. Ann. § 6-2-309.</p>	

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Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence

By Legal Momentum and Morgan Lewis, LLP

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This information is current as of September 17, 2007. It is intended to provide an overview regarding health benefits and victim compensation for each state. Victims in need of legal advice should contact their local domestic violence/sexual assault program for referrals.

Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence

INTRODUCTION

The Federal Victims of Crime Act established a Crime Victims Fund that provides grants to states for eligible crime victim compensation programs. If states meet certain requirements, this federal funding can be obtained to compensate victims of crimes through programs administered by the states and U.S. territories. See 42 U.S.C. §10602, and discussion of relevant federal law below.

In general a “compensable crime” includes motor vehicle accidents resulting from driving while intoxicated, domestic violence, and any crime where the victim suffers death or personal injury, including assault, battery, child abuse, reckless driving, murder, robbery, sexual assault, kidnapping, or other violent crimes.

Each state and territory has a victims compensation program. Most of these programs provide compensation to victims of crimes that occur in that state. Generally a victim must suffer physical (bodily) injury, emotional injury, economic loss, or some combination of these.

Many of the programs extend certain types of compensation to relatives of the victim, such as counseling, or, where the crime results in a death, coverage of funeral and burial expenses. Often, relatives or even non-relatives that paid for medical care of a victim can be compensated for those costs. Some states also extend benefits to those who prevent or attempt to prevent a crime.

Most states provide compensation to:

- state residents, or nonresidents, if the crime occurred in the state; and
- state residents if the crime occurred in another state, and there is no comparable compensation available from that other state.

Several states also provide compensation to:

- state residents for crimes committed outside of the country, in an act of international terrorism, or mass violence.

Most states do not deny compensation based upon immigration status. Accordingly, in most states, both qualified and non-qualified immigrants can receive compensation if they are victims of a crime. However, several states either do not provide coverage for non-qualified immigrants or seek information that a non-qualified immigrant may not have. For example, several states ask for a social security number as part of the process of applying for compensation. Generally speaking, however, these states will process an application and provide compensation, even if the social security number is not available. Among the very few states where compensation is not provided to non-qualified immigrants, one will permit compensation if the crime victim is also a victim of human trafficking.

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It is generally required that the crime be reported to law enforcement officials within a certain time period--often 72 hours. However, most states permit a crime to be reported later if for good cause, or if the victim was a juvenile. It is not necessary that the crime at issue be solved or that the accused is convicted. However, it is generally required that the victim cooperate with law enforcement officials in investigating the crime, and that the victim be innocent, *e.g.*, not involved in the crime, and not incarcerated at the time of the crime.

Compensation is available for a wide variety of financial costs. Most often this includes medical costs, such as physician services, hospital care, dental services, prescription drugs, and mental health treatment. For victims of sexual assault, compensated medical care can include STD and HIV/AIDS screening/treatment, pregnancy testing, hepatitis screening, and pre-natal care.

Most states provide compensation for loss of income and funeral/burial costs. Many states also provide compensation for travel for court appearances or for medical treatment, rehabilitation, crime scene clean-up, necessary moving/relocation costs, necessary home security or modifications, limited attorney's fees, and replacement costs for the work victim is no longer able to perform, *e.g.*, housekeeping or child care. A few states compensate for lost, stolen, or damaged property. Very few states compensate for pain and suffering.

Most states have limits on how much will be reimbursed in each category, as well as a limit on total compensation. Most also consider this compensation of last resort, *i.e.* compensation will not be provided if the costs are reimbursable by insurance or other benefits.

Emergency benefits can often be provided if the victim would suffer substantial hardship without immediate compensation. Emergency awards can range, in general, from \$500 to \$1500.

To obtain compensation, victims must generally file an application in the particular state with the agency that administers the program. Time limits for filing vary, but are generally one to three years from the time of the crime. There are usually allowances for good cause that enable an application to be submitted at a later time. Applications are then reviewed and a decision is reached. Most states have an appeal process that may be used if the victim's request is denied.

RELEVANT FEDERAL LAW

The Victims of Crime Act established a Crime Victims Fund from which grants are provided to states for eligible crime victim compensation programs. Under 42 U.S.C. §10602, a compensation program qualifies as an eligible crime victim compensation program if:

- the program is operated by the state and offers compensation to victims and the survivors of victims of criminal violence (including drunk driving and domestic

violence) for (i) medical expenses attributed to a physical injury related to compensable crime, including expenses for mental health counseling, (ii) lost wages attributable to a physical injury resulting from a compensable crime, and (iii) funeral expenses attributable to a death resulting from a compensable crime;

- the program promotes victim cooperation with reasonable requests from law enforcement;
- the grants will not supplant state funds otherwise available for victim compensation;
- the program makes compensation awards to victims who are nonresidents of the state on the basis of the same criteria used to make awards to victims who are residents of the state;
- the program provides compensation to victims of federal crimes occurring within the state on the same basis as compensation to victims of state crimes;
- the program provides compensation to residents of the state who are victims of crimes occurring outside the state if (i) the crimes would be compensable crimes had they occurred inside that state, and (ii) the places the crimes occurred in are states not having eligible crime victim compensation programs;
- the program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender; and
- the program does not provide compensation to any person who has been convicted of an offense under federal law with respect to any time period during which the person is delinquent in paying a fine, other monetary penalty, or restitution imposed for the offense.

In addition, it is important to note that under federal law, immigrants have access to emergency medical services, which cover those services that are necessary to protect life or safety. Immigrants can seek medical care at federally funded Community Health Centers and Migrant Health Centers, which provide services to underserved populations.

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STATE LAW PROVISIONS

Below is a mini-chart briefly summarizing the provisions available to victims of sexual assault and other violent crimes. This mini-chart is followed by a detailed chart for each U.S. state and territory setting forth the relevant provisions for eligibility, compensation, and the application process for crime victim compensation (CVC).

State	Qualified Immigrants ¹	Non-Qualified Immigrants ²	Types/Mean of Coverage
Alabama	Yes	No	AL's CVC compensates victims for the following expenses: medical, including testing and preventative treatment for STDS, funeral, psychiatric, loss wages, and rehabilitation.
Alaska	Yes	Yes	AK's Violent Crime Compensation will compensate victims for all expenses actually and reasonable incurred as a result of the crime, including medical costs, attorney's fees, counseling, funeral expenses, and loss of wages.
Arizona	Yes	Yes	AZ's CVC will compensate victims for the following expenses: medical costs including STD testing, work loss, counseling, and funeral.
Arkansas	Yes	Yes	AR's Crime Victims Reparations Program compensates victims for the following expenses: 75% of medical costs (although medical providers may accept this as payment in full), work loss, funeral, crime scene cleanup, and miscellaneous expenses (i.e., travel and lodging to and from judicial proceeding relating to crime).
California	Yes	Yes	CA's CVC compensates victims for the following expenses: medical including STD and AIDS screening or treatment, counseling, remedial care, loss of wages, job retraining, funeral, crime scene cleanup, and miscellaneous (i.e., relocation, installing residential security system).
Colorado	Yes	Yes	CO's CVC compensates victims for the following expenses: medical, loss of wages, outpatient care, burial, and counseling.
Connecticut	Yes	Yes	CT's Office of Victim Services compensates victims for the following expenses: medical, counseling, loss of wages, and funeral. For victims of sexual assault, testing for pregnancy and STDs, and prophylactic treatment for STDs is offered as part of the forensic program.
Delaware	Yes	Yes	DE's Violent Crime Compensation Board will compensate victims for the following expenses: medical, counseling, remedial, loss of wages, crime scene cleanup, and miscellaneous (i.e., changing residential locks, temporary housing, and moving expenses). For victims of

¹Qualified immigrants include: (1) LPRs, including Amerasian immigrants; (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry, or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also qualified.

²Non-qualified immigrants include (1) undocumented immigrants; (2) U-visa holders; (3) other immigrants formerly considered "permanently residing under color of law" (PRUCOL); and (4) immigrants with temporary status such as tourists and students.

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State	Qualified Immigrants ¹	Non-Qualified Immigrants ²	Types/Mean of Coverage
			sexual assault, a forensic program includes testing for pregnancy and STDs.
District of Columbia	Yes	Yes	DC's CVC compensates victims for the following expenses: medical, counseling, rehabilitation, loss of wages, funeral, crime scene cleanup, attorney's fees, and miscellaneous (i.e., temporary food and shelter, moving, transportation, replacement of doors, windows, locks).
Florida	Yes	Yes	FL's Victim Services compensates victims for the following expenses: medical, loss of wages, counseling, funeral, property loss reimbursement, and miscellaneous (i.e., relocation, prescriptions and prosthetics).
Georgia	Yes	Yes	GA's CVC compensates victims for the following expenses: medical including STD, AIDS and post-coital screening/treatment if not paid for through forensic exam coverage or other coverage, counseling, funeral, lost wages, and crime scene cleanup.
Hawaii	Yes	Yes	HI's CVC compensates victims for the following expenses: any reasonable and proper costs resulting from the injury or death of the victim, including medical (including STD and HIV examinations and treatment), loss of wages, pain and suffering.
Idaho	Yes	Yes	ID's Industrial Commission will compensate victims for the following expenses: medical, counseling, loss of wages, funeral, and miscellaneous (i.e., travel expenses incurred in connection with obtaining benefits).
Illinois	Yes	Yes	IL's Crime Victim Services compensates victims for the following expenses: medical including STD testing and HIV treatment, crime scene cleanup, loss of wages, funeral, and miscellaneous (i.e., temporary lodging, replacement locks or windows).
Indiana	Yes	Yes	IN's Division of Violent Crime compensates victims for the following expenses: medical (including pregnancy and STD testing, and HIV testing), counseling, loss of wages, childcare, funeral, and miscellaneous (i.e., emergency shelter).
Iowa	Yes	Yes	IA's Crime Victims Assistance compensates victims for the following expenses: medical (including prenatal care and delivery), counseling, loss of wages, funeral, and crime scene cleanup. For victims of sexual assault, expenses relating to STD, HIV/AIDS, hepatitis, pregnancy testing, and post-coital are covered by the forensic program.
Kansas	Yes	Yes	KS' CVC compensates victims for the following expenses: loss of wages, medical (including testing and preventative treatment for STDs, and pregnancy testing), funeral, attorney's fees, and miscellaneous (i.e., moving for safety reasons and mileage for medically necessary travel).
Kentucky	Yes	Yes	KY's CVC compensates victims for the following expenses: medical, funeral, counseling, attorney's fees, and miscellaneous (i.e., replacement of glasses, stolen, lost, or damaged property). For victims of sexual assault,

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State	Qualified Immigrants ¹	Non-Qualified Immigrants ²	Types/Mean of Coverage
			CVC compensates for preventative and follow-up treatment of hepatitis B and certain STDs.
Louisiana	Yes	Yes	LA's Crime Victims Reparations compensates victims for the following expenses: medical, attorney's fees, funeral, loss of wages, counseling, child care, crime scene cleanup, and miscellaneous (i.e., travel expenses when medical care is needed, catastrophic property loss).
Maine	Yes	Yes	ME's CVC compensates victims for the following expenses: medical limited to 75% of charges, counseling, funeral, loss of wages, crime scene costs, and miscellaneous (replacement costs for eyeglasses and prosthetics). For victims of sexual assault, the forensic program includes coverage for testing and treatment for STDs and testing for pregnancy.
Maryland	Yes	Yes	MD's Criminal Injuries Compensation Board compensates victims for the following expenses: medical, counseling, funeral, loss of wages, miscellaneous (i.e., replacement for eyeglasses, repairing, replacing, and cleaning property).
Massachusetts	Yes	Yes	MA's Victim Compensation and Assistance Division compensates victims for the following expenses: medical (including pregnancy testing, STD/AIDS screening or treating and prenatal care), funeral, counseling, loss of wages, childcare, and attorney's fees.
Michigan	Yes	Yes	MI's CVC compensates victims for the following expenses: medical, counseling, loss of wages, funeral, childcare, rehabilitation, attorney's fees, and miscellaneous (including, travel costs).
Minnesota	Yes	Yes	MN's Crime Victims Reparations compensates victims for the following expenses: medical, counseling, loss of wages, funeral, childcare, crime scene cleanup. For victims of sexual assault, the forensic program provides testing for pregnancy and STDs.
Mississippi	Yes	Yes	MS' CVC compensates victims for the following expenses: medical, rehabilitation, funeral, counseling, loss of wages, and miscellaneous (i.e., transportation costs to obtain medical and counseling that are at least 45 miles from victim's residence).
Missouri	Yes	Yes	MO's CVC compensates victims for the following expenses: medical, counseling, loss of wages, and funeral.
Montana	Yes	Yes	MT's CVC compensates victims for the following expenses: medical, counseling, loss of wages, and funeral. For victims of sexual assault, the forensic program covers preventative treatment for STDs.
Nebraska	Yes	Yes	NE's Crime Victim's Reparations will compensate victims for the following expenses: medical, loss of wages, funeral, and counseling.
Nevada	Yes	No	NV's Compensation Board will compensate victims for the following expenses: medical, counseling, funeral, loss of wages, replacement of eyeglasses, prosthetics.
New	Yes	Yes	NH's CVC compensates victims for the following

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State	Qualified Immigrants ¹	Non-Qualified Immigrants ²	Types/Mean of Coverage
Hampshire			expenses: medical, funeral, counseling, loss of wages. For victims of sexual assault, the forensic program covers STD testing and pregnancy testing.
New Jersey	Yes	Yes	NJ's Victims of Crime Compensation Board compensates victims for the following expenses: medical, loss of wages, counseling, funeral, loss of eyeglasses, crime scene cleanup, relocations expenses and miscellaneous (including limited transportation costs). For victims of sexual assault, the CVC program covers pregnancy testing and preventative treatment for some STDs.
New Mexico	Yes	Yes	NM's Crime Victims Reparations Commission compensates victims for the following expenses: medical, funeral, counseling, replacement of eyeglasses or medically necessary devices, loss of wages, rehabilitation and miscellaneous (i.e., cost of making home or auto accessible, job training).
New York	Yes	Yes	NY's Crime Victim's Board compensates victims for the following expenses: medical, loss of wages, funeral, rehabilitation, replacement of essential personal property, counseling, crime scene cleanup, attorney's fees, miscellaneous (including transportation expenses, cost of temporary lodging). For victims of sexual assault, the forensic program covers testing and preventative treatment for some STDs.
North Carolina	Yes	Yes	NC's CVC compensates victims for the following expenses: medical, counseling, loss of wages, funeral, replacement, crime scene cleanup, and miscellaneous (including travel costs necessary to obtain medical services). For victims of sexual assault, CVC covers STD screening and treatment and pregnancy testing.
North Dakota	Yes	Yes	ND's CVC compensates victims for the following expenses: medical (including STD, HIV/AIDS, post-coital treatment), counseling, loss of wages, replacement services loss, and funeral.
Ohio	Yes	Yes	OH's CVC compensates victims for the following expenses: medical, counseling, rehabilitation, loss of wages, replacement, crime scene cleanup, and funeral. The forensic program informs victims of sexual assault of available services for STDs.
Oklahoma	Yes	Yes	OK's CVC compensates victims for the following expenses: medical, loss of wages, replacement, counseling, funeral, and crime scene cleanup.
Oregon	Yes	Yes	OR's CVC compensates victims for the following expenses: medical, counseling, replacement of eyeglasses and other medically necessary devices, funeral, loss of wages, rehabilitation, and miscellaneous (i.e., mileage expenses). The Sexual Assault Victims Emergency Medical Response Fund (SAVE) provides funding to pay for sexual assault medical exams, forensic exams, and preventive treatment for STDs.
Pennsylvania	Yes	Yes	PA's Office of Victims compensates victims for the following expenses: medical (including pregnancy and

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State	Qualified Immigrants ¹	Non-Qualified Immigrants ²	Types/Mean of Coverage
			STD testing), counseling, medically necessary devices, and miscellaneous (i.e., temporary or permanent relocation).
Rhode Island	Yes	Yes	RI's CVC compensates victims for the following expenses: medical, counseling, funeral, attorney's fees.
South Carolina	Yes	Yes	SC's CVC compensates victims for the following expenses: medical, counseling, loss of wages, rehabilitation, and funeral. For victims of sexual assault, the forensic program provides treatment for certain STDs.
South Dakota	Yes	Yes	SD's CVC compensates victims for the following expenses: medical, counseling, loss of wages, funerals, replacement, crime scene cleanup, rehabilitation, and miscellaneous (i.e., travel to attend treatment).
Tennessee	Yes	Yes	TN's CVC compensates victims for the following expenses: medical, funeral, counseling, crime scene cleanup, replacement costs, attorney's fees, and miscellaneous (traveling to and from the trial, relocation).
Texas	Yes	Yes	TX' CVC compensates victims for the following expenses: medical, counseling, rehabilitation, loss of wages, funeral, replacement, crime scene cleanup, and miscellaneous (i.e., relocation, travel to assist with investigation, prosecution or judicial process).
Utah	Yes	Yes	UT's Crime Victims Reparations compensates victims for the following expenses: funeral, counseling, attorney's fees, loss of wages, replacement, and medical. For victims of sexual assault, the forensic program provides testing and initial treatment for STDs.
Vermont	Yes	Yes	VT's CVC compensates victims for the following expenses: medical, counseling, loss of wages, funeral, replacement, crime scene cleanup, rehabilitation, and miscellaneous (i.e., moving expenses, travel for medical or counseling and food and lodging to attend court hearings and funerals). For victims of sexual assault, the forensic program provides HIV testing and counseling.
Virginia	Yes	Yes	VA's CVC compensates victims for the following expenses: medical (including prenatal care resulting from rape), loss of wages, counseling, funeral, crime scene cleanup, replacement, and miscellaneous (i.e., moving expenses).
Washington	Yes	Yes	WA's CVC compensates victims for the following expenses: medical, counseling, loss of wages, funeral, rehabilitation, and miscellaneous (i.e., modification home and vehicle to accommodate permanent injuries). For victims of sexual assault, the forensic program offers post-coital treatment.
West Virginia	Yes	Yes	WV's CVC compensates victims for the following expenses: medical, counseling, loss of wages, funeral, rehabilitation, replacement, and miscellaneous (i.e., mileage to the medical treatment facility). For victims of sexual assault, STD and HIV testing and treatment are covered, and post-coital treatment is offered under the forensic program.

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State	Qualified Immigrants¹	Non-Qualified Immigrants²	Types/Mean of Coverage
Wisconsin	Yes	Yes	WI's CVC compensates victims for the following expenses: medical, counseling, loss of wages, replacement, funeral, attorney's fees, and crimes scene cleanup.
Wyoming	Yes	Yes	WY's Division of Victim Services compensates victims for the following expenses: medical (including STD and pregnancy testing), counseling, funeral, loss of wages, replacement, relocation, and miscellaneous.
Territories			
Guam	Yes	Yes	GU's Criminal Injuries Compensation Commission compensates victims for the following expenses: actually and reasonably incurred as a result of the injury or death of the victim, loss of wages, pain and suffering, medical expenses (including STD and AIDS screening and treatment, prenatal care, and post coital treatment).
Puerto Rico	Yes	Yes	PR's CVC compensates victims for the following expenses: medical, counseling, funeral, and replacement.
Virgin Islands	Yes	Yes	VI's CVC compensates victims for the following expenses: loss of wages, medical (including exams for sexual assault and STDs), counseling, replacement, pain and suffering, attorney's fees, funeral, and miscellaneous (i.e., travel in extraordinary circumstances). For victims of sexual assault, the forensic program provides treatment for STDs.

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State	Victim Compensation Laws	Process to Receive Compensation
Alabama	<p>BACKGROUND</p> <p>The Crime Victims Compensation Fund is funded by the Crime Victims Compensation Commission through various sources including grants, appropriations, gifts, donations, and other sources. Al. Code § 15-23-16.</p> <p>Alabama provides compensation to victims of any act resulting in personal injury or death for which punishment by fine, imprisonment, or death may be imposed. Al. Code § 15-23-3(2).</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> To qualify for reimbursement, the victim’s presence in the U.S. must be lawful. Every claimant must provide a valid government-issued photo identification to be eligible. Therefore, qualified immigrants are eligible, but non-qualified immigrants are not. However, claimants/victims who are certified by federal authorities as victims of human trafficking are eligible for compensation benefits regardless of immigration status. Al. Adm. Code 262-X-4-.02(13) and (14). http://www.acvcc.state.al.us/downloads/application.pdf. The crime which caused the injury or death must be reported to a law enforcement officer within 72 hours after its occurrence, unless the commission finds there was good cause for the failure to report within that time. Al. Code § 15-23-12(a)(4). <p>The victim or the surviving spouse, child,</p>	<p>TO APPLY</p> <p>For an application form, a claimant can contact the following agencies or go online:</p> <ol style="list-style-type: none"> Alabama Crime Victims Compensation Commission P.O. Box 1548 Montgomery, Alabama 36102-1548 Phone (334)290-4420 Fax (334) 290-4455 Victims' Service Officer in claimant’s local District Attorney's Office Online at http://www.acvcc.state.al.us/downloads/application.pdf <p>The claimant must file an application within 1 year of the incident, unless there is a good reason for the delay. Applications should be filed with the Alabama Crime Victims Compensation Commission. Al. Code § 15-23-12(a)(1).</p> <p>The executive director of the Commission shall notify the claimant within 10 days of the Commission's action.</p> <p>TO APPEAL</p> <p>The claimant may notify the executive director in writing (certified mail) of the intent to appeal within 30 days of the date of the notification letter.</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>or representative of the victim of a violent crime may apply for compensation. Al. Code § 15-23-3(5).</p> <p>The claimant must not be the offender, or an accomplice of the offender, or the one who encouraged or in any way participated in the criminally injurious conduct. Al. Code § 15-23-12(a)(2).</p> <p>The award must not unjustly benefit the offender or accomplice of the offender. Al. Code § 15-23-12(a)(3).</p> <p>COMPENSATION</p> <p>An award may be reduced or denied if the applicant fails to cooperate with law enforcement, including appearing as a witness for the prosecution. Al. Code § 15-23-12(c); Al. Adm. Code, § 262-X-5-.01.</p> <p>Victims may be able to receive the following compensation benefits (up to a maximum of \$15,000):</p> <ul style="list-style-type: none"> • Medical; • Psychiatric; • Work loss due to the crime (\$400/week); • Funeral expenses (not to exceed \$5,000) Alabama Code § 15-23-3(6); and • Rehabilitation of the victim. Al. Code § 15-23-15. <p>Testing and preventative treatment for sexually transmitted diseases, and testing for pregnancy are covered under the compensation program. Al. Adm. Code § 262-X-11.01(1)(c).</p> <p>Alabama Crime Victims Compensation Commission (“ACVCC”) Annual Report contains both the statutory provisions and the administrative code. http://www.acvcc.state.al.us/downloads/annualreport05.pdf</p>	<p>The claimant is entitled to a formal hearing before the Commission, which shall be held within 60 days of the receipt of the intent-to-appeal notice from the claimant. The Commission may, without a hearing, settle a claim by stipulation, agreed settlement, consent order or default.</p> <p>The Commission will make its decision within 10 days of the formal hearings and the applicant will be notified by mail. Adm. Code § 262-X-9-.01</p>

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State	Victim Compensation Laws	Process to Receive Compensation
Alaska	<p>BACKGROUND</p> <p>Alaska provides compensation to innocent victims of a violent crime that occurred in Alaska.</p> <p>http://www.state.ak.us/admin/vccb/</p> <p>A victim of a crime may be compensated if the victim suffered injury or was killed by:</p> <ul style="list-style-type: none"> • attempting to prevent a crime, apprehend a criminal, or aiding a victim of a crime; • murder; • manslaughter; • criminally negligent homicide; • assault; • kidnapping; • sexual assault; • robbery; • threats to do bodily harm; • driving while under the influence of alcohol, inhalant or a controlled substance or another crime while operating a vehicle, boat, or airplane; and • arson in the first degree . <p>Dependents or representatives of a victim are also covered.</p> <p>AS 18.67.101.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • Alaska provides assistance to crime victims regardless of residency or citizenship. 2 AAC 80.050(b)(1). Note that the application requests the applicant’s social security number, and states that the claim “cannot be processed without this information.” However, the Administrator of the Victim Compensation Group indicated that Alaska provides compensation to anyone who is a victim regardless if person is a U.S. citizen or not. • The incident must have been reported to the police within 5 days of its 	<p>TO APPLY</p> <p>A person may obtain an application form by writing to the Violent Crimes Compensation Board at P.O. Box 111200, Juneau, AK, 99811-1200, by calling the board at (800) 764-3040, or by visiting the board's web site at http://www.state.ak.us/admin/vccb/. The forms are also available at all law enforcement agencies in the state. 2 AAC 80.010.</p> <p>Applications must be completed and submitted to the Violent Crime Compensation Board. http://www.state.ak.us/admin/vccb/pdf/Application.pdf</p> <p>A request for compensation must be made within 2 years of the incident. AS 18.67.130.</p> <p>Upon receipt of the application, the Board administrator will investigate the claim.</p> <p>Upon completion of investigation, the administrator will present the claim to the board at its next meeting. The board will grant an award, deny the claim, order a hearing, or request further investigation or information, and will notify the claimant or the claimant's attorney of its decision.</p> <p>2 AAC 80.015.</p> <p>The Board may order that compensation be paid directly to the service provider. AS 18.67.110.</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>occurrence (if that is not reasonable, the incident must be reported within 5 days of the time when a report could have been reasonably made). The applicant must cooperate with law enforcement and prosecution officials of the offender. AS 18.67.130.</p> <p>An application for compensation can be made by the victim, or in the case of death, by the victim’s dependents or a representative of the victim. 2 AAC 80.110.</p> <p>COMPENSATION</p> <p>Total compensation is not to exceed \$40,000 per victim per incident.</p> <ul style="list-style-type: none"> • Total compensation awarded as a result of the death may not exceed \$80,000 in the case of a victim with more than one dependent eligible to receive compensation. • Total compensation awarded as a result of the deaths may not exceed \$80,000 in the case of two or more victims in the same incident who jointly have a dependent eligible for compensation. AS 18.67.130(c). • Expenses actually and reasonably incurred as a result of the crime. • Loss of earning power as a result of total or partial incapacity of the victim and employment related rehabilitation costs. • Financial loss to the dependents of a deceased victim. • Any other reasonable loss resulting from personal injury or death. • Funeral and burial (up to \$7,000). • Reasonable attorney’s fees (up to 25% of the first \$1,000 compensation, 15% of the next \$9,000, and 7.5% of the amount awarded over \$10,000). • Emergency compensation (up to \$1,500). • Mental health counseling sessions (\$2,600 or 26 sessions for primary victims, or \$600 or 6 sessions for secondary victims). 	

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>AS 18.67.050, 18.67.110, 18.67.120; http://www.state.ak.us/admin/vccb/pdf/Application.pdf; http://www.state.ak.us/admin/vccb/2002/policy.htm</p>	
<p>Arizona</p>	<p>BACKGROUND</p> <p>Arizona maintains a Victim Compensation and Assistance Fund, which is administered by the Arizona Criminal Justice Commission. A. R. S. § 41-2407. The Commission has issued regulations and procedures, and awards are made by local CVC Boards in each county, which meet every 60 days. Ariz. Admin. Code § R10-4-105 & -106.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must have been reported to law enforcement within 72 hours after it occurred or the applicant will be required to show good cause why the crime was not reported. <p>Application for compensation may be made by a victim or a “derivative victim,” who may be a relative, a household member in a substantially similar relationship as a relative, a non-family member who witnessed a violent crime, or person whose presence is required for the successful treatment of the victim.</p> <p>The Board may deny claims for a variety of reasons, including recoupment of economic losses from other sources, the victim’s own negligence, lack of victim cooperation or failure to assist prosecution or otherwise provide information about the crime, or</p>	<p>TO APPLY</p> <p>The person seeking compensation must complete an application and submit it to the CVC Board in the county where the crime occurred within 2 years of discovery of the crime unless good cause is shown. A standard application provided by the Commission is used by each board. A board is required to render a decision within 60 days of receipt of the application unless good cause exists. Ariz. Admin. Code § R10-4-106.</p> <p>A board may conduct hearings on any application in its discretion.</p> <p>TO APPEAL</p> <p>If the board denies a claim, the applicant may request a hearing, and a hearing or review of the decision may be granted on specific grounds, including irregularity in the administrative proceedings, newly discovered evidence that could not with reasonable diligence have been discovered and produced at the board meeting, lack of justification for the decision, errors in the rejection or admission of evidence, or other errors of law. Ariz. Admin. Code § R10-4-106.</p> <p>See the following link for more information (including application forms):</p> <p>http://azcjc.gov/victim/VictComp.asp</p>

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	<p>insufficient funds. Ariz. Admin. Code § R10-4-106.</p> <p>A claimant may not be an offender or anyone who encouraged or participated in criminally injurious conduct. A claimant may not be a person serving or who has escaped from any sentence of imprisonment, or a person who has been convicted of a federal crime and is delinquent in paying any fine or other monetary penalty. A person engaged in unlawful activity at the time of the crime or who contributed to their own injury is not eligible. Absent special circumstances, individuals in custody, or who have been adjudicated a habitual felony or violent offender or are found guilty of a forcible felony offense are not eligible. Records are confidential and not subject to public disclosure. Ariz. Admin. Code § R10-4-106.</p> <p>COMPENSATION</p> <p>Compensation may pay for:</p> <ul style="list-style-type: none"> • medical expenses; • mental health counseling; • work loss; and • funeral expenses (up to \$5,000) <p>Total award is up to \$20,000.</p> <p>Payments for work loss of victims (and parents of victims who are minors) include compensatory payments for attending court proceedings, up to 40 hours per month at the federal minimum wage rate.</p> <p>Emergency compensation awards of up to \$500 may be made if an award is likely and serious hardship would result if the payment is not provided. Ariz. Admin. Code § R10-4-106 & -108.</p> <p>A “medical expense” must be related to physical injury resulting from the crime to be compensated. Compensation may be</p>	

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	<p>paid for direct injury suffered, but not subsequent costs associated with a “medical condition” (e.g., compensation is available for emergency treatment after a stabbing but not subsequent treatment for internal adhesions; similarly, STD testing as part of an emergency room admission following a sexual assault may be covered, but not subsequent tests after discharge). Medical costs may also include expenses resulting from damage to a dental or prosthetic device.</p>	
Arkansas	<p>BACKGROUND</p> <p>The Arkansas Legislature created the "Arkansas Crime Victims Reparations Act" in 1987. The legislation provides a method of compensating and assisting victims that have suffered personal injury or death as the result of a violent crime, including DWI and hit and run incidents.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The incident must be reported to the proper authorities within 72 hours (minors excluded) and documentation of the report must be maintained. <p>Claimants include the victim, a dependent of a homicide victim, or an authorized person acting on behalf of the victim.</p> <p>The following qualify as a “victim in Arkansas:”</p> <ul style="list-style-type: none"> • An Arkansas resident suffering personal injury or death as the result of a criminal act occurring in Arkansas; • An Arkansas resident suffering personal injury or death as an act of 	<p>TO APPLY</p> <p>A claim form for crime victim compensation may be obtained from the prosecuting attorney's office, law enforcement agency or the Arkansas Crime Victims Reparations Program, or from:</p> <p>http://www.ag.state.ar.us/outreach/cvictims/app.pdf.</p> <p>The claim form must be filed within 1 year of incident (minors excluded and may be waived for good cause) and must be completed in its entirety and accompanied by the following:</p> <ul style="list-style-type: none"> • at least one itemized statement of expenses related to the crime (for example, itemized medical bills including hospital charges, counseling fees, ambulance fees, and prescription costs). • documentation of the crime was reported on time. <p>http://www.ag.state.ar.us/citerv/cv/CVRB_Application.pdf</p> <p>Arkansas Crime Victims Reparations Program Office of the Attorney General 323 Center Street, Suite 1100 Little Rock, Arkansas 72201</p> <p>By phone: 501-682-1020 or 1-800-448-3014</p> <p>For more information, go to:</p>

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	<p>terrorism committed outside of the United States;</p> <ul style="list-style-type: none"> • a child of an eligible victim; • an immediate family member of a deceased victim, a sexual assault victim, or a child victim; • a person who resided in the same permanent household as a deceased victim; or • a person who discovers the body of a homicide victim. <p>Arkansas Code 16-90-703(11)(A).</p> <p>In order to be eligible for compensation, the following requirements must be met:</p> <ul style="list-style-type: none"> • Victimization must have occurred in Arkansas; • The crime must be reported to the proper authorities within 72 hours (may be waived for good cause); • Victim must have suffered personal injury or death due to criminal act of another person; • Victim/claimant must cooperate with the investigation and/or prosecution; • Victim must not have been covered by a collateral source (e.g. insurance or other payment of costs); • Victim/claimant must not have been convicted of a criminally injurious felony; • Victim's conduct must not have contributed to the victimization; • Victim must not have been involved in illegal activity at the time of the incident; • Victim must not have been incarcerated at the time of the incident; • If a motor vehicle was involved, compensation is available if the incident involved one of the following: <ul style="list-style-type: none"> ○ Alcohol or drugs (violation of Omnibus DWI) ○ Intent; or ○ Hit and Run (Leaving the scene of an accident involving serious injury or death) <p>State officials will review all eligibility criteria and a decision will be made accordingly. It is important to note that the Application for CVC requires that a social</p>	<p>http://www.ag.state.ar.us/outreach/cvictims/outreach4.htm</p>

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	<p>security number be provided. State officials will attempt to obtain a social security number, but the screening process will continue even if it is determined that the victim does not have one.</p> <p>COMPENSATION</p> <ul style="list-style-type: none"> • Medical expenses, including rehabilitation and dental, are paid at 75% of balance submitted; but providers may accept this as payment in full; • Repair and/or replacement, such as eyeglasses, dentures or hearing aids; • Mental health expenses are paid up to \$3,500 for out-patient treatment and \$3,500 for in-patient; • Work loss; • Loss of support for dependents of a homicide victim; • Funeral expenses are paid up to \$5,000; • Crime scene clean-up expenses are paid up to \$3,000; • Miscellaneous expenses, including purchase and installation of locks and windows following sexual assault or domestic violence in victim’s primary residence, travel and lodging expenses resulting from a criminal justice proceeding related to the victimization, and an application for guardianship of minors following the death of a victim. http://www.ag.state.ar.us/citserv/cv/CV_RB_Application.pdf <p>Overall maximum is \$10,000 per victim, but this can be raised to \$25,000 if the victim suffered catastrophic injury that resulted in total and permanent disability. Arkansas Code 16-90-716.</p> <p>http://www.arlegalservices.org/Data/DocumentLibrary/Documents/1088519571.55/doc_FSCrimeReparations.pdf</p> <p>Expenses that are not covered by the Program include:</p> <ul style="list-style-type: none"> • Pain and Suffering; • Property damage or loss; and • Attorney’s fees. 	

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	<p>http://www.arlegalservices.org/Data/DocumentLibrary/Documents/1088519571.55/doc_FSCrimeReparations.pdf</p> <p>A.C.A. §5-65-101 et. seq.; A.C.A. §27-53-101.</p>	
California	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific reporting requirement, but state officials indicate that the crime must be reported within a reasonable period of time. <p>Victims of certain types of crimes may receive compensation from the state if: (i) the crime occurred in California, whether the victim is a resident of California or not, or (ii) whether or not the crime occurred in California, if the victim is a resident of California. The types of crimes include drunk driving, domestic violence, and any crime that results in death or personal injury, including sexual assault.</p> <p>Compensation may be received by the victim of the crime, a derivative victim (which is an individual who sustains pecuniary loss as a result of the injury or death to the victim) or a survivor if the crime results in a death. A derivative victim may receive compensation whether or not the derivative victim is a resident of California if the derivative victim meets any of the following: (i) at the time of the crime was the parent, grandparent, sibling, spouse, child or grandchild of the victim; (ii) at the time of the crime was living in the household of the victim; (iii) at the time of the crime was a person who previously lived in the household of the victim for a period of not less than 2 years in a relationship substantially similar to that under (i); (iv) is another family member of the victim, including the victim’s fiancé or fiancée and who witnessed the crime; or (v) is the primary caretaker of a minor victim</p>	<p>TO APPLY</p> <p>The victim must complete an application and file it with the California Victim Compensation & Government Claims Board. A local Victim Witness Assistance Center may help with the application process. Unless the Board grants an extension, the application must be filed within 1 year from the date of the crime; the date the victim turned eighteen (18); or the date the victim knew that the crime caused an injury or death. Cal. Gov’t Code §13953.</p> <p>An application will be denied if the Board finds that the victim knowingly and willfully participated in the commission of the crime that resulted in the pecuniary loss.</p> <p>An application will also be denied if the Board finds that the victim fails to reasonably cooperate with law enforcement in the apprehension and conviction of the criminal. The Board will consider the victim’s age, physical condition, psychological state, cultural or linguistic barriers, health and safety concerns (including a reasonable fear of retaliation) when determining the degree of cooperation of which a victim is capable.</p> <p>The applicant must verify the content of the application under penalty of perjury and the Board may require the submission of additional information. The applicant has 30 days from the date of receipt of a request for additional information to supply the information or appeal the request. The Board will independently verify the information contained in the application by contacting hospitals, physicians and law enforcement. The victim must cooperate with the Board as it seeks to verify the information or risk the</p>

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	<p>but was not the primary caretaker at the time of the crime.</p> <p>To be compensated, the injury or death must be the direct result of a crime. Injury can include physical injury, emotional injury coupled with a threat of physical injury, or other forms of emotional injury resulting from specified crimes. The injury or death must have resulted or may result in financial loss within the scope of compensation. See Cal. Gov't Code §13955.</p> <p>COMPENSATION</p> <p>Compensation is provided for: (i) medical and medical-related expenses; (ii) mental health counseling; (iii) expenses of nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law; (iv) loss of income or loss of support; (v) job retraining; (vi) expenses for installing or increasing residential security; (vii) expenses for retrofitting or renovating a victim's residence or vehicle, or both, to make them accessible by a victim who is permanently disabled as a direct result of the crime; (viii) relocation expenses; and (viii) funeral/burial expenses and crime scene cleanup expenses.</p> <p>An attorney may receive compensation from the Board in the amount of 10% of the amount of the award, or \$500, whichever is less, for each victim, and may not otherwise charge for providing services in connection with obtaining compensation for a victim.</p> <p>The total award on behalf of each victim may not exceed \$35,000 although this amount may be increased to \$70,000 if federal funds are available.</p> <p>Medical expenses to be reimbursed may include STD, AIDS, and post coital screening/treatment. Pre-natal care can be</p>	<p>application being rejected.</p> <p>A representative of the victim may complete the application. A representative may include an attorney, a legal guardian, immediate family member, parent, or relative caregiver who is not the perpetrator of the crime if the victim is a minor or incompetent adult, a victim assistance advocate, or an immediate family member who is not the perpetrator of the crime with written authorization from the victim.</p> <p>An applicant may request and receive an emergency award if the Board determines that such an award is necessary to avoid or mitigate substantial hardship that may result from delaying compensation until the application can be completely processed. Emergency awards must be dispersed within 30 days of the application. Denial of an emergency award is not appealable.</p> <p>TO APPEAL</p> <p>An applicant can appeal if a claim is recommended for denial, or if any part of the claim is recommended for denial. An appeal must be filed within 45 days of the date the Board mailed the notice to deny the claim and/or expense. In some cases, if new information is provided, the denial may be reconsidered immediately. Otherwise, most appeals are scheduled for a hearing before a Hearing Officer. This hearing will give the applicant the opportunity to present information supporting the claim. Hearings are not held to contest the denial of an emergency award.</p> <p>If the applicant does not agree with the outcome of the Board's final decision, a Petition for a Writ of Mandate may be filed in the Superior Court.</p> <p>For more information, contact Victim Compensation & Government Claims Board</p>

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	<p>reimbursed if the expenses are related to the crime and there is no other source of reimbursement.</p>	<p>PO Box 3036 Sacramento, CA 95812-3036</p> <p>Or see the following link: http://www.boc.ca.gov/default.htm</p>
<p>Colorado</p>	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The law enforcement agency must have been notified within 72 hours after the crime occurred. <p>The following persons may be eligible to receive compensation:</p> <ul style="list-style-type: none"> • any person who suffers property damage, economic loss, injury or death as a result of an intentional or criminally negligent act committed in Colorado; • any person who attempts to assist a victim who suffered property damage, economic loss, injury or death as a result of an intentional or criminally negligent act committed in Colorado; or • any person who is a relative of a victim who suffered property damage, economic loss, injury or death as a result of an intentional or criminally negligent act committed in Colorado. <p>If the crime occurred outside the state of Colorado, compensation is available if: (1) the person is a resident of Colorado and the state in which the crime occurred does not have a CVC program for which the person would be eligible, or (2) the person is a resident of the state of Colorado and is injured or killed by an act of international terrorism committed outside of the United States.</p>	<p>The CVC Board in the judicial district in which the crime took place. The three board members are appointed by the district attorney.</p> <p>TO APPLY</p> <p>The victim (or applicant) must file a claim for compensation for injury or death within 1 year from the date of the crime. The victim must file a claim for compensation for property damage within 6 months of the crime.</p> <p>Victims are required to apply for Victim Compensation in the district in which the crime occurred by completing an application and submitting receipts or bills directly related to the crime. The Board may require additional information of the applicant.</p> <p>The processing time is different for each district. It generally takes 30-45 days to be notified of the Board's decision. The Board reviews the claims from victims for compensation and makes compensation awards from the victims' assistance fund.</p> <p>If the applicant makes any important, false statements to the Board, then she will be ineligible to receive compensation under this program.</p> <p>TO APPEAL</p> <p>If the Board denies the victim's claim for</p>

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	<p>The victim must cooperate with law enforcement officials.</p> <p>Colorado Statute 24-4.1-101.</p> <p>COMPENSATION</p> <p>A victim may recover the following for injury or death:</p> <ul style="list-style-type: none"> • reasonable medical and hospital expenses and expenses incurred from dentures, eyeglasses, hearing aids, or other prosthetic or medically necessary devices; • loss of earnings; • outpatient care; • homemaker and home health services; • burial expenses; • loss of support to dependents; and • mental health counseling. <p>A victim may recover the following for property damage:</p> <ul style="list-style-type: none"> • repair or replacement of property damaged as a result of the crime or payment of the deductible amount on a residential insurance policy; and • any modification to the victim’s residence that is necessary to ensure victim safety. <p>A relative of a victim, even though not a dependent of the victim, is eligible for compensation for reasonable medical or burial expenses if: (1) the relative files a claim with the CVC Board and (2) the relative paid for the medical and/or burial expenses.</p> <p>The Board can order an emergency award for compensation even if the final decision has not been made, if the victim shows that immediate payment is necessary. The amount of the emergency award will not exceed \$1,000.</p>	<p>compensation, the victim may ask the Board to reconsider its decision. The victim should contact the Victim Compensation program within 30 days from the date of receiving notice of the denial. Colorado Statute 24-4.1.</p> <p>For more information, contact:</p> <p>Office for Victims Programs 700 Kipling Street, Suite 1000 Denver, CO 80215-5865 303-239-5719 888-282-1080</p>

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	<p>The following will not be compensated:</p> <ul style="list-style-type: none"> • pain and suffering or property damage other than residential property damage; • damage to the victim (or the dependents of a victim) exceeding \$20,000; or • damages of less than \$25. 	
Connecticut	<p>BACKGROUND</p> <p>The Connecticut Office of Victim Services manages a fund to help crime victims recover lost wages and some out-of-pocket expenses associated with a violent crime.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must be reported to the police within 5 days of its occurrence. If the crime could not have been reasonably reported in such period, then it should be reported within 5 days of the time when a report could have reasonably been made. <p>Any individual who suffers bodily injury or death resulting from a crime which occurs:</p> <ul style="list-style-type: none"> • within Connecticut, regardless of the residency of the applicant; • outside of Connecticut but within the United States, if the victim at the time of the injury or death, was a resident of Connecticut and the state in which the crime occurred does not have a program for compensation for which the victim is eligible; or • outside of the US, if the applicant is a victim of international terrorism and was a resident of the Connecticut at the 	<p>The Office of Victim Services reviews the applications and may order the payment of compensation.</p> <p>TO APPLY</p> <p>The applicant should file a claim for compensation within 2 years after the date of the personal injury or death.</p> <p>If an applicant fails to make a claim within 2 years of the crime, a waiver of the time limit can be requested if:</p> <ul style="list-style-type: none"> • the victim failed to make the application because of physical, emotional, or psychological injuries caused by the personal injury or death (in which case they may file the application within 6 years of the crime); or • the applicant is a minor (in which case they may file the application within 2 years of attaining the age of majority (18)). <p>The applicant should file an Application for Compensation with the Office of Victim Services (OVS). An OVS examiner will work with the applicant to collect the necessary information. For an applicant to file a claim, go to: www.jud.ct.gov/crimevictim or call the Office of Victim Services.</p>

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	<p>time of injury or death.</p> <p>COMPENSATION</p> <p>A victim may recover damages for the following:</p> <ul style="list-style-type: none"> • expenses incurred as a result of the personal injury or death of the victim, including medical and dental costs related to the crime; • counseling for victims of sexual assault and child abuse; • counseling for relatives of victims of sexual assault and child abuse; • medical costs for injuries to a guide or assistance dog of a blind or disabled crime victim; • loss of earning power -- including overtime and self-employment income, to cover the salary lost due to the crime related absence; • financial loss to the spouse or dependents of a deceased victim; • funeral costs up to \$4,000; and • financial loss to the relatives or dependents of a deceased victim for attendance at court proceedings with respect to the criminal case of the person charged with committing the crime that resulted in the death of the victim. <p>No compensation will be awarded for losses sustained for crimes against property or for noneconomic losses such as pain and suffering.</p> <p>No compensation will be awarded for the first \$100 of injury sustained by the victim.</p> <p>A maximum of \$15,000 will be awarded except that the dependents of a homicide victim can receive a maximum of \$25,000.</p> <p>The Division of Criminal Justice is responsible for paying for the examination costs of a victim of sexual</p>	<p>For more information, contact:</p> <p>Connecticut Judicial Branch 31 Cooke Street, Plainville, Ct 06062 Office Of Victim Services Telephone (860) 747-4501 Or Toll Free 1-888-286-7347</p>

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	<p>assault, when the examination is performed to gather evidence. This includes the costs of testing for pregnancy and sexually transmitted diseases and prophylactic treatment for sexually transmitted diseases.</p> <p>The Division of Scientific Services within the Department of Public Safety is responsible for paying for a toxicology screening of a victim of sexual assault.</p> <p>The spouse or dependants of a deceased victim are also eligible to receive a 0-1% loan of up to \$100,000, if the family qualifies for compensation as a result of murder or manslaughter of the victim. The loan funds may be used to pay for essential living expenses directly resulting from the loss of income provided by the deceased victim or to cover preexisting financial obligations. Repayment begins five years from the date of the loan.</p> <p>http://www.jud.state.ct.us/crimevictim/#Program</p>	
Delaware	<p>BACKGROUND</p> <p>The Violent Crime Compensation Board provides compensation for innocent victims (or their survivors) who have been physically or emotionally injured as a result of a crime.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must be reported to law enforcement within 72 hours. <p>A person who was injured or killed by the act of another person during the</p>	<p>The Delaware Violent Crimes Compensation Board has the authority to award compensation for crime victims. The Board consists of 5 members who are appointed by the Governor. The Board is responsible for reviewing and investigating the applications for compensation.</p> <p>TO APPLY</p> <p>An application for compensation must be filed with the Board within 1 year of the crime.</p> <p>The applicants shall submit an application to the Board. All claims filed with the Board must be written and should accurately describe the crime and circumstances which brought about the injury, damage or death. It should</p>

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	<p>commission of a violent crime such as murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives or unlawful use of firearms, stalking, or endangering the welfare of a child.</p> <p>The victim must agree to cooperate with law enforcement agencies in the apprehension and conviction of the criminal.</p> <p>The crime must have taken place within the state of Delaware or the victim must have been a resident of Delaware at the time of the crime (if the state in which the crime took place does not have a compensation program).</p> <p>COMPENSATION</p> <p>The victim may recover the following financial losses:</p> <ul style="list-style-type: none"> • medical expenses, including psychiatric care, dental care and mental health counseling; • nonmedical remedial care and treatment associated with a religious method of healing; • hospital expenses; • loss of past or future earnings, including reimbursement for vacation, sick and compensatory time; • income loss to the custodian of a child victim while providing care to the victim; • change of locks; • replacement of items seized as evidence; • crime scene clean-up expenses not to exceed \$1,000; • temporary housing not to exceed \$1,500; • moving expenses not to exceed \$1,000; and • essential personal safety property not to exceed \$1,500. 	<p>also state the time and place the injury occurred, state the names of the people involved, and contain the amount claimed by the applicant.</p> <p>The Board will initiate an investigation of the claim within 30 days of the filing of the claim. After the investigation, the Board will make a decision on whether or not to issue compensation and will specify the amount of the award.</p> <p>TO APPEAL</p> <p>If the applicant is dissatisfied with the Board’s decision, they must request a hearing before the Board within 15 days of the Board’s original decision.</p> <p>The Board may require the injured person filing a claim to submit to a physical or mental examination.</p> <p>For more information, contact: Violent Crimes Compensation Program 240 N. James Street, Suite 203 Newport, DE 19804 302-995-8383</p> <p>Delaware Helpline 1-800-464-4357 (in state) 1-800-273-9500 (out of state)</p>

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	<p>The relatives of a deceased victim may recover the following losses:</p> <ul style="list-style-type: none"> • funeral and burial expenses; • loss of support to the dependents of the victim; and • mental health counseling. <p>No compensation will be made for a claim of less than \$25.</p> <p>No compensation will be made for property damage.</p> <p>Awards may be paid in a lump sum or in periodic payments.</p> <p>Total amount of compensation awarded to a victim (or in the case of the death of the victim to the relatives) will not exceed \$25,000 unless the victim is permanently and totally disabled in which they may receive up to \$50,000.</p> <p>A victim can be compensated for reasonable actual expenses due to the injury.</p> <p>Any amounts received through an insurance policy will be deducted.</p> <p>Reimbursement will be made regardless of whether the alleged perpetrator of the criminal act is prosecuted.</p> <p>If the victim dies due to the violent crime, any person who legally or voluntarily assumes the obligation to pay the medical or burial expenses will also be eligible to file a claim with the Board.</p> <p>Title 11, Section 90 of the Delaware Code § 9001-9020.</p>	

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District of Columbia	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A police report must have been filed within 7 days of the crime. In cases of sexual assault, seeking medical treatment is sufficient. In cases of domestic violence, requesting a civil Restraining Order is sufficient. <p>Victims of crime, and secondary victims (such as people related to the victim and others) may receive compensation from the Crime Victim’s Compensation Program (CVCP) if the crime occurred in DC, the victim is a resident of DC, or if a DC resident suffered personal injury as a result of a terrorist act or act of mass violence committed outside the U.S.</p> <p>The types of crimes include arson, assault, negligent homicide, sexual abuse, kidnapping, murder, robbery, carjacking, cruelty to children, stalking, burglary, unauthorized use of explosives, reckless driving, driving under the influence of alcohol or drugs, and terrorist acts. (D.C. Code §§ 4-501-4-508)</p> <p>People eligible for compensation include victims of violent crime, their family or household members, guardians, dependents or survivors, and people who legally assume the obligation or voluntarily pay for a victim’s expenses.</p> <p>Persons injured while attempting to assist a crime victim, prevent the commission of a crime, or apprehend a person suspected of committing a crime are also eligible.</p> <p>Eligibility requirements include:</p> <ul style="list-style-type: none"> • A claim for compensation must be filed within 1 year after the crime or one year after learning of the 	<p>TO APPLY</p> <p>Applications for compensation are available at:</p> <ul style="list-style-type: none"> • The Crime Victim’s Compensation Office located in Suite 203 of DC Superior Court Building A, at 515 5th Street, NW (between E and F Streets). • http://mpdc.dc.gov/mpdc/frames.asp?doc=/mpdc/lib/mpdc/serv/victims/pdf/victimscomp.pdf&group=1523 • DC Metropolitan Police Department and Capitol/Park Police Stations • DC Area Hospital Emergency Rooms • The Victim/Witness Assistance unit of the US Attorney’s Office <p>This form must be completed and mailed to, and further information may be sought from:</p> <p>Crime Victim’s Compensation Office Superior Court Building A 515 5th Street, NW, Suite 203 Washington, DC 20001 (202) 879-4216 http://mpdc.dc.gov/mpdc/cwp/view,a,1241,q,539157,mpdcNav_GID,1523,mpdcNav,l.asp</p> <p>The form does ask for a Social Security number, but it will not be asked for if it is not filled in. The Crime Victim’s Compensation Office does not review immigration status.</p>

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	<p>CVCP;</p> <ul style="list-style-type: none"> • The victim must have been injured in the District of Columbia or as a result of a terrorist act committed outside of the United States; • The claimant must have reasonably provided information to and cooperated with requesting law enforcement agencies; • The claimant cannot have participated in, consented to, or provoked the crime; and • The award cannot unjustly enrich the offender. <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • Medical expenses, including ambulance, hospital, surgical, medical, nursing, dental, optometric, ophthalmologic, chiropractic, podiatric, in-patient mental health and pregnancy-related care. As per the Crime Victim’s Compensation Office, testing and treatment for STDs is not covered; • Mental health counseling: up to \$3,000 for adults, \$6,000 for children (also for secondary victims); • Physical or occupational therapy, or rehabilitation; • Lost wages: not to exceed 52 weeks or \$10,000; • Loss of support to dependents (where victim is deceased and social security is denied): up to \$2,500 per dependent, not to exceed \$7,500 per victimization; • Funerals: up to \$6,000; • Crime scene cleanup: not to exceed \$1,000; • Replacement of clothing held as evidence by law enforcement: not to exceed \$100 (does not apply where victim is deceased); • Temporary emergency food and housing (made necessary as a result of the crime): not to exceed 	

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	<p>120 days or \$400 for food costs and \$3,000 for housing costs;</p> <ul style="list-style-type: none"> • Moving expenses: (necessary as a result of the crime, where the health and safety of the victim are jeopardized) up to \$1,500, not to exceed 120 days; • Transportation costs: to participate in the investigation or prosecution of the case, or to receive medical treatment or some other service necessary as a result of the crime \$100 for local; and \$500 for necessary out of state travel to receive services; • Replacement of doors, windows, locks or other items to secure the victim’s home: up to \$1000; • Reimbursement for rental of an automobile while the victim’s car is being held as evidence by law enforcement: up to \$2000; • Attorney’s fees: to assist in the appeal of a determination only; not to exceed \$500 or 10 percent of award, whichever is less; and • Emergency award: not to exceed \$1,000. <p>Only the services described above are compensable. Pain and suffering and property damaged or stolen as a result of the crime are not compensable under the CVCP. Also, other benefits available to the victim, such as health, life, auto, or property insurance, Medicaid, Medicare, annual and sick leave programs offered by employers are deducted from the amounts payable by the CVCP. For more information on Medicaid and other programs, <i>See Pre-Natal Care for Qualified and Non-Qualified Aliens Chart.</i></p>	
Florida	<p>BACKGROUND</p> <p>The Florida Crimes Compensation Act provides compensation to victims of crime as well as people who attempt to prevent a crime (intervenors).</p>	<p>TO APPLY</p> <p>The person seeking compensation must complete an application and submit it to the Division of Victim Services within 1 year of the crime date or, upon good cause shown, within 2 years. Minors must submit within 1 year after reaching majority, or 2 years upon</p>

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	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must have been reported to law enforcement within 72 hours after it occurred or the applicant will be required to show good cause as to why the crime was not reported. <p>Compensation is available to those who suffer personal physical injury, death, or, where force is used, psychiatric or psychological injury. Application for benefits may be made by victims, guardians, surviving relatives, and any other person who is dependent for principal support upon a deceased victim or intervisor. The victim must cooperate fully with law enforcement, and a criminal background check will be conducted on all victims and all claimants. (F. S. A. § 960.01- 960.28)</p> <p>COMPENSATION</p> <p>Benefits include:</p> <ul style="list-style-type: none"> • wage loss; • medical expenses; • disability allowance; • mental health counseling; • funeral/burial expenses (up to \$5000); • property loss reimbursement (up to \$500 for elderly and disabled adults); • necessary prescriptions and prosthetic devices; • relocation assistance for victims of domestic violence (up to \$1,500 for one claim and a lifetime maximum of \$3,000); and • minor travel expenses for medical treatment. <p>Benefits are limited to \$10,000 for treatment and \$25,000 for compensable costs, but if there is catastrophic injury, costs may be covered up to \$50,000. For an injury to be covered, it should be discussed</p>	<p>good cause shown. The application must include a law enforcement report documenting proof of crime, documentation of crime-related expenses, and as necessary, third-party payments (e.g., insurance), lost work time, and doctor’s statements certifying disability. There is no application fee, and assistance is available for completing the application.</p> <p>TO APPEAL</p> <p>If the Crime Victim Services Office denies a claim, an applicant may request a hearing within 60 days after notice of the denial. The claim is then referred to a hearing officer designated by Florida’s Attorney General.</p> <p>See the following link for more information:</p> <p>http://myfloridalegal.com/victims</p> <p>Office of the Attorney General Division of Victim Services The Capitol, PL-01 Tallahassee, FL 32399 (850)414-3300 1-800-226-6667 (Toll-free victim information and referral line)</p>

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	<p>in the law enforcement report of the crime. Additional medical documentation of crime-related injury and expenses will also be considered. Covered medical expenses include testing for sexually transmitted diseases after sexual assault.</p> <p>Wage loss and disability claims are calculated using state worker compensation schedules.</p> <p>Emergency funding up to \$1,000 may also be available if an award is likely to be made and the claimant receives Social Security or undue hardship will result.</p> <p>Benefits are awarded subject to actual need and are a “last resort” after all other sources; payments will be reduced by other payments received by the victim or claimant as a result of the injury or death.</p> <p>Anyone who aided the crime, engaged in unlawful activity at the time of the crime or contributed to their own injury is not eligible for compensation. Absent special circumstances, an individual in custody, a habitual felon, a violent offender or one found guilty of a forcible felony offense is not eligible. Records are confidential and not subject to public disclosure.</p>	
Georgia	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • According to the staff at the Georgia Crime Victims Compensation Board, there are no restrictions based on immigration status. • The crime must be reported to proper government authorities (<i>i.e.</i> law enforcement, child protective services, the courts, etc.) within 72 hours. The 72 hours may be waived for good cause shown. <p>Innocent victims who have been physically</p>	<p>TO APPLY</p> <p>Georgia Crime Victims Compensation Board decides on compensation.</p> <p>Applications are available online at http://www.ganet.org/cjcc/victimscomp.html</p> <p>The claim shall be verified and contain:</p> <ul style="list-style-type: none"> • a description of the date, nature and circumstances of the crime; • a complete financial statement of the

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	<p>injured in a violent crime in Georgia are eligible for victim compensation. This includes:</p> <ul style="list-style-type: none"> • a victim; • a dependent spouse or child of a victim; • any person who goes to the aid of another and suffers physical injury or death as a direct result of reasonably acting (i) to prevent the commission of a crime, (ii) to lawfully apprehend a person reasonably suspected of having committed a crime, or (iii) to aid the victim of a crime or any person who is injured or killed while aiding or attempting to aid a law enforcement officer in the prevention of a crime or apprehension of a criminal at the officer’s request; • any person who is a victim of family violence; and • any person (other than a direct service provider) who assumes the cost of an eligible expense of a victim, regardless of such person’s relationship to the victim or whether such person is a dependent of the victim. <p>A victim will not be denied compensation based the victim’s familial relationship with the person who is criminally responsible for the crime.</p> <p>Victims may be legal residents or nonresidents of Georgia. A surviving spouse, parent, or child who is legally dependent for his or her principal support upon a deceased victim is entitled to file a claim if the deceased victim would have been so entitled, regardless of the residence or nationality of the surviving spouse, parent, or child.</p> <p>Ga. Code § 17-15-7</p> <p>To obtain compensation:</p> <ul style="list-style-type: none"> • The claim must be filed within 1 year of the crime; and • applications received 2 years after the 	<p>amounts requested for compensation;</p> <ul style="list-style-type: none"> • a statement indicating the extent of any disability resulting from the injury incurred (if appropriate); • an authorization permitting the board to verify the contents of the application; and • such other information as requested by the board. <p>Ga. Code § 17-15-5</p> <p>Each claim will be assigned to an investigator who will investigate the application. The examination will include, but will not be limited to, an examination of law enforcement, court, and official records and reports concerning the crime and an examination of medical, financial and hospital reports relating to the injury or losses claimed in the application. All claims arising from the death of an individual as a result of a crime will be considered together by a single investigator.</p> <p>All claims will be investigated, even if the alleged criminal has been taken into custody, prosecuted or convicted of any crime based upon the same incident or whether the alleged criminal has been acquitted or found not guilty of the crime in question.</p> <p>A claim must show that:</p> <ul style="list-style-type: none"> • a crime was committed • the crime directly resulted in the victim’s physical injury, financial hardship as a result of the victim’s physical injury, or the victims death • police records must show that the crime was promptly reported to the proper authorities. In no case may an award be made where the police records show that such report was made more than 72 hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified

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	<p>crime cannot be considered for compensation.</p> <p>Those not eligible include:</p> <ul style="list-style-type: none"> • victims of property crime; • victims who consent, provoke, or incite the crime committed against them or is an accomplice of the person who committed the crime; • victims who were participating in a criminal act; • victims injured while confined in any federal, state, county, or municipal jail, prison, or other correctional facility; and • victim of a crime which occurred prior to July 1, 1989 <p>COMPENSATION</p> <p>Compensation is available for:</p> <ul style="list-style-type: none"> • Assault/Battery; • Homicide; • Child Abuse; • Sexual Assault; • Domestic/Family Violence; • DUI Crash Victims; • Vehicular Homicide; • Hit and Run; and • Serious Injury by Vehicle. <p>Total award amount can not exceed \$25,000 and the categorical caps are as follows:</p> <ul style="list-style-type: none"> • Medical Expenses: \$15,000 (crimes occurring on or after 07/01/02); • Medical Expenses: \$10,000 (crimes occurring between 05/13/02 - 06/30/02); • Medical Expenses: \$5,000.00 (crimes occurring prior to 05/13/02); • Counseling Bills: \$3,000 (crimes occurring on or after 05/13/02); • Counseling Bills: \$2,500 (crimes occurring prior to 05/13/02); • Funeral Expenses: \$3,000; • Lost Wages/Support: \$10,000 (crimes occurring on or after 05/13/02); 	<ul style="list-style-type: none"> • the applicant has pursued restitution rights against any person who committed the crime unless the board or director determines that such action would not be feasible. <p>The board, upon finding that any claimant or award recipient has not fully cooperated with all law enforcement agencies, may deny, reduce, or withdraw any award. Ga. Code § 17-15-8.</p> <p>The investigator will file a written report with the director with a recommendation and the investigator’s reasons for the recommendation. The director will render a decision on the application and will provide the applicant with a copy of the report if requested. Ga. Code § 17-15-6.</p> <p>TO APPEAL</p> <p>To appeal, an applicant may make an application in writing to the director for review of the decision within 30 days after receipt of the report of the decision.</p> <p>Upon receipt of an application for review the director forwards all relevant documents and information to the board. The board reviews the records and will either uphold or reverse the decision of the director. The board may order a hearing prior to a decision. At the hearing, any relevant evidence not legally privileged is admissible. The board will render a decision within 90 days after completion of the investigation. If the director receives no application for review within 30 days of rendering a decision, the director’s decision becomes final.</p> <p>Ga. Code § 17-15-6</p>

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	<ul style="list-style-type: none"> • Lost Wages/Support: \$5,000 (crimes occurring prior to 05/13/02); • Crime Scene Clean-up: \$1,500 (crimes occurring on or after 05/13/02); • victims of domestic violence may also be eligible for loss of support; • a parent of a child victim may be eligible for lost wages, to compensate for medical time spent away from work with the child; and • A criminal history will be provided and analyzed on all victims 18 years and older. <p>According to the staff at the Georgia Crime Victims Compensation Board, medical expenses to be reimbursed include STD, AIDS, and post-coital screening/treatment, if the expenses are related to the crime, if they are not otherwise paid for through the state's forensic exam coverage and there is no other source of reimbursement.</p> <p>Victims/applicants are required to exhaust funds from other sources such as health insurance, car insurance, social security, annual/sick leave pay, disability insurance, worker's compensation, unemployment compensation or funds from other government agencies.</p>	
Hawaii	<p>BACKGROUND</p> <p>The Hawaiian victim compensation statute addresses a wide range of crimes, including murder, manslaughter, negligent homicide, negligent injury, assault, kidnapping, sexual assault, abuse of family or household member, and terrorism. Hi. Rev. Stat. § 351-32.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. The statute does not discuss immigration status, nor do any of 	<p>County administrative units generally handle reimbursement to hospitals for forensic examinations and related services. Most of the time, the victim will not receive a bill. If the medical provider has difficulty obtaining reimbursement, the CVCC frequently does provide payment. The CVCC witness agreed that the statute is not clear on this point.</p> <p>TO APPLY</p> <p>If a claimant requires reimbursement, s/he must fill out an application form, which may be obtained directly from the CVCC or from its website. Following review of that application, compensation may be awarded for all expenses incurred in connection with the crime. An application must be filed within 18</p>

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	<p>the applicable definitions address this issue. “Resident” is defined broadly to include “every” individual who “intends to permanently reside in this State” or who “has a permanent abode in State.” Hi. Rev. Stat. § 351-2. A CVCC representative confirmed that immigration status is not a consideration.</p> <ul style="list-style-type: none"> • The crime must be reported within 72 hours and an application must be filed within 18 months of the incident unless there is good cause for delay. Hi. Rev. Stat. § 351-62(a). See Hi. A.D.C. § 23-605-2. <p>Hawaii provides compensation for any “private citizen” who is the victim of a violent crime, including sexual assault, that occurs in Hawaii or for “state residents” who are crime victims elsewhere. Compensation is also provided for other individuals who are dependents or who expend money as a result of the crime. Hi. Rev. Stat. § 351-31.</p> <p>COMPENSATION</p> <p>Compensation may be ordered for any reasonable expenses incurred during the period of injury or death of the victim; medical expenses related to the crime; loss of earning power because of the crime; monetary loss to a deceased victim's dependents; pain and suffering of the victim; and "any other pecuniary loss directly resulting from the injury or death of the victim that the commission determines to be reasonable and proper." Hi. Rev. Stat. § 351-33.</p> <p>The Crime Victims’ Compensation Commission (CVCC) may require a treatment plan. Hi. A.C. § 23-605-8. But, in general, coverage is very extensive. See id. § 23-605-9 (noting coverage for prescription glasses, nontraditional medical treatments, modifications to homes or vehicles, ambulance services and plastic</p>	<p>months of the incident unless there is good cause for delay. Hi. Rev. Stat. § 351-62(a). See Hi. A.D.C. § 23-605-2. “Good cause” usually requires “mental, physical, or legal impairment”—that is, an actual inability to file a report and application. Failure to understand the law, negligence, and incarceration do not qualify as good cause. Hi. A.D.C. § 23-605-2.</p> <p>Information on the CVCC process (including application forms) is available at 1-800-587-1143 or www.hawaii.gov/cvcc. The CVCC can also provide information on different crisis and treatment facilities and county medical providers. The Oahu Sex Assault Treatment Center, 1-808-524-7273, also provides information.</p> <p>For more information, contact</p> <p>1136 Union Mall Room 600 Honolulu HI 96813 Ph: 808 587-1143 Fax: 808 587-1146 cvcc@hawaii.rr.com</p>

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	<p>surgery).</p> <p>According to the CVCC, many medical procedures and services related to sexual assault are covered directly (such that the victim will never receive a bill), but neither the statute nor the Administrative Code provide detail on this issue, as, in many cases, individual counties and localities handle these services.</p> <p>The Administrative Code relating to the CVCC provides for such items as prescription drugs, emergency room treatment, and “other appropriate medical care.” Hi. A.D.C. § 23-605-9. The CVCC confirmed that pregnancy testing, HIV prophylactic treatment, and STD examinations are included. The CVCC also stressed that Hawaii takes a very broad view of what is covered depending on the needs of the individuals in question.</p>	
Idaho	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime resulting in the injury or death of the victim must be reported to a law enforcement officer within 72 hours after its occurrence, unless the Idaho Industrial Commission (IIC) finds there was good cause for not reporting the crime within that time period. <p>Compensation is available to:</p> <ul style="list-style-type: none"> • A “victim,” meaning a person who is injured or dies as a result of (a) a crime committed against him or her; (b) trying, in good faith, to prevent a crime; or (c) trying, in good faith, to apprehend a person that he or she reasonably believes to have committed a crime; or • A spouse or dependent child of a deceased victim; or • A parent, guardian or sibling of a victim who is a minor. Idaho Code § 	<p>TO APPLY</p> <p>Claims are received by the Idaho Industrial Commission (IIC).</p> <p>Complete a Crime Victim’s Application for Compensation Form, which is available at:</p> <ul style="list-style-type: none"> • The IIC offices; • Law enforcement agencies; • Prosecuting attorney offices; • Hospitals; • Victim advocate groups; and • On the website for the IIC at www.IIC.idaho.gov/cv/crimevictims.htm. <p>Together with the application for benefits, the claimant should provide copies of the police investigative report and any other information requested by the IIC. If the claimant does not provide all required information, benefits could be denied or reduced.</p>

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	<p>72-1003.</p> <p>A person does not have to be a resident of Idaho, a U.S. citizen or a qualified immigrant to receive benefits under the Crime Victims Compensation Act.</p> <p>**This chart refers to victims and others entitled to benefits under the Idaho Crime Victims Compensation Program as “claimants.”</p> <p>To be eligible for compensation:</p> <ul style="list-style-type: none"> • The claimant must file a claim for compensation with the IIC within 1 year after the crime occurred. Idaho Code § 72-1016. • Note that, although the offender does not have to be convicted in order for the claimant to receive benefits, there must be “sufficient evidence” to show that a crime was committed. Idaho Code § 72-1018. • The claimant must fully cooperate with all law enforcement authorities and the prosecutors in their efforts to investigate the crime and apprehend and prosecute the person who committed the crime. If not, benefits will be reduced or denied, as determined by the IIC. Idaho Code § 72-1016(4). • The crime must occur in Idaho, unless the victim is a resident of Idaho and the crime occurred in a state that does not have a CVC program. Idaho Code § 72-1003(4). • The IIC may require victims to submit additional information or be examined (without cost to the victim) by a doctor in order to receive benefits. If requested information is not submitted, benefits may be denied. Idaho Code § 72-1014. <p>Victims are not eligible to receive compensation if:</p> <ul style="list-style-type: none"> • A victim who is in jail or in any other institution that provides for the “maintenance” of the victim. Idaho Code § 72-1016(6). • A victim of a car accident, unless the car was used to cause the injury or death of the victim. Idaho Code § 72- 	<p>The IIC will process the claims as follows:</p> <ul style="list-style-type: none"> • When the IIC receives the complaint and all requested information, it makes a determination of the claimant’s eligibility and sends notice to the claimant of the determination. The claimant is required to help the IIC make eligibility determinations. Idaho Administrative Code 17.05.01.011.02 • The IIC will appoint an employee – the Crime Victims Supervisor (CVS) – to review the claim. The CVS may enter awards granting benefits in full or in part or denying benefits. Idaho Administrative Code 17.05.01.011.04. • Claimants have 20 days to petition the IIC for reconsideration or any award or order or 45 days to request a hearing with the IIC. Idaho Administrative Code 17.05.01.011.05. • To receive benefits, a claimant needs to send bills to the IIC. Bills will be paid directly to the service provider or to the claimant if the claimant has already paid the bill. Idaho Administrative Code 17.05.01.011.06 <p>A claimant may request the IIC to reconsider and review its benefit determinations. The IIC may decide on its own to review and reconsider benefit determinations. (Idaho Code § 72-1021)</p> <p>There is no appeal from a final determination of the IIC. (Idaho Code § 72-1022)</p> <p>A claimant has the right to inspect the records of the IIC. (Idaho Code § 72-1007)</p> <p>For more information, contact Crime Victims Compensation Program Industrial Commission P.O. Box 83720 Boise Id 83720-0041 (208) 334-6080 Or (800) 950-2110</p>

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	<p>1003(4)(d).</p> <p>Claims may be denied or benefits reduced if:</p> <ul style="list-style-type: none"> • A victim contributed to his or her own injury or death, • A victim who was engaged in a crime (including drunk driving). Idaho Code § 72-1016(7). • Any claimant who is an offender or accomplice of an offender if they would “unjustly benefit” the offender or accomplice. Idaho Code § 72-1016(2). <p>COMPENSATION</p> <p>Funds for treatment expenses to the victim will only be provided after all other sources of payment have been exhausted. Compensation may be paid up to a maximum of \$25,000 for the victim and dependents of a deceased victim, with no more than \$20,000 (of the \$25,000 maximum payable) payable for lost wages. Idaho Code § 72-1019 and Idaho Administrative Code 17.05.011.10. Benefits may include the following:</p> <ul style="list-style-type: none"> • Reasonable medical expenses, including doctor and hospital visits, medicine and other approved treatment; • Pre-natal care and delivery of the child is covered if a victim of a sexual assault becomes pregnant as a result of that assault. (Per IIC); • Counseling and mental health services, up to a maximum of \$2,500 for the victim and – for the spouse, parent, grandparent, child, grandchild or sibling of a victim who is killed or sexually assaulted – up to \$500 per person or \$1,500 per family; • Wage losses resulting from the victim’s (or dependent’s) inability to work for more than one week as a result of injuries – up to a maximum of \$150 per week for a victim who survives a crime and was employable but not employed at the time of the crime and up to \$150 per week for dependents of a deceased victim – beginning after the first full week or 	<p>http://www2.state.id.us/iic/forms/cv/cvcppp.pdf</p>

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	<p>missed work and until the victim or dependent has a “reasonable prospect” of being regularly employed again. These lost wage benefits are limited to \$20,000, and the amount paid for lost wages, together with medical and other expenses paid under § 72-1019(2) and funeral, burial or cremation expenses paid under § 72-1019(4), may not exceed \$25,000;</p> <ul style="list-style-type: none"> • Funeral, burial or cremation expenses, up to a maximum of \$5,000; • Compensation will not be paid for pain and suffering or property damage; and • Claimants may be compensated for necessary travel expenses incurred in connection with obtaining benefits. <p>Idaho Code § 72-1019.</p> <p>Any claimant may receive reduced benefits if government funds are insufficient to fully pay all claims. Idaho Code § 72-1008.</p> <p>Claimant’s benefits will be denied or reduced where the benefits are covered by other sources, including: (a) from the offender; (b) the U.S. government or any of its agencies; (c) any other state; (d) social security, Medicare or Medicaid; (e) worker’s compensation; (f) employer wage continuation programs; or (f) insurance proceeds. Idaho Code §§ 72-1003(2) and 72-1016(5).</p> <p>If a claimant receives compensation from the offender or any other source, benefits paid by IIC are to be repaid from such compensation. Idaho Code § 72-1023.</p> <p>A claimant’s attorney’s fees may be paid in addition to the maximum benefits payable as described above. Attorney’s fees compensation will be limited to 5% of the total amount paid to claimant. Idaho Code § 72-1006.</p>	
Illinois	<p>BACKGROUND</p> <p>Illinois' CVC act covers virtually all violent crimes, including, homicide, kidnapping, battery, and sexual assault. It does not cover crimes related to operation of motor vehicles, unless the perpetrator was</p>	<p>TO APPLY</p> <p>Under the law, crime victims must file an application under oath within 2 years of the crime.</p>

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	<p>intoxicated. 740 Ill. Stat. § 45/2.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. An Illinois court has ruled that proof of citizenship or legal alien status is not required. However, it is possible that, if an Illinois resident makes a claim for injuries occurring elsewhere, citizenship could be relevant. The Illinois courts have ruled on <u>Hernandez v. Fahner</u>. • In most cases, the crime must have been reported within 72 hours of the crime, and the victim must cooperate with law enforcement personnel. However, sex crimes have a 7-day reporting period. In addition, the statute specifically provides that an applicant will be considered to have complied with the law if s/he has obtained an order of protection, obtained a no contact order, or “presented himself or herself to a hospital for sexual assault evidence collection and medical care.” 740 Ill. Stat. 45/6.1. <p>Any Illinois resident injured or killed elsewhere may also seek compensation. Certain dependents, family members, and others who assisted the victim may also seek compensation. 740 Ill. Stat. § 45/2(d).</p> <p>COMPENSATION</p> <p>Compensation may be awarded for a variety of health care expenditures including counseling and all "appropriate medical expenses" and hospital expenses, including prosthetics and eyeglasses damaged as a result of the crime.</p> <p>In addition, compensation may be awarded for a wide range of expenditures and lost</p>	<p>For services provided under SASETA, if the victim is not eligible to receive the services under the Illinois Public Aid Code or through insurance, the provider must furnish services without charge. The provider will be reimbursed by the state of Illinois. 410 Ill. Stat. § 70/7. Note, however, that some victims can receive bills when reimbursement has not been received promptly by the medical provider.</p> <p>Information, including application forms for the crime victims’ compensation program, is available at www.ag.state.il.us. In addition, Illinois Coalition Against Sexual Assault (ICASA) can provide information on a variety of related issues. Information may be obtained from ICASA at 1-217-753-4117 or at their website, http://www.icasa.org. The website includes a list of crisis centers.</p> <p>For additional information, contact:</p> <p>Crime Victim Services Division Office of the Attorney General 100 West Randolph Street, 13th Floor Chicago, IL 60601 312-814-2581 312-814-4231 (fax) 1-800-228-3368 (voice/TTY)</p>

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	<p>income. These include replacement costs for clothing and bedding used as evidence, costs for temporary lodging (including first month's rent and security deposit), replacements for locks or windows necessary or damaged as a result of the crime, crime scene clean-up, loss of earnings, loss of future earnings, funeral and burial expenses, and expenses incurred in obtaining services to replace those the injured or deceased person would have performed but for the crime. 740 Ill. Stat. § 45/2.</p> <p>In addition to the crime victims' compensation program, the Sexual Assault Survivors Emergency Treatment Act (SASETA) specifically addresses the need for medical care following sexual assault. Under SASETA, victims can obtain medical examinations and tests; information on STDs; tests for STDs; "appropriate medication," including HIV prophylaxis, and counseling. 410 Ill. Stat. § 70.</p>	
<p>Indiana</p>	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. A state official confirmed that immigrants may receive compensation for crimes committed against them. • The crime must have been reported to the police within 48 hours unless there was a good reason why the crime could not be reported in that time. The victim or survivors must be cooperative in the investigation and prosecution of the crime. http://www.in.gov/attorneygeneral/legal/victim/victim_advocacy.html <p>Residents of Indiana may be compensated for violent crimes that occur anywhere (unless the jurisdiction where the crime occurred has a similar statute), and a nonresident of Indiana may be compensated for violent crimes that occur in Indiana.</p>	<p>TO APPEAL</p> <p>The procedures for coverage vary considerably depending on the particular services sought.</p> <p>For example, "suturing and care of wounds" directly related to sex crimes are covered without charge to the victim and without specific reporting and cooperation requirements. Ind. Code § 5-2-6.1-39(b), § 16-21-8-5.</p> <p>In contrast, so called "additional forensic services," which include pregnancy testing, STD testing, etc., requires the victim to report the crime within 96 hours and to cooperate with law enforcement unless there are compelling reasons that would excuse these requirements. Ind. Code § 16-21-8-5. The law specifically provides that a hospital may bill directly an alleged victim who does not fulfill these requirements. Ind. Code § 5-2-6.1-39. If these conditions are met, however, the</p>

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	<p>Certain dependents, family members, and others who rendered aid may also seek compensation. Ind. Code § 5-2-6.1-12.</p> <p>Victims may be able to receive compensation resulting from criminal acts of felonies and certain misdemeanors resulting in bodily injury or death except for various crimes related to the operation of a motor vehicle in which the perpetrator was not intoxicated. Ind. Code § 5-2-6.1-8.</p> <p>With the exception of forensic evidence collection from sex crime victims, there must be minimum of \$100 in out-of-pocket expenses.</p> <p>http://www.in.gov/attorneygeneral/legal/victim/victim_advocacy.html</p> <p>COMPENSATION</p> <p>Compensation may be awarded for "out of pocket" losses related to the crime as well as for:</p> <ul style="list-style-type: none"> • reasonable expenses for necessary medical, chiropractic, hospital, dental, psychological, optometric, psychiatric, and ambulance services and prescription drugs and prosthetic devices; • loss of income; • reasonable emergency shelter care expenses; • childcare expenses (up to \$1,000) to replace childcare the victim would have supplied; • loss of financial support to dependents; • funeral or burial expenses; and • mental health care (up to \$2,000) for the immediate family of a crime victim. <p>Ind. Code § 5-2-6.1-21.</p> <p>In most cases, claimant must spend \$100 before compensation may be awarded. Ind. Code § 5-2-6.1-21.</p>	<p>victim should never receive a bill for such services.</p> <p>If a victim does receive a bill for services for which a provider is not directly reimbursed or if a victim wishes to apply for compensation for other expenditures, claimants must file an application for assistance with the Indiana Criminal Justice Institute's Division of Violent Crime within 180 days of the crime. While an extension may be granted for good cause, there is a firm two-year limit on such extensions. Ind. Code § 5-2-6.1-16. In addition, compensation may not be awarded unless the law enforcement records regarding the crime are available and any investigation is substantially complete. Ind Code. § 5-2-6.1-17.</p> <p>Information on the application process is available at www.in.gov.</p>

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	<p>In addition, victims of sexual crimes may be able to receive direct coverage for:</p> <ul style="list-style-type: none"> • counseling; • pregnancy and STD testing immediately after the crime; • drug and alcohol testing; • pregnancy testing up to 30 days after the crime; and • syphilis testing up to 90 days after the crime. <p>Inpatient treatment and HIV prophylactic medication are not covered, and reimbursement for such services must be sought through the crime victims' compensation process.</p> <p>Ind. A.C. § 1-2-3, Ind. Stat. § 16-18-2-1.8.</p>	
Iowa	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • To be eligible for compensation, the victim must report the crime to local law enforcement within 72 hours, unless there is an explanation as to why that was not possible. This reporting requirement is not applicable to minors or dependent adults who are subject to unlawful sexual conduct or a forcible felony if the crime is committed by an individual responsible for the victim's care and the crime is reported to an employee of the department of human services. The victim is expected to cooperate with reasonable requests by the appropriate law enforcement agencies in the investigation and prosecution of the crime. <p>Victims of violent crime may receive compensation from the State of Iowa. Under Iowa's program, the following victims may be eligible for assistance:</p> <ul style="list-style-type: none"> • victims who have been physically or emotionally injured in a violent crime in Iowa; 	<p>TO APPLY</p> <p>A victim must file an application with the Iowa Department of Justice within 2 years of the date of the crime or show good cause for why it took longer than 2 years to file.</p> <p>TO APPEAL</p> <p>The original claims determinations are made by the crime victim program investigator at the Iowa Department of Justice. If a claim is denied, the alleged victim is provided written notice of the denial and has the opportunity to appeal. The first level appeal is determined by the director of the crime victim program, and the final appeal is decided by the Crime Victim Assistance Board. A victim aggrieved by the denial or disposition of his/her claim may appeal to the district court within 30 days of receipt of the Board's decision.</p> <p>Iowa Attorney General Crime Victim Assistance Division Lucas Building, Ground Floor Des Moines, Iowa 50319</p>

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	<ul style="list-style-type: none"> • victims of a drunk driving, hit and run, reckless driving, vehicular homicide or injury when a car is used as a weapon; • survivors of a homicide victim; • a victim’s spouse, children, parents, siblings and persons residing in the victim’s household at the time of the crime; • Iowans injured by violent crime in a state without a compensation program; or • Iowans injured by an act of terrorism in a foreign country. <p>The Iowa Code, Title XVI, subtitle 3, § 915.80 et seq.</p> <p>COMPENSATION</p> <p>Compensation is available for:</p> <ul style="list-style-type: none"> • medical care related to the victim’s injuries (up to \$15,000); • medical expenses for crime-related care for survivors of a homicide victim (up to \$3,000 per survivor); • crime-related mental health counseling to the victim (up to \$3,000) and to the victim’s family members and those residing in the victim’s home (up to \$1,000 per secondary victim); • grief counseling for survivors of homicide victims (up to \$3,000); • wages lost by the victim due to crime injuries (up to \$6,000); • lost wages for homicide survivors (up to \$6,000); • loss of support of dependents of deceased victims or victims who cannot work for more than 60 days (up to \$2,000 per person); • funeral and burial costs for homicide victims (up to \$7,500); • residential crime scene clean-up (up to \$1,000); and • replacing clothing and bedding held as evidence by law enforcement (up to \$100). <p>The compensation described above will be reduced by any amount received (or to be received) as the result of an injury or death:</p>	<p>Phone: (515)281-5044</p> <p>Toll Free: (800) 373-5044</p> <p>Fax: (515) 281-8199</p> <p>http://www.state.ia.us/government/ag/CVAD/index.html</p>

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	<p>(1) from or on behalf of the person who committed the crime or who was otherwise responsible for damages resulting from the crime; (2) from an insurance payment or program, including but not limited to workers compensation or unemployment compensation; and (3) from public funds.</p> <p>Emergency compensation, up to \$500, is available if the victim would otherwise suffer undue hardship.</p> <p>Compensation is not available when the bodily injury or death was caused by: (1) the consent, provocation or incitement by the victim; or (2) the victim assisting, attempting or committing a criminal act.</p> <p>Prenatal care, including delivery, may be included as medical expenses paid for by the victim crime program as long as they otherwise meet the program's criteria.</p> <p>Medical expenses related to STD, HIV/AIDS and hepatitis screening and treatment, pregnancy testing, and post coital treatment are paid for through the forensic program.</p>	
Kansas	<p>BACKGROUND</p> <p>Victims of violent crimes including drunk driving, hit and run, and intentionally inflicted injuries from motor vehicles may receive compensation from the state if the crime occurred in Kansas and the victim suffered bodily injury, death, or resulted in mental health treatment due to trauma. (Kan. Stat. Ann. §74-7305)</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. 	<p>TO APPLY</p> <p>The claim must be filed with Crime Victims Compensation Board within 2 years of the incident, and the victim/claimant must show economic hardship without the award. The Board may consider various factors for deciding undue financial hardship. (Kan. Stat. Ann. §74-7305(d).)</p> <p>Crime Victims Compensation Board 120 SW 10th Avenue, 2nd Floor Topeka, KS 66612 (785) 296-2359</p>

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	<ul style="list-style-type: none"> The victim must report the incident to the law enforcement agency where the crime occurred within 72 hours of the incident unless the victim can show good cause for failing to report the incident within this time. The victim/claimant cannot be an accomplice and/or committed crime in connection with the incident and must cooperate with law enforcement agency. <p>As listed on the application form, some of the crimes include domestic violence, assault, arson, kidnapping, murder/homicide, sexual assault/rape, stalking, DUI, child physical abuse. However, victims of other criminal injurious conduct may be eligible.</p> <p>To be compensated, economic loss must exceed \$100, except in sexual assault cases. Victims of sexual assault do not need to show economic loss to be eligible for Victims Compensation. Loss of personal property is not included, except for clothing/bedding seized as evidence.</p> <p>COMPENSATION</p> <p>Compensation is provided for loss of earnings/wages, out-of-pocket medical expenses incurred as a direct result of the incident, and funeral, burial, and cremation expenses if death was the result. The maximum amount of coverage is \$25,000. Funeral expenses are limited to \$5,000.</p> <p>Other allowable expenses include moving expenses if a law enforcement officer recommends move for safety reasons, and mileage expenses for medically necessary travel. (Kan. Admin. Regs. §20-2-9)</p> <p>If the victim dies, dependent or legal representative may apply on behalf of the victim.</p>	<p>See the following link for more information:</p> <p>http://www.accesskansas.org/ksag/Crime/victims_comp_program.htm</p>

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	<p>A tentative award (i.e., emergency award) may be given when it appears the claimant will suffer economic hardship without the award. Any tentative award is deducted from final award. (Kan. Stat. Ann. §74-7314)</p> <p>If the victim/claimant is represented by an attorney, reasonable attorney's fees determined by the Compensation Board may be paid. Attorney's fees are in addition to the award, and may be paid whether or not compensation is awarded. (Kan. Stat. Ann. §74-7311)</p> <p>For victims of sexual assault, medical treatments, such as testing and preventive treatment (prophylaxis) for sexually transmitted diseases, and testing for pregnancy are available and costs for these treatments may be paid by the Crime Victims Compensation Board. For victims of sexual assault, you do not have to show economic loss to be eligible for victims compensation.</p>	
Kentucky	<p>BACKGROUND</p> <p>Victims who suffer bodily or psychological injury or death from a crime, including drunk driving, may receive compensation from the state if the crime occurred in Kentucky. Kentucky does not enumerate specific crimes.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim must have reported the crime within 48 hours or show good cause as to the delay. The victim must cooperate with law enforcement agencies. 	<p>TO APPLY</p> <p>The victim must apply with the Crime Victims' Compensation Board for compensation. The claim must be filed within 5 years of the crime.</p> <p>The claimant must show financial hardship to be eligible for compensation. In determining financial hardship, the Compensation Board will not include:</p> <ul style="list-style-type: none"> • a home and whatever real estate it is located on; • personal property consisting of clothing and strictly personal effects, except jewelry; • tools and equipment necessary for claimant's trade, occupation or business; • household furniture, appliances and equipment, except antiques;

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	<p>Anyone who is a victim of a criminally injurious conduct is eligible for compensation if other eligibility requirements are met. Victims of hate crimes are also eligible. (Ky. Rev. Stat. Ann. §346.055) However, victims who were in a correctional facility or in an institution run by the Cabinet for Health and Family Services of Kentucky at the time of the crime are not eligible.</p> <p>In addition, the victim does not have to be a resident of Kentucky to be eligible for compensation as long as the victim suffered losses as a direct result of the crime in Kentucky. (Ky. Rev. Stat. Ann. §346.025)</p> <p>If a victim dies, a surviving spouse, parent, or child of the victim is also eligible for compensation. (Ky. Rev. Stat. Ann. §346.050)</p> <p>COMPENSATION</p> <p>Compensation is available up to \$25,000. Funeral expenses are limited to \$5,000. Compensation is provided for reasonable medical and hospital expenses, loss of earnings/wages up to \$150 per week if employed at the time of the crime, funeral expenses, benefits for dependents of the deceased victim, and psychological counseling for a maximum of 2 years.</p> <p>Compensation does not cover stolen, lost, or damaged property, although replacement costs for eye glasses or corrective lens damaged during the crime are covered. (Ky. Rev. Stat. Ann. §346.130(3))</p> <p>Emergency awards (not to exceed \$500) are allowed when it appears the award will probably be made and undue hardship will result if not awarded. This amount is to be later deducted from final award (Ky. Rev. Stat. Ann. §346.120)</p>	<ul style="list-style-type: none"> • family automobiles; and • savings or valuables or additional property in an amount equal to the claimant's annual income. (107 Ky. Admin. Regs. 1:010) <p>Crime Victims Compensation Board 130 Brighton Park Blvd. Frankfort, KY 40601 Phone: (502) 573-7986 ext 228 Fax: (502) 573-4817</p> <p>See the following link for more information: http://www.cvcb.ky.gov/faq/</p>

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	<p>If the victim/claimant is represented by an attorney, attorney's fees may be paid. Attorney's fees cannot be larger than 15% of award and is part of the award, not in addition to the award. (107 Ky. Admin. Regs. 1:025)</p> <p>In Kentucky, basic treatment, laboratory testing, and evidence gathering services for victims of sexual assault are paid by the Crime Victims' Compensation Board. In addition to evidence gathering, post-assault treatment available to the victim includes preventive treatment (prophylaxis) for potential infections, such as hepatitis B and certain types of sexually transmitted infections (e.g., chlamydia, gonorrhea, trichomonas, and BV). Follow up treatment and testing are also available.</p> <p>Hospital/Community Facility Procedural Guidelines for the Forensic & Medical Examination of Adult Sexual Assault Victims in Kentucky.</p>	
Louisiana	<p>BACKGROUND</p> <p>An innocent victim of a violent crime in Louisiana may be entitled to compensation if the crime: involves the use of force or the threat of the use of force; results in personal injury, including physical and/or emotional harm, death or catastrophic property loss.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • To be eligible for compensation, the crime must be reported to a law enforcement agency within 72 hours after the incident unless there is a good reason why the crime was not reported within this time period. The victim and/or claimant must cooperate fully with law enforcement officials in the investigation and prosecution of the case. 	<p>TO APPLY</p> <p>The application must be filed within 1 year of the crime unless there is a good reason why the application was not submitted within this time period.</p> <p>Applications are available from all Louisiana sheriffs' offices. The victim reparations coordinators provide assistance to victims who ask for help in filling out application forms. Victims may also get an application directly from the Crime Victim's Reparations Office by calling 1-888-6VICTIM (in-state only).</p> <p>Each type of claim form used by the board should identify the documents that must be submitted by the victim/claimant to support and verify a claimed expense. When applications lack documentation necessary for a decision or award in total or in part, and adequate effort has been made to acquire that information, the application will be placed on an agenda and the decision and award will be based on the information available. Should the formerly</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>Victims, dependents, representatives of victims, and those who seek to prevent crimes can be compensated.</p> <p>A victim is:</p> <ul style="list-style-type: none"> • any person who suffers personal injury, death, or catastrophic property loss as a result of a crime committed in Louisiana; • a resident of Louisiana who is a victim of an act of terrorism occurring outside the U.S.; • a Louisiana resident who suffers personal injury or death as a result of a crime occurred outside of Louisiana; or • if the crime occurs outside of Louisiana, the victim needs to be “Louisiana resident” and show that 1) the state where the crime occurred does not have an eligible crime victims reparations program; and 2) the crime would have been compensable had it occurred in Louisiana, in order to be compensated by the state of Louisiana. <p>Louisiana Admi. Code § 22:XIII.103</p> <p>Other claimants include a dependent of a deceased victim; a legal representative of a victim; or a person who helps another and is killed or injured in the good faith effort to prevent a crime, to apprehend a person reasonably suspected of having engaged in such a crime, or to aid a peace officer.</p> <p>In the event of death, a person who assumes the obligation or voluntarily pays the medical or the funeral or burial expenses incurred as a direct result of the crime can also be compensated. Louisiana Admi. Code § 22:XIII.103</p> <p>A Louisiana resident is a person who maintained a permanent place to live in this state at the time the crime was committed. Louisiana Admi. Code § 22:XIII.103</p>	<p>sought information become available, a supplemental application can be filed. Awards to eligible victims or claimants for expenses incurred but not yet paid may be made payable directly to the providers.</p> <p>Crime Victims Reparations Program Louisiana Admi. Code § 22:XIII.303 http://www.state.la.us/osr/lac/22v01/22v01.pdf#nameddest=cvrboard</p>

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	<p>Not eligible if:</p> <ul style="list-style-type: none"> • the victim was convicted of a felony within 5 years before the incident that leads to the claim; • there is good cause to believe that the victim engaged in an ongoing criminal activity within 5 years of the incident that leads to the claim; or • the victim was engaging in an illegal activity at the time of the incident that leads to the claim. <p>Louisiana Admi. Code § 22:XIII. 301.A.1.a</p> <p>Award will be reduced if:</p> <ul style="list-style-type: none"> • the victim was not wearing a seat belt and injured or killed by a person driving while intoxicated (DWI). The total maximum award allowed under current policy may be reduced by 50 percent. <p>Louisiana Admi. Code § 22:XIII. 301.A.1.b</p> <p>COMPENSATION</p> <ul style="list-style-type: none"> • There is a \$10,000 cap for awards for all victims except those who suffered total and permanent injuries; for those applications the award can be up to \$25,000. • Attorney’s fees: a maximum of \$50/hour for a total of 5 hours of \$250. • Funeral expenses: up to \$3,500. • Lost wages/earnings: up to \$10,000 (up to \$320/week take home pay, or 80% of the gross income up to \$400/week). • Loss of support: up to \$10,000. • Ambulance: up to \$300 for regular ambulance transport; up to 500 for air medical transport. • Medical expenses: treatment must be “usual and customary,” and up to \$10,000. • Travel expenses: only when required medical care is not locally available. • Mental health counseling: limited to 6 months from the date of the first visit or after the first 26 qualified 	

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>sessions/groups (whichever comes first).</p> <ul style="list-style-type: none"> • Catastrophic property loss: up to \$10,000. • Vehicular incidents: eligible expenses include those resulting from death or personal injury if they are incurred as a result of DWI or hit and run offenses, fleeing felon incidents, or injuries intentionally inflicted with a motor vehicle, boat or aircraft. • Child care expense: up to \$1,500 for each eligible child care claim. • Crime scene evidence: reasonable replacement costs for clothing; bedding; or property seized as evidence or become unusable as a result of criminal investigation or lab test. <p>Louisiana Admi. Code § 22:XIII.503 http://www.state.la.us/osr/lac/22v01/22v01.pdf#nameddest=cvrboard Louisiana R.S. 15:535</p>	
Maine	<p>BACKGROUND</p> <p>The following victims of a violent crime are eligible for financial assistance:</p> <ul style="list-style-type: none"> • victims of violent crimes (including Operating Under the Influence) occurring in Maine • dependents and family members of homicide victims • any person responsible for the funeral expenses of a homicide victim <p>Maine statute, Title 5, Chapter 316-A, § 3360-B.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must have been reported to the police within 5 days unless the victim is a minor or there is good cause for delay. <p>To qualify for benefits, applicants must satisfy the following requirements:</p> <p>The crime must be one of the following types:</p>	<p>TO APPLY</p> <p>Applications are available from the Victims Compensation Board, Office of the Attorney General, 6 State House Station, Augusta, Maine 04330-0006 (207) 624-7882 or 1 (800) 903-7882.</p> <p>A victim’s compensation application can also be obtained by contacting the Victim Witness Program in the office of your local District Attorney or one of a number of statewide victim services programs.</p> <p>When all information and documentation necessary to support a victim's claims have been submitted, the case is reviewed by the Board at its next monthly meeting. Most claims can be verified by staff and are approved by the Board.</p> <p>TO APPEAL</p> <p>If the Board issues a denial, a claimant can request a hearing before the Board. If the case is denied after hearing, the claimant may appeal to Superior Court.</p> <p>http://www.maine.gov/ag/faq.php?pods=138 Maine statute, Title 5, Chapter 316-A, §§ 3360-F, 3360-G.</p>

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	<ul style="list-style-type: none"> • an offense against the person; • a sexual assault; • a kidnapping and/or criminal restraint; • a robbery; • a drunk driving incident; or • sexual exploitation of a minor. <ul style="list-style-type: none"> • The claimant must cooperate with the reasonable requests of law enforcement officials in the investigation and prosecution of the crime. • Unless the crime is a sexual assault, the victim must have suffered some bodily injury or a psychological injury resulting from a threat of bodily injury from the crime. • Compensation may only be paid to innocent victims; it may not be paid to any person who violated a criminal law that contributed to or caused the injury. • The crime need not result in a successful prosecution. However, to make an award, the Board must find by a preponderance of the evidence that a compensable crime in fact did occur. • An application must be filed by the victim with the Compensation Board within 3 years of the crime or 60 days of the discovery of the injury or compensable loss, whichever is later, unless there is good cause for failing to file. <p>Maine statute, Title 5, Chapter 316-A, §§ 3360.3, 3360-B.</p> <p>COMPENSATION</p> <p>The Board may award up to \$15,000 for actual medical and medically-related expenses or losses incurred as a direct result of crime-related injuries. To the extent insurance or other funds do not cover crime related expenses, the claimant may be reimbursed for:</p> <ul style="list-style-type: none"> • Medical and dental charges (including equipment, supplies and medications) limited to 75% of actual charges. • Counseling expenses (for victims, for family and household members of 	

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	<p>homicide victims and child sexual assault victims, and for family and household members of the victim who witness the crime).</p> <ul style="list-style-type: none"> • Funeral/burial costs up to \$4,500, costs of a marker up to \$500. • Lost wages (for victims only). • Loss of financial support (for dependents of homicide victims). • Crime scene cleaning costs (bio-matter). • Costs to repair or replace locks or other security devices. • Replacement costs of eyeglasses, dentures and other prosthetic devices. <p>Maine statute, Title 5, Chapter 316-A, §§ 3360.3, 3360-E.</p> <p>Property losses, compensation for pain and suffering, and other losses (not medically related) are not covered.</p> <p>http://www.maine.gov/ag/faq.php?pods=138</p>	
Maryland	<p>BACKGROUND</p> <p>Victims of certain types of crimes may receive compensation from the state if: (1) the crime occurred in Maryland; or (2) the victim is a Maryland resident and the criminal act occurred in a state that does not have a CVC program. The types of crimes include drunk driving, domestic violence, and any crime that results in death or personal injury, including sexual assault.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim must report the crime within 48 hours of the occurrence and reasonably cooperate with law enforcement. Md. Code Ann., Criminal Procedure § 11-810. 	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Criminal Injuries Compensation Board. The victim must report the crime within 48 hours of the occurrence and reasonably cooperate with law enforcement. Md. Code Ann., Criminal Procedure § 11-810.</p> <p>The application must (absent good cause) be filed within 180 days from: the date of the crime or the death of the victim. Md. Code Ann., Criminal Procedure § 11-809. As of October 1, 2006, the time limit to file an application will be extended to 3 years.</p> <p>Although an application must generally be filed within 180 days (or 3 years as of October 1, 2006), there is no time limit on how long benefits can be received.</p> <p>See the following link for more information:</p>

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	<p>A claimant may be the direct victim of the crime, or a survivor if the crime results in a death. Md. Code Ann., Criminal Procedure § 11-808.</p> <p>COMPENSATION</p> <p>Compensation is provided for medical care; expenses for eyeglasses and other corrective lenses; mental health counseling; funeral expenses; repairing, replacing, or cleaning property; disability; and loss of income. Md. Code Ann., Criminal Procedure § 11-810.</p> <p>Medical Assistance benefits will also be available if the assault results in a need for emergency medical care, and if income and residency requirements are met.</p>	<p>http://www.boc.ca.gov/default.htm</p>
Massachusetts	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim must report the crime within 5 days of the occurrence and reasonably cooperate with law enforcement. Mass. Gen. Laws ch. 258C, § 2; 940 Mass. Code Regs. 14.05. <p>Victims of certain types of crimes may receive compensation from the state if: (1) the crime occurred in Massachusetts; or (2) the victim is a Massachusetts resident and the crime occurred in a state that does not have a CVC program. The types of crimes include drunk driving, domestic violence, and any crime that results in death or personal injury, including sexual assault.</p> <p>A claimant may be the direct victim of the crime, a survivor if the crime results in a death, a person who assumes homemaker responsibilities in certain circumstances,</p>	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Victim Compensation and Assistance Division of the Office of the Attorney General.</p> <p>The application must (absent good cause) be filed within 3 years from the date of the crime. Mass. Gen. Laws ch. 258C, § 5; 940 Mass. Code Regs. 14.05.</p> <p>There is no time limit on how long benefits can be received.</p> <p>See the following link for more information: http://www.ago.state.ma.us/sp.cfm?pageid=1037</p> <p>or contact</p> <p>Office of Attorney General Tom Reilly</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>and persons who actually incur burial expenses directly related to the victim. 940 Mass. Code Regs. 14.04.</p> <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • funeral and burial expenses; • medical expenses (including limited transportation expenses, pregnancy testing, STD/AIDS screening and/or treatment, and prenatal care); • mental health counseling; • lost wages; • homemaker services (including childcare); • loss of financial support; and • attorney's fees. <p>940 Mass. Code Regs. 14.06.</p> <p>Compensation is limited to \$25,000 per crime. Mass. Gen. Laws ch. 258C, § 3.</p>	<p>Victim Compensation and Assistance Division</p> <p>One Ashburton Place</p> <p>Boston, MA 02108</p> <p>(617) 727-2200</p> <p>TTY: (617) 727-4765</p> <p>http://www.ago.state.ma.us</p>
Michigan	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. Mich. Comp. Laws § 18.351, Sec. 1(c). • A police report of the crime must generally be made within 48 hours. The victim must reasonably cooperate with law enforcement. Mich. Comp. Laws § 18.360. <p>The types of crimes include: any felony or serious misdemeanor involving assault and battery (including domestic violence), breaking and entering, child abuse, indecent exposure, stalking, aiming or discharging a firearm, leaving the scene of an accident resulting in personal injury, drunk driving, and any crime that results in death or personal injury.</p> <p>Victims of certain types of crimes may</p>	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Crime Victim Services Commission. Mich. Comp. Laws § 18.353, Sec. 3(j).</p> <p>Absent good cause, the application must be filed within 1 year from: the date of the crime; the date the victim turned eighteen (18); or the date after discovery by a law enforcement agency that injuries previously determined to be accidental, of unknown origin, or resulting from natural causes, were incurred as a result of a crime. Mich. Comp. Laws §18.355.</p> <p>See the following link for more information:</p> <p>http://www.michigan.gov/mdch/0,1607,7-132-2940_3184---,00.html</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>receive compensation from the state if: (1) the crime occurred or was attempted in Michigan; (2) the crime occurred to a Michigan resident outside of Michigan and that jurisdiction does not have a crime victim reparations law covering the resident’s injury or death; or (3) a Michigan resident was injured in another country by a crime involving an act of international terrorism. Mich. Comp. Laws § 18.351, Sec. 1(c).</p> <p>A victim is a person who suffers direct or threatened physical, financial, or emotional harm as a result of the crime, or a survivor if the crime results in death. 1985 Mich. Pub. Act 87; Mich. Comp. Laws § 18.354, Sec. 4.</p> <p>COMPENSATION</p> <p>Compensation is provided for un-reimbursable medical and medical-related expenses, mental health counseling costs, lost earnings or support, funeral costs, expense of replacement services for childcare or housekeeping, rehabilitation, travel costs for non-local travel, and a portion of attorney’s fees. Mich. Comp. Laws §18.361.</p> <p>Medical expenses to be reimbursed include hospital bills, doctor bills, laboratory fees, ambulance charges and other related costs.</p> <p>If a claim for compensation appears likely and undue hardship will result if immediate payment is not made, an emergency award up to \$500 may be provided. Mich. Comp. Laws §18.359.</p>	<p>For more information, contact</p> <p>Crime Victim Services Commission 320 South Walnut Lansing, Michigan 48913 (517) 373-7373</p> <p>http://michigan.gov/documents/Crimevictimcompensation_9679_7.pdf</p>
Minnesota	<p>BACKGROUND</p> <p>Victims of certain types of crimes may</p>	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Crime Victims Reparations</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>receive compensation from the state if: (1) the crime occurred or was attempted in Minnesota; (2) if the crime occurred to a Minnesota resident outside of Minnesota and that jurisdiction does not have a crime victim reparations law covering the resident's injury or death; or (3) if the person is a Minnesota resident who is injured in another country by a crime involving an act of international terrorism. Minn. Stat. § 611A.52, Subd. 6(a); Minn. Stat. § 611A.53, Subd. 1b.</p> <p>The types of crimes include: homicide, assault, child abuse, sexual assault, robbery, kidnapping, domestic abuse, stalking, criminal vehicular operation and drunk driving, and any crime that results in death or bodily harm.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. Minn. Stat. § 611A.53, Subd. 1b. • A police report of the crime must generally be made within 30 days. The victim must reasonably cooperate with law enforcement. <p>A victim is a person who suffers personal injury or death as a direct result of a crime, a good faith effort to prevent a crime, or a good faith effort to apprehend a person suspected of engaging in a crime. Minn. Stat. 611A.52, Subd. 10. Persons entitled to compensation include the victim, his or her dependents, the victim's estate, persons paying certain of the victim's expenses, and the guardian, guardian <i>ad litem</i>, conservator or authorized agent of any of these persons. Minn. Stat. § 611A.53, Subd. 1.</p> <p>COMPENSATION</p> <p>Compensation is provided for un-reimbursable medical and medical-related</p>	<p>Board. Minn. Stat. §§ 611A.51 to 611A.67.</p> <p>An application for compensation filed within 3 years of the occurrence of the crime. Minn. Stat. § 611A.53, Subd. 2(e).</p> <p>Absent good cause, the application must be filed: (1) within 3 years from the victim's injury or death; or (2) if the claimant was unable to file the claim, within 3 years from the time when the victim's injury or death was reasonably discoverable.</p> <p>The following do not render a claimant unable to file a claim: (1) lack of knowledge of the existence of the Minnesota Crime Victims Reparations Act; (2) the failure of law enforcement to provide information to a potential claimant; (3) incompetency of the claimant if the claimant's affairs were handled by a guardian, guardian <i>ad litem</i>, conservator, authorized agent, or parent; or (4) the fact that the claimant is not the age of majority. Minn. Stat. § 611A.53, Subd. 2(e).</p> <p>For help completing a form or to request an application call: 651-201-7300 or 1-888-622-8799</p> <p>Mail, fax or email completed forms to: Minnesota Crime Victims Reparations Board 445 Minnesota Street, Suite 2300 St. Paul, MN 55101-1515 Fax: 651-296-5787 email: dps.justiceprograms@state.mn.us</p> <p>See the following link for more information: http://www.ojp.state.mn.us/MCCVS/FinancialHelp/Reparations.htm#Apply</p>

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	<p>expenses, mental health counseling costs, lost earnings or support, funeral costs, expense of replacement services for childcare, rehabilitation, crime-scene cleanup costs, travel costs for immediate family to attend funerals, costs related to the return of an abducted child. Minn. Stat. § 611A.52, Subd. 8(a).</p> <p>Medical expenses to be reimbursed include necessary medical, chiropractic, hospital, rehabilitative, and dental products, services or accommodations, including ambulance services, drugs, appliances, and prosthetic devices and other related costs. Minn. Stat. § 611A.52, Subd. 8(a).</p> <p>Emergency grant money is available to victims through local programs for expenses such as transportation to medical and court facilities, home security devices, essential personal property and crime scene cleanup. Minn. Stat. § 611A.675, Subd. 1.</p>	
Mississippi	<p>BACKGROUND</p> <p>The Division of Victim Compensation provides financial assistance to victims of violent crime and their family members. The Program reduces the financial burden of crime by reimbursing victims for their crime related expenses not covered by any other source of benefits (insurance, Medicaid, Medicare, disability benefits, Workers' Compensation, etc.). Compensation may be awarded to the victim, the dependents of a deceased victim or a person authorized to act on behalf of the victim and/or surviving dependent. Benefits are awarded for medical care, rehabilitation, counseling services, work loss, loss of support for dependents of homicide victims and funeral expenses.</p> <p>http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php</p> <p>ELIGIBILITY</p>	<p>TO APPLY</p> <ul style="list-style-type: none"> • Fill out a compensation application form, have it notarized and return the form, along with bills and receipts. • Compensation Application Forms are available at http://www.ago.state.ms.us/divisions/crime_victim/CompensationApplication.pdf • Applications are also available from the district attorney's office, domestic violence shelters, rape crisis centers, survivor of homicide agencies and MADD. <p>Completed application form along with all bills and receipts are to be returned to</p> <p>Office of the Attorney General Crime Prevention & Victim Services Crime Victim Compensation Division Post Office Box 220 Jackson, MS 39205-0220</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim must report the crime to law enforcement officials within 72 hours after the crime or show good cause for not reporting. • The victim or claimant must fully cooperate with law enforcement investigation and prosecution. • Application must be filed within 24 months after the date of the crime. • In cases of child sexual abuse, the application must be filed within 24 months after the crime was reported. • The victim must not have contributed, provoked or in any way caused the injury or death; in such cases, benefits may be denied or reduced. • All other available sources of payment such as insurance, Medicaid, Medicare, disability benefits and Workers' Compensation must pay first. http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php • Individual must be the victim of a violent crime who has suffered personal injury, death or extreme psychological trauma as a result of the crime. Types of crimes include: assault, homicide, sexual assault, child sexual abuse, child physical abuse, domestic violence and DUI crashes. • Dependents of a deceased victim. • Persons authorized to act on behalf of the victim or dependents of a deceased victim. • Family members of the victim who incur mental health expenses. • Persons who have assumed responsibility for funeral expenses. • A Mississippi resident who is a victim of a violent crime in a foreign country which does not provide crime victim compensation. http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php Who is not eligible: By law, certain persons may not meet 	<p>1-800-829-6766 or 601-359-6766 601-576-4445 (Fax) http://www.ago.state.ms.us/contact/</p> <p>After receiving an application and related documentation, including a complete offense report, the Division of Victim Compensation reviews the information to see if the crime, the victim and/or claimant are eligible for compensation. This process involves verifying all the information presented in the application. Law enforcement officers, prosecutors, physicians, counselors, hospitals, and employers may be contacted for additional information. A decision about whether the victim or claimant is eligible is usually made within 90 days. A staff member is then assigned to the case to review expenses incurred as a result of the crime and determine eligibility of reimbursement or payment. Payment of awards may be made directly to the service providers or to the victim/claimant. The victim or claimant is notified in writing of the decision to award or deny the claim. Claimants who are denied compensation may appeal.</p> <p>http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php</p> <p>TO APPEAL</p> <p>The victim or claimant may ask the Division of Victim Compensation to reconsider its decision if he/she disagrees with the Division's decision. The victim or claimant must notify the Division of Victim Compensation of the reason for their dissatisfaction and provide additional information in the reconsideration process. If the outcome of the reconsideration process is not satisfactory, the victim or claimant may request a contested hearing before a hearing officer. If the victim or claimant does not agree with the outcome of the contested hearing, an appeal may be made to circuit court.</p> <p>http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php</p>

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	<p>eligibility requirements for compensation:</p> <ul style="list-style-type: none"> • A victim who is engaged in illegal conduct. • The offender and/or the accomplice to the offender. • Anyone injured in a motor vehicle accident unless the vehicle was used as a weapon or the offense includes driving under the influence (DUI). • Anyone incarcerated in a penal institution when the crime occurred. • A victim or claimant who, after filing an application with the Program, is convicted of any felony involving the Controlled Substances Act, the use or possession of a weapon, personal injury or attempted personal injury and the conviction becomes known to the program. <p>http://www.ago.state.ms.us/divisions/crime/victim/cvcinfo.php</p> <p>COMPENSATION</p> <ul style="list-style-type: none"> • Reasonable and necessary medical and rehabilitation expenses, not to exceed \$10,000. • Funeral expenses, not to exceed \$4,500, include: transportation costs to make and/or attend funeral services that are at least 45 miles from the claimant's residence, not to exceed \$500 per claim. • Mental health counseling for the victim and victim's family members, not to exceed \$3,500 per claim. • Lost wages for work missed by the victim during recovery of injuries, maximum of \$600 per week up to 52 weeks; not to exceed \$15,000. • Lost wages for work missed by the claimant in order to assist the victim during recovery of injuries, maximum of \$600 per week up to 52 weeks; not to exceed \$15,000. • Lost wages for the victim or claimant to attend court proceedings, maximum of \$600 for one week per claim. • Lost wages for the claimant to arrange and attend funeral services, maximum of \$600 for one week per claim. 	

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	<ul style="list-style-type: none"> • Loss of support for dependents of the deceased victim, maximum of \$600 per week up to 52 weeks; not to exceed \$15,000. • Transportation costs to obtain medical and mental health services that are at least 45 miles from the victim's residence, not to exceed \$500. • Overall maximum award for expenses incurred is \$15,000. • Additional financial assistance is provided by the CVC Division's Victim Assistance Program. <ul style="list-style-type: none"> ○ The Victim Assistance Fund was established to address and to respond to the unmet financial needs of crime victims. It provides assistance with: <ol style="list-style-type: none"> 1) immediate safety needs such as replacement of broken locks or broken doors/windows; 2) court related transportation costs; and 3) crime scene clean-up of a homicide or other violent crime that occurred in a residence or vehicle. 	

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	<p>For additional information about these services, please call their office at 601.359.4144 or 800.829.6766</p> <p>http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php</p> <p>Ineligible expenses:</p> <ul style="list-style-type: none"> • Stolen or damaged property. • Pain and suffering. • Attorney’s fees. • Expenses paid by an insurance plan, public funds, the offender or other sources. <p>http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php</p>	
Missouri	<p>BACKGROUND</p> <p>The Crime Victims’ Compensation Program provides financial assistance to victims who have suffered physical harm as a result of violent crime. In the case of death, the Program helps the victim's dependents. The Crime Victims’ Compensation Program is designed to assist victims of violent crimes through a period of financial hardship as a payor of last resort. If a victim has exhausted other sources of compensation, such as health insurance, and has no other source of reimbursement, the Program can help pay for medical costs, wage loss, psychological counseling, funeral expenses and support for dependent survivors up to \$25,000.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. http://www.dolir.mo.gov/wc/forms/cv-14-ai.pdf; accessed August 14, 2006 • The incident must be reported to the proper law enforcement agency within 48 hours, unless the victim was a minor or there is good cause shown for reporting late. 	<p>TO APPLY</p> <p>For a claim application or other information: PO Box 3001 Jefferson City, MO 65102</p> <p>573-526-6006 1-800-347-6881 www.dolir.mo.gov/wc/cv_help.htm</p> <p>After receiving the proper claim forms, the Crime Victims’ Compensation Unit conducts an investigation. Witnesses, law enforcement officers, physicians, hospitals and employers may be contacted for report and verification. The Unit then makes a decision on the claim and the claimant is notified of the decision.</p> <p>TO APPEAL</p> <p>If a claim is denied, or if the settlement offer is unacceptable, a dissatisfied claimant may request the Crime Victims’ Unit to set the case before an Administrative Law Judge.</p>

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	<p>Those eligible to make a claim are:</p> <ol style="list-style-type: none"> 1. The victim; 2. In the case of a sexual assault victim: <ol style="list-style-type: none"> a. A relative of the victim requiring counseling in order to better assist the victim in his recovery; and 3. In the case of the death of the victim as a direct result of the crime: <ol style="list-style-type: none"> a. A dependent of the victim; b. Any member of the family who legally assumes the obligation, or who pays the medical or burial expenses incurred as a direct result; or c. A survivor of the victim requiring counseling as a direct result of the death of the victim. <p>§ 595.020, RSMo.</p> <p>In addition, the following conditions must be met:</p> <ul style="list-style-type: none"> • The victim must cooperate with law enforcement officials in the investigation and prosecution. • The injury or death must have occurred in Missouri, except when the victim is a Missouri resident who suffers personal injury or death in a state that does not have crime victims' compensation, or when a Missouri resident is injured by an act of terrorism which was committed outside of the United States; • A claim must be filed within 2 years of the crime, unless the victim is a minor; then the claim must be filed within 2 years of discovering the crime. <p>http://www.dolir.mo.gov/wc/forms/cv-14-ai.pdf; accessed August 14, 2006</p> <p>COMPENSATION</p> <p>Costs incurred by a victim or claimant eligible for compensation are medical and drug costs, counseling expenses, lost wages, funeral costs and loss of earnings or support. A claimant must suffer at least \$50 "out-of-pocket" loss. Out-of-pocket loss means unreimbursed or unreimbursable expenses or indebtedness reasonably incurred for medical care or other services such as burial or funeral expenses. §</p>	

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	<p>595.030, RSMo.</p> <p>The Fund is a payor of last resort. This means that all other sources of payment must be used before compensation is made from the Fund. Health insurance, funds from Medicaid or Medicare and any other sources of payment available to the victim are deducted from the total expense that may be eligible for reimbursement under the crime victim law. However, if a claimant has a health insurance policy but still has out of pocket expenses because of deductibles or co-payments, those out-of-pocket costs may be eligible for reimbursement.</p> <p>Program guidelines: http://www.dolir.mo.gov/wc/cv_guidelines.htm</p>	
Montana	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. A state official confirmed that immigration status is not taken into consideration when determining whether a person is eligible for victim’s compensation benefits. • To qualify for compensation benefits, the victim must report the crime within 72 hours or show good cause for a delay in reporting and must cooperate with law enforcement and prosecuting attorneys. (Mont. Code Ann. § 53-9-125(3)). In addition, victims must fully report and cooperate with law enforcement officials and prosecuting attorneys to be eligible for benefits. (Mont. Code Ann. § 53-9-125(4)). <p>To be eligible for compensation, the applicant must be:</p> <ul style="list-style-type: none"> • A “victim”—defined as a person who suffers bodily injury or death as a result of criminally injurious conduct. (referred to as the Primary Victim) • A dependent of deceased victim (referred to as the Secondary Victim) • A person who engaged in a good faith 	<p>TO APPLY</p> <p>Applications may be obtained from Crime Victim Compensation Program, Office of Victim Services, Department of Justice, 1712 9th Avenue, P.O. Box 201410, Helena, MT 59620-1410 (phone 406.444.3653 or 800.498.6455). Claim forms are also available from law enforcement, city or county attorneys, hospitals, and victim advocate programs.</p> <p>The victim must file a claim with the Crime Victim Compensation Program within 1 year of the date the crime was committed or show good cause for delay. (Mont. Code Ann. § 53-9-125(1)).</p> <p>Once a claim has been submitted, it may take 2 to 3 months for the Crime Victim Compensation Program to make an eligibility determination.</p> <p>Copies of all crime-related medical bills must be sent to the Crime Victim Compensation as soon as possible. The Crime Victim Compensation Program is a program of last resort, so victims must first submit medical expenses to any other program for which they</p>

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	<p>effort to prevent a crime or apprehend a person reasonably suspected of engaging in criminally injurious activity. (Mont. Code Ann. § 53-9-103)</p> <ul style="list-style-type: none"> • The victim may be either a non-resident who is injured in Montana or a Montana resident who is injured either in Montana or in a state which does not provide compensation for non-residents <p>A victim may receive compensation benefits for any criminally injurious conduct, which is defined as conduct that results in bodily injury or death and is punishable by fine, imprisonment, death, or would be so punishable except that the perpetrator lacked capacity to commit crime (i.e. a person who is found not guilty by reason of insanity). (Mont. Code Ann. § 53-9-103(3)).</p> <p>Compensation may be reduced or denied if:</p> <ul style="list-style-type: none"> • Any offender or accomplice of the offender or any claimant if award would unjustly benefit the offender or accomplice. (Mont. Code Ann. § 53-9-125(2)). • Persons injured while in prison. (Mont. Code Ann. § 53-9-125(6)). • Compensation may be denied or reduced for any person who contributed to the death or injury for which the claim is made. (Mont. Code Ann. § 53-9-125(7)). • the applicant is a victim of a traffic accident not related to drunk driving. <p>COMPENSATION</p> <p>Montana’s Crime Victims Compensation Act provides assistance with expenses (not to exceed \$25,000) including:</p> <ul style="list-style-type: none"> • Payments for medical expenses including physician and hospital services, medicine, and ambulance costs; • Benefits for mental health counseling are capped at \$2,000 or 1 year, whichever comes first (although the victim may request an extension); • Benefits for chiropractic services can be paid for up to 30 visits • Funeral expenses may not exceed \$3,500 and will be paid only if all other 	<p>are eligible, such as health insurance, Medicaid, Workers’ Compensation, etc. See http://www.doj.mt.gov/victims/victimcompensation.asp for additional information.</p> <p>TO APPEAL</p> <p>A claimant who disputes the Office’s determination may appeal to the district court for the county in which the claimant resides or Lewis and Clark County for review. (Mont. Code Ann. § 53-9-131).</p>

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	<p>collateral sources fail to cover the expense;</p> <ul style="list-style-type: none"> • If a victim is employed at the time the crime occurs and is physically unable to work as the result of a physical injury related to the crime, a portion of the lost wages can also be reimbursed. To receive wage loss benefits, the victim must provide a letter from his or her primary care physician stating that the victim is physically unable to work and setting forth the length of time that the victim will miss work. Wage loss claims are paid every 2 weeks. (Mont. Code Ann. § 53-9-128); • If a victim has no prospect of being employed in the normal labor market and was employable but not employed at the time of injury may, at the discretion of the office, receive up to \$100 per week. Payments continue until the victim is reasonably employable again; • Dependants of a victim who is killed are entitled to receive, in a gross single amount, weekly benefits amounting to 66 2/3% of the wages received at the time of the injurious conduct causing death. This payment is subject to a cap set at one-half the state’s average weekly wage; and • Dependants of a victim who was killed and unemployed at the time may, at the discretion of the office, receive a sum not to exceed \$100 per week. Parents, brothers, or sisters of a victim who is killed are entitled to receive reimbursement for mental health treatment received as a result of the victim’s death. (Mont. Code Ann. § 53-9-128). <p>Forensic Rape Examination Payment Program covers the cost of:</p> <ul style="list-style-type: none"> • complete sexual assault examination • emergency room facility charges • doctor/nurse examiner charges • STD prophylaxis • toxicology, lab, testing, pharmaceuticals, and supplies. <p>The 2005 Montana Legislature’s House Bill</p>	

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	<p>577 (amending Mont. Code Ann. §§ 2-15-2014 and 46-15-411).</p> <p>Parents, brothers, sisters of a minor who is the victim of sexual assault and who are not entitled to receiving services under title 41 chapter 3 are entitled to reimbursement for mental health treatment as a result of that criminally injurious conduct. Total payments are not to exceed \$2,000 or 12 months. (Mont. Code Ann. § 53-9-128(9)(b)).</p> <p>Compensation benefits do not include:</p> <ul style="list-style-type: none"> • Property damage; • Pain and suffering; • Non-medical expenses; • In-patient psychiatric care; or • Chemical dependency counseling. <p>The CVC Program either will make payment directly to the service provider or will reimburse the victim for payments made.</p>	
Nebraska	<p>BACKGROUND</p> <p>Nebraska’s Crime Victims Reparations (“CVR”) Program assists victims of crime who suffer bodily harm and have incurred a financial loss as a direct result of a criminal act, provided the loss exceeds ten percent of the victim’s net financial resources.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • To qualify for compensation, the victim must report the crime to a law enforcement agency within three (3) days of the crime and cooperate with criminal justice officials in the investigation of the crime and the prosecution of the offender. Neb. Rev. Stat § 81-1821. <p>A person may be eligible to receive</p>	<p>TO APPLY</p> <p>An applicant must file a claim with the CVR program within 2 years of the date of the crime. Neb. Rev. Stat § 81-1821).</p> <p>To apply for compensation, a victim must submit (1) a completed, notarized compensation application, (2) a completed Financial Resources Form, and (3) itemized copies of all medical bills relating to the incident to the Nebraska Crime Victim’s Reparations Program, P.O. Box 94946, Lincoln, Nebraska 68509-4946 (402.471.2828 or 402.471.2194).</p> <p>Forms and additional information are available at http://www.ncc.state.ne.us/services_programs/crime_victim_reparations.htm</p> <p>The claimant must also provide the CVR an itemized list of medical bills relating to the incident or an itemized copy of the funeral bill and death certificate.</p>

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	<p>compensation benefits if the applicant is:</p> <ul style="list-style-type: none"> • A victim of a crime who suffers personal injury or death as a result of a crime committed in the State of Nebraska; • A dependent or legal representative of an innocent victim who has been killed as a result of a violent crime; • The parent or guardian responsible for the medical expenses of a minor; and • Persons injured in an attempt to prevent the commission of a crime, apprehend a criminal, aid a victim of a crime, or aid a police officer in the commission of their duties. (Neb. Rev. Stat § 81-1818). <p>A crime for which a victim may receive compensation benefits includes any crime that caused bodily injury or death to the victim in the State of Nebraska that occurred after January 1, 1979.</p> <p>Victims are not eligible if:</p> <ul style="list-style-type: none"> • They are injured in a motor vehicle accident unless the injury was intentionally inflicted or the offender was charged with D.U.I.; • They aided or abetted the offender in the commission of an unlawful act; • The offender will receive unjust economic benefit or enrichment from the compensation; and • The victim violated a criminal law of the state which contributed to his or her injury or death. <p>Neb. Rev. Stat § 81-1822</p> <p>COMPENSATION</p> <p>The maximum award per incident is \$10,000.</p> <p>Compensation is available for:</p> <ul style="list-style-type: none"> • Medical expenses (hospital, doctor, dental, prescriptions, etc.); • Lost wages; • Funeral expenses (up to a maximum of \$5,000); • Lost earning power; • Counseling expenses (up to a maximum of \$2,000); <p>Neb. Rev. St. §§ 1801—1842.</p>	<p>To request compensation for lost wages, a victim must submit (1) copies of three payroll stubs covering the period prior to the crime; (2) a statement from her employer, verifying hours of work missed and hourly wages; and (3) a copy of the doctor's release stating the exact date the victim could return to work.</p> <p>After the CVR Program receives the required information, it completes an investigation and presents the claim to a Hearing Officer. The Hearing Officer shall rule within 180 days after receipt of all required information. A copy of the Hearing Officer's decision will be mailed to the victim.</p> <p>TO APPEAL</p> <p>A decision may be appealed by submitting a written request for a hearing to the CVR program within 30 days of the decision. A claimant may appeal a decision by a hearing officer within 30 days of the initial decision. The appeal is heard by the committee and shall commence within 120 days of the request for rehearing.</p>

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	<p>Compensation is not available for expenses paid by collateral sources, including:</p> <ul style="list-style-type: none"> • A private or group insurance plans; • Public funds; • The offender; or • Other sources. <p>Victims may not be compensated for:</p> <ul style="list-style-type: none"> • Pain and suffering; • Loss of property; • Expenses not directly related to the crime; or • Expenses paid by private or group insurance plans, public funds, the offender, or other sources. 	
Nevada	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • Immigrants who are not lawfully entitled to reside in the U.S. are not eligible to receive victims compensation benefits. (N.R.S. § 217.220(b)). A social security number is required to receive compensation. • In addition, victims must file a criminal police report within 5 days following the crime unless there is an explanation as to why the victim was unable to notify authorities. Victims must also cooperate with law enforcement officials during their investigation and prosecution of the crime. http://hearings.state.nv.us/Victims.htm <p>The application must be made within 1 year of the date of the personal injury or death unless the time limit is waived based on good cause shown. The incident must have been reported to the police within 5 days of the time when a report could have been reasonably filed. (N.R.S. § 217.210).</p> <p>The following individuals are eligible to receive compensation benefits:</p> <ul style="list-style-type: none"> • A victim who has suffered personal injury or any person responsible for the maintenance of a victim who has suffered a pecuniary loss (N.R.S. 217.160.); • Any dependents of a deceased victim; • A minor who is a member of a household or immediate family of a 	<p>TO APPLY</p> <p>Applications for compensation must be filed within one (1) year from the date of the crime, unless there is good reason why the application could not be filed within this timeframe. In addition, minors may apply until they reach the age of 21 years. http://hearings.state.nv.us/Victims.htm</p> <p>Applications for compensation resulting from sexual assault crimes must be made within 60 days of after the date of the assault. The sexual assault must be reported to the police within three (3) days of the assault or, if a report could not have been reported within that period, within 3 days after the time when a report could reasonably have been made. A compensation officer will obtain and review the police report, interview the applicant, accumulate medical bills and medical reports, as well as insurance, employment and financial information. The applicant will be notified in writing within 60 days of the interview if he/she is eligible for assistance.</p> <p>The application will be reviewed by a Compensation officer, a Hearing Officer, an Appeals Officer, and finally the Victims Compensation Board, if applicable.</p> <p>The application process can take 8-10 weeks. Payments will not be authorized until all required information is received.</p>

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	<p>victim of a battery which constitutes domestic violence pursuant to N.R.S 33.018 who is in need of psychological assessment, evaluation, or counseling arising out of trauma suffered as a result of the battery;</p> <ul style="list-style-type: none"> • A member of the victim’s household or immediate family needing psychological counseling resulting from trauma suffered as a result of the crime of murder; and • An awardee of the Governor’s certificate for meritorious citizen’s service to a victim. <p>The following individuals are not eligible to receive compensation benefits:</p> <ul style="list-style-type: none"> • Those who were injured in motor vehicle, boat, or airplane accident unless such vehicles were deliberately used to injure the victim or the vehicle was used in some other crime. • Persons who were not citizens of the United States or legally permitted to reside in the United States at the time of injury. (N.R.S 217.220(b)) • Person injured or killed while serving sentence of imprisonment in prison or jail including juvenile detention. (N.R.S. 217.220) • A victim who is a relative of the offender who at the time of injury or death was living with the offender in a continuing relationship may be awarded compensation only if the offender would not profit by the compensation of the victim. (N.R.S. 217.220) • Compensation may be denied if the compensation officer determines that the victim will not suffer serious financial hardship, however, the following may not be considered: (1) the value of the victim’s home; (2) value of the victim’s motor vehicle; (3) Any savings or investments up to and equaling the victim’s annual salary. • Co-conspirators, codefendants, accomplices, or adult passenger of the offender whose crime resulted in the victims injuries. (N.R.S. 217.220.1(c)). • Those who fail to cooperate with law 	<p>For more information, contact the county board of commissioners where the crime occurred or the Victims of Crimes office, 2200 South Rancho Drive Suite 130, Las Vegas, Nevada 89102.</p> <p>Tel: (702)486-2740 Fax: (702)486-2825</p> <p>TO APPEAL</p> <p>Applicants may make a written request for reconsideration with the Hearings Division located at 555 East Washington Avenue, Suite 3200, Las Vegas, NV 89101, or 1050 E. Williams, Carson City, NV 89701 within 15 days of the decision.</p>

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	<p>enforcement agencies but not limited solely to prosecution of the offender. http://hearings.state.nv.us/Victims.htm</p> <p>COMPENSATION</p> <p>The program has a monetary case cap of \$50,000 per victim. The following benefits may be available to victims of criminal acts:</p> <ul style="list-style-type: none"> • Medical expense payment and psychological counseling; • Counseling and medical treatment of victims of sexual assault (N.R.S. 217.290); • Counseling expenses (not to exceed \$3,500); • Funeral costs (not to exceed \$3,500); • Lost wages (not to exceed \$300 per week for 52 weeks); and • Replacement or repair of lost or damaged property which is essential to physical or mental health of the victim (including eye-glasses, dentures, prosthetics). <p>Victims may not be compensated for:</p> <ul style="list-style-type: none"> • Property loss or repair; • Legal fees; • Phone bills; • Meals; • Living expenses; or • Pain and suffering. <p>http://hearings.state.nv.us/Victims.htm</p> <p>Costs incurred by a hospital for initial emergency care for a victim of a sexual offense must not be charged directly to the victim, but must be charged to the county in whose jurisdiction the offense was committed (not to exceed \$1,000). N.R.S. 449.244.1(b). To qualify for this benefit the application for treatment must be made within 60 days of the sexual assault and reported to the police within 3 days of the occurrence or the time when a report could be reasonably made. (N.R.S. 217.340.)</p>	
New Hampshire	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions 	<p>TO APPLY</p> <p>A victims' assistance commission is</p>

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	<p>based on immigration status.</p> <ul style="list-style-type: none"> In order to be eligible to receive benefits, the victim must have reported the crime to law enforcement authorities within 5 days, unless there is a reasonable explanation for not doing so. <p>The following individuals are eligible to receive compensation benefits:</p> <ul style="list-style-type: none"> Any person who sustains personal injury as a result of a felony or misdemeanor; Any person who sustains personal injury caused by a person driving under the influence of alcohol or controlled substances; Any person who is a victim of sexual abuse and is under the age of 18 at the time the claim is filed. (RSA 21-M:8-h.I(a)) <p>In the case of a child victim, the claimant, guardian ad litem, advocate or parent may claim compensation in the victim's stead. (RSA 21-M:8-h.I(b))</p> <p>Failure to apprehend the offender, or failure of the state to convict the offender, by itself, does not disqualify the claimant for compensation, if there is reasonable evidence to sustain the claim that a crime had been committed, which resulted in injury to the victim. (RSA 21-M:8-h.III)</p> <p>The Victims' Assistance Commission may consider the finding of innocence or guilt of the alleged offender, as well as the contributory fault of the victim in causing his injury, in determining the eligibility of the claimant. (RSA 21-M:8-h.IV)</p> <p>COMPENSATION</p> <p>There is a \$10,000 ceiling on recovery per claimant per incident. The claimant may be reimbursed for reasonable out-of-pocket</p>	<p>established to review and award victims' claims for compensation. Members of the commission are nominated by the attorney general. (RSA 21-M:8-g.I)</p> <p>The claimant, guardian ad litem or child advocate, or parent shall file a claim for compensation within one (1) year of the crime, unless good cause is shown. (RSA 21-M:8-h.II.)</p> <p>The commission shall review claims from victims for compensation and make compensation awards from the victims' assistance fund and from private donations and contributions (RSA 21-M:8-g.III)</p> <p>The commission may consider the finding of innocence or guilt of the alleged offender in determining the eligibility of the claimant. In determining eligibility and the amount of compensation to be awarded, the commission shall consider the contributory fault of the victim in causing his injury. (RSA 21-M:8-h.IV.)</p> <p>The accused shall receive no benefit as a result of compensation, if compensation is paid to members of the accused's immediate family, or persons who reside with or who have maintained a continuous relationship with the accused. (RSA 21-M:8-h.IV.)</p>

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	<p>expenses, including:</p> <ul style="list-style-type: none"> • Medical expenses; • Funeral expenses; • Counseling expenses; and • Lost wages directly resulting from the crime. (RSA 21-M:8-h.V.) <p>Reimbursable expenses incurred has to be at least \$100. (RSA 21-M:8-h.V.)</p> <p>If expenses paid through the victims' assistance program fund are later covered by insurance settlements, civil suit settlements, restitution, or through any other source, the claimant shall reimburse the fund for the amount of expenses recovered. (RSA 21-M:8-h.V.)</p>	
New Jersey	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must be reported to the police within three (3) months after it occurs, or within three (3) months from the time it was known, or from the time there was reason to believe, that a crime occurred. (N.J.A.C. 13:75-1.5(b)) <p>The following persons are eligible for compensation benefits:</p> <ul style="list-style-type: none"> • A victim of a crime who has sustained personal injury, mental trauma or death; • A surviving spouse, parent/guardian, child or other relative dependent for support upon a victim of a crime who died as a direct result of such crime (N.J.A.C. 13:75-1.6(b)); or • A person injured while trying to prevent a crime or while assisting a police officer in making an arrest. <p>In addition, victims must meet the following conditions:</p> <ul style="list-style-type: none"> • For incidents prior to June 26, 1995, the victim must have suffered at least \$100 in out-of-pocket medical expenses 	<p>TO APPLY</p> <p>VCCB applications are available:</p> <ul style="list-style-type: none"> • At every law enforcement agency and medical institution in New Jersey; • Online at http://www.state.nj.us/victims/files/VCCB_Forms_Final.pdf; • From the 21 county prosecutors' offices through their respective Victim/Witness Coordinator. The Coordinators will assist crime victims in filling out the form; or • From the VCCB by calling 973-648-2107 or 877-NJ-VCCB1 (877-658-2221) for assistance. <p>The claim must be filed within two years from the date of the personal injury or death, or after two years if the Board determines that good cause existed for the delayed filing. (N.J.A.C. 13:75-1.5(a))</p> <p>To obtain benefits, the victim must file a completed claim form and comply with Board regulations which are explained in the instructions. The victim will be asked to submit information to support the application. Where possible and to speed up processing, it is helpful to submit a copy of a police report and related bills, receipts and insurance statements together with the application.</p>

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	<p>and/or two weeks continuous loss of earnings or support. (N.J.A.C. 13:75-1.7(a));</p> <ul style="list-style-type: none"> • For incidents occurring on or after June 26, 1995, there are no minimum loss requirements (N.J.A.C. 13:75-1.7(a).2); • The victim must cooperate fully with the police and prosecutor's office (N.J.A.C. 13:75-1.6(c)4.vii); however, eligibility is not dependent upon conviction or prosecution of the offender; • Failure to cooperate with the Board investigator or failure to inform the Board of a change of address will result in a denial of compensation; • If there are any Victims of Crime Compensation Board assessments imposed on the victim by the courts for prior convictions, the victim must pay them in full before the victim can receive any compensation. (N.J.A.C. 13:75-1.7(k)); and • The crime must occur in New Jersey, although the victim does not need to be a New Jersey resident (N.J.A.C. 13:75-1.6(g)1), or the victim must be a New Jersey resident who became a victim in another state or jurisdiction that does not have a CVC program (N.J.A.C. 13:75-1.6(g)2) or has a program that has not provided full compensation for the crime-related losses (N.J.A.C. 13:75-1.6(g)3). <p>The following individuals are not eligible to receive benefits:</p> <ul style="list-style-type: none"> • A victim whose behavior contributed to the crime and injuries suffered (N.J.A.C. 13:75-1.7(a)3) • A victim who was engaged in illegal activity at the time of the crime (N.J.A.C. 13:75-1.6(e)) • An offender or an accomplice of the offender (N.J.A.C. 13:75-1.6(d)) • Anyone in prison for a crime when the incident occurred (N.J.A.C. 13:75-1.7(l)1) • A victim of a motor vehicle or boating accident except those listed under Crimes for Which Compensation is Available • A victim of a motor vehicle or boating 	<p>The claim will be processed in the chronological order in which it is received by the Board. Upon receipt of the application, the claim is opened, given a claim number, an acknowledgment of receipt is sent to the applicant, and if needed, additional information is requested. All requests for emergency assistance and counseling are reviewed immediately.</p> <p>After a police report is received, the Board's eligibility investigators will review all the circumstances surrounding the incident, including, but not limited to, direct discussion with police and prosecutorial personnel, securing trial related information from the courts, and speaking with witnesses. The investigator will provide the Board's commissioners with a recommendation either that the claim is eligible for compensation or to deny compensation because there has been a failure to comply with one of the statute's provisions.</p> <p>Once determined eligible for compensation, the claim enters the compensation phase. The Board's investigator will verify losses by communicating directly with providers of medical services, securing insurance benefit statements, and gathering loss of earnings and disability payment information.</p> <p>The victim is required to show a minimum loss of at least \$100 unreimbursed medical expenses or two continuous weeks loss of earnings or support. For incidents occurring on or after June 26, 1995, the minimum loss requirement no longer applies</p> <p>If additional information comes to the Board's attention which requires the Board to change its determination of eligibility, the victim will be notified and given an opportunity to respond to the Board's new decision.</p> <p>The investigator may send a recommendation denying eligibility or may recommend an amount of compensation with which the victim disagrees. The victim will have twenty (20) days to advise the Board in writing whether the recommendation is accepted. The victim is entitled to a hearing before the Board. At the hearing the victim will be given an opportunity to submit supporting proofs.</p>

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	<p>incident where the victim knew, or had reason to believe, the vehicle or vessel was being operated by the offender while under the influence of alcohol or narcotics. (N.J.A.C. 13:75-1.7(i))</p> <ul style="list-style-type: none"> • A victim who is a non-resident of New Jersey and the crime incurred in a location other than New Jersey. <p>New Jersey “Resident” is defined as “a person who is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom.”</p> <p>(Medicaid Only Manual. N.J.A.C. 10:71-3.5.(a). p.20)</p> <p>The Board may order the payment of compensation for personal injury or death which resulted from the commission or attempt to commit any of the following offenses:</p> <ul style="list-style-type: none"> • Aggravated assault; • Threats to do bodily harm; • Lewd, indecent or obscene acts; • Indecent acts with children; • Kidnapping; • Murder; • Manslaughter; • Aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact; • Any other crime involving violence including domestic violence; • Burglary (personal property loss or damage will not be compensated) (N.J.A.C. 13:75-1.7(f)); • Tampering with a cosmetic, drug or food product; • Driving a vehicle, commercial or private, or boat while under the influence of alcohol or narcotics; and • Theft of an automobile, eluding a law enforcement officer or unlawful taking of a motor vehicle where injuries to the victim occur in the course of operating the automobile. <p>(N.J.A.C. 13:75-1.7(f) citing N.J.S.A. 52:4B-11)</p> <p>COMPENSATION</p> <p>Compensation benefits may be awarded up</p>	<p>(check http://www.state.nj.us/victims/pages/hearings.htm for hearing dates)</p> <p>The Board does not require that the victim appear at formal hearings with an attorney. The victim does have the right, however, to be represented before the Board at all stages of proceedings by a New Jersey licensed attorney.</p> <p>At the hearing the victim will be called upon to respond to questions from the Board's legal counsel and the Board's commissioners. The victim will have the opportunity to make a statement and question witnesses. There may be issues and questions for which legal advice would be beneficial.</p> <p>If the victim decides to obtain an attorney, the Board must be notified within twenty (20) days of the hearing date. The attorney must also send a letter to the Board’s Legal Department confirming that the attorney is representing the victim.</p> <p>The Board does not assign or provide attorneys, but will be able to refer for assistance. For further information, contact the Board's Victim Counseling Service at 201-648-2535.</p> <p>For additional information, contact the State of New Jersey Victims of Crime Compensation Board (VCCB) For claim information, 50 Park Place Newark, New Jersey 07102 1-877-658-2221 or www.njvictims.org.</p> <p>TO APPEAL</p> <p>If, after the hearing, the victim does not agree with the Board's determination, the decision can be appealed directly to the Appellate Division of the Superior Court within forty-five (45) days from the date the Board's order is received.</p> <p>The following information has been summarized from http://www.state.nj.us/victims/admincode/admincode.htm; accessed July 2006</p>

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	<p>to a maximum of \$25,000 per claim (\$10,000 for crimes before December 5, 1982) (N.J.A.C. 13:75-1.7(g))and may include the following:</p> <ul style="list-style-type: none"> • Medically related expenses (including chiropractic/physical therapy. N.J.A.C. 13:75-1.7(j)); • Loss of earnings in personal injury cases (N.J.A.C. 13:75-1.7(b)2); • Loss of support from the victim for dependents in homicide cases (N.J.A.C. 13:75-1.7(b)3); • Loss of earnings for surviving spouse whose earning capacity has been reduced in case of victim/spouse's death; • Loss of support from the offender in domestic violence cases; • Limited transportation costs; • Mental health counseling for victim and immediate family members; • Limited domestic service, child care, day care and after school care costs; • Funeral allowances of up to \$5,000 (N.J.A.C. 13:75-1.7(e)5); • Loss of prescription eyeglasses; • Crime Scene Cleanup of up to \$1,500 (N.J.A.C. 13:75-1.7(o)(6); • Relocation expenses of up to \$2,500 (N.J.A.C. 13:75-1.7(m)3); and • Emergency financial assistance of up to \$1,500, if the victim is employed and unable to work and face undue hardship as a result of crime-related injuries. (N.J.A.C. 13:75-1.25(c)). <p>For crimes committed after June 26, 1995, if the victim is at least 60 years old or determined to be disabled and meet financial guidelines, the victim may be eligible for reimbursement for up to \$200 in stolen cash resulting from the assault and robbery. (N.J.A.C. 13:75-1.25(e))</p> <p>The Board will pay legal fees only if it awards compensation. Attorneys are limited to receiving fees that are set by statute and by the Board.</p> <p>For more information: http://www.state.nj.us/victims/pages/eligreq.htm</p>	

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	<p>Victims of sexual assault receive the following healthcare services during the forensic examination:</p> <ul style="list-style-type: none"> • routine medical screening; • medications for prophylaxis of some sexually transmitted infections; and • pregnancy tests. <p>Victims requiring emergency health care services beyond the scope of the forensic examination may be charged according to hospital policy for any services provided and can seek compensation.</p> <p>The following information has been summarized from http://www.state.nj.us/victims/admincode/admincode.htm; accessed July 2006</p>	
New Mexico	<p>BACKGROUND</p> <p>Generally, a victim of certain crimes (listed below) may receive compensation from the New Mexico Crime Victims Reparation Commission (the “Commission”) if the person who committed the crime is within the criminal jurisdiction of the State.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There is no eligibility requirement relating to immigration status. • In order to be eligible for compensation benefits, a victim must report the crime to the police within 30 days of its occurrence. However, if the person was a victim of domestic violence or sexual assault, the crime must be reported within 180 days of its occurrence. In the case of a crime against a child, compensation may still be awarded if the crime was reported within 30 days of its occurrence to the Children, Youth and Families Department, a domestic violence or sexual assault service provider, a teacher, or a health care provider. In 	<p>TO APPLY</p> <p>To apply for compensation, an application must be completed and submitted to the Commission.</p> <p>An application must be filed within 2 years after the date of the injury or death. N.M. Stat. Ann. § 31-22-14.A (2006) and NMAC § 10.40.2.8 (2006).</p> <p>Applications should be submitted to:</p> <p>Crime Victims Reparation Commission 8100 Mountain Road NE, Suite 106 Albuquerque, NM 87110</p> <p>For assistance, a victim may contact their local District Attorney’s Office.</p> <p>An applicant must provide all documentation that is necessary to verify reimbursable expenses. Such documentation may include invoices, receipts, and canceled checks. See</p>

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	<p>the latter case, a police report must be filed before payment is approved. The victim must fully cooperate with law enforcement. See N.M. Stat. Ann. § 31-22-14.A (2006) and NMAC § 10.40.2.8 (2006).</p> <p>Compensation may be paid to the victim, one or more of the victim’s dependents (in the case of the victim’s death), or to any person who voluntarily pays the funeral or medical expenses of the victim. See N.M. Stat. Ann. § 31-22-7.A (2006).</p> <p>The crimes for which compensation can be received include:</p> <ul style="list-style-type: none"> • arson resulting in bodily injury; • aggravated arson; • aggravated assault or aggravated battery; • dangerous use of explosives; • negligent use of a deadly weapon; • murder; • voluntary and involuntary manslaughter; • kidnapping; • criminal sexual penetration; • criminal sexual contact of a minor; • vehicular homicide or certain bodily injury caused by a vehicle; • child abandonment or abuse; • aggravated indecent exposure; and • aggravated stalking. <p>See N.M. Stat. Ann. § 31-22-8.A (2006).</p> <p>COMPENSATION</p> <p>The maximum amount that can be awarded on any one application is \$20,000 (except as discussed below). Compensation may be paid for:</p> <ul style="list-style-type: none"> • medical, dental, or hospital expenses incurred as a result of the victim’s injury or death; • funeral (not to exceed \$3,500); • counseling; • replacement or repair cost (including eyeglasses or medically necessary 	<p>NMAC § 10.40.2.10.C (2006).</p> <p>For more information, see http://www.state.nm.us/cvrc/</p> <p>For a claim application, see http://www.state.nm.us/cvrc/brochure/broc7.html</p>

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	<p>devices);</p> <ul style="list-style-type: none"> • loss of the victim’s earning power; • any other monetary loss resulting from the victim’s injury or death that the Commission determines is reasonable and proper; and • expenses relating to rehabilitation services provided to a victim of child abuse or neglect. <p>An additional \$30,000 may be awarded for extraordinary pecuniary losses if the victim’s personal injury is catastrophic and causes permanent and total disability. The extraordinary losses that may be compensated include:</p> <ul style="list-style-type: none"> • loss of wages; • cost of home health care; • cost of making home or automobile accessible; • cost of training in the use of special application; or • job training. <p>See N.M. Stat. Ann. § 31-22-14 (2006).</p> <p>In making its decision regarding whether to award compensation, the Commission will consider the behavior of the victim. The Commission may reduce or deny an award under certain circumstances, including if the victim:</p> <ul style="list-style-type: none"> • knowingly or willing was involved in the commission of the crime; • provoked or incited the crime; • engaged in illegal drug use; • engaged in gang-related crime or activity; • knowingly or willingly rode in a vehicle operated by a person under the influence of alcohol or a controlled substance; • was intoxicated or operated a vehicle while legally intoxicated; • failed to wear a seat belt; • falsified the application; • failed to have automobile insurance; or • engaged in a physical altercation. <p>See N.M. Stat. Ann. § 31-22-10 (2006); N.M. Stat. Ann. § 31-22-20 (2006); NMAC § 10.40.2.11 (2006).</p>	

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	<p>Expenses incurred must first be submitted to other available sources, including insurance, local indigent programs, Medicare, and Medicaid for payment. For example, certain counties may provide compensation for certain types of expenses. Expenses not covered will be considered for payment by the Commission.</p> <p>The Commission can appoint an impartial licensed physician to examine a person making an application for reparation. The fees for such examination will be paid by the Commission. See N.M. Stat. Ann. § 31-22-6.A (2006).</p> <p>Based on information provided through SANE, Sexual Assault Nurse Examiners, a victim may receive five free mental health sessions through the Behavioral Health Services Division of the Department of Health. Counseling also is available through Rape Crisis Centers. NMAC § 7.7.2.38 (2006).</p>	
New York	<p>BACKGROUND</p> <p>Innocent victims of crime may receive financial assistance under certain circumstances from the Board.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There is no eligibility restrictions based on immigration status. • In addition, the crime must have been reported to a criminal justice agency within 1 week of its occurrence. <p>A person is eligible to apply if he or she:</p> <ul style="list-style-type: none"> • Sustained personal physical injury as a result of the crime; • Was unlawfully imprisoned in the first 	<p>TO APPLY</p> <p>To apply for compensation, an application must be submitted to the Board within 1 year after the occurrence or discovery of the crime or not later than 1 year from the death of the victim. The Board may waive these deadlines for claims involving sex offenses or family offenses. In those cases, a police report must be filed within a reasonable time frame considering all circumstances.</p> <p>Applications should be submitted to:</p> <p>Crime Victims Board New York State 845 Central Avenue Albany, NY 12206</p>

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	<p>degree;</p> <ul style="list-style-type: none"> • Was kidnapped in the first or second degree; • Is 60 years or older, disabled and has suffered a loss or damage to essential personal property; • Is the surviving spouse, parent, grandparent, stepparent, child, stepchild or person dependent upon the victim if the victim died as a direct result of the crime; • Paid or incurred the burial expenses of an innocent victim who died as a result of the crime; • Is a child victim of or witness to a crime (under 18 years old) or his/her parent, guardian or sibling; or • Is the victim of a stalking offense. <p>If the victim is criminally responsible for the crime upon which his or her claim is based or if the victim was an accomplice, he or she will not be eligible to receive an award.</p> <p>For more information, see NY CLS Exec § 624 (2006) http://www.cvb.state.ny.us/services.htm</p> <p>COMPENSATION</p> <p>Generally, compensation benefits include:</p> <ul style="list-style-type: none"> • Medical expenses or other related services not covered by other resources; • Lost earnings or support up to \$600 per week, up to a maximum of \$30,000; • Burial expenses (up to \$6,000) or, in the case of the death of a police officer or firefighter who dies from injuries sustained in the line of duty, the Board will pay reasonable expenses related to costs incurred upon their death; • Occupational rehabilitation expenses; • Counseling for the victim and certain family members; 	<p>If available or applicable, the following documents should be attached to the application:</p> <ul style="list-style-type: none"> • correspondence with insurance companies or benefit plan that indicates whether the loss will be covered; • medical bills; • police reports; • insurance cards; • receipts for essential personal property; and • death certificate or funeral contract. <p>For a person under the age of 18 or a person who is incompetent, the claim application may be filed on their behalf by a relative, guardian, conservator, committee, or attorney.</p> <p>For more information, see NY CLS Exec § 625 (2006).</p> <p>For a claim application, see http://www.cvb.state.ny.us/app_forms.htm</p>

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	<ul style="list-style-type: none"> • Repair or replacement cost of essential personal property up to \$500 (up to \$100 cash) or up to \$5000 for a good Samaritan’s property losses; • Transportation expenses for court appearances; • Cost of residing or using the services of a domestic violence shelter; • Crime scene related expenses up to \$2,500; and • Attorney’s fees for representation before the Board, up to \$1,000. <p>Emergency awards, not exceeding \$1,500, may be awarded in instances where an award will probably be made and where undue hardship will result to the claimant does not receive immediate payment. The amount of such awards will be deducted from the final award made to the claimant. However, if the amount of the emergency awards exceeds the final award, or if no final award is made, the claimant must repay the Board accordingly. See NY CLS Exec § 630 (2006).</p> <p>For more information, see http://www.cvb.state.ny.us/index.html</p> <p>Victims of sexual assault must be offered testing for HIV, hepatitis B, and hepatitis C when they are provided health care and the evidentiary exam is performed. Victims may receive a three-day supply of HIV prophylaxis and medication to prevent sexually transmissible infections, including chlamydia and gonorrhea. NY CLS Pub Health § 2805-p (2006).</p> <p>To receive reimbursement for expenses related to follow-up or post-exposure HIV prophylaxis, a victim can file a claim with the New York State Crime Victims Board (the “Board”).</p> <p>For more information, see:</p>	

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	<p>http://www.health.state.ny.us/professionals/protocols_and_guidelines/sexual_assault/docs/adult_protocol.pdf</p> <p>http://www.cvb.state.ny.us/FRE.htm</p>	
North Carolina	<p>BACKGROUND</p> <p>The compensation available to victims of crimes other than sexual assault is called Crime Victims Compensation. There are two types of compensation funds available to sexual assault survivors: Crime Victims Compensation and Rape Victims Assistance.</p> <p>Law enforcement agency investigating a crime committed against a victim must provide the victim with the following information:</p> <p>(1) The availability of medical services, if needed.</p> <p>(2) The availability of crime victims' compensation benefits and the address and telephone number of the agency responsible for providing these funds.</p> <p>NC Crime Victims Rights' Act § 15A-831.</p> <p>A crime victim has the right to receive restitution as ordered by the court. Article 81C of Chapter 15A of the General Statutes.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • In order to receive Crime Victims Compensation, the victim must fully cooperate with the law enforcement investigation and also report the crime within a 72-hour period. • In order to receive Rape Victims Assistance, cooperation with law enforcement is not necessary. A police report in which the victim chooses not to press charges is sufficient to receive Rape Victims Assistance funds. However, the victim's name must be 	<p>TO APPLY</p> <p>The victim or legal representative may request an application for Crime Victims Compensation from the North Carolina Dept. of Crime Control & Public Safety, Division of Victims Compensation Services.</p> <p>In order to receive Crime Victims Compensation, the victim (or a legal representative) must file an application for compensation within two (2) years of the assault. Any economic losses must have been incurred within one (1) year of the assault, except for children under age ten who may be compensated for losses up to two years after the assault. In other words, children under age ten can continue to receive services (mental health therapy, medical services etc.) relative to the crime for up to two years after the incident while adults and children over age ten may only receive services for up to one year after the incident.</p> <p>There is no application for Rape Victims Compensation and the victim does not need to have any direct interaction with the Division of Victims Compensation Services in order for this kind of reimbursement to be provided. Instead, health care providers are responsible for providing all necessary materials to the Division on the victim's behalf.</p> <p>In order to receive Rape Victims Assistance:</p> <ul style="list-style-type: none"> • The bill must be submitted within six months of the date of service provided; • The victim's name must be identified for the service provider to apply for such funds; • The medical treatment covered must have been received within 90 days after the

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	<p>identified for the service provider to apply for such funds. In addition, the assault must have been reported to law enforcement within five (5) days of the assault; and the forensic medical examination must have been performed within five (5) days of the assault.</p> <p>The following individuals are eligible to receive compensation benefits:</p> <ul style="list-style-type: none"> • The victim; • The victim’s family; or • The service providers (e.g., hospitals). <p>COMPENSATION</p> <p>Victims may receive up to a maximum of \$30,000 in compensation benefits. The following benefits may be covered under the program:</p> <ul style="list-style-type: none"> • Medical and mental health services; • Lost wages; • Funeral services; • Replacement services; • Crime scene cleanup costs; and • Travel costs necessary to obtain medical services. <p>The Assistance Program for Victims of Rape and Sex Offenses provides reimbursement for expenses incurred by victims of sexual assault including:</p> <ul style="list-style-type: none"> • Immediate and short-term medical expenses; • Ambulance services from the place of the attack to a place where medical treatment is provided; • Mental health services provided by a professional licensed or certified by the State to provide such services; and • Counseling treatment following the attack. <p>More specifically, rape victims can also receive coverage for STD screening and treatment, and pregnancy testing. (N.C.G.S.A. § 143b-480.2)</p> <p>The Assistance Program for Victims of Rape and Sex Offenses pays for all eligible expenses in addition to a forensic examination (as outlined above) in an amount not to exceed the difference</p>	<p>assault; and</p> <ul style="list-style-type: none"> • Itemized bills must be submitted by the medical staff to the Rape Victims Assistance Program (at the North Carolina Dept. of Crime Control & Public Safety, Division of Victims Compensation Services) within six (6) months after the date of service, along with the name of the law enforcement agency to which the crime was reported. <p>See the following link for more information:</p> <p>http://www.nccrimecontrol.org</p>

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	<p>between the full cost of the forensic medical examination and one thousand dollars (\$1,000). For instance, if the cost of the forensic medical examination is one thousand dollars (\$1,000) or more, then the Program will only pay for the forensic medical examination. (N.C.G.S.A. § 143b-480.2)</p> <p>If a rape victim has expenses that total more than the one thousand dollar maximum provided by the Rape Victims Assistance Program, the victim can then apply to receive Crime Victims Compensation funds. If the application is approved, the victim’s file is transferred from the Rape Victims Assistance Program to Crime Victims Compensation and the victim may receive additional benefits up to the \$30,000 maximum (\$31,000 including Rape Victims Assistance).</p>	
North Dakota	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must be reported to law enforcement within 72 hours; provided that, in the case of child abuse or sexual molestation of a child, the crime must be reported by age 21. The victim must also reasonably cooperate with law enforcement, and must not have been assisting in, or committing a criminal act that caused the victim’s injuries. <p>See N.D. Cent. Code §54-23.4-06</p> <p>Victims of certain types of crimes may receive compensation from the state if the crime occurred in North Dakota. The types of crimes compensated under the program include:</p> <ul style="list-style-type: none"> • Drunk driving; • Hit and run; and • Any violent crime that results in death or bodily injury, including domestic violence and sexual assault. 	<p>TO APPLY</p> <p>Absent good cause, an application must be filed within one year from the date of the crime or discovery of the crime.</p> <p>See N.D. Cent. Code §54-23.4-06</p> <p>The victim must complete an application and file it with the Crime Victims Compensation Program. Victims’ advocates, domestic violence/sexual assault programs, law enforcement personnel and medical providers provide victims with either applications or referrals to the Crime Victims’ Compensation Program for an application.</p> <p>TO APPEAL</p> <p>If an application is denied by the Crime Victims Compensation Program, a victim has 30 days to request an informal review by the Attorney General’s office. If that review is denied, a victim has the right to pursue either (1) a formal hearing with an administrative hearings officer or (2) an appeal to a district</p>

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	<p>N.D. Cent. Code §54-23.4-01</p> <p>Eligible claimants include the following:</p> <ul style="list-style-type: none"> • Innocent victims who have been physically or emotionally injured in a violent crime in North Dakota or where a compensation program is not available; • The victim does not need to be a resident of North Dakota; • North Dakota residents injured by an act of terrorism in a foreign country; • Dependents of a homicide victim; or • Individuals who assume responsibility for funeral and/or medical expenses of a homicide victim. <p>http://www.state.nd.us/docr/parole/victim_comp.htm</p> <p>“Victim” means a person who suffers bodily injury or death as a result of criminally injurious conduct, the good-faith effort to prevent criminally injurious conduct, or the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.</p> <p>N.D. Cent. Code §54-23.4-01.8</p> <p>COMPENSATION</p> <p>Maximum compensation benefits must not exceed \$25,000. Compensation benefits include:</p> <ul style="list-style-type: none"> • Medical and medical-related expenses (including STD and pregnancy testing, post coital treatment, HIV/AIDS); • Mental health counseling; • Loss of income (not to exceed \$300/week); • Replacement services loss (expenses incurred in obtaining services the victim would have performed if the victim had not been injured); • Dependent’s economic loss (loss of deceased’s wages); and • Funeral/burial expenses (not to exceed \$3,000). <p>http://www.state.nd.us/docr/parole/victim_comp.htm</p>	<p>court.</p> <p>For additional information:</p> <p>http://www.state.nd.us/docr/parole/victim_home.htm or</p> <p>http://www.ndcrimevictims.org/compensation.htm</p>

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	<p>omp.htm</p> <p>N.D. Cent. Code §54-23.4-06.8.</p> <p>Compensation is only provided if there is no other source of reimbursement.</p>	
Ohio	<p>BACKGROUND</p> <p>Innocent victims may receive compensation under Ohio’s Crime Victims Compensation Act to recover economic losses resulting from violent crimes.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • To be eligible for compensation, the crime must be reported to law enforcement officials within 72 hours from the time it occurs. <p>An applicant may be the direct victim of the crime, or a survivor if the crime results in a death.</p> <p>The applicant must be a resident of the U.S. or a resident of a foreign country of which the laws permit residents of Ohio to recover compensation as victims of offenses committed in that country; or</p> <p>The applicant has a permanent place of residence within Ohio at the time of the crime and falls into one of the following categories:</p> <ul style="list-style-type: none"> • had a permanent place of employment within Ohio; • was a member of the regular armed forces of the US or of the US coast guard, the Ohio organized militia, US army reserve, naval reserve, or air force reserve; • was retired and receiving social security or other retirement income; • was at least sixty years old; • was temporarily in another state for purpose of receiving medical 	<p>TO APPLY</p> <p>An application for compensation must be completed and filed with the Attorney General’s office. An application can be filed: (a) if the victim was a minor, within 2 years of a minor victim’s eighteenth birthday or within two years from the date a complaint, indictment, or information is filed against the alleged offender, whichever is later; (b) if the victim was an adult, within two years after the occurrence of the crime. Ohio Revised Code § 2743.56.</p> <p>An assistant attorney general will issue a Finding of Fact and Decision within 120 days from receiving the claim. If the applicant does not agree with the findings, the applicant may file a Request for Reconsideration within 30 days from the date of the Finding of Fact and Decision. The Attorney General has 60 days to issue a Final Decision.</p> <p>TO APPEAL</p> <p>If the applicant does not agree with the Final Decision, the applicant has 30 days to file an appeal for review before a three-commissioner panel of the Court of Claims of Ohio. Decisions by the panel may be appealed to the judge of the Court of Claims. However, the judge of the Court of Claims may only reverse the panel decision if the decision is contrary to law or not reasonable given the evidence in the claim.</p> <p>For additional information:</p> <p>http://www.ag.state.oh.us/victim/forms/cvc_co</p>

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	<p>treatment;</p> <ul style="list-style-type: none"> • was temporarily in another state for the purpose of performing employment-related duties required by an employer located within Ohio; or • was temporarily in another state for the purpose of receiving occupational, vocational, or other job-related training or instruction required by an employer located within Ohio. <p>Crimes covered under the program include homicide, assault, menacing, stalking, sexual assault, domestic violence, and intimidation of an attorney, victim, or witness. Ohio Revised Code § 2930.01(A)(2).</p> <p>However, a violent crime does not include conduct that arises out of the ownership, maintenance or use of a motor vehicle except if the person engaging in the conduct intended to cause injury or death, or if the injury or death occurred while the person engaging in the conduct was fleeing immediately after committing a felony. Ohio Revised Code § 2743.51</p> <p>Law enforcement agencies are required to provide victims of violent crimes with information, including medical care, counseling, housing, emergency, compensation, and any other services that are available to a victim. Ohio Revised Code § 2930.04.</p> <p>Each hospital in Ohio that offers emergency services is required to have on staff a physician, a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife available on call twenty-four hours each day for the examination of persons reported to any law enforcement agency to be victims of sexual offenses. Each victim shall be informed of available venereal disease, pregnancy, medical, and psychiatric services. Ohio Revised Code §2907.29.</p>	<p>mpensation_application.pdf</p>

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	<p>COMPENSATION</p> <p>The maximum amount of compensation that will be paid per victim per claim will be \$50,000. Claims may be submitted for reasonable charges incurred for reasonable needed products, services, and accommodations, including:</p> <ul style="list-style-type: none"> • Medical care; • Counseling for family members of victims for specific crimes (up to \$2,500 each, maximum \$7,500 per claim); • Rehabilitation; • Wages lost; • Replacement services; • Crime scene clean-up/repair for safety (up to \$750); and • Funeral expenses (up to \$7,500). <p>Ohio Revised Code § 2743.51(F)(1).</p> <p>Compensation will not be paid on stolen, damaged, or lost property, or for pain and suffering due to violent crimes. However, if victim receives treatment for pain and suffering, the victim may receive compensation for the cost of treatment.</p> <p>Family members of a victim who died as a result of a violent crime may be reimbursed for wages lost and travel expenses in order to attend criminal justice proceedings (not to exceed \$500 for each family member of the victim and \$2,000 for all family members).</p> <p>Ohio Revised Code § 2743.51. http://www.ag.state.oh.us/victim/compensation.asp</p>	
Oklahoma	<p>BACKGROUND</p> <p>Victims of criminal acts suffering physical or psychological injury or death within Oklahoma or who are residents of Oklahoma who become victims in states with no crime victims compensation program may apply for compensation for</p>	<p>TO APPLY</p> <p>The applicant must complete an application and file it with the Crime Victims Compensation Board within one year after the injury or death upon which the claim is based. The one year requirement may be waived by the Board if there is good cause for failure to file the claim within one year, but in no event</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>economic losses resulting from the crime.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • To be eligible to receive compensation, the crime must be reported to a law enforcement agency within 72 hours of its occurrence. <p>Persons who are eligible for compensation under the Crime Victims Compensation Program are:</p> <ul style="list-style-type: none"> • Victims; • Dependents of a victim who died because of the crime; and • Persons authorized to act on behalf of the victim or the dependent of the victim. <p>Oklahoma Statutes § 142.3.</p> <p>Crimes covered under the Crime Victims Compensation Program include misdemeanors or felonies occurring or attempted within Oklahoma or against a resident of Oklahoma within a state that does not have a comparable program that results in bodily injury or death to a victim which may be punishable by fine, imprisonment, or death, or if the crime is committed by a child, the child could be adjudicated as a delinquent.</p> <p>Crimes do not include those acts involving the negligent maintenance or use of a motor vehicle, unless:</p> <ul style="list-style-type: none"> • The offender was under the influence of an intoxicating substance; • The offender intended to injure or kill; or • The act involved willful, malicious or felonious failure to stop after being involved in a personal injury accident. <p>Oklahoma Statutes § 142.3.</p>	<p>shall the filing be permitted after two years. If the victim is mentally handicapped or under eighteen years, the Board may use the date the criminal incident was disclosed to a responsible adult when determining whether or not the claim was filed in a timely manner.</p> <p>Oklahoma Statutes § 142.10.</p> <p>A three-panel Board will hear and make determinations on all matters relating to claims for compensation of \$2,500 or more and may hear claims under \$2,500. Oklahoma Statutes § 142.5.</p> <p>Applicants will be notified as to when their claim will be considered by the Board so they can attend if they choose to. Oklahoma Statutes § 142.5.</p> <p>Once the Board renders a decision, the applicant will be notified of the decision within 2-3 weeks.</p> <p>TO APPEAL</p> <p>Appeals may be made to the Board for a formal hearing if the applicant is not satisfied with the initial decision. If the applicant is dissatisfied with the formal decision, the applicant may file a petition in District Court.</p> <p>http://www.dac.state.ok.us/victim/victimcomp.asp?A=5&B=4</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>COMPENSATION</p> <p>Economic loss resulting in injury or death to victim, which may be claimed by the victim or another claimant, may not exceed \$20,000. Assistance is available for the following types of out-of-pocket expenses, among other things:</p> <ul style="list-style-type: none"> • Medical care (doctor exams, dental work, hospital treatment, hospital stay, artificial limbs, prescriptions, and eye glasses); • Wage loss; • Replacement services; • Survivor benefits; • Crisis counseling within 3 years of the crime not to exceed \$3,000 for each family member of a homicide victim; • Individual counseling sessions for victims of a crime not to \$3,000; • Individual mental health treatment will be considered for compensation not to exceed \$10,000; • Reasonable funeral, cremation or burial expenses not to exceed \$6,000. • Homicide crime scene cleanup; and • Caregiver loss of support (not to exceed \$2,000). <p>Property losses and Pain and Suffering is not covered under the program.</p> <p>http://www.dac.state.ok.us/victim/victimcomp.asp?A=5&B=4</p> <p>Loss of support for a dependent of the deceased victim is computed based on a formula which calculates the net loss of support for dependents based upon an estimated date of retirement or an estimated date of adulthood for the dependent children.</p> <p>Oklahoma Statutes § 142.13.</p> <p>For additional information, contact the District Attorney’s Council at (800) 745-6098.</p> <p>http://www.ok.gov/dac/documents/VICTIMS%20COMP%20ACT%20JULY%201,%2</p>	

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State	Victim Compensation Laws	Process to Receive Compensation
	02005.pdf	
Oregon	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. In addition, per the Application for Crime Victim Compensation, refusal to submit social security numbers will not result in denial. • Report the crime to the appropriate law enforcement officials within 72 hours. The reporting requirement may be waived with good cause. • The victim of a sexual assault may obtain a medical assessment and complete and submit an application form to the Sexual Assault Victims Emergency Medical Response Fund regardless of whether the victim reports the sexual assault to a law enforcement agency. <p>Victims of crime may receive compensation from the state of Oregon if the crime occurred in Oregon. The types of crimes include robberies, child abuse, assaults, rapes, domestic violence, homicides and other intentional, knowing or reckless acts by a person resulting in physical and/or emotional injury and/or death of another person which would be punishable as a crime.</p> <p>In order to be eligible to receive compensation benefits under the program, a victim must:</p> <ul style="list-style-type: none"> • Cooperate fully to apprehend and prosecute the assailant. • Not have been involved in a wrongful act and/or did not provoke the assailant. <p>An “eligible victim” for the purposes of accessing the Sexual Assault Victims Emergency Medical Response Fund (SAVE</p>	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Oregon Department of Justice Crime Victims Compensation Program. The victim must:</p> <ul style="list-style-type: none"> • Be a victim of a compensable crime that occurred in Oregon. • Apply for compensation within six (6) months of the crime.* <p>*May be waived with good cause.</p> <p>Further information may be found at:</p> <p>Crime Victims’ Compensation Program Department of Justice 1162 Court St. NE Salem, Oregon 97301-4096 Telephone (503) 378-5348 TDD (503) 378-5938 FAX (503) 378-5738 http://www.doj.state.or.us/crimev/comp.shtml</p> <p>The victim applying for SAVE benefits must complete and submit a completed application form to the victim’s medical service provider. A copy of the form may be found at: http://www.doj.state.or.us/crimev/pdf/sa_fundf_inal.pdf.</p> <p>To obtain payment from the SAVE Fund, the medical services provider must submit the form to the Oregon Department of Justice within one year. A provider who submits a bill may not bill the victim or the victim’s insurance carrier for the medical assessment except to the extent that the SAVE Fund is unable to pay the bill due to lack of funds or declines to pay the bill.</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>Fund) is a person who has self-identified or been identified by another as a victim of a sexual assault that occurred in Oregon and who receives a “complete medical examination” within 84 hours of the assault or a “partial medical examination” within 168 hours (seven days) of the sexual assault.</p> <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • Reasonable mental health counseling expenses. • Reasonable medical and hospital expenses. • Eyeglasses, hearing aids, dentures, and other medically necessary devices and expenses. • Funeral expenses. • Documented loss of support to dependents of homicide victims. • Victim’s documented loss of earnings. • Grief counseling expenses for relatives of homicide victims. • Rehabilitation expenses. • Counseling expenses for children who witness domestic violence. • Mileage expenses. • In the case of child sex abuse, reasonable counseling expenses of the victim’s family. <p>Compensation is <u>not</u> provided for:</p> <ul style="list-style-type: none"> • Pain and suffering or property damage or loss. • Nervous or mental shock due to property damage or loss. <p>An individual’s benefits, such as sick leave, medical disability, social security, or restitution are considered resources that must be used before Crime Victim’s compensation dollars.</p> <p>Oregon Revised Statute Chapter 147.</p> <p>The Sexual Assault Victims Emergency Medical Response Fund (SAVE Fund)</p>	<p>Further information may be found at:</p> <p>Crime Victims’ Compensation Program Department of Justice 1162 Court St. NE Salem, Oregon 97301-4096 Telephone (503) 378-5348 TDD (503) 378-5938 FAX (503) 378-5738</p> <p>http://www.doj.state.or.us/crimev/sex_aslt_vtm_s_emrf.shtml</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>provides dollars to pay for sexual assault medical exams, forensic exams, and STD prophylaxis for any victim of a sexual assault that occurred within Oregon, regardless of ability to pay. There is no restriction based on Oregon residency or immigration status, and the Crime Victims Assistance Section does not review the immigration status of victims. In addition, the SAVE Fund application does not ask for social security numbers. Both qualified and non-qualified immigrants are eligible.</p> <p>The SAVE Fund pays for any of or all the elements of a “Complete” Medical Assessment, which includes the collection of forensic evidence and must be conducted within 84 hours of the assault; and for any of or all the elements of a “Partial” Medical Assessment which does not include the collection of forensic evidence and must be conducted within 7 days of the assault.</p> <p>Examples of services not covered by the SAVE Fund include: treatment of injuries, DNA testing, HIV testing, laboratory testing of blood for any purpose, and prescriptions filled off-site of the location of the medical examination.</p> <p>For additional information, see Oregon Administrative Rules 137-084-0001 - 137-084-0030, temporary provisions relating to medical assessments for victims of sexual assaults compiled as a note preceding Oregon Revised Statute 147.0005, and http://www.doj.state.or.us/crimev/sex_asltvtms_emrf.shtml.</p>	
Pennsylvania	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • Victims must promptly report the crime to the proper authorities, and in no case may an award be made if the report was made more than 72 hours after the occurrence of the crime 	<p>TO APPLY</p> <p>A victim shall provide a valid address and telephone number and any other required information to all agencies responsible for providing information and notice to the victim. The information shall not be disclosed to any person other than a law enforcement agency, corrections agency or prosecutor’s office without the victim’s prior consent. 18 P.S. §</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>unless: (i) the victim was under the age of 18 and the alleged offender was a parent, a person responsible for the victim’s welfare, a person residing in the same household or a paramour of the victim’s parent; or (ii) the Office of Victims’ Services finds that the delay was justified. Similarly, no award for compensation will be made unless the direct victim or claimant has fully cooperated with all law enforcement agencies and the Office of Victims’ Services unless the Office of Victims’ Services finds such non-compliance to have been justified.</p> <p>A delay in reporting a crime to the appropriate authorities may delay or prohibit a victim from receiving compensation benefits. 18 P.S. § 11.707(a).</p> <p>Compensation benefits are available to:</p> <ul style="list-style-type: none"> • Victims of crimes committed in Pennsylvania (without regard to residency); • Residents of Pennsylvania who are victims of acts that would be a crime under Pennsylvania law if they occurred in Pennsylvania or constitute acts of international terrorism. <p>A “direct victim” is an individual that suffers “physical or mental injury, death or the loss of earnings.”</p> <p>The definition of a “victim” eligible for compensation under the Act includes, in addition to a direct victim:</p> <ul style="list-style-type: none"> • A parent or guardian of a child that is a direct victim (unless the parent or guardian is the alleged offender); • A minor child who is a material witness to certain crimes, including rape, committed or attempted against a family member; and • A family member (other than an alleged offender) of a homicide victim. <p>18 P.S. § 11.103.</p>	<p>11.211.</p> <p>A claim for compensation must be filed: (i) within two years of the discovery of the occurrence of the crime; (ii) within two years of the death of the direct victim as a result of the crime; or (iii) within two years of the discovery and identification of the body of a murder victim. The two-year limitation period may be extended for victims under the age of 18 until they reach 21 years of age. 18 P.S. § 11.702(b).</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>COMPENSATION</p> <p>Compensation is limited to out-of-pocket loss and loss of earnings, not to exceed \$35,000 in total. 18 P.S. § 11.707(b).</p> <p>Out-of-pocket losses include:</p> <ul style="list-style-type: none"> • Unreimbursed expenses for medical care and non-medical remedial care and treatment (including physical therapy, medications, ambulance, home health care, replacement services, child care medical equipment/supplies, or transportation costs to medical and counseling appointments or pharmacy visits) PA Code 411.103; • Expenses for counseling, prostheses, wheelchairs and other enumerated devices required as a result of the crime; • Expenses for temporary or permanent relocation; • Expenses for physical examinations and materials used to obtain evidence; • Other reasonable expenses deemed necessary as a direct result of the crime. 18 P.S. § 11.103. <p>In addition, the compensation fund will cover the costs for STD and pregnancy testing directly relating to the crime.</p> <p>http://www.pccd.state.pa.us/pccd/cwp/view.asp?A=1393&Q=572575</p> <p>Awards made pursuant to the Act will not affect the claimant's or direct victim's eligibility under public assistance or any other Federal or state social benefit or assistance program. 18 P.S. § 11.707(c).</p>	

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State	Victim Compensation Laws	Process to Receive Compensation
Rhode Island	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • The law does not specifically exclude immigrants from receiving compensation benefits. However, the application for compensation requests that the applicant provide a social security number. An official from Rhode Island’s Victim Compensation office stated that an applicant’s inability to provide a social security number will not, in and of itself, limit an immigrant’s ability to receive benefits. • To be eligible to receive compensation, you must report the crime to law enforcement authorities within 10 days from the occurrence of the crime. <p>In any case in which a person is injured or killed by any act of a person or persons, the victim or a legal representative may apply to the state’s Victim Compensation Office. The Office may award compensation if the criminal act occurred:</p> <ul style="list-style-type: none"> ▪ Within the physical confines of the state of Rhode Island; ▪ Within the maritime jurisdiction of the state of Rhode Island; ▪ Outside the state of Rhode Island to any victim who has his or her residence in the state of Rhode Island and had the residence in the state at the time that the offense occurred, and is not entitled to compensation of any kind from the state in which the offense occurred; or ▪ Outside the state of Rhode Island to any victim who had his or her residence in the state of Rhode Island at the time the offense occurred who is injured or killed by an act of terrorism occurring either outside of the United States or within. <p>R.I. Gen. Laws §12-25-19.</p> <p>COMPENSATION</p> <p>No compensation shall be awarded in a</p>	<p>TO APPLY</p> <p>Section 12-25-22 (2006) of the General Laws of Rhode Island provides that actions for compensation under this chapter shall be commenced within three (3) years after the date of the personal injury or death, and no compensation shall be awarded for an injury or death resulting from a crime which was not reported to the appropriate law enforcement authority within ten (10) days of its occurrence; provided, that the office shall have the authority to allow a claim which was not reported pursuant to this section when the victim was below the age of eighteen (18) years of age or of unsound mind, or for good cause shown.</p> <p>In determining the amount of the judgment or order approving a settlement, the Office shall take into consideration the rates and amounts payable for injuries and death under other statutes of this state and of the United States, and the amount of revenue in the violent crimes indemnity account and the number and nature of claims pending against it. The Office shall make every effort to ensure that compensation awards are paid within six (6) months of the date of application. R.I. Gen. Laws § 12-25-21 (2006)</p> <p>For more information see:</p> <p>http://www.treasury.ri.gov/crimevictim/</p> <p>http://www.treasury.ri.gov/documents/CVCP_Regs_2009.pdf (2009)</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>total amount in excess of twenty-five thousand dollars (\$ 25,000) plus any attorney’s fees awarded upon appeal to the treasurer or to the superior court.</p> <p>R.I. Gen. Laws §12-25-22.</p> <p>Compensation benefits include:</p> <ul style="list-style-type: none"> • Expenses actually and reasonably incurred as a result of the personal injury or death of the victim; • Pecuniary loss to the dependents of the deceased victim; • Any other pecuniary loss resulting from the personal injury or death of the victim, the amount of which the Office finds upon the evidence to be reasonable and necessary; • Supplemental award for compensation for additional medical expenses, including psychiatric care and mental health counseling, provided that the victim provides proper documentation that the additional medical expenses have been actually and reasonably incurred as a direct result of the personal injury; and • Expenses related to psychiatric care and mental health counseling for a parent, spouse, minor sibling or minor child of a victim who dies as a direct result of a violent crime, provided that proper documentation is provided. <p>R.I. Gen. Laws §12-25-21.</p> <p>The Office may award emergency compensation under this chapter for the burial expenses of a victim who dies as a direct result of a violent crime, not to exceed five thousand dollars (\$5,000). The award for emergency compensation shall be deducted from the final award. R.I. Gen. Laws § 12-25-21.1.</p> <p>The treasurer may award attorney' fees, not to exceed fifteen percent (15%) of the total amount awarded to the plaintiff, or fifteen hundred dollars (\$1,500). R.I. Gen. Laws § 12-25-25.</p>	

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>For more information see: http://www.treasury.ri.gov/crimevictim/</p>	
<p>South Carolina</p>	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no explicit eligibility restrictions based on immigration status. However, a state agency representative indicated that an application may not be processed if the office becomes aware of that the applicant is undocumented. • The crime must promptly be reported to the proper authority and recorded in police records (a crime reported more than 48 hours after its occurrence is not 'promptly reported', absent a showing of special circumstances or causes which justify the delay). <p>A victim, surviving spouse, or a parent or legally dependent child of a victim is entitled to file for benefits from the state's victim compensation fund if either:</p> <ul style="list-style-type: none"> • the offense was committed in South Carolina; or • the victim was a resident of South Carolina when the crime was committed in either another state or outside the United States if the crime is terrorism; or • the victim was a resident of South Carolina when the offense was committed in another state. South Carolina Code § 16-3-1210. <p>No award may be made unless:</p> <ol style="list-style-type: none"> (1) a crime was committed; (2) the crime directly resulted in physical or psychic trauma to the victim; (3) the crime was promptly reported to the proper authority and recorded in police records; and (3) the claimant or other award recipient has fully cooperated with 	<p>TO APPLY</p> <p>South Carolina Code § 16-3-1230 provides that a:</p> <ol style="list-style-type: none"> (1) A claim may be filed by a person eligible to receive an award, or, if the person is an incompetent or a minor, by his parent or legal guardian or other individual authorized to administer his affairs; (2) A claim must be filed by the claimant not later than one hundred eighty (180) days after the latest of the following four events: (a) the occurrence of the crime upon which the claim is based; (b) the death of the victim; (c) the discovery by the law enforcement agency that the occurrence was the result of crime; or (d) the manifestation of a mental or physical injury is diagnosed as a result of a crime committed against a minor. Upon good cause shown, the time for filing may be extended for a period not to exceed four (4) years after the occurrence or death. "Good cause" for the above purposes includes reliance upon advice of an official victim assistance specialist who either misinformed or neglected to inform a victim of rights and benefits of the Victim's Compensation Fund but does not mean simply ignorance of the law; and (3) Claims must be filed in the office of the Deputy Director by mail or in person. The Deputy Director shall accept for filing all claims submitted by persons eligible under this section and meeting the requirements as to the form of the claim contained in the regulations of the Board. <p>For more information see:</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>all law enforcement agencies and with the South Carolina Victim's Compensation Fund. § 16-3-1170</p> <p>COMPENSATION</p> <p>The aggregate of award to and on behalf of victims may not exceed \$15,000 unless extraordinary circumstances exist and in that case, the award may not exceed \$25,000. § 16-3-1180</p> <p>An award may be made for: (§ 16-3-1180)</p> <ul style="list-style-type: none"> • Medical services, including mental health counseling, required and rendered as a direct result of the injury on which the claim is based, as long as these services are rendered by a licensed professional. Payment for mental health counseling is limited to the number of sessions during a 180 day period beginning on the date of the first counseling session or 20 sessions, whichever is greater; § 16-3-1180 • Reasonable and customary charges for other services required and rendered as a direct result of the injury upon which the claim is based, as long as the service is rendered by a professional or paraprofessional who holds a license or other appropriate documentation of training; § 16-3-1180 • Loss of earning or support, provided that the claimant is deprived of that income for at least two consecutive weeks, the loss is not reimbursable, the amount may not exceed the average weekly wage in South Carolina for the preceding fiscal year (§ 42-1-50) (these conditions may be waived in severe hardship cases); • Employment-oriented retraining or rehabilitative services incurred as a direct result of the injury; and • Burial expenses not to exceed \$4,000. <p>The Office may award emergency compensation pending a final decision on the case, provided that the amount of each</p>	<p>http://www.oepp.sc.gov/sova/compensation.html</p> <p>South Carolina Code § 16-3-1520 provides that a victim is entitled to copy of initial incident report; assistance in applying for victim's compensation benefits; information on progress of case and that a law enforcement agency must provide a victim, free of charge, a copy of the initial incident report of his case.</p> <p>For more information see:</p> <p>http://www.oepp.sc.gov/sova/compensation.html</p>

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	<p>emergency award does not exceed five hundred dollars and a total amount of one thousand dollars. The award for emergency compensation must be deducted from the final award. § 16-3-1150</p> <p>For more information see: http://www.oepp.sc.gov/sova/compensation.html</p>	
South Dakota	<p>BACKGROUND</p> <p>The South Dakota Victims’ Compensation Program is implemented by S.D. Codified Law Chapter 23A-28B, including the creation of a Crime Victims’ Compensation Commission. S.D. Codified Laws § 23A-28B-3. “The department or commission, as applicable may order payment of victims’ compensation in accordance with the provisions of this chapter for reasonable economic losses incurred as a direct result of personal injury to or death of a victim, including any economic loss as defined in § 23A-28B-1. S.D. Codified Laws § 23A-28B-19. Sec. 23A-28B-1 defines economic loss as “medical and hospital expenses, loss of earnings, loss of future earnings, funeral and burial expenses,” among others.</p> <p>http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=23a-28b&Type=Statute</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. Note that the Crime Victims’ Compensation Application has a space for the victim’s Social Security Number. A state agency representative confirmed that applicants will not be denied access to funding if they cannot provide a social security number. • Compensation may not be awarded if the crime is not reported to authorities within 5 days, unless that was not reasonable, in which case, it must have been reported within 5 days of the time 	<p>TO APPLY</p> <p>Persons seeking compensation must complete the Crime Victims’ Compensation Application Form, which are available from all local law enforcement agencies, the Department of Social Services, or the Office of the Attorney General. http://dss.sd.gov/victimservices/cvc/eligibility.asp</p> <p>S.D. Codified Laws 23A-28B-11.</p> <p>Compensation may not we awarded if:</p> <ul style="list-style-type: none"> • the victim fails or refuses to cooperate fully with any appropriate law enforcement officer or agency or with the department in the administration of this chapter; or • the claim is not filed within 1 year of the injury (can be waived for good cause). <p>S.D. Codified Laws § 23A-28B-25. See also S.D. Administrative Rules 67:55:01:07 and 67:55:01:08</p> <p>The Compensation Program is funded by VOCA, in addition to receiving \$2.50 on every criminal conviction, including traffic violations.</p> <p>S.D. Codified Laws 23A-28B-42. http://www.nacvcb.org/progdir/southdakota.html</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>it became reasonable to report it.</p> <p>Eligible Applicants to the Compensation Program include:</p> <ul style="list-style-type: none"> • innocent victims of a violent crime who suffered harm; • family member of a deceased victim; • person authorized to act on behalf of a victim or dependent; and • parents or other family member under limited circumstances. <p>S.D. Codified Laws 23A-28B-18.</p> <p>Acts eligible for compensation include injuries resulting from:</p> <ul style="list-style-type: none"> • a violent crime; • trying to stop a person from committing a crime; • trying to help a law enforcement officer; • trying to help a victim of a crime; or • witnessing a violent crime. <p>http://dss.sd.gov/victimservices/cvc/eligibility.asp</p> <p>Crimes Covered under the Compensation Program include any conduct that results in personal injury or death and is punishable as a felony or misdemeanor. S.D. Codified Laws § 23A-28B-3.</p> <p>COMPENSATION</p> <p>Not to exceed \$15,000 and including: (S.D. Codified Laws § 23A-28B-21).</p> <ul style="list-style-type: none"> • Medical Expenses <ul style="list-style-type: none"> ○ physician and other health services ○ hospital services ○ home health services (limited to \$100 a month for up to 12 months) ○ adult dental services ○ chiropractic expenses (limited to 10 treatment sessions, not to exceed a total of \$500) ○ payment for medical expenses 	

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>is limited to those medical services provided during the 12-month period immediately following the date the crime occurred; the Commission can extend it if good cause is shown.</p> <ul style="list-style-type: none"> • Mental Health Counseling (24 sessions for primary victim, 18 sessions for family member of homicides, 6 sessions for parents of juvenile victims and spouses of rape victims) • Lost wages/support (up to 40 hours for parents caring for children) • Funerals (\$6,500) • Replacement services (Housekeeping and child care) • Crime-scene cleanup/evidence (up to \$1,000 for homicide-scene cleanup and \$500 for clothing/personal items used for evidence) • Travel (mileage reimbursement of up to \$720 to attend treatment) • Rehabilitation • Emergency (\$1,000) (§ 23A-28B-27). <p>http://www.nacvcb.org/progdir/southdakota.html</p> <p>S.D. Codified Laws 23A-28B-21.</p> <p>No attorney is needed and compensation cannot be paid for attorney’s fees.</p> <p>http://dss.sd.gov/victimservices/cvc/eligibility.asp</p>	
Tennessee	<p>BACKGROUND</p> <p>An innocent victim of a violent crime committed in the State of Tennessee, may be eligible for compensation. The purpose of the program is to assist victims of crimes or, in the case of the victim's death, their dependent family members in paying out-of-pocket expenses incurred as the direct result of personal injuries sustained by a criminal offense.</p> <p>Tennessee Code 29-13-102 - 411. http://treasury.tn.gov/injury/</p> <p>ELIGIBILITY</p>	<p>TO APPLY</p> <p>Before seeking compensation from the fund, the victim or their surviving dependents must seek any amounts that they are legally entitled to receive as a result of the injuries from any other public or private source including, but not limited to, insurance, Medicaid, Medicare, workers' compensation, etc. Should the amounts received from such other sources not cover all eligible losses and expenses, then the victim may apply for criminal injuries compensation. In order to receive compensation, the following conditions must be met:</p>

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	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. A state official from the Victim Compensation program confirmed that an immigrant’s inability to provide a social security number on the application should not affect his or her eligibility to receive compensation benefits. • In order to receive compensation benefits, the victim (or the victim's survivors) must report the crime to the proper authorities within 48 hours after the crime was committed, unless the victim was a minor, or unless good cause can be shown for reporting the crime late. In addition, the individual could not have contributed to his or her own victimization in any way and the victim must fully cooperate with law enforcement officials in their investigation and prosecution. <p>A person may be eligible for benefits under the following circumstances:</p> <ul style="list-style-type: none"> • A person who suffered bodily injury as an innocent victim of a criminal act occurring in a state or federal jurisdiction within the borders of Tennessee. • A resident of Tennessee who was an innocent victim of terrorism or mass violence that occurred outside the territorial boundaries of the United States and the claimant is not eligible for compensation under Title VIII of the Federal Omnibus Diplomatic Security and Antiterrorism Act of 1986. • A resident of Tennessee who was an innocent victim of a crime that occurred in another state which does not have a compensation program. • Survivors of a homicide victim for medical and funeral expenses, and, in some cases, dependency, mental health counseling and crime scene cleanup. If there are no surviving dependents, the victim's estate may receive compensation for unreimbursed funeral and burial expenses. • An innocent person who sustained bodily injury or death while attempting 	<ul style="list-style-type: none"> • A written claim for benefits must be filed within 1 year after the date of the criminal act, unless good cause can be established for not doing so. <p>Tennessee Code 29-13-108.</p> <p><i>Victim Compensation</i> 615-741-2734 Fax: 615-532-4979 Web site: http://treasury.tn.gov/injury/</p> <p><i>Victim Assistance</i> 615-741-8277 Fax: 615-532-2989 Web site: http://tennessee.gov/finance/rds/ocjp/</p> <p>Sexual Assault Crisis Center – SACC is a private nonprofit agency funded by United Way for victims of sexual assault. There are eight centers in Tennessee providing services including crisis intervention, forensic nursing, criminal justice support and advocacy, counseling and support groups.</p> <p>http://www.thesacc.org/pdfs/MainSACCInfo.pdf</p>

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	<p>to prevent a criminal act or in an attempt to apprehend a person or persons suspected of engaging in a criminal act.</p> <ul style="list-style-type: none"> • A person who suffered bodily injury or death as a result of a motor vehicle or watercraft accident caused by a drunk driver or by a driver who intentionally inflicted injury. In some circumstances, a passenger in the vehicle or watercraft driven by the drunk driver may not be eligible for compensation. • A person who sustained serious bodily injury or death directly as a result of a driver's failure to stop at the scene of an accident in violation of § 55-10-101 and the evidence shows that the operator of the motor vehicle knew or reasonably should have known that death or serious bodily injury had occurred. <p>Tennessee Code 29-13-105.</p> <p>COMPENSATION</p> <p>The overall maximum benefit currently available under the Criminal Injury Compensation Program is \$30,000. Compensation is provided for:</p> <ul style="list-style-type: none"> • Medical services, including hospital services in an amount not to exceed 75% of the billed charges; • Funeral and burial expenses (not to exceed \$6,000); • Mental health counseling or treatment (not to exceed \$3,500); • Permanent partial or total disability; • Expenses incurred as a result of traveling to and from the trial of the defendants, appellate, post-conviction, or habeas corpus proceedings resulting from the trial (not to exceed \$1,250); • Crime scene cleanup (not to exceed \$3,000); • Death benefits to the dependent of the deceased victim; • Relocation expenses; • Replacement costs (for example, for eyeglasses or hearing aids damaged during the crime); • Attorney's fees may be awarded (shall not exceed the lesser of (1) 15% of the first \$2,500 of compensation awarded 	

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	<p>plus 10% of any compensation awarded over \$2,500 or (2) \$375 for claims resulting in death of victim or \$500 for all other claims. Tennessee Code 29-13-112; and</p> <ul style="list-style-type: none"> • Emergency award (not to exceed \$500). Tennessee Code 29-13-114. <p>Unless otherwise noted above, Tennessee Code 29-13-106 and Tennessee Code 29-13-107.</p> <p>Benefits are reduced by the amount of any other public or private insurance, workers' compensation benefits, or medical, health or disability benefits which may be available to the victim. Payment by the program is secondary to such other insurance or benefits, regardless of any contract or coverage provision to the contrary, as this is a fund of last resort. Tennessee Code 29-13-106(f)(1)</p> <p>Compensation will not be awarded for:</p> <ul style="list-style-type: none"> • Damage to Real or Personal Property; and • Pain and Suffering EXCEPT for victims of sexual assault (not to exceed \$3,000). Tennessee Code 29-13-107. <p>Tennessee Code 29-13-106.</p> <p><i>Note:</i> Commentary found in a 2005 Crime Victims' Needs Analysis produced by the Tennessee Office of Criminal Justice programs stated that "illegal and undocumented immigrant children . . . are ineligible for victim compensation. This information could not be confirmed by agency officials or through a review of the Tennessee Code. http://tennessee.gov/finance/rds/ocjp/documents/0609STOPIMPPLAN.pdf</p>	
Texas	<p>BACKGROUND</p> <p>Victims of certain types of crimes may receive compensation from the state if: (1) the crime occurred in Texas and the victim is a Texas resident or a United States resident, (2) the crime occurred outside of Texas (in another state or county) that does not provide compensation and the victim is a Texas resident, or (3) the crime involves a Texas resident who becomes a victim of</p>	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Office of the Attorney General, Crime Victims' Compensation Program, which is responsible for the administration of the Compensation to Victims of Crime Fund which receives funds from state offender assessments, state donations, and VOCA funds. Tex. Const. Art. 1, Sec. 31; Tex. Code</p>

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	<p>international terrorism committed outside of the United States. <i>See</i> Tex. Code Crim. Proc. Art. 56.32(a)(11).</p> <p>The types of crimes include, sex offenses, kidnapping, aggravated robbery, assaultive offenses, arson, homicide, drunk driving and other violent crimes in which the victim suffers physical or emotional harm or death. <i>See</i> Tex. Code Crim. Proc. Art. 56.32(a)(4).</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. Tex. Code Crim. Proc. Art. 56.32(a)(11)(A)(ii); 1 Tex. Admin. Code § 61.101(a)(10). • A police report of the crime must generally be made within a reasonable period of time, but not so late as to interfere with or hamper the investigation and prosecution of the crime. Tex. Code Crim. Proc. Art. 56.46. <p>Persons eligible for compensation include:</p> <ul style="list-style-type: none"> • Victims of crime who suffer substantial threat of physical and/or emotional harm or death; • Dependents of victims, authorized individuals acting on behalf of a victim, or persons who voluntarily pay certain expenses on behalf of a victim; • Immediate family or household members related by blood or marriage who require counseling; or • A person who goes to the aid of a victim. <p>Tex. Code Crim. Proc. Art. 56.32(a)(2).</p> <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • Un-reimbursable medical and medical-related expenses, including hospital, nursing, and physical therapy; 	<p>Crim. Proc. Art. 56.31.</p> <p>The victim must reasonably cooperate with law enforcement. The application must be filed within 3 years from the date of the crime. The time period for filing may be extended for good cause, including the age of the victim or the physical or mental incapacity of the victim. Tex. Code Crim. Proc. Art. 56.37.</p> <p>TO APPEAL</p> <p>The victim or claimant must notify the Crime Victims' Compensation Program of the reason for their dissatisfaction of the decision not later than the 40th day after the final decision. The claimant must provide additional information in this reconsideration process. If the outcome of the reconsideration process is not satisfactory, the victim or claimant may request a final ruling hearing from the Crime Victims' Compensation Program. If the victim or claimant does not agree with the outcome of the final ruling, an appeal may be made to district court. Tex. Code Crim. Proc. Art. 56.48.</p> <p>For more information:</p> <p>e-mail: crimevictims@oag.state.tx.us</p> <p>Or write to:</p> <p>Crime Victim Services Division - CVC Program Office of the Attorney General - MC011 PO Box 12198 Austin, TX 78711-2198</p> <p>Or Call: 1 (800) 983-9933 or (512) 936-1200 (in Austin) Or Fax: 1 (512) 320-8270 http://www.oag.state.tx.us/victims/about_comp</p>

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	<ul style="list-style-type: none"> • Mental health counseling costs; • Rehabilitation; • Lost earnings or support; • Funeral and burial costs, including related travel expenses for immediate family of a deceased victim; • Bereavement leave costs for immediate family of a deceased victim (limited to 10 work days); • Expense of replacement services for childcare or housekeeping; • Travel costs for non-local travel to assist with the investigation, prosecution or judicial process, including attendance at a criminal's execution; • Relocation costs for victims of sexual assault or domestic violence occurring in the victims place of residence; • Replacement costs for the victim's clothing, bedding and other property seized as evidence or rendered unusable from the criminal investigation; • Crime scene clean-up and a portion of attorney's fees. <p>Tex. Code Crim. Proc. Art. 56.32(a)(9).</p> <p>Medical expenses to be reimbursed include hospitals, doctors, ambulance services, prescriptions, dental work, nursing homes, and medical appliances, such as wheelchairs and prosthetics. <i>See</i> Tex. Code Crim. Proc. Art. 56.32; 1 Tex. Admin. Code §§ 61.101, 61.407.</p> <p>Except in the case of extraordinary pecuniary losses, compensation may not exceed \$50,000 in the aggregate. Tex. Code Crim. Proc. Art. 56.42.</p> <p>Attorney's fees shall not exceed 25 percent of the amount the attorney assisted the claimant in obtaining. Tex. Code Crim. Proc. Art. 56.43.</p> <p>Emergency awards of up to \$1500 are available if it appears likely that a final award will be made and the claimant or</p>	<p>.shtml</p>

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	<p>victim would otherwise suffer undue hardship. Emergency awards can be issued for lost support and lost earnings, emergency medical and funeral charges. Tex. Code Crim. Proc. Art. 56.50.</p>	
Utah	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. However, a Social Security number is requested on the application. • The criminally injurious conduct shall be reported to a law enforcement officer, in his capacity as a law enforcement officer, or other federal or state investigative agencies. <p>Utah law provides reparations to crime victims. In order to be eligible for a reparations award:</p> <ul style="list-style-type: none"> • The claimant must be a victim of criminally injurious conduct; a dependent of a deceased victim of criminally injurious conduct; or a representative acting on behalf of one of the above; • The victim shall be either a resident of Utah or the criminally injurious conduct shall have occurred in Utah; • If a Utah resident suffers injury or death as a result of criminally injurious conduct inflicted in a state, territory, or country that does not provide a reciprocal crime victims' compensation program, the Utah resident has the same rights under this chapter as if the injurious conduct occurred in this state; § 63-25a-411(5) • Application shall be made in writing in a form that conforms substantially to that prescribed by the Utah Crime Victim Reparations (“CVR”) Board; • The criminally injurious conduct shall be reported to a law enforcement officer or other federal or state investigative agencies. • The claimant or victim shall cooperate with the appropriate law enforcement 	<p>TO APPLY</p> <p>The crime victim must submit an Application For Crime Victim Reparations to</p> <p>State of Utah Office of Crime Victim Reparations 350 East 500 South Suite 200 Salt Lake City Utah 84111 Tel (801) 238-2360 Toll Free 1-800-621-7444 Fax (801) 533-4127</p> <p>Applications are available at http://www.crimevictim.utah.gov/Comp/CompApp.pdf</p> <p>Application requests for one time funding will be submitted to the CVR Board for their review and decision. Requests for ongoing funding may be approved by the CVR Board and then forwarded to the CVR grants program for administration and monitoring purposes.</p> <p>Awards may be denied or limited as determined appropriate by the Board. Decisions by the CVR Board are final and may not be appealed. The CVR office shall review expenditures by award recipients to insure compliance with the provisions of the request. Recipients shall be required to provide the CVR office with all documentation and receipts requested.</p> <p>Utah Admin. Code Rule R270-1-26</p>

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	<p>agencies in their efforts to apprehend or convict the perpetrator of the alleged offense (provided that an award to a victim may be made whether any person is arrested, prosecuted, or convicted of the criminally injurious conduct giving rise to the claim; and</p> <ul style="list-style-type: none"> • The criminally injurious conduct shall have occurred after December 31, 1986. <p>Utah Code § 63-25a-409.</p> <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • Funeral and burial (up to \$7,000); • Mental health counseling (up to \$3,500); • Attorney’s fees (up to 15% of the reward); § 63-25a-424 • Emergency awards; § 63-25a-422 • Loss of earnings (up to 12 weeks); • Moving (up to \$2,000) and transportation (up to \$500); • Essential personal property, including all personal articles necessary and essential for the health and safety of the victim, such as replacement of eyeglasses, hearing aids, burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. (up to \$1,500); and • Medical awards cover prescription or OTC medications used during the course of treatment. • Reasonable and necessary charges incurred for products, services, and accommodations; • inpatient and outpatient medical treatment and physical therapy; • mental health counseling which (i) is set forth in a mental health treatment plan which has been approved prior to any payment by a reparations officer; and (ii) qualifies within any further rules promulgated by the board; • actual loss of past earnings and anticipated loss of future earnings because of a death or disability 	

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	<p>resulting from the personal injury at a rate not to exceed 66-2/3% of the person's weekly gross salary or wages or the maximum amount allowed under the state workers' compensation statute;</p> <ul style="list-style-type: none"> • care of minor children enabling a victim or spouse of a victim, but not both of them, to continue gainful employment at a rate per child per week as determined under rules established by the board; • funeral and burial expenses for death caused by the criminally injurious conduct, subject to rules promulgated by the board; • loss of support to the dependent or dependents not otherwise compensated for a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate not to exceed 66-2/3% of the person's weekly salary or wages or the maximum amount allowed under the state workers' compensation statute, whichever is less; • personal property necessary and essential to the health or safety of the victim as defined by rules promulgated by the board <p>An award of reparations shall not exceed \$25,000 in the aggregate unless the victim is entitled to proceeds in excess of that amount as provided in Subsection 77-38a-403(2). However, reparations for actual medical expenses incurred as a result of homicide, attempted homicide, aggravated assault, or DUI offenses, may be awarded up to \$50,000 in the aggregate. Utah Code § 63-25a-411.</p> <p>If the reparations officer determines that the claimant will suffer financial hardship unless an emergency award is made an amount may be paid to the claimant. The board may limit emergency awards to any amount it considers necessary. Utah Code § 63-25a-422.</p> <p>There is a 3-year limitation for payments of</p>	

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	<p>benefits.</p> <p>Utah Admin. Code Rule R270-1-1 to 1-19.</p>	
<p>Vermont</p>	<p>BACKGROUND</p> <p>Vermont law provides compensation to crime victims and their dependents. The Vermont Center for Crime Victim Services was created and is responsible for strengthening and coordinating programs serving crime victims, promoting the rights and needs of crime victims statewide, administering the victims compensation program, the victims assistance program, and the restitution unit, assisting in the development and administration of other programs and services for crime victims and witnesses, administering the federal VOCA benefits, and serving as a clearinghouse for information regarding victims of crimes. Vermont Statutes § 13.167.5361.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. However, Vermont’s application requires social security numbers and payments can only be made directly to those victims with social security numbers. In practice, payments can be made to service providers on the victim’s behalf. Note: An official from the Crime Victims Compensation Fund stated that Vermont will soon be amending its application process to eliminate the request for social security numbers. • The crime must be reported to a law enforcement official. A law enforcement official must have probable cause that a crime has occurred. <p>http://www.leg.state.vt.us/statutes/statutes2.htm http://www.ccvs.state.vt.us</p> <p>The victim or victim’s dependent is eligible for compensation if:</p> <ul style="list-style-type: none"> • The victim was injured or killed in a crime committed in Vermont or if the victim was a Vermont resident and the 	<p>TO APPLY</p> <p>Complete the application for Vermont Crime Victims Compensation and send to:</p> <p style="text-align: center;">Victims Compensation Program 58 S. Main St., Suite 1 Waterbury, VT 05676-1599</p> <p>http://www.ccvs.state.vt.us</p> <p>Vermont Statutes §13.167.5353.</p> <p>The board will review applications and consider all relevant information. Vermont Statutes §13.167.5354.</p> <p>TO APPEAL</p> <p>An applicant may file a petition with the board for review of the board’s preliminary decision within 30 days of the date on which the notice of its decision is mailed. The board will either affirm or reverse the preliminary decision, explaining its reasons in writing. Vermont Statutes §13.167.5355.</p> <p>Crime victims or their dependents should contact:</p> <p>Vermont Center for Crime Victim Services Victims Compensation Program 58 South Main St., Suite 1 Waterbury, VT 05676-1599 (802) 241-1250 FAX: (802) 241-1253</p>

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	<p>state in which the crime occurred does not have an eligible crime victim's compensation program and the applicant would have been eligible for compensation if the crime had occurred in Vermont; or the victim is a Vermont resident who is injured or killed by an act of terrorism outside the United States, to the extent that compensation is not otherwise available under federal law.</p> <ul style="list-style-type: none"> • A law enforcement official has filed a report concluding that a crime was committed resulting in injury or death of the victim. <p>Vermont Statutes §13.167.5353.</p> <p>A victim is:</p> <ul style="list-style-type: none"> • A person who sustains injury or death as a direct result of the crime; • Someone who intervenes on the crime and is injured or killed in an attempt to assist another victim or the police; • Surviving immediate family of a homicide victim, including a spouse, domestic partner, parent, sibling, child, grandparent, or survivor who suffer severe emotional harm as the result of the victim's death; or • Resident of Vermont who is injured or killed by an act of terrorism committed outside the U.S. <p>Vermont Statutes §13.167.5351(7).</p> <p>COMPENSATION</p> <p>Maximum compensation may not exceed \$10,000. Vermont Statutes §13.167.5356.</p> <p>Crime victims are eligible to receive the amount of medical or medically-related expenses, loss of wages, and any other expenses which the Vermont Crime Compensation Board feels became necessary as a direct result of the crime, including:</p> <ul style="list-style-type: none"> • Medical expenses (including costs of individual or family psychological, psychiatric or mental health counseling; or costs of replacing or repairing eyeglasses, hearing aids, 	<p>1-800-750-1213 (in-state only);</p> <p>1-800-845-4874 (TTY, in-state only)</p>

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	<p>dentures, or prosthetic devices);</p> <ul style="list-style-type: none"> • Reimbursement of health care facilities and health care providers will be at 70 percent of the billed charges for compensation claims for uninsured crime victims who do not qualify for the hospital's patient assistance program, Medicaid, or Medicare. These facilities are not allowed to balance bill. • Mental health counseling: up to 20 sessions with treatment plan, may request extensions at 20-session increments for crime-related symptoms still needing treatment; limit of \$70 per individual session; \$35 per group session; • Lost wages/support: \$2,000 per month maximum, for not more than 3 months; also may be paid for time lost to attend funeral and criminal proceedings; • Funerals: (not to exceed \$7,000); • Moving expenses; • Replacement services; • Crime-scene cleanup (not to exceed \$1,500); • Travel: 30 cents per mile to obtain medical and counseling assistance; up to \$1,500 per person (victims and survivors) for travel expenses, food and lodging to attend court hearings, trial and funeral; and • Rehabilitation: physical therapy, chiropractic, self-defense classes. <p>National Association of Crime Victim Compensation Boards: http://www.nacvcb.org/progdir/vermont.html.</p> <p>“Unreimbursed loss” means loss (A) which is not covered by medical, hospitalization or disability insurance or workers' compensation; and (B) which has not been ordered by the court to be restored to the victim or dependent by the person who caused the loss; or (C) which has been ordered by the court to be restored to the victim or dependent but has not been paid by the person who caused the loss. Vermont Statutes §5351(6).</p>	

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Virginia	<p>BACKGROUND</p> <p>The Virginia Workers' Compensation Commission administers the Virginia Criminal Injuries Compensation Fund.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. Although the application for compensation requests a social security number, an official from the CVC Fund program confirmed that an immigrant's inability to provide a social security number will not affect the immigrant's eligibility to receive benefits. • The crime must be reported to law enforcement within 120 hours (5 days) after occurrence unless good cause for the delay is shown. Virginia Code § 19.2-368.10 • CICF application must be filed within 1 year of the commission of the crime, unless good cause can be shown. <p>The following individuals are eligible for compensation:</p> <ul style="list-style-type: none"> • A victim who suffers personal physical injury or death as a result of a crime, trying to prevent a crime or apprehending a criminal. If a minor, the claim must be filed by the victim's parent or legal guardian. • A parent, grandparent, spouse, sibling or child of a homicide victim who dies as a result of the crime. • Any person legally dependent for principal support from a victim who dies as a result of the crime. • Any person who takes responsibility for funeral expenses of a homicide victim <p>Virginia Code § 19.2-368.4</p> <p>Applicants may file a claim for compensation if the following conditions are met:</p>	<p>TO APPLY</p> <p>The applicant must file a claim for compensation within one (1) year from the date of the crime in an injury case, the date of victim's death if death is caused by the crime, or the date a minor reaches majority age.</p> <p>A Victim of child sexual assault has ten (10) years past the date of their eighteenth (18th) birthday to file.</p> <p>A claim can be filed past the one (1) year deadline if "good cause" can be shown.</p> <p>Virginia Code § 19.2-368.5</p> <p>Applications may be obtained from and filed with:</p> <p>Criminal Injuries Compensation Fund 2201 West Broad St. Suite 207 Richmond, VA 23220</p> <p>Telephone: (804) 367-1018- Richmond 1-800-552-4007 - Toll-free Statewide e-mail cicfmail@vwc.state.va.us</p> <p>An application also can be obtained from your local Victim/Witness program.</p> <p>http://www.cicf.state.va.us/cicfapplication.shtml</p> <p>http://www.cicf.state.va.us/</p> <p>Applicants may contact the Criminal Injuries Compensation Fund directly by calling:</p> <p>Toll-free statewide(800) 552-4007</p> <p>Richmond or out-of-state..... (804) 378-3434</p> <p>Or writing:</p> <p>Criminal Injuries Compensation Fund 11513 Allecingie Parkway Richmond, Virginia 23235</p>

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	<ul style="list-style-type: none"> • The crime occurred in Virginia or resulted from an act of foreign terrorism and resulted in physical injury or death; • The victim cooperated with law enforcement and was willing to prosecute in court; • The value of the claim amounts to at least \$100; • The crime did not involve a motor vehicle accident unless it was a result of a violation of the Drunk Driving Statute or the injuries were intentionally inflicted; and • A Virginia resident who suffers a compensable crime in a country or territory without compensation program may be eligible. <p>http://www.cicf.state.va.us/benefits.shtml</p> <p>COMPENSATION</p> <p>Benefits are awarded from the Virginia Criminal Injuries Compensation Fund, up to a maximum award of \$25,000, for certain unreimbursed losses such as:</p> <ul style="list-style-type: none"> • Medical expenses; • Wage loss (based on 2/3 of the wages up to a maximum of \$600 per week); • Mental health counseling; • Mental health counseling expenses (up to \$2,500 for eligible family members of homicide victims); • Funeral/burial expense (up to \$5000); • Moving expenses up to \$1,000; • Crime scene clean-up expenses; • Other reasonable and necessary expenses incurred as a result of the crime, such as prescriptions, mileage to doctors, eyeglasses; • Emergency award of up to \$2,000 (Virginia Code § 19.2-368.9); • Expenses attributable to pregnancy resulting from forcible rape; and • other reasonable and necessary expenses resulting from your injury or from the death of a crime victim. <p>Virginia Code § 19.2-368.11:1</p>	<p>The National Crime Victim Bar Association provides victims referrals to local attorneys specializing in victim-related litigation. The referral service can be reached at (800) FYI-CALL (394-2255) between 8:30 a.m.–5:30 p.m. (EST) Monday through Friday.</p> <p>TO APPEAL</p> <p>If an applicant disagrees with the decision, an appeal process is available. Instructions for and assistance with filing an appeal are provided to each applicant.</p> <p>Virginia Code § 19.2-368.8.</p>

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	<p>The following benefits are not available:</p> <ul style="list-style-type: none"> • Property loss • Attorney’s fees • Pain and suffering <p>Collateral resources include but are not limited to benefits provided by insurance, Social Services, Social Security and employers (sick leave or disability).</p> <p>For more information see:</p> <p>http://www.dcjs.virginia.gov/victims/documents/victimsWitnessRightsActSummary.pdf</p> <p>or</p> <p>http://www.dcjs.virginia.gov/victims/documents/saVictims.pdf</p>	
Washington	<p>BACKGROUND</p> <p>Victims of certain types of crimes may receive compensation from the state if (1) the crime occurred in Washington; (2) the victim is a Washington resident and the criminal act occurred in a state that does not have a CVC program; or (3) an act of terrorism as defined in 18 U.S.C. Sec. 2331, committed outside of the United States against a resident of the state. Wash. Rev. Code § 7.68.020.</p> <p>Policy Manual: http://www.lni.wa.gov/ClaimsIns/Files/CrimeVictims/CvcPolicyManual.pdf</p> <p>The types of crimes include acts that are punishable as a federal offense comparable to a felony or gross misdemeanor under the laws of the state (e.g., drunk driving, domestic violence, and any crime that results in death or personal injury, including sexual assault). Wash. Rev. Code § 7.68.020.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions 	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Crime Victims Compensation Program.</p> <p>Absent good cause, the application must be filed within 2 years from the date the crime was reported or the date the victim turned 18, or within 5 years from the date the crime was reported with good cause. Wash. Rev. Code § 7.68.060.</p> <p>Although an application must generally be filed within 2 years of reporting the crime, there is no time limit on how long benefits can be received.</p> <p>Appeals are permitted for ninety days from the date the order, decision, or award is communicated to the parties. Wash. Rev. Code § 7.68.110.</p> <p>See the following link for more information:</p> <p>http://www.lni.wa.gov/ClaimsIns/CrimeVictims/default.asp</p>

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	<p>based on immigration status. The Crime Victims Compensation Program does not review the immigration status of victims.</p> <ul style="list-style-type: none"> The victim must report the crime within one year or within one year of when a report could have reasonably been made. The victim must cooperate with law enforcement. Wash. Rev. Code § 7.68.60. <p>A claimant may be the direct victim of the crime, or a survivor if the crime results in a death. Wash. Rev. Code § 7.68.070.</p> <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> Medical, dental, mental health counseling (including STD, AIDS, post coital screening/treatment, if the expenses are related to the crime and there is no other source of reimbursement.); Lost wages; Funeral/burial expenses (not to exceed \$5,750); Rehabilitation (not to exceed \$5,000); Modification to homes and vehicles to accommodate permanent injuries; Limited pension payment if the crime prevents victim from returning to work permanently; Limited pension payment to the spouse or child of a deceased victim; Permanent partial disability (not to exceed \$7,000); Total temporary disability (not to exceed \$15,000); Assist law enforcement agency or prosecutor in judicial proceedings relating to the death of the victim, who is not domiciled in Washington at time of request (not to exceed \$7,500); and Counseling for family members of sexual assault or homicide victims. <p>Wash. Rev. Code § 7.68.070.</p> <p><u>No more than fifty thousand dollars shall be</u></p>	<p>http://www.lni.wa.gov/ClaimsIns/CrimeVictims/Resources/default.asp</p> <p>http://www.lni.wa.gov/forms/pdf/F800-042-000.pdf</p> <p>http://www.lni.wa.gov/IPUB/800-006-909.pdf</p>

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	<p><u>paid per claim.</u> Except for authorized medical benefits. Wash. Rev. Code § 7.68.070. No more than \$30,000 shall be awarded as a result of a single injury or death, except for medical aid. Total awards shall not exceed \$40,000 if permanent disability or death occurs. Wash. Rev. Code § 7.68.070(13).</p> <p>http://www.lni.wa.gov/forms/pdf/F800-042-000.pdf</p>	
West Virginia	<p>BACKGROUND</p> <p>West Virginia’s Crime victims Compensation Fund provides compensation to crime victims, relatives of victims, guardians, estate executors, and others who provide payment for expenses related to the crime.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must be reported to law enforcement officials within 72 hours (unless just cause exists). WV Code §14-2A-14 <p>Eligible persons include:</p> <ul style="list-style-type: none"> • A victim who has suffered an injury as a result of a crime; • Anyone who pays for the medical and/or funeral/burial expenses of a victim; • A legal guardian of a minor; • An executor or executrix of the estate of a deceased victim; and • A spouse or dependent who suffers noneconomic loss due to the death of a victim. <p>Crimes that may result in personal injury, include:</p> <ul style="list-style-type: none"> • Malicious Assault; 	<p>TO APPLY</p> <p>A Crime Victims Compensation Fund application must be completed. Applications are available upon request by calling the Fund at 1-877-562-6878 (within W.Va. only) or (304) 347-4850. Applications may be obtained from local county prosecuting attorney offices.</p> <p>The application for an adult victim (18 years or older at the time of crime) must be filed with the Fund within two years of the crime. WV Code §14-2A-10.</p> <p>The application for a minor victim (under 18 year of age at the time of the crime) must be filed with the Fund before the minor’s 20th birthday.</p> <p>WV Code 14-2A-10.</p> <p>After receiving the application and related documentation, the claim is assigned to a claim investigator for review to determine eligibility. This involves verifying all of the information presented in the application. Witnesses to the crime, law enforcement officials, physicians, counselors, hospitals, and employers may be contacted for verification of the information presented.</p> <p>Upon completion of the application review process, the claim investigator will file with the Court a Finding of Fact and</p>

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	<ul style="list-style-type: none"> • Assault and Battery; • Child Abuse/Molestation; • Domestic Violence; • Driving under the Influence; • Reckless Driving; • Vehicle Homicide (Negligent Homicide); • Murder; • Other Violent Crimes; • Robbery; • Sexual Assault; • Kidnapping; • Hunting Accident; and • Arson. <p>WV Code 14-2A-3.</p> <p>To be eligible for compensation, there must be a crime involving personal injury or death, with the following additional requirements:</p> <ul style="list-style-type: none"> • The crime must either have occurred in West Virginia, or involved a West Virginia resident injured in another State without a compensation program, or involved a West Virginia resident injured outside the United States as a result of terrorism; • The claimant must fully cooperate with law enforcement officials; • The claim must be filed within two years of the date of the incident; • The victim must suffer a personal injury; and • There must be an economic loss. <p>In the case of domestic abuse, a claim resulting from domestic abuse will not be denied solely because the applicant lives with or has lived with the alleged offender of the crime.</p> <p>Payments to third party vendors will not be denied based upon a finding that the victim and the offender are maintaining a relationship.</p> <p>http://www.legis.state.wv.us/Joint/victims/e</p>	<p>Recommendation. A copy of the recommendation is sent to the applicant who may file a response within 30 days.</p> <p>One of the three Court of Claims judges will review the Finding of Fact and Recommendation, all other documents in the file, and the applicant’s response, if any. The judge will render a decision and a copy of the Order is sent to the applicant.</p> <p>In considering an award, the Court will consider the extent to which a payment to the victim will support the offender by paying for the offender’s living expenses, including food, shelter, clothing or entertainment, or the extent to which the payment will substitute for money that the offender otherwise normally would expend for the benefit of the household or its members, so as to avoid unjust enrichment.</p> <p>WV Code 14-2A-12.</p> <p>The law requires that awards be made directly to the medical or funeral/burial provider. WV Code 14-2A-19a.</p> <ul style="list-style-type: none"> • Awards are made to the applicant for reimbursement of approved expenses. • Awards are made to the applicant for approved wage/income losses. <p>TO APPEAL</p> <p>If the applicant disagrees with the judge’s decision, the applicant is given 21 days to request a hearing. Another judge will preside over the appeal hearing, which is the final process.</p> <p>See the following link for more information:</p> <p>http://www.legis.state.wv.us/Joint/victims/mai</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>ligibility.cfm</p> <p>COMPENSATION</p> <p>An applicant can be reimbursed for the following types of expenses if they are incurred as a direct result of a crime as long as there are no other sources of reimbursement available:</p> <ul style="list-style-type: none"> • Medical/Dental (including physician, hospital, and STD, AIDS, and post coital screening/treatment, if the expenses are related to the crime and there is no other source of reimbursement); • Mental Health Counseling; • Lost Wages/Income; • Funeral/Burial (not to exceed \$4,000); • Lost Support of eligible dependents; • Rehabilitation; • Replacement service loss; • Mileage to medical treatment facility; • Attorney fees, §14-2A-19; and • Compensation for being a witness in a hearing on a claim for an award of compensation. §14-2A-19 <p>WV Code 14-2A-3(f).</p> <p>The total of all reimbursement to or on behalf of a victim cannot exceed the maximum allowable benefits as set out below:</p> <p><u>Victim Suffers Injury</u></p> <ul style="list-style-type: none"> • Up to \$25,000.00 • Medical/Dental • Mental Health Counseling • Wage/Income Loss (victim only) • Mileage to and from medical treatment facility • Replacement Services 	<p>n.cfm</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p><u>Victim Suffers Death</u></p> <ul style="list-style-type: none"> • Up to \$50,000.00 • Medical • Mental Health Counseling for Dependents • Economic Loss of Dependents • Funeral/Burial Expenses up to \$7,000.00 <p>WV Code 14-2A-14(g).</p> <p>http://www.legis.state.wv.us/Joint/victims/eligibility.cfm</p> <p>Applicants may also seek assistance from an attorney. Reasonable fees will be paid by the Fund at no cost to the applicant regardless of the outcome of the claim. Attorney’s fees are paid from the Fund, not from awards. WV Code 14-2A-19.</p> <p>Persons not eligible to receive compensation include:</p> <ul style="list-style-type: none"> • Person who commits the crime; • Persons who do not cooperate with law enforcement officials or the claim investigator; and • Persons who are injured while incarcerated. <p>http://www.legis.state.wv.us/Joint/victims/eligibility.cfm</p> <p>The following types of losses are not covered under the program:</p> <ul style="list-style-type: none"> • Personal property (except medically necessary items such as eyeglasses); and • Work loss of others (only the victim’s work loss is considered). <p>http://www.legis.state.wv.us/Joint/victims/eligibility.cfm</p> <p>By law, the Crime Victims Compensation Fund is the “payer of last resort.” As such, if any other sources of reimbursement are available for the victim’s/applicant’s crime-related losses, such sources must be used</p>	

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>before the victim/applicant becomes eligible for reimbursement from the Fund. Victims/applicants have the responsibility to inform the Fund of any reimbursement sources for their losses and are responsible for repayment of any amounts for which it was later determined they were not eligible. Other reimbursement sources that may be available include, but are not limited to:</p> <ul style="list-style-type: none"> • Medical/health, dental, or vision insurance; • Employee sick leave benefits; • Employee annual leave benefits; • Public program benefits (Medicaid, Medicare, etc.); • Workers' Compensation; • Unemployment benefits; • Life insurance over \$25,000 and auto insurance; • Court-ordered restitution; and • Civil lawsuit recoveries. <p>WV Code 14-2A-14(f).</p> <p>For more information please see: W. Va. Code § 14-2A <i>et. seq.</i> (2006).</p>	
Wisconsin	<p>BACKGROUND</p> <p>The CVC Program provides sufficient assistance to victims of crime and their families in order to ease their financial burden and to maintain their dignity as they go through a difficult and often traumatic period.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. “Any person may apply for an award under this chapter.” W.S.A. 949.04(1). <p>Although the application requests a Social Security Number, Program officials confirmed that the inability to provide a social security number on the application will not, in and of itself, affect an</p>	<p>TO APPLY</p> <p>Application for reimbursement must be made within one year from the date of injury or death. If the crime is not reported within 5 days, within 5 days of the time when a report could reasonably have been made, or the application is not filed within one year from the date of the crime, attach a written explanatory statement to the application. The department may waive the one-year requirement in the interest of justice. W.S.A. 949.08.</p> <p>The Wisconsin department of justice will prescribe application forms for awards and will provide them to law enforcement agencies. W.S.A 949.04(2).</p> <p>Applicants should submit reports from all treating providers who treated or examined the</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>immigrant’s ability to receive benefits.</p> <p>Further, the Wisconsin Coalition Against Sexual Assault, Inc. Information Sheet states that undocumented immigrants are eligible for compensation in the event of sexual assault.</p> <ul style="list-style-type: none"> • The crime must be reported to law enforcement within five days of the date of the crime. <p>Additional compensable acts include:</p> <ul style="list-style-type: none"> • Preventing or attempting to prevent the commission of a crime; • Apprehending or attempting to apprehend a suspected criminal; • Aiding or attempting to aid a police officer to apprehend or arrest a suspected criminal; and • Aiding or attempting to aid a victim of a crime specified in par. <p>W.S.A. 949.03.</p> <p>Crimes are defined as “conduct prohibited by state law and punishable by fine or imprisonment or both.” W.S.A. 939.12</p> <p>COMPENSATION</p> <p>Awards will not be more than \$40,000 for any one injury or death. W.S.A 949.06(2).</p> <ul style="list-style-type: none"> • Medical treatment (including medical, surgical, dental, optometric, chiropractic, podiatric, hospital care; medicine; medical, dental and surgical supplies, crutches, artificial members, appliance and training in use of artificial members and appliances); • Mental health (see application for compensation); • Work loss (including homemaker, in an amount sufficient to ensure that the duties and responsibilities are continued until the victim is able to 	<p>victim at the time of or subsequent to the victim’s injury or death. W.S.A. 949.04(3).</p> <p>For additional information:</p> <p>http://www.doj.state.wi.us/cvs/documents/CVCompensation/CVCApplication.pdf</p> <p>Crime Victim Compensation Program P.O. Box 7951 Madison, WI 53707 (608) 264-9497 or (800) 446-6564</p>

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	<p>resume the responsibilities);</p> <ul style="list-style-type: none"> • Replacement of clothing and bedding that is held for evidentiary purposes (up to \$300), or is rendered unusable as a result of crime lab testing (up to \$200); • Funeral and burial expenses (up to \$2000); • Emergency compensation (up to \$500); • Attorney’s fees; • Dependent’s economic loss (4 times the victim’s average annual earnings); and • Cleaning crime scene (up to \$1000). <p>W.S.A. 949.06, 949.10, and 949.14.</p> <p>Any award made under the program will be reduced by the amount received from another source (for example, from the insurance company, public funds, emergency award, person who committed the crime). W.S.A. 949.06(f)(3).</p> <p>Personal property and pain and suffering are not compensated under the program. http://www.doj.state.wi.us/cvs/documents/CVCompensation/CVCApplication.pdf</p>	
Wyoming	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. Although the application for compensation requests social security numbers, immigrants will not be turned away if they do not have a Social Security Number. Rather, the auditor will assign them a number for purposes of tracking compensation benefits. • The crime must be reported to law enforcement as soon as possible. <p>Persons eligible to receive benefits include:</p> <ul style="list-style-type: none"> • A victim of a crime who has suffered physical injury or is killed as a result of: <ul style="list-style-type: none"> • a “criminal act” of another person; • trying to stop a person committing a crime; • trying to help a law enforcement officer; 	<p>TO APPLY</p> <p>The Attorney General, Division of Victim Services, will review applications and make a ruling.</p> <p>Primary victims must fill out an application. Applications are available at local law enforcement agencies, domestic violence/sexual assault agencies, prosecuting attorney’s offices, and victim assistance agencies. Applications are also available at: Herschler Building, 1st Floor West Barrett Building, 4th Floor Cheyenne, WY 82002</p> <p>Phone: (307) 777-7200 (you may call collect), Victim Helpline V/TTY: 888-996-8816</p> <p>e-mail: victimservices@state.wy.us</p> <p>http://victimservices.wyoming.gov/vcomp-primary.htm</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • trying to help a victim of a crime; or • a federal crime occurring in Wyoming; • Families and dependents of deceased victims; • Persons who are authorized to act on behalf of victims; • Wyoming residents injured or killed by an act of terrorism committed outside the U.S.; • Family members who are Wyoming residents and who have suffered a pecuniary loss as a result of a terrorist attack in the U.S., regardless of the actual victim’s residency; • Wyoming residents who are victims of a crime of terrorism occurring in another state which would have been compensable if it had occurred in Wyoming and who suffer a pecuniary loss; • Children who witness violent crimes against adults; • Spouses residing with sexual assault victims; • Household members of minor victims; and • Household members of homicide victims. <p>Household members means: persons married to each other; persons living with each other; persons formerly married to each other; persons formerly living with each other as if married; parents and their adult children; other adults sharing common living quarters; and persons who are the parents of a child but who are not living together.</p> <p>http://vssi.state.wy.us/documents/cvcAssocVInstr.pdf Wy. Stat. § 1-40-102</p> <p>In order to be eligible for compensation benefits:</p> <ul style="list-style-type: none"> • The crime must have occurred in Wyoming or in state that does not have a Crime Victims Compensation program or the crime was an act of terrorism; • The victim or claimant must fully cooperate in the investigation and 	<p>If associated victims are going to seek associated victim benefits, they do not need to complete a separate application (e.g., parents of minor children, survivors of homicide, caretakers of incompetent victims). If the associated victims are people other than the claimant, then they must also complete the Associated Victim Application (e.g., siblings or other household members, children who witness a violent crime being committed against an adult).</p> <p>The division staff will review the application and conduct an investigation to verify all of the information. Law enforcement, witnesses, service providers, employers, etc. will be contacts to substantiate the application. Application processing usually takes a minimum of 90 days.</p> <p>After conducting a hearing, the division will notify applicants of the amount of the award. If an award is reduced or denied, the reason will be provided in writing. Wy. Stat. § 1-40-108.</p> <p>Applicants may apply for emergency compensation (to cover basic, survival needs), which can be awarded within a shorter period of time, usually 10 working days. No appeals are granted on emergency claims. Wy. Stat. § 1-40-111</p> <p>http://vssi.state.wy.us/vcomp.htm</p> <p>TO APPEAL</p> <p>Applicants have the right to request an appeal of a claim reduction or denial within 30 days of receipt of the decision. Appeals must be in writing, state the reasons why the applicant disagrees with the decision, and provide additional information for review.</p>

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	<p>prosecution of the crime;</p> <ul style="list-style-type: none"> • The claim must be filed within one (1) year of the injury or death; • Federal crime victims are eligible to apply for compensation whether or not the crime falls under tribal, state or federal jurisdiction; • No portion of the compensation shall benefit the offender in any way; and • A victim whose own misconduct either caused or contributed to the criminal attack could be reduced or denied compensation. <p>Wy. Stat.§§ 1-40-102, 1-40-106.</p> <p>The following persons are not eligible to receive compensation benefits:</p> <ul style="list-style-type: none"> • The offender and/or accomplice; • A victim convicted of a felony after applying for compensation; • An individual who is a victim of a criminal attack while confined in a prison or other correctional facility at the time of the crime; • A victim whose expenses are paid entirely by other sources; • Victims of monetary or property loss; and • Victims seeking compensation only for pain and suffering. <p>Wy. Stat 1-40-106, Wy. Stat. §§ 1-40-110(d), and http://vssi.state.wy.us/documents/cvcPrimAppInstr.pdf</p> <p>Victims of a criminal act may be able to receive compensation benefits. A "criminal act" means an act committed or attempted in this state, including an act of domestic violence, which constitutes a crime as defined by the laws of this state or an act of terrorism, committed outside the United States, and which results in actual bodily injury, or actual mental harm, or death to the victim. No act involving the operation of a motor vehicle, boat or aircraft which results in injury or death constitutes a crime for the purpose of this act unless the injury or</p>	

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	<p>death was recklessly or intentionally inflicted through the use of the vehicle, boat or aircraft, or unless the act constitutes a violation of under Wyoming’s law on driving under the influence of alcohol. Wy. Stat. §§ 1-40-102.</p> <p>COMPENSATION</p> <p>Maximum award may be up to \$15,000. Compensation paid to an associated victim is included in the primary victim’s cap of \$15,000.</p> <ul style="list-style-type: none"> • Medical, dental and hospital services (including dental and prosthetic devices, eyeglasses, or other corrective lenses, STD screening, pregnancy testing, DNA testing, and services rendered in accordance with any method of healing as recognized by the state of Wyoming); • Mental health and counseling care; • Funeral/burial expenses (not to exceed \$5,000); • Loss of earnings (not to exceed \$500/month); • Loss of support to dependents, including home maintenance and day care; • Homemaker replacement services loss; • Eyeglasses, corrective lenses, dental and other prosthetic devices; • Relocation services (including U-Haul rental, gas, mileage, and per diems); • Emergency award (not to exceed \$1,000); and • Other expenses incurred as a result of the crime (including crime scene cleanup and travel costs). <p>Wy. Stat. §§ 1-40-102; 1-40-109, and 1-40-110. http://www.cispark.org/faq.cfm</p> <p>Victims of catastrophic injury, the permanent disability of limbs or functions as a result of being a victim of a crime, are eligible for additional compensation (exceeding the maximum \$15,000 award) up to \$10,000 to cover future lost</p>	

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	<p>wages, special medical needs and any other special assistance needed as a result of the injury. The additional award may be made only for losses and expenses occurring within twenty-four (24) months after the date of the injury. Wy. Stat. §§ 1-40-109(e).</p> <p>Associated victims may be eligible for compensation with regard to counseling (not to exceed \$1,500) and economic losses (including, but not limited to, mileage, food, lodging, and loss of earnings). These expenses may be reimbursed if they were incurred by the associated victim due to the death or injury of the primary victim.</p> <p>Insurance benefits must be used first, as well as other sources such as sick or vacation leave from an employer, disability insurance, worker’s compensation and social security. Wy. Stat. §§ 1-40-110(d).</p> <p>http://victimservices.wyoming.gov/vcompFAQ.htm</p> <p>For additional information: Crime Victim Compensation Program Herschler Building 122 W. 25th 1st Floor West Cheyenne, WY 82002 (307) 777-7200 (888) 996-8816</p> <p>http://victimservices.wyoming.gov/vcompFAQ.htm</p> <p>http://vssi.state.wy.us/documents/cvcAssocVInstr.pdf</p>	
Territories		
Guam	BACKGROUND	TO APPLY

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	<p>In Guam, a victim of certain types of crime may receive compensation if injured or killed by any act or omission of another person. The types of crimes include aggravated murder, murder, manslaughter, aggravated assault, assault, kidnapping, felonious restraint, child stealing, custodial interference, criminal sexual conduct in the first, second, third or fourth degree, assault with intent to commit criminal sexual conduct, driving under the influence of alcohol or controlled substances, conviction involving a child, vehicular negligence, vehicular homicide, drinking while driving a motor vehicle upon any highway, stalking, and family violence. 9 Guam Code Ann. § 86.55 (1998).</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no restrictions based on immigration status. • The Commission requires that the crime has been reported to the police “without undue delay.” <p>8 Guam Code Annotated § 161.50 (2006)</p> <p>A victim may be the direct victim of the crime, or a survivor if the crime results in a death.</p> <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • expenses actually and reasonably incurred as a result of the injury or death of the victim; • loss to the victim of earning power as a result of total or partial incapacity; • pecuniary loss to the dependents of the deceased victim; • pain and suffering; and • any other pecuniary loss directly result from the injury or death of the victim which the Commission determines to be reasonable and proper. 	<p>An application must be filed with the Criminal Injuries Compensation Commission. The Guam Code does not set forth the process to receive compensation.</p> <p>An application must generally be filed within 1 year. There is no time limit on how long benefits can be received.</p> <p>TO APPEAL</p> <p>The Commission may, on its own motion or upon application of</p> <p>any person disagrees with an order/decision of the Commission, reconsider the order/decision and revoke, confirm and verify it, based on the findings of the Commission.</p> <p>Any person adversely affected by the order/decision of the Commission on the sole ground that the order or decision was in excess of the Commission’s authority or jurisdiction, shall have a right of appeal to the Superior Court, if the appeal is filed with the Commission within 30 days after receiving such order/decision. Otherwise, orders/decisions of the Commission shall be conclusive and not subject to judicial review.</p> <p>Office of the Attorney General The Justice Building 287 West O'Brien Drive Hagatna, GU 96910 USA phone: (671) 475-3324 fax: (671) 472-2493 email: law@guamattorneygeneral.com</p>

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	<p>There is a \$10,000 limit on any award. 9 Guam Code Ann. § 86.60 (1998).</p> <p>The same benefits may apply, in the discretion of the Commission, to private citizens who incur injury or property damage in preventing the commission of a crime within Guam, in apprehending a person who has committed a crime within Guam, or in materially assisting a peace officer who is engaged in the prevention or attempted prevention of such a crime or the apprehension or attempted apprehension of such a person. 9 Guam Code Ann. § 86.75 (1998).</p> <p>Medical expenses to be reimbursed include STD, AIDS, and post coital screening/treatment or pre-natal care. The limit is \$70,000. The expenses must be related to the crime. Reimbursement is not available if there is another source of reimbursement.</p>	
Puerto Rico	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • While the law does not appear to place any restriction on the immigration status of the victim, the instructions to the application form require evidence of legal residence, and a copy of a social security card. • The victim must report to the officers of public law and order the commission of the criminal conduct within ninety-six (96) hours following the delinquent act, unless there is just cause for the delay. <p>The following victims of crime may receive compensation:</p> <ul style="list-style-type: none"> • legal residents of Puerto Rico; • nonresident persons if their resident jurisdiction does not provide for compensation under a Federal Crime Victims Compensation Act; • persons related to the victim by legal or 	<p>TO APPLY</p> <p>The victim must:</p> <ul style="list-style-type: none"> ▪ complete an application and file it with the Crime Victims Compensation Office; and ▪ claim the benefits within six (6) months following the date of the commission of the crime, unless there is just cause. 25 L.P.R.A. §981(f) and (g) and Law 3 of 2006. <p>A minor or disabled claimant must be represented by his/her parents, custodian or guardian. 25 L.P.R.A. §981(g).</p> <p>The application should include all medical reports available regarding the injury and any other information required by regulations. 25 L.P.R.A. §981(g).</p>

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	<p>consensual ties, consanguinity or affinity up to the second degree or who depend on the victim for more than 50% of his/her subsistence expenses; and</p> <ul style="list-style-type: none"> persons suffering from acts of terrorism under certain circumstances. 25 L.P.R.A. §981. <p>The compensable crimes or attempted crimes are: murder; homicide; involuntary manslaughter; rape (sexual aggression); kidnapping; lascivious acts; child stealing; domestic violence; child abuse, aggravated robbery; battery in the third degree and any equivalent federal crime. 25 L.P.R.A. §981(d) and Law No. 3 of 2006.</p> <p>The victim must cooperate with the corresponding authorities in the phases of solving and prosecuting the persons responsible for the commission of the crime. The continuous availability of the victim will be verified through reports filed by the officers to the Crime Victims Compensation Office.</p> <p>COMPENSATION</p> <p>The compensation payable depends on the date of the crime:</p> <ul style="list-style-type: none"> Crimes committed before 21 August 03 receive a maximum of \$3,000 per person and \$5,000 per family; crimes committed between 21 August 03 and 04 January 06 receive a maximum of \$4,000 person and \$6,000 per family; crimes committed after 05 January 06 receive a maximum of \$6,000 per person, \$15,000 per family and \$25,000 for catastrophic or permanent injury. <p>Compensation is provided for:</p> <ul style="list-style-type: none"> Expenses incurred for medical treatment, including chiropractic, rehabilitation, hospitalization services 	<p>The application should be accompanied by the following information:</p> <ol style="list-style-type: none"> photo I.D. of the victim and claimant; copy of the social security card(s) of the victim and claimant; birth certificate or passport; evidence of legal residence of the victim or claimant, if an alien; marriage or death certificate, as applicable; evidence of loss of income; evidence of compensatory benefits received from any other source; medical evidence of the incapacity of the victim to work; police report of the crime; other documents to evidence expenses incurred as a result of the crime. <p>In an emergency, where the victim’s physical injury is obvious, the Office may relax the requirement for the victim to file an application, until the victim’s emergent needs have been attended to.</p> <p>See website for forms and instructions: www.justicia.gobierno.pr/rs_template/v2/CompVic/CV_TDoc.html</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>and medical care, including ambulance service, medication, medical equipment, prosthetics, eyeglasses, dental prosthetics and transportation expenses for medical appointments and treatments;</p> <ul style="list-style-type: none"> • Expenses for psychological, psychiatric treatment, including transportation and medical expenses; and • Income the victims would have earned if he/she had not suffered the injury. <p>Death benefits include:</p> <ul style="list-style-type: none"> • Expenses for funeral services, burial or cremation (\$1,000 for crimes committed before 21 August 03; \$1,500 for crimes committed between 21 August 03 and 04 January 06; \$3,000 for crimes committed after 05 January 06); • Medical, chiropractic, rehabilitation treatment, hospitalization services and medical care; ambulance service, medications, medical equipment, prosthetics, eye-glasses and dental prosthetics incurred prior to the death of the victim; (1) Crimes committed before 21 August 03 receive a maximum of \$3,000 per person and \$5,000 per family; (2) crimes committed between 21 August 03 and 04 January 06 receive a maximum of \$4,000 person and \$6,000 per family; (3) crimes committed after 05 January 06 receive a maximum of \$6,000 per person, \$15,000 per family; • Psychological and psychiatric expenses for the treatment of certain surviving claimants of the victim, up to \$500 if the crime was committed between 21 August 03 and 04 January 06 and up to \$1,000 if the crime was committed after 05 January 06; and • Loss of support of up to \$500 if the crime was committed between 21 August 03 and 04 January 06 and up to \$1,000 if the crime was committed after 05 January 06 for certain surviving claimants; 25 L.P.R.A. §981(h) and Law No. 3 of 2006. 	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>See compensation table: www.justicia.gobierno.pr/rs_template/v2/CompVic/CV_Tabla.html</p> <p>Deductions on compensation may be made if the victim or dependants have received compensation from another source. 25 L.P.R.A. §981(i). Mental anguish and suffering are not compensable. 25 L.P.R.A. §981(h).</p> <p>Funding comes from both the state and federal government.</p>	
Virgin Islands	<p>BACKGROUND</p> <p>The Crime Victims Compensation Program provides public compensation to certain eligible persons.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. In 1978, the following provision was deleted from the Code: "Provided, however, that no person who is not a citizen of the United States or who is not an immigrant alien admitted to the United States for permanent residence under the pertinent provisions of the Immigration and Nationality Act, as amended (8 U.S.C. §§ 1101 et seq.) may apply for or receive compensation under the provisions of this chapter;" • In order to receive compensation, the criminal offense or act of domestic violence giving rise to the claim must be reported to the Police Department or other appropriate law enforcement agency within twenty-four (24) hours of its occurrence. <p>Eligible victims include:</p> <ul style="list-style-type: none"> • Victims of a criminal act; • Any person who is responsible for the maintenance or care of the victim and who has incurred expenses as a result of injury to or the death of the victim; 	<p>TO APPLY</p> <p>Applications should be completed and filed with the Executive Secretary within two (2) years after the personal injury or death occurs. In addition, applicants must file a notice of intention to file an application given to the Commission within ninety (90) days of the occurrence of the criminal offense, or act of domestic violence.</p> <p>CVIR 34-007-000, Sec. 161-A and 161-B (2006).</p> <p>TO APPEAL</p> <p>In order to obtain reconsideration by the Commission of an order, the applicant must file a written request for reconsideration with the Executive Secretary within one calendar year after the issuance of the order.</p> <p>Virgin Islands Code 34.7.166.</p> <p>The contact information:</p> <p>Knud Hanson Complex, Building A 1303 Hospital Ground</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>and</p> <ul style="list-style-type: none"> • The estate or any dependents of the victim may apply for compensation, in the case of the death of the victim. <p>Virgin Islands Code 34.7.161</p> <ul style="list-style-type: none"> • The victim was injured or killed by any act that constitutes a criminal offense which is a felony or aggravated assault and battery or domestic violence; • The victim was injured or killed while attempting to prevent the commission of a criminal offense; • The victim was injured or killed by an act or omission that constitutes a criminal offense had it occurred in the Virgin Islands but which occurred in a state, territory, or possession of the United States of America which does not have a CVC program; • The victim was injured or killed while attempting to prevent the commission of a criminal offense but which occurred in a state, territory, or possession of the United States of America which does not have a CVC program; • The victim was injured or killed by an act of terrorism committed outside of the United States. <p>Virgin Islands Code 34.7.161 and 162. CVIR 34-007-000, Sec. 161-A and 161-B (2006).</p> <p>COMPENSATION</p> <p>Maximum award is \$25,000. Virgin Island Code 34.7.164.</p> <p>Applicants may apply for:</p> <ul style="list-style-type: none"> • Lost income (resulting from total or partial disability resulting from the injury equal to two-thirds (2/3) of the difference between earnings (or earning power, if the victim was not employed) at the time when the injury occurred, and the wages, if any earned by the victim during disability); • Medical expenses (including examinations for sexual assault and treatment for venereal disease) [Virgin Islands Code 34.8.206]; • Mental Health counseling (10 sessions 	<p>Charlotte Annalie, VI 00802 (340) 774-0930, ext. 4104 FAX: (340) 774-3466</p>

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State	Victim Compensation Laws	Process to Receive Compensation
	<p>at \$75 per session);</p> <ul style="list-style-type: none"> • Replacement services; • Travel (in extraordinary circumstances transportation can be paid but requires a medical referral); • Pain and suffering (not to exceed \$5,000); • Pecuniary losses (\$20,000 to the spouse of the deceased victim and \$5,000 for each dependent minor child or other dependent of the deceased victim for pecuniary losses); • Emergency benefits pending final decision in the case (not to exceed \$500); • Attorney's fees to be deducted from the award and not to be paid in addition to an award - two percent (2%) of any recovery under \$ 1,000 or five percent (5%) of any recovery over \$ 1,000 for legal expenses; and • Burial expenses (not to exceed \$2,500). <p>CVIR 34-007-000, Sec. 161-B, Section 163-A and Virgin Island Code 34.7.163. http://www.nacvcb.org/progdir/virginislands.html</p> <p>Compensation awards will be reduced by:</p> <ul style="list-style-type: none"> • Moneys received by the applicant from the offender, person on behalf of the offender, from public or private source (other than insurance on victim's life); and • Collateral source payments. <p>Virgin Islands Code 34.7.165.</p>	

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Sexual Harassment and Assault in the Workplace: A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law¹²

By William R. Tamayo, Regional Attorney,³ U.S. Equal Employment Opportunity Commission⁴

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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 Regional Attorney, EEOC San Francisco District Office (1995 – present). (Jurisdiction: Northern California, Northern Nevada, Oregon, Washington, Alaska, Idaho and Montana)

Prior to his appointment as Regional Attorney, Mr. Tamayo was a staff attorney and Managing Attorney for the Asian Law Caucus (1979-95), a public interest organization in San Francisco where he practiced immigration and nationality law, employment discrimination law and other civil rights laws. He represented dozens of battered women before the Immigration and Naturalization Service and was part of the legal team that developed the "self-petitioning" provisions for immigrant women under the Violence Against Women Act. Member, National Advisory Board, National Network to End Violence Against Immigrant Women. J.D. University of California, Davis, School of Law.

Contact: U.S. EEOC, 350 The Embarcadero, Suite 500, San Francisco, CA 94105-1260; (415) 625-5645; (415) 625-5657 fax; email: william.tamayo@eoc.gov. Materials in this outline include documents available at EEOC's website: www.eoc.gov. This document, however, is not an official EEOC publication.

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Introduction

- I. Overview of the Law
- II. Proving Harassment
- III. Retaliation
- IV. EEOC's Charge Processing and Litigation
- V. Private Lawsuits
- VI. Remedies Available to Victims
- VII. The Role of the Medical Professional

Introduction

Sexual harassment demeans its victims and destroys their lives. It is unlawful. Sexual harassment can include but is not limited to sexual assaults (e.g., rape), *quid pro quo* harassment (conditioning employment opportunities upon the grant of sexual favors) and a hostile work environment that can also include sexual overtures, touching, grabbing, fondling, propositions, pictures, pornography, etc. *Attorneys, advocates, and health care providers working with victims of sexual assault should be informed about the various remedies available so that they can properly advise their clients and patients.* Healthcare providers may also be the critical witnesses in ensuring that a victim receives relief, including compensation.

The U.S. Equal Employment Opportunity Commission (EEOC) is the federal government agency responsible for investigating charges of discrimination and, if necessary, litigating these cases in court. The EEOC has recovered millions of dollars for victims of sexual harassment including sexual assaults. Many of these cases have involved *immigrant women and teenagers*.⁵

I. Overview

Statistics: In Fiscal Year 2006, the EEOC received 12,025 charges of sexual harassment accounting for 15.9% of all charges filed with the EEOC.⁶ This is a marked increase from when the sexual harassment cases were only 12% of the charges just three years earlier. The “power disparity” between employers or supervisors and employees (especially immigrant and low wage workers) creates conditions ripe for harassment and sexual assault in the workplace. The EEOC resolved 11,936 sexual harassment charges and recovered \$48.8 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation). For statistics in previous years, see www.eeoc.gov.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq., prohibits discrimination on the basis of race, color, sex, national origin and religion in all terms and conditions of employment including, but not limited to, hiring, firing, promotions, references, and job conditions. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government. Prior to the enactment of Title VII on July 1, 1965, discrimination in the private sector was perfectly legal under federal law. Thus, an employer could very well have sexually harassed an employee and fired her in retaliation for rejecting sexual advances without violating any federal law. Thus, Title VII provides a very important protection and remedy for workers.

⁴ The EEOC enforces Title VII of the Civil Rights Act of 1964 (race, color, sex, national origin and religion), the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act and portions of the Civil Rights Act of 1991. The agency has 51 field offices. A list of EEOC offices and contact names is listed at www.eeoc.gov.

⁵ For a partial list of EEOC cases involving sexual assault see Appendix A.

⁶ Of this number, 15.4% of those charges were filed by males.

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Sexual harassment is a form of sex discrimination that violates [Title VII of the Civil Rights Act of 1964](#). Under the law, employers have a **duty to provide a safe work environment** and to take **prompt and corrective action** once the employer is on notice that harassment may have occurred.⁷

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. The behavior must be **severe or pervasive enough to alter an employee's working conditions**.⁸

Sexual harassment can occur in a variety of circumstances, including, but not limited to the following:

The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.

The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.

The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

Unlawful sexual harassment may occur without economic injury to or discharge of the victim.

Notice to the Employer: There must generally be notice to the employer of the harassment before it can be found liable. The victim should inform the harasser directly that the conduct is unwelcome and must stop ("opposition"). The victim should complain to her supervisor (unless he is the harasser) or any other superior, and use any employer complaint mechanism or grievance system available. Verbal or written notice is sufficient, and a third party can also put the employer on notice that there is a complaint or existence of harassment. These third parties can include, but are not limited to, a union, family member, a victim advocate, victim's attorney,⁹ co-workers, customers or providers. Again, notice to an employer of possible harassment requires an employer to promptly investigate and take necessary corrective action to stop and deter harassment. Corrective action may require discipline of the harasser and his supervisors up to and including termination.

This includes:

- When investigating allegations of sexual harassment, the EEOC makes a determination on the allegations from the facts on a case-by-case basis;
- EEOC looks at the whole record, particularly the circumstances;
- the nature of the sexual advances;
- the context in which the alleged incidents occurred;
- how the employer was put on notice, and the response of the employer once it knew or should have known about the harassment.

Harassment by a Supervisor: An employer is generally liable for harassment by a **supervisor**. However notice to the employer of the harassment is critical. An employer can escape liability and/or reduce the damages if it can establish that:

- 1) the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior
AND

⁷ *Fuller v. City of Oakland*, 47 F.3d 1522, 1528 (9th Cir. 1995)

⁸ *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986).

⁹ This can include the victim's attorney representing her in other matters, including immigration, family, or protection order proceedings. Attorneys and advocates working with immigrant victims of sexual assault and sexual harassment are encouraged to offer victims assistance as third parties making and documenting complaints to employers.

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2) the victim employee unreasonably failed to take advantage of any preventive or corrective opportunities provided or to otherwise avoid harm.¹⁰

If the harassment by the supervisor results in a “**tangible employment action**”, the employer has no defense and will be found liable. A tangible employment action includes, but is not limited to: termination, retaliation, suspension, failure to hire, demotion, or reduction in hours. It is important to note that under some state anti-discrimination laws,¹¹ an employer is *strictly liable* for harassment by a supervisor. There is no defense available to the employer. However, the employee’s failure to report the harassment or otherwise take steps to avoid the harassment could reduce the monetary relief awarded to her.

If the harasser is the President, CEO, Chairman, or otherwise very top official in the company, the company could be *strictly liable*, and there is no need for notice to any higher authority.

Harassment by a Co-Worker or Third Party: An employer is liable for **co-worker or third party** harassment if it knew or should have known that harassment occurred. *Fuller v. City of Oakland*, 47 F.3d 1522 (9th Cir. 1995). Again, notice to the employer either directly or indirectly is a key factor.

II. Proving Harassment

Harassment is proven in a variety of ways. Even when there is no “third party, eye witness” of the assault, harassment can be proven.

Charging Party: The Charging Party can provide the most important testimony since she is a witness to the harassment. Her testimony should include her description of the harassment (its frequency, any physical contact or assault, verbal harassment, etc.) and any other discrimination she suffered, including threats by harasser or managers, or other forms of retaliation. Other factors include her reaction to the harassment and/or to describing the harassment. Was she crying? Emotionally upset? **The charging party’s credibility is the key element.** Employers will generally deny that the harassment occurred and thus, the credibility of the parties involved, the company’s response to the complaint of harassment, and the testimony of witnesses will be critical in determining whether harassment occurred. (See questions for the Charging Party in Sec. VIII.)

Corroboration through Witnesses: Testimony from other witnesses are also key to establishing the charging party’s credibility, the facts of the case, and past and present practices of an employer in response to sexual harassment. These witnesses may include co-workers, supervisors, counselors, parents, teachers, doctors, psychologists, actual eyewitnesses, etc. Witnesses might describe:

- changes in the charging parties’ behavior;
- how she looked before and after the assault;
- whether other workers have been assaulted or otherwise harassed in the workplace;
- the response of the employer to prior reports of harassment;
- acts of retaliation against persons who complain about harassment or testify on behalf of victims (see discussion below on the role of advocates, counselors and medical professionals); or
- may provide other important evidence that supports the victim’s case.

The Employer’s Actions: Ultimately, the key issue is whether the employer, once put on notice of the harassment, adequately protected the victim from harassment and/or assault and, if she was harassed or assaulted, whether the company took prompt and corrective action. The existence of a policy against harassment and retaliation, and how the policy is disseminated to the workforce will be at issue. Important issues will include:

- Was the policy distributed in a language that the workforce can understand?

¹⁰ *Burlington Industries v. Ellerth*, 118 S. Ct. 2257, 2270 (1998); *Faragher v. City of Boca Raton*, 118 S. Ct. 2275, 2292 (1998).

¹¹ California and Hawaii

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- How are workers trained about the policy?

The testimony and actions of company officials including human resources and company investigators will be critical factors. Other key factors will include:

- the past practices of the company in responding to complaints;
- the discipline of harassers or lack thereof;
- its actions in responding to the instant complaint;
- the qualifications of the company investigator to conduct the investigation; and
- the adequacy of the company investigation.

The Harasser's Actions: Ultimately, in sexual harassment cases, the accused harasser can either claim that the sexual harassment did not occur or that the harassment was consensual, that the charging party welcomed the sexual harassment. The accused harasser might portray the victim as the aggressor and harasser, or that she otherwise engaged in the same sexual behavior. The accused harasser may try to deny that harassment occurred by contending that he was nowhere near the alleged harassment, and his co-workers may support his version of the facts. Like the charging party, the accused harasser's credibility is a critical factor for the fact finder in determining "who is telling the truth".

Law Enforcement: The existence, or lack thereof, of a filed police report is not determinative of whether harassment occurred. Less than 10% of sexual assault crimes are reported. When the victim of sexual assault or sexual harassment is an immigrant, the likelihood of police reporting is lower, and the barriers to reporting are even higher.¹² The standard of proof that applies in sexual harassment cases is whether the sexual harassment or sexual assault is proven by a preponderance of the evidence (51%), rather than upon proof beyond a reasonable doubt, the standard that is required for criminal sexual assault prosecutions.

Some Hurdles in Proving Harassment:

The Charging Party:

- May be afraid to tell parents or friends;
- Must deal with stigma, shame, peer pressure, or community pressure;
- Fears that friends, family members, co-workers, or her cultural community will tease her or reject her;
- May be concerned that they will believe that she is having an affair with a co-worker or supervisor;
- Needs the job to support family, pay for basic living expenses, and fears retaliation;
- Is afraid that her parents and family will not believe her and/or will punish her;
- Is afraid that her cultural community will reject or abandon her;
- Fears that her husband or boyfriend will not believe her and will harm her or others;

¹² Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass, and Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L.J. 1 (2003).

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- Fears deportation and its consequences (poverty, persecution, cultural stigma, isolation, rejection of family and/or community in her homeland);
- Might not have known about her rights and did not object;
- May have been so traumatized by the assault that she has difficulty remembering details, or copes with the trauma by burying any memories.

Other witnesses may be fearful about stepping forward because of potential retaliation including bodily harm, termination, suspension, etc.

CAVEAT: Just because the Charging Party did not tell someone right away about the harassment does not mean she is lying!! There is no “normally expected” response for victims of severe harassment or assault.

III. Retaliation

In Fiscal Year 2006, the EEOC received 22,555 charges of retaliation discrimination based on all statutes enforced by the EEOC.

Title VII of the Civil Rights Act of 1964 also protects employees from retaliation. An employer may not fire, demote, harass or otherwise "retaliate" against an individual for:

- filing a charge of discrimination;
- testifying;
- participating in a discrimination proceeding, investigation or litigation; or
- otherwise opposing discrimination.

The same laws that prohibit discrimination based on race, color, sex, religion, national origin, age, and disability, as well as wage differences between men and women performing substantially equal work, also prohibits retaliation against individuals who oppose unlawful discrimination or participate in any related proceeding. Participation in a proceeding is defined as including, but is not limited to:

- an investigation of the discrimination charge;
- testifying in court; or
- testifying in depositions.

Retaliation occurs when an employer, employment agency, or labor organization takes an **adverse action** against a **covered individual** because he or she engaged in protected **activity**.

A. Adverse Action

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An adverse action is an action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. Examples of adverse actions include:

- Employment actions such as termination, refusal to hire, and denial of promotion;
- Other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance; and
- Any other action such as an assault or unfounded civil or criminal charges that are *likely to deter reasonable people* from pursuing their rights.¹³

NOTE: If, during the course of an EEOC investigation, a charging party is being threatened with termination, further harassment, or other adverse actions that may consequently impede the investigation, EEOC can go to federal court immediately to obtain a temporary restraining order or preliminary injunction to stop the adverse action.¹⁴

If you are aware of these threats, you should immediately contact the EEOC Regional Attorney in your jurisdiction. A list of the Regional Attorneys is available at www.eeoc.gov.¹⁵

Adverse actions generally do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history. Adverse actions for retaliation, however, can also include *further harassment*.¹⁶

Even if the prior protected activity alleged wrongdoing by a **different employer**, retaliatory adverse actions are unlawful. For example, it is unlawful for a worker's current employer to retaliate against her for pursuing an EEO charge against a former employer. Similarly, it is unlawful for a former employer against whom a complaint was made to retaliate against the charging party in other jobs by giving a negative reference, informing the prospective employer that the charging party made a complaint of discrimination or harassment, or otherwise taking actions which serve to deter the charging party from pursuing her complaint.

B. Covered Individuals

Covered individuals are people who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, or disability. Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals. For example, it is illegal to terminate an employee because his/her spouse participated in employment discrimination litigation.

Individuals who have brought attention to violations of law other than employment discrimination are NOT covered individuals for purposes of the employment discrimination retaliation laws. For example, "whistleblowers" who raise ethical, financial, or other concerns unrelated to employment discrimination (race, color, sex, national origin, religion, age and disability under federal law) are not protected. However, they may be covered under anti-retaliation provisions of other federal or state laws.

¹³ See *Burlington Northern Santa Fe Ry Co. v. White*, 126 S. Ct. 2405 (2006); *Ray v. Henderson*, 217 F.3d 1234 (9th Cir. 2000).

¹⁴ 42 U.S.C. Sec. 2000e-5(f)(2). (See *EEOC v. Iowa AG, LLC and DeCoster Farms of Iowa*, discussed in "Partial List of Sexual Assault Cases Litigated by EEOC" below.) It is important to note that the victims in this case were immigrant victims of sexual assault. De Coster Farms victims received some of the first U-Visa interim reliefs awarded.

¹⁵ There is a Regional Attorney in each of the 15 EEOC District Offices in Atlanta, Birmingham, Charlotte, Chicago, Dallas, Houston, Indianapolis, Los Angeles, Miami, Memphis New York City, Philadelphia, Phoenix, San Francisco and St. Louis. Each Regional Attorney has jurisdiction over a broad geographic area including multiple states.

¹⁶ *Ray*, 217 F.3d at 1245-1246.

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C. Protected Activity

Protected activity includes:

- **Opposition to a practice believed to be unlawful discrimination.** This would include informing an employer that you believe that he/she is engaging in prohibited discrimination. Opposition is protected from retaliation as long as it is based on a reasonable, good-faith belief that the complained of practice violates anti-discrimination laws and the manner of the opposition is reasonable.

Complaining to anyone about alleged discrimination against oneself or others;

- Threatening to file a charge of discrimination;
- Picketing in opposition to discrimination; or
- Refusing to obey an order reasonably believed to be discriminatory.
- **Participation in an employment discrimination proceeding.** Participation is protected activity even if the proceeding involved claims that ultimately were found to be invalid. Examples of participation include:
 - Filing a charge of employment discrimination;
 - Cooperating with an internal investigation of alleged discriminatory practices; or
 - Serving as a witness in a discrimination investigation or lawsuit.
- A protected activity can also include requesting a reasonable accommodation based on religion or disability.

Examples of activities that are NOT protected opposition include:

- Actions that interfere with job performance so as to render the employee ineffective; or
- Unlawful activities such as acts or threats of violence.

IV. EEOC's Charge Processing Procedures

A. Who Can File A Charge?

A charge filed with the EEOC authorizes the EEOC to investigate alleged discrimination at a company or other covered entity. The federal laws apply to all employees of employers in the United States and its possessions and territories (e.g. U.S. Virgin Islands, Guam, Commonwealth of the Northern Mariana Islands, American Samoa, Commonwealth of Puerto Rico) that have 15 or more employees (for at least 20 weeks in the calendar year or preceding calendar year of the charge filing).¹⁷

Exhaustion of Administrative Remedies: Under Title VII, a charge must be filed with the EEOC or a state or local fair employment practices agency before the charging party can file suit in federal court.

¹⁷ For technical assistance regarding violations by employers with less than 15 employees, contact NIWAP for individual technical assistance.

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Immigrant workers: The federal laws against discrimination make no distinction on the basis of immigration status for employees working in the U.S. or its territories. Consequently, *undocumented workers*¹⁸ and *other non-U.S. citizens are covered*.¹⁹ During its investigation, the EEOC will not ask the immigration status of any charging party since it is irrelevant to a finding of discrimination.²⁰ In the course of litigation, the EEOC has sought and obtained court orders barring a company's lawyer from inquiring into a charging party or any witness' immigration status.²¹ Courts have concluded that allowing questioning about immigration status has a "chilling effect" on complainants and undercuts the civil rights laws.²²

U.S. citizens working for U.S. companies abroad are covered by federal laws.²³ However, non-U.S. citizens working abroad for U.S. companies are not covered.

Third Parties: Charges can also be filed by a third party on behalf of an aggrieved individual. Third parties might include a friend, relative, co-worker, union, church member, advocate, or attorney. Advocates, healthcare providers, shelter workers, and attorneys offering civil legal assistance, immigration assistance, or prosecuting a criminal case on behalf of immigrant victims of sexual assault or sexual harassment are encouraged to assist victims, particularly those with limited English proficiency and who lack familiarity with the U.S. justice system. This approach provides an alternate or additional method for holding sexual harassment and sexual assault perpetrators accountable. This is particularly important due to strict filing deadlines, as will be discussed below (see Timelines).

Commissioner's Charge: Additionally, an EEOC Commissioner (one of five commissioners) can initiate an investigation on his/her own based on information that is obtained by the Commissioner's office.

Directed Charge: Under the Age Discrimination in Employment Act, an EEOC District Director can initiate a "director's charge" to launch an investigation into a company.

B. Timeliness

A charge must be filed within **180 days** of the discriminatory act. In harassment cases involving a pattern of harassment, at least one act must occur within the last 180 days.²⁴ Note: In states that have similar anti-discrimination statutes and that have a work-sharing agreement with the EEOC, the charge must be filed within **300 days** of the discriminatory act.²⁵ In discharge cases, the date of NOTICE of termination (not the last day of work necessarily) starts the clock.²⁶ A charging party cannot proceed to court unless it has "exhausted its administrative

¹⁸ The term "undocumented workers" refers to non-citizens working in the United States without having received employment authorization from the Department of Homeland Security. This terminology is used in this chapter instead of pejorative terminology often used, including "illegal aliens", "unauthorized workers", and "illegal immigrants". It is important to note that VAWA self-petitioners, VAWA cancellation applicants and U-Visa interim relief recipients are undocumented until they receive their lawful permanent residency under VAWA, or until they are awarded a U-Visa, but are eligible for and can receive legal employment authorization and are thus not undocumented workers.

¹⁹ See *EEOC v. Tortilleria "La Mejor"*, 758 F. Supp. 585, 589 (E.D. Cal. 1991); see also, *Rivera v. NIBCO, Inc.* 364 F.3d 1057, 1064 (9th Cir. 2004). Immigration status might affect the remedies available. In *Hoffman Plastics Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) the Supreme Court held (5-4) that under the National Labor Relations Act the NLRB has no authority to interpret immigration law and that where an unfair labor practice occurs (termination), the NLRB may not order back pay or reinstatement for an undocumented worker. While some employers argue that Hoffman Plastics applies to Title VII, no federal court has adopted that view. (see footnote 14 and 15 for examples). Title VII claims are adjudicated in federal court, and federal judges have wider discretion than the NLRB. (See *Rivera v. NIBCO* above). In reality, the back pay may be minimal and real remedy lies in recovering compensatory and /or punitive damages. Courts have also held that where neither back pay nor reinstatement is sought, Hoffman Plastics clearly does not apply (*EEOC v. The Rest. Co.*, 448 F. Supp. 2d 1085, 1088, order affirmed, 2007 WL 424323 (D. Minn.) *EEOC v. Bice of Chicago*, 229 FRD 581, 583 (N.D. Ill. 2005)).

²⁰ If there is any question about the immigration status of the charging party, she should be referred to competent immigration lawyers for consultation and advice.

²¹ See, e.g. *EEOC v. The Rest.Co.*, 448 F. Supp. 2d at 1087, order affirmed, 2007 WL 424323 (D. Minn.) *Bice of Chicago*, 229 FRD at 583; *EEOC v. First Wireless Group, Inc.* 225 FRD 404, 406 (E.D.N.Y. 2004).

²² *Rivera*, 364 F.3d at 1064.

²³ 42 U.S.C. 2000e (f).

²⁴ *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002).

²⁵ 42 U.S.C. Sec. 2000e-5(e).

²⁶ *Del. St. Col. v. Ricks*, 449 U.S. 250, 259 (1980).

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remedies” without first filing with the EEOC or a state or local agency authorized to receive the charges. *Practice Point: A lawsuit under Title VII or the Americans with Disabilities Act (ADA) cannot be filed unless a charge is timely filed with the EEOC or corresponding state agency.*

C. What Happens after a Charge of Employment Discrimination is Filed with EEOC?

Ten days after a charge is filed with the EEOC, the employer is notified that the charge has been filed and is given an opportunity to respond to the charge. There are a number of ways a charge may be handled:

Investigation

A charge may be assigned for priority investigation if the initial facts appear to support a violation of law. When the evidence is less strong at the outset, the charge may be assigned for follow up investigation to determine whether it is likely that a violation has occurred.

EEOC can seek to settle a charge at any stage of the investigation if the charging party and the employer express an interest in doing so. If settlement efforts are not successful, the investigation continues.

In investigating a charge, EEOC may make written requests for information, interview people, review documents, and, as needed, visit the facility where the alleged discrimination occurred and other related sites.

The EEOC can also seek information on other potential victims of discrimination or harassment, including names, lists of employees, other witnesses, etc. The EEOC can also obtain relief for these “class members” even if they do not file a charge.

When the investigation is complete, EEOC will discuss the evidence with the charging party or employer, as appropriate. The employer is required by law to cooperate with the EEOC’s requests for information. A failure to provide the information can result in the EEOC issuing an administrative subpoena for the information. If the company does not comply with the subpoena, the EEOC can file a complaint in federal court to enforce the subpoena. The existence of a federal investigation then becomes public.

Note: The charge may be selected for EEOC’s *mediation* program if both the charging party and the employer express an interest in this option. Mediation is offered as an alternative to a lengthy investigation. Participation in the mediation program is confidential, voluntary, and requires consent from both charging party and employer. If mediation is unsuccessful, the charge is returned for investigation.

D. Resolving Charges

Dismissal: A charge may be dismissed at any point if, in the agency’s best judgment, further investigation will not establish a violation of the law. If the evidence obtained during an investigation does not establish that discrimination occurred, this will be explained to the charging party. A required notice is then issued, closing the case and giving the charging party 90 days (from the date of receipt of the Notice of Right to Sue) in which to file a lawsuit on his or her own behalf in federal court. Different laws may apply to the comparable state claims.²⁷

Letter of Determination: If the evidence establishes that discrimination has occurred, the employer and the charging party will be informed of this in a letter of determination that explains the finding. The EEOC will then attempt conciliation with the employer to develop a remedy for the discrimination.

²⁷ See discussion below on an individual filing a lawsuit.

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Conciliation: Conciliation is an opportunity for the employer, employee and the EEOC to seek a confidential settlement.²⁸ This may include various remedies including back pay, reinstatement, monetary damages, injunctive relief (training, discipline, etc.) and other remedies.

V. Litigation by EEOC

If the EEOC is unable to successfully conciliate the case, the agency will decide whether to file a lawsuit in federal court. Lawsuits by the EEOC are brought by the Office of General Counsel (OGC). The Regional Attorney is the OGC's representative in the field and can authorize lawsuits.²⁹ The lawsuit is essentially between the United States government (EEOC) (on behalf of the charging party) and the employer. In the lawsuit, the EEOC can obtain relief for the charging party and the class of similarly situated workers even if the other workers did not file individual charges.³⁰ A press release is issued when an EEOC lawsuit is filed so that witnesses and potential class members are aware of the case.

Intervention: If the EEOC files suit, the charging party can intervene in the lawsuit and sue on the federal claims as well as any other related state or federal claims. This can play an important role in the case since federal employment anti-discrimination laws have caps on damages up to \$300,000. Some state law claims have no caps on damages or may have different caps from federal law. Attorneys seeking to represent charging parties who will intervene into the EEOC's lawsuit, should contact the respective EEOC Regional Attorney as soon as possible to communicate and coordinate intervention in the case.³¹ Early communication can result in the best case coordination, improving outcomes for victims. Note that the Charging Party cannot intervene in an Age Discrimination in Employment Act suit filed by the EEOC.

Notice of Right to Sue: If the EEOC decides not to file a lawsuit, it will issue a notice closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf. A Charging Party can request a Notice of Right to Sue at anytime after a charge is filed. However, the EEOC District Director can decide not to issue the Notice of Right to Sue within the first 180 days of the charge being filed.

Settlements: Generally, EEOC lawsuits that are settled are resolved through a Consent Decree signed by the federal judge and filed with the court. It is a matter of public record.

VI. Private Lawsuit by the Charging Party

Generally, the EEOC's earlier determination that the evidence did not establish a violation of law does not prevent a Charging Party from filing a private lawsuit. These lawsuits are trials *de novo*, i.e., the Charging Party has the opportunity and the burden to show that a violation occurred, notwithstanding the EEOC's findings. Similarly, a court is not bound by the EEOC's determination that discrimination occurred. The Charging Party must still prove discrimination and the defendant employer can present its own witnesses to establish that no violation occurred.

The EEOC can intervene in a private lawsuit if it is in the public interest to do so. The EEOC may choose to intervene even when it had decided not file the original lawsuit.

²⁸ Until the EEOC files an action in federal court, the existence of the charge and any information gathered during the investigation remains confidential and cannot be disclosed by the EEOC under federal law.

²⁹ The charging party's attorney or advocate should communicate with the Regional Attorney and provide any necessary information that may help determine whether a lawsuit should be filed.

³⁰ *Gen. Tel. Co. v. EEOC*, 446 U.S. 318, 324 (1980).

³¹ For a list of regional attorneys and their contact information, see www.eeoc.gov. There is a Regional Attorney in each of the 15 EEOC District Offices in Atlanta, Birmingham, Charlotte, Chicago, Dallas, Houston, Indianapolis, Los Angeles, Miami, Memphis New York City, Philadelphia, Phoenix, San Francisco and St. Louis. Each Regional Attorney has jurisdiction over a broad geographic area including multiple states.

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Required Timelines:

- **Federal Court cases**
 - A charging party may file a lawsuit within 90 days in federal court after receiving a notice of a "right to sue" from EEOC, as stated above.³²
 - Under **Title VII** of the Civil Rights Act of 1964 and the Americans with Disabilities Act a charging party also can request a notice of "right to sue" from EEOC 180 days after the charge was first filed with the Commission, and may then bring suit within 90 days after receiving this notice.
 - Under the Age Discrimination in Employment Act, a suit may be filed at any time 60 days after filing a charge with EEOC, but not later than 90 days after EEOC gives notice that it has completed action on the charge.
 - Under the Equal Pay Act, a lawsuit must be filed within two years (three years for willful violations) of the discriminatory act, which in most cases is payment of a discriminatory lower wage.
 - There may be different deadlines for claims brought under state law and to be filed in state court.³³

VII. Remedies Available to Victims of Harrassment or Retaliation

The "relief" or remedies available for employment discrimination may include:

Back pay (salary and benefits covering the period from termination until resolution), or

Front pay (money for pay that would have been earned if charging party was reinstated but reinstatement is not a good option under the circumstances),

- **Compensatory Damages:** Under Title VII and the Americans with Disabilities Act, compensatory damages can be awarded to compensate a victim for actual monetary losses, for future monetary losses, and for mental anguish, pain and suffering, etc.
- **Punitive Damages:** Punitive damages also may be available to punish an employer if it acted with malice or reckless indifference. Punitive damages are not available against the federal, state or local governments under federal employment discrimination laws.
- **Title VII Caps on Compensatory and Punitive Damages:** There are, however, caps on compensatory and punitive damages, ranging from \$50,000 to \$300,000, per charging party or class member, depending on the size of the employer.³⁴ These caps are not applicable to discrimination claims brought under 42 U.S.C. Sec. 1981 generally covering race/national origin claims. They are also not applicable to claims of discrimination under state law.
- **Other costs and fees:** The court could order the defendant to pay the plaintiff's attorney fees (if the plaintiff wins), witness fees and court costs. However, it is important to be aware that the plaintiff could

³² The EEOC can also intervene in individual suits if there is a public interest that can be served by joining the lawsuit.

³³ See *EEOC v. Farmer Bros. Co.*, 31 F.3d 891, 902 (9th Cir. 1994)

³⁴ 42 U.S.C. 1981a (b). The caps on damages are as follows: Respondents (employers) with 15-100 employees (\$50,000); respondents with 101-200 employees (\$100,000); respondents with 201-500 employees (200,000), and respondents with more than 500 employees (\$300,000). The caps on damages do not apply to back pay or front pay.

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be ordered to pay for the defendant's attorney's fees and costs if the court finds that the lawsuit was "frivolous".³⁵

Injunctive Relief: The court could also order that the employee be hired, reinstated, promoted, or otherwise made whole, e.g., in the condition s/he would have been but for the discrimination. An employer may be required to post notices in applicable languages to all employees addressing the violations of a specific charge and advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

The employer also may be required to take corrective or preventive actions to cure the source of the identified discrimination and minimize the chance of its recurrence, as well as discontinue the specific discriminatory practices involved in the case. This may include training for all staff, tying managers' or supervisors' performance reviews to compliance with federal anti-discrimination laws, or termination and/or not rehiring any harassing individual. The Consent Decree or other court orders could also specifically bar retaliation against the charging party. If the employer retaliates, the employer could be found in contempt of court and be subject to fines as well as additional damages.

VIII. The Role of the Attorney, Advocate, Counselor or Medical Professional

A. Establishing Credibility: The medical doctor, counselor, therapist, social worker, advocate, or other professional who treats or assists the charging party plays a critical role. He or she may be the first person who hears about the acts that occurred, how they occurred, who did it, and what suffering the charging party may have undergone. All this information may help to buttress the charging party's credibility – a crucial factor in "he said, she said" disputes or, the more likely case, where sexual assault occurs behind closed doors.

Corroboration of assault: physical injuries, mental state, etc. may help to confirm that the charging party has undergone some traumatic experience; but "stoic" behavior, apparent indifference, and a limited description of the events, do not necessarily confirm that the assault did not occur.

Law Enforcement: Do not assume that law enforcement was called in when the assault was reported to the company or ever. Similarly, don't assume that the police know how to assess credibility *in civil cases* involving a private company. Police do not enforce and generally are not trained in federal employment discrimination law. More often than not, women do not report sexual assault crimes to law enforcement, and companies do not always report assault in the workplace when the company could face liability for the acts committed by an supervisor, a co-worker or even a third party. In criminal proceedings, the standard for finding guilt is "beyond a reasonable doubt" whereas the standard for finding an employer liable of harassment is "by a preponderance of the evidence, which is 51%".

Some Tips/Questions at the Initial Interview:³⁶

- 1) Ask first about the most recent assault: i.e. parties involved; location; and what occurred.
- 2) How did the charging party respond to the assault? Fight it off? Fearful? Protest?
- 3) Did the harasser threaten the charging party with retaliation? Bodily harm? Harm to others? Deportation?
- 4) Did she complain internally to the company? To a supervisor? What happened? Treatment offered?

³⁵ See Federal Rules of Civil Procedure, Rule 11; see also *Christianburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978)

³⁶ While these questions can be asked by health care providers and counselors, they are also suggested questions for the attorney assessing Charging Party's credibility and gathering the general facts to support the claim.

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- 5) **Did the company or supervisor retaliate?** What was the retaliation? Demotion? Termination? Reduced Hours? Threatened Termination? Did the company try to discourage her from pursuing her complaint? Deportation?
- 6) Were there prior incidences of harassment? When? How often? Who was involved?
- 7) Why didn't she complain sooner to the company? Were other victims deterred from complaining? Supporting Facts? Witnesses?
- 8) Are there other victims who suffered harassment as well?

Remember, the attorney contemplating filing suit must be convinced that the charging party is credible and that there is evidence to support that conclusion.

B. Compensatory Damages: Compensatory damages are damages awarded for pain and suffering and emotional distress. In cases where there is no significant back pay involved (i.e. failure to hire, demotion, termination), compensatory damages may be the most critical remedy for the charging party. Generally, the treating physician's or therapist's notes and records will be involved in establishing pain and suffering, but might not be necessary when seeking damages such as injunctive relief (hiring, reinstatement, promotion) or back pay. Family members and friends could also testify to explain changes in the charging party's behavior after the assault.

Some Areas to Explore:

- 1) How did the charging party react after the assault? Cry? Break down? Was she withdrawn?
- 2) What changes have there been in her relations with others? Spouse? Boyfriends? Children? Siblings? Diminished sexual relations? Inability to hold conversations with anyone? Less social? Not able to fulfill family obligations?
- 3) How does she feel when she sees the harasser?
- 4) How did she react after she was retaliated against?
- 5) Does she have any physical injuries? What? Marks? Bruises? Cuts? Were these reported to anyone? Who? What was her response when she was injured?
- 6) Did the sexual harassment or sexual assault(s) lead to harm to her mental health (e.g., Post-Traumatic Stress Disorder, depression, anxiety, sleeplessness)?

Lessons from *EEOC v. Footaction, USA*: In a case involving the harassment of an 18-year-old sales associate, the assistant manager had threatened to ring the charging party's neck on two occasions, and on the second threat, actually had his hands around her neck. Earlier complaints of harassment to the store manager (who had been dating the harasser's mother) were unheeded. The teen did not report the harassment to her mother. *The mother first learned of the harassment when she found the teen curled up in a fetal position on the couch after the second "break your neck" threat.* She convinced the teen to file a charge with the EEOC, and her testimony about how the harassment impacted her daughter greatly affected the daughter's recovery for compensatory damages.

Rule 35 Medical Examination: Under Rule 35 of the Federal Rules of Civil Procedure, the defendant company can ask the judge to order a physical and mental examination of the charging party when her physical or mental condition is at issue, as in the case that the party raises her physical or medical condition in support of her position, the party intends to offer expert testimony in support of the claim for emotional distress, and there is good cause. A party's emotional distress is at issue when it is unusually severe, requires an expert to explain or is described in medical terms.³⁷ Less serious emotional distress, such as grief, anxiety, anger, and frustration that

³⁷ *Ricks v. Abbott Labs*, 198 FRD 647, 649 (D.Md. 2001).

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people experience when bad things happen is not sufficiently “in controversy”.³⁸ Often the case and the amount of compensatory damages can turn on “dueling” doctor’s testimony.

The Examiner: The examination must be conducted by a certified or licensed professional, normally a physician or a psychologist.³⁹ Other examiners may “include a licensed clinical psychologist and other certified or licensed professionals such as dentists, social workers, or occupational therapists, who are not physicians or clinical psychologists, but who may be well-qualified to give valuable testimony about the physical or mental condition that is the subject of dispute.”⁴⁰

Other Stressors: In the Rule 35 examination, other stressors in the victim’s life may come out. These stressors may include: domestic violence, divorce, history of victimization, or other pressures that undercut or muddy her claim for compensatory damages. The defendant will argue that the “pain and suffering” the victim is experiencing was not caused by the assault alone but by other stressors, and therefore the amount of monetary damages should be minimal.

Conflicting Medial Opinions: When a Rule 35 medical examination is ordered the decision in the sexual harassment cases and the amount of compensatory damages can turn on “dueling doctors” respective evaluations of the charging party’s physical and mental condition. When the charging party’s own health care professionals testify as experts about her physical and mental condition and the impact the sexual harassment or sexual assault had on her and the Rule 35 medical examiner presents different results in his evaluation, the court will have to resolve this conflict between the doctors as a part of the court’s decision in the case.

C. Cultural and Linguistic Competencies: Cultural and linguistic competencies are critical particularly in working with immigrant women or young workers. Attorneys and treating professionals should be aware of the following factors and exercise great patience when working with victims.

Language: Studies show that victims are better able to describe embarrassing acts and emotional harm if they speak in their first language. Thus, it is critical for the treating professional to be linguistically competent or have a qualified interpreter. The interpreter must also understand and be sensitive to the fact that the victim will describe acts which may be embarrassing to her.

Factors of vulnerability: Awareness of the factors of vulnerability is critical. These factors may include:

- minority and/or immigrant status;
- limited or non-English speaking ability;
- retaliation;
- the charging party desperately needing the job;
- economic condition of the charging party;
- lack of employment alternatives, harsh historical working conditions and employment practices in an industry; or
- other factors.

These factors commonly exist in higher levels in industries where employees are less likely to complain. Examples include: service, agriculture, businesses in rural communities, and small companies.

³⁸ Michael C. Smith, O’CONNOR’S FEDERAL RULES: CIVIL TRIALS 2007 (Jason E. Wilson ed., Jones McClure Publishing 2006).

³⁹ *Id.*

⁴⁰ Federal Civil Judicial Procedures and Rules (2006 Revised Ed.).

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Teenagers: Young workers pose an exceptional challenge in sexual assault cases as they might first believe that “it was not a big deal”, “they can handle it” on one hand, or be extremely reluctant to talk about it because they fear that their parents or boyfriend may punish them. Peer pressure “not to complain” is strong, particular in areas where jobs are few. Their relative youth, first time experience in work, and general unawareness of their rights or knowledge of what is permissible or prohibited behavior, may make it difficult to get the complete story in the initial interviews.

Moreover, this is by no means an exhaustive list of the cultural and linguistic competencies that may be brought to bear in sexual harassment and assault cases and attorneys, advocates, counselors and medical professionals should be aware of other factors.⁴¹

CONCLUSION

Sexual harassment and assault in the workplace is a continuing problem, but laws exist to protect victims. This outline is intended to be a basic document to inform advocates, counselors and attorneys offering civil and immigration legal assistance to victims about their roles in helping victims of sexual harassment and assault in the workplace obtain remedies, including monetary relief. If you would like training or materials and/or have questions, feel free to contact the EEOC.

APPENDIX A

RESOURCES:

www.eeoc.gov: Lists all EEOC offices, District Directors and Regional Attorneys, guidelines on discrimination claims, EEOC programs, etc.

www.youth.eeoc.gov: Highlights work behind “Youth at Work” initiative which targets young workers.

PARTIAL LIST OF SEXUAL ASSAULT CASES LITIGATED AND RESOLVED BY EEOC

EEOC v. Tanimura & Antle (N.D. Cal.) (EEOC San Francisco)

EEOC alleged that Blanca Alfaro and a class of Latina farm workers were sexually harassed and/or retaliated against for protesting harassment by supervisory officials of Tanimura & Antle, the largest lettuce grower in the world (Salinas, California). The harassment included, among others, “quid pro quo” demands, i.e., employment to work in the fields was conditioned on having sexual relations with the hiring official.

Resolution: Consent Decree; settlement; \$1.855 million, the largest sexual harassment award in the agricultural industry. Lead harasser was fired (for other reasons unrelated to the harassment charge) but will not be rehired; co-harasser suspended, and mandatory training for all employees. (1999)

EEOC v. Rivera Vineyards, Inc. (C.D. Cal.) (EEOC Los Angeles)

⁴¹ See chapter on Dynamics of sexual assault experienced by immigrant victims for more information

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EEOC alleged that Latina farm workers were subjected to sex discrimination (segregation) and sexual harassment, including rape (Coachella, California)
Resolution: Consent Decree; settlement; \$1.1 million (June 2005)

EEOC v. Technicolor Videocassette, Inc. (C.D. Cal.) (EEOC Los Angeles)

EEOC alleged that class of Latina video production workers were subjected to egregious sexual harassment and retaliation by male co-workers and supervisors. Retaliation included demotion, loss of wages, further harassment, disciplinary action and discharge. (Camarillo, California)
Resolution: Consent Decree; settlement \$875,000 (2002)

EEOC v. DJ International dba Moods & Music (D.N.M.I.) (EEOC San Francisco)

EEOC alleged that seven Filipina waitresses, some of whom were teenagers, were sexually harassed as a condition of employment (allow customers to fondle them and/or have sex with them) and retaliated against them for opposing harassment. (Saipan, Commonwealth of the Northern Mariana Islands)
Resolution: Judgment: \$350,000 (1999)

EEOC v. Mid-America Hotels, dba Burger King (D. Mo.) (EEOC St. Louis)

EEOC alleged that seven women including 6 high school students were subjected to weeks of groping, vulgar sexual comments and demands for sex by the manager (Peerless Park, Missouri) Resolution: Consent Decree: settlement \$400,000 (2004)

EEOC v. Footaction, USA (N.D. Cal.) (EEOC San Francisco)

EEOC alleged that an 18-year old female sales associated was constantly sexually harassed by her assistant manager, co-workers and customers, including propositions for sex. Assistant manager twice threatened to break the charging party's neck if she complained and put his hands around her neck while making the threat. (San Jose, CA)
Resolution: Consent Decree: settlement \$111,000 (2001)

EEOC v. Star Concrete dba Sandman (N.D. Cal.) (EEOC San Francisco)

EEOC alleged that young female in office was harassed (physical grabbing, propositions for sex, comments about body, etc.) by owner's son in plain view of managers for two years.
Resolution: Consent Decree; settlement \$250,000 (2001)

EEOC v. Iowa AG, LLC and DeCoster Farms of Iowa (N.D. Iowa) (EEOC Milwaukee)

EEOC alleged that Mexican female employees at poultry and egg processing plants were raped by their supervisors and so intimidated and threatened with retaliation (including further rape) that they were afraid to cooperate with EEOC's investigation. EEOC filed Motion for Preliminary Injunction to enjoin retaliation while EEOC investigated. Consent order granted. Lawsuit on harassment and retaliation filed.
Resolution: Consent Decree; settlement \$1.525 million (2002)

EEOC v. Safeway (D. Hawaii) (EEOC San Francisco)

EEOC alleged that male store employee was subjected to "same sex" sexual harassment (grabbing of genitals and buttocks, touching, propositions for sex, simulated sex, etc.) by supervisor on a regular basis. (Honolulu, HI)
Resolution: Consent Decree, settlement \$250,000 for federal claims (undisclosed amounts for state claims) (2001)

EEOC v. Harris Farms (E.D. Cal.) (EEOC San Francisco) (see attached *Ms. Magazine* article)

EEOC alleged that Mexican farm worker employed by large agricultural company was egregiously sexual harassed by her supervisor and co-workers (three rapes, constant requests for sex, threats to physical safety, assault) and then retaliated against, resulting in her constructive discharge (Coalinga, California)
Resolution: Jury verdict \$994,000 (January 2005)

EEOC v. Roy's Poipu Bar & Grill (D. Hawaii) (EEOC San Francisco)

EEOC alleged that three female restaurant employees were subjected to sexual harassment (verbal and physical, including propositions for sex and a harasser placing a waitress on the bar and putting his head between her legs).
Resolution: Consent Decree; settlement \$245,000 (2002)

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EEOC v. Carmike Cinemas (D.N.C.) (EEOC Charlotte)

EEOC alleged that 14 young men had been harassed by a male supervisor, a convicted sex offender, at a theater (sexual touching, egregious comments, sexual advances, demands for sex, etc.) (Raleigh, NC)

Resolution: Consent Decree; settlement \$765,000 (2005)

EEOC v. Quality Art LLC and Palestra Capital (D. Arizona) (EEOC Phoenix)

EEOC alleged that the company subjected 27 Latina females to widespread sexual harassment and national origin discrimination, and that the company retaliated against employees who complained about discrimination by firing them or forcing them to resign, as well as by reporting undocumented workers to the INS. (Gilbert, Arizona)

Resolution: Judgment \$3.5 million (2001)

EEOC v. Rent-A-Center (N.D. Missouri) (EEOC St. Louis)

EEOC alleged that thousands of women were denied job opportunities and promotions on the basis of sex and were sexually harassed

Resolution: Consent decree; settlement \$47 million (2003)

EEOC v. Mitsubishi (N.D. Illinois) (EEOC Chicago)

EEOC alleged that hundreds of women were subjected to sexual harassment on the factory line. Harassment included touching, groping, fondling and constant propositions for sex by supervisors and co-workers.

Resolution: Consent Decree; settlement \$34 million (1998)

EEOC v. Sizzler (N.D. Cal.) (EEOC San Francisco)

EEOC alleged that Mexican female employee was subjected to egregious sexual harassment in the restaurant which included grabbing, constant propositions for sex by a co-worker, a failure of management to address the problem, and threats to kill female employee by harasser; Consent Decree; settlement \$300,000 (2008)

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National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
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The Criminal Justice System and Immigrant Victims¹²

By Leslye Orloff, Rebecca Story and Carole Angel

The information provided in this chapter is intended to serve as an introduction and provides a basic overview of how criminal matters can affect immigrant victims. It is essential to contact an expert on immigration law and the possible consequences of a criminal conviction, and who has experience working with immigrant victims before proceeding with a criminal case involving immigrants. Immigrant victims of sexual assault or domestic violence who become involved in the criminal judicial system as defendants should be advised not to enter into any plea agreement until the victim and her defense attorney have consulted an immigration attorney with expertise on criminal immigration issues and on the legal rights of immigrant survivors.³

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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 A list of references is provided at the end of this chapter.

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Immigrant victims who have not committed crimes, but rather were acting in self-defense can be charged with crimes of violence or assault. This could be particularly true when immigrant victims are limited English proficient, when police who are not fluent in the victim's language do not secure assistance of qualified interpreters, and police who cannot effectively communicate with immigrant victims rely on information provided by others including the perpetrator. When an immigrant victim has been arrested and/or has had criminal charges brought against her, the victim's advocate and attorney and victim's attorneys should work with both prosecutors and defense attorneys to have the charges dropped and should inform victims about the potential immigration consequences of the conviction for the crimes of violence or assault.

I. Introduction

This chapter is designed to help advocates and attorneys assist immigrant victims **of sexual assault and domestic violence** avoid the harmful immigration consequences of criminal convictions and/or findings that an immigrant has violated a protection order. Such convictions and findings can lead to loss of legal immigration status and potentially deportation for persons who are not citizens of the United States. For non-citizen sexual assault or domestic violence victims, criminal issues can have serious immigration consequences, including the following:

- A non-citizen immigrant victim can be deported if she commits any of a wide variety of crimes;
- Her VAWA self-petition, application for VAWA cancellation of removal or application for naturalization can be denied if she cannot show good moral character because of a criminal history;
- Even if she has an approved VAWA self-petition, she may be barred from obtaining lawful permanent residence (a green card) if she falls within one of the criminal grounds of inadmissibility;
- A U-visa or T-visa applicant may hinder the ability of a victim to obtain an inadmissibility waiver and pursue T or U visa immigration relief;
- Her application for adjustment of status (permanent residence) or VAWA cancellation of removal can be denied if immigration authorities decide not to exercise discretion in her favor because of her criminal history.

Advocates and attorneys should screen all immigrant victim clients using the "Red Flags" list⁴ and the information in this chapter to identify issues that require immediate attention before the victim files any petition or application for immigration relief. This screening should occur as early in the case as possible because as more time passes, particularly if the victim begins to use the legal system to seek protection, it is more likely that abusers will report victims to the Department of Homeland Security (DHS), which has been increasing its enforcement operations.⁵ Those who cooperate in a criminal prosecution of the abuser and file for a protection order or custody may prompt the abuser to contact DHS about the victim's immigration status, triggering an enforcement action against the victim. If screening for criminal issues and assessment of victim eligibility for immigration relief occur prior to the initiation of family court actions, then these issues can be taken into account in developing case strategy and timing.

Though it is critical that any immigrant who becomes involved as a defendant with the criminal legal system seek counsel from an attorney, there are several situations in which this is absolutely critical. Consult with an immigration attorney with expertise on immigration law and crimes and immigrant victim's legal rights⁶ if any of the following has happened to an immigrant victim client:

1. Arrest
2. Dual Arrest
3. Criminal conviction
4. Entering into a plea agreement in any criminal case⁷

⁴ See Chapter 1 for the Appendix of this Manual

⁵ Jennifer Brooks, *Records show surge in immigration prosecutions*, Gannett News Service, August 24, 2005; Patrick McGhee, *Deportations of immigrants have spiked over decade*, September 17, 2006 available at <http://educate-yourself.org/cn/undocumentedimmigrants01may06.shtml>; Robert Boyer, *Immigration enforcement plan stirs concerns: Commissioner likes idea; Advocates doubt its effectiveness*, Times-News (Burlington, North Carolina), October 8, 2006.

⁶ See the More Resources section at the end of the chapter for technical assistance and referral information.

⁷ This includes a plea of *nolo contendere*.

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5. Any contempt or protection order enforcement action filed against the victim
6. Arrest or detention by DHS of a victim to whom any of the above (1-5) have occurred.

This will enable the victim and her defense attorney to assess the potential effects of the criminal case on her immigration status when deciding how to proceed.⁸

II. Criminal Convictions and Immigration Status of Victims

Criminal conduct can jeopardize the immigration status of all non-citizens living in the United States. Even lawful permanent residents who have lived in the U.S. for years and have close family ties, such as U.S. citizen spouses and children, can be affected. Such consequences include deportation, permanent bars to returning to the U.S., and mandatory detention by immigration authorities, as well as difficulties in obtaining permanent residence or becoming citizens through naturalization.⁹

Immigrant victims of sexual assault or domestic violence, even if otherwise eligible for permanent residence through the Violence Against Women Act (VAWA), a U-visa or a T-visa can be rendered ineligible because of a criminal conviction and be subject to removal.¹⁰ Often non-citizen victims who have not committed crimes, but were acting in self defense or whose conduct was directly related to their victimization are incorrectly counseled to plead guilty without being advised as to the immigration consequences associated with their plea. To avoid these consequences, advocates and attorneys should work with defense attorneys and prosecutors to inform them of the potential immigration consequences and get criminal charges dismissed or reduced when possible to a crime or convictions that will not cut the victim off from the relief she would otherwise be entitled to receive.

It is not unusual for non-citizen victims of sexual assault in the context of family violence themselves to be arrested on domestic violence charges, when assaulted by their spouse, intimate or cohabiting partner. This can occur because of language barriers. The police may speak to an intimate partner or his family members but not to the victim, because she does not speak English. A perpetrator may assault the victim, causing her to fight back in self-defense, and then call the police and claim that she assaulted him. If the victim speaks little or no English, she will not be able to explain what really happened and could herself be arrested. A conviction for domestic violence is grounds for deportability and can render an immigrant victim ineligible for certain relief under VAWA.¹¹

It is important to understand that the relationship between criminal law and immigration law is complex, and that immigration laws are constantly changing. A misunderstanding of these legal complexities can render an immigrant ineligible for permanent resident status and may result in deportation.

A. Effects of Criminal Convictions On Immigration Status – An Overview For Non Citizen Victims

There are numerous ways in which a criminal history can negatively affect an immigrant victim's immigration case:

- Regardless of her immigration status, criminal convictions and conduct can make an immigrant survivor subject to "removal proceedings" (formerly known as deportation proceedings) by triggering one of the crime-related legal grounds of inadmissibility or deportation.¹²

⁸ For information on how to obtain a client's criminal records, see Appendix 2.

⁹ See ANN BENSON ET AL., WASHINGTON DEFENDER ASS'N, IMMIGRATION CONSEQUENCES OF CRIMINAL CONDUCT: AN OVERVIEW FOR CRIMINAL DEFENDERS IN WASHINGTON STATE, 1 (2005). See also <http://www.defensenet.org/immigration-project/immigration-resources>. (last visited August 2009).

¹⁰ "Removal" is the term in immigration law also known as deportation.

¹¹ INA §237(a)(2)(E); 8 U.S.C. 1227 (1996); INA §240A(b)(2); 8 U.S.C. 1229b (1996). (For immigrant victims with criminal convictions who qualify for both VAWA and U visas, they will have to decide which to pursue. They will need to consult an expert on the immigration consequences of criminal convictions before proceeding.)

¹² See INA §101(a)(43); §212(a)(2); §237(a)(2); 8 USC 1101(a)(43); §1181(a)(2); §1227(a)(2).

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- Criminal convictions can trigger legal barriers that will prevent immigrant survivors from getting lawful immigration status and benefits that they would otherwise be entitled to receive. VAWA self-petitions, VAWA cancellation, U and T visa provisions, asylum and citizenship all contain legal bars relating to criminal convictions and conduct.¹³
- Even where a criminal conviction does not trigger a legal bar preventing the immigrant survivor from filing for immigration status or citizenship, it will constitute a negative discretionary factor in deciding her case. Immigration authorities can deny an otherwise eligible applicant if they determine that she does not deserve a favorable exercise of discretion.
- If the immigrant survivor has been deported and returns illegally to the U.S., she is at risk of federal criminal prosecution for illegal reentry after deportation. If she has a criminal conviction, it will increase her sentence possibly by years.¹⁴

Advocates and attorneys should be aware of common issues of criminal law that affect immigrant victims. The following sections describe some possible scenarios that victims may face in the criminal justice system and the effects on their immigration cases. **This chapter is not intended to be a comprehensive guide to the immigration scenarios of criminal convictions. Instead, it is meant to address some of the more common situations in which criminal matters affect the immigration status of immigrant victims of sexual assault or domestic violence.**

1. Definitions – Convictions and Sentences Under Immigration Law

Convictions under immigration law

It is important for advocates and attorneys to understand that the definition of “conviction” in the criminal justice system differs from the legal definition of “conviction” in the immigration context. The Immigration and Nationality Act (INA) defines the term “criminal conviction” for immigration purposes.¹⁵ A judgment that might not be considered a conviction under the criminal law of the relevant jurisdiction may be one for immigration purposes.

The immigration law defines a conviction as follows:

The term “conviction” means, a formal judgment of guilt of the non-citizen or lawful permanent resident entered by a court or, if adjudication of guilt has been withheld, where

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.¹⁶

Many states have a variety of “deferred adjudication procedures” that allow a criminal case to be continued at some stage of the proceedings in order to give the defendant an opportunity to comply with certain conditions. The specifics of each procedure vary, but they are generally designed to result in the dismissal of charges if the

¹³ Some of these provisions contain special “waivers” of certain criminal convictions. See INA §212(a)(2)(A)(ii)(I); INA§212(h); INA §204(c). However, many convictions cannot be “waived” and having to apply for crime-related waivers makes these cases much more difficult and susceptible to denial.

¹⁴ See 8 USC 1326. The maximum possible sentence in these cases is either 10 or 20 years. Illegal reentry after deportation is one of the most prosecuted federal crimes and accounts for over 25% of all federal cases in some jurisdictions. See <http://articles.latimes.com/2008/mar/16/local/me-crackdown16>, and <http://www.ice.gov/pi/news/newsreleases/articles/071003losangeles.htm>

¹⁵ INA §101(a)(48)(A); 8 U.S.C. 1101(a)(48)(A) (1996).

¹⁶ *Id.*

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defendant complies with these conditions.¹⁷ Often, the defendant agrees to the admissibility of the police report or certain facts, with the understanding that, if she violates the conditions, the judge will rely on the police report or those facts to determine the defendant's guilt. Even if these admissions do not constitute a conviction, the admissions, particularly when they include a stipulation as to the sufficiency of the facts, can still have serious consequences for non-citizen defendants. Immigration officials may find there is an admission to facts "sufficient to warrant a finding of guilt," and find the non-citizen inadmissible for having admitted to committing a crime, whether or not there is a conviction.¹⁸

A conviction with a pending appeal is not final and therefore is not considered a conviction under immigration law,¹⁹ and juvenile dispositions are not considered convictions for immigration purposes (unless the juvenile was transferred to and convicted as an adult in adult criminal court).²⁰ However, some other dispositions that are not considered convictions under state and federal criminal law, such as pretrial diversion, withholding of adjudication, or probation before judgment, may be considered convictions for immigration purposes.²¹

An advocate or attorney working with an immigrant victim of sexual assault who has been accused of a crime should consult with the victim's defense attorney and prosecutors when possible and inform them of potential immigration consequences of a conviction. If a victim is charged with assault, domestic violence, or aggravated assault or other crime, the advocate or attorney should assist the defense attorney in determining the circumstances of the arrest. Questions that should be asked include the following:

- Was the victim acting in self-defense
- Does the victim speak English fluently?
- Does her perpetrator speak English?
- Did the police speak the victim's language or have a qualified interpreter?
- Who served as the interpreter?
- Did the police arrive and only speak with her perpetrator or his family members?
- Was this a case of dual arrest?
- Is the abuser the predominant perpetrator of abuse in the relationship?

If the victim was wrongly arrested, the advocate or attorney should work with the police and prosecutors to have the case dismissed. If efforts to have the case dismissed are unsuccessful, the advocate or attorney must educate the prosecutor and defense attorney about the immigration consequences of a guilty plea and deferred adjudication agreements that contain admissions that could warrant a finding of guilt. **Immigrant victims should be advised not to enter into any plea agreement until the victim and her defense attorney have consulted an immigration attorney who has expertise on immigration status and crimes for advice.**

Criminal Sentences

The sentence a non-citizen receives is often a critical factor in determining the immigration consequences that will result. A sentence for immigration purposes includes not only time served in jail, but any period of incarceration ordered by a court regardless of whether some or the entire sentence is suspended.²² Many crimes, such as misdemeanor assault, can have drastic immigration consequences if the non-citizen is sentenced to one year or more in prison, even if the entire sentence is suspended. If an immigrant victim of sexual assault or domestic violence is convicted of one of these crimes and receives a 365-day sentence with 364 days of it suspended, she will be considered to have a 365-day sentence for immigration purposes.

¹⁷ See e.g. ANN BENSON, WASHINGTON DEFENDER ASS'N, IMMIGRATION CONSEQUENCES OF CRIMINAL CONDUCT, 14 (2002).

¹⁸ See INA §212(a)(2)(A)(i); 8 U.S.C. 1182(a)(2)(A)(i) (1990), which states that "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of – (I) a crime involving moral turpitude..., or (II) a violation of... any law or regulation of a State... is inadmissible."

¹⁹ See *Pino v. Landon*, 349 U.S. 901 (1955).

²⁰ *Matter of Devison*, Int. Dec. 3435 (BIA 2000); See also Daniel Levy, Under the Auspices of the National Immigration Project of the National Lawyers Guild, *U.S. Citizenship and Naturalization Handbook*, §7:28.

²¹ *Id.*

²² INA § 101 (a)(48)(B); 8 U.S.C. 1101(a)(48)(B) (1996).

Sexual Assault by a non-intimate or intimate partner

Domestic sexual assault refers to sexual assault committed by a former or current intimate or cohabiting partner or spouse.²³ An immigrant convicted of these crimes can be deported under various provisions of the Immigration and Nationality Act.²⁴

B. Domestic Violence Crimes:

An immigrant convicted of domestic violence, stalking, child abuse, child neglect, or child abandonment can also be deported.²⁵ An immigrant can be deported for violating a protection order as well.²⁶ These provisions are grounds of deportability and will apply to all non-citizens including undocumented immigrants and immigrants who have been lawfully admitted to the U.S. or who have obtained lawful permanent resident status or conditional permanent resident status.²⁷

The definition of “crime of violence” under Section 16 of Title 18 U.S.C. includes:²⁸

- An offense that has as an element of use, attempted use, or threatened use of physical force against the person or property of another; or
- Any felony that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Domestic violence is defined as any crime of violence that is directed against a person listed in Section 327 of the Immigration & Nationality Act. This section defines domestic violence related deportable offenses and relationships to be any 8 U.S.C. §16 crime of violence that is directed against a person by:²⁹

- A current or former spouse of the person;
- An individual with whom the person shares a child in common;
- An individual who is cohabitating with or has cohabitated with the person as a spouse;
- An individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs³⁰; or

²³ Marital or spousal rape is “any unwanted intercourse or penetration (vaginal, anal, or oral) obtained by force, threat of force, or when the wife is unable to consent. Most studies of marital rape have included couples who are legally married, separated, divorced or cohabiting with the understanding that the dynamics of sexual violence in a long-term cohabiting relationship are similar to those of a married couple (Mahoney & Williams, 1998).” Raquel Kennedy Bergen, Elizabeth Barnhill *Marital Rape: New Research and Directions* Applied Research Forum of the National Network on Violence Against Women (February 2006).
http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR_MaritalRapeRevised.php

²⁴ INA § 237(a)(2)(E); 8 U.S.C. 1227(a)(2)(E)(1996).

²⁵ INA § 237(a)(2)(E)(i); 8 U.S.C. 1227(a)(2)(E)(i) (1996).

²⁶ INA § 237(a)(2)(E)(ii); 8 U.S.C. 1227(a)(2)(E)(ii) (1996).

²⁷ ²⁷ INA § 237(a)(2)(E); 8 U.S.C. 1227(a)(2)(E)(1996). It is important to understand that crimes of domestic violence, stalking, violations of protection orders and crimes against children are grounds for deportability and removal from the United States. When a person applies for admission to the United States they must prove admissibility. The grounds of inadmissibility are defined by INA § 212 and do not explicitly make a perpetrator inadmissible if convicted of domestic violence, stalking, violations of protection orders and crimes against children. However these crimes are considered for purposes of the exercise of discretion to find that the applicant has good moral character and because these crimes may be considered crimes of moral turpitude under the INA §212(a)(2)(A)(i).

²⁸ 18 U.S.C §16. Cases interpreting 18 U.S.C. § 16 have found that sexual assault and sexual battery are crimes of violence. In *Sutherland v. Reno*, the Second Circuit held that the defendant was convicted of a crime of violence and eligible for removal because he was convicted of a crime of domestic violence based upon his conviction under state law for indecent assault and battery. *Sutherland v. Reno*, 228 F.3d 171 (2d Cir. 2000).

²⁹ INA § 237(a)(2)(E)(i); 8 U.S.C. 1227(a)(2)(E)(i) (1996).

³⁰ Depending on the state, relationships may include spouses and former spouses, parents, siblings, aunts, uncles, grandparents, in-laws, step-siblings, step-parents, children, parents of a child in common, unmarried individuals living together as spouses, intimate partners, those in dating relationships, the current spouse of an ex-spouse those offering refuge, someone formerly living together as a spouse, and unrelated household members. See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 814-841 (1993).

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- Anyone protected from the perpetrator by state domestic violence laws.

Domestic violence is typically a crime committed by an intimate or cohabiting partner.³¹ Moreover, domestic violence is also considered a crime of violence. Immigrant victims of sexual assault may also be arrested if police officers see that their intimate partner or perpetrator has visible wounds—even if those wounds were inflicted while the victim was defending herself. Police officers may have a difficult time determining who the aggressor is, particularly if the victim does not speak English and the police fail to obtain a qualified interpreter to assist them in communicating with the victim. When this happens the victim could then be charged with domestic violence or various forms of assault.³² Thus, an immigrant victim of domestic violence or sexual assault could potentially fall under one or both of the aforementioned categories of crime if, for example, she acted in self-defense and police charged her with assault or aggravated assault. A conviction for domestic violence or even simple assault involving the above listed relationships may trigger deportation.³³

When police are not properly trained, mandatory arrest laws can result in dual arrest (arresting both parties), instead determining which party is the principle aggressor. This confusion is heightened when an immigrant victim has limited English skills and the perpetrator speaks English. Immigrant victims of domestic violence can be arrested for various forms of assault or domestic violence offences when police officers mistakenly believe them to be the perpetrators when they actually acted in self-defense. It is essential for advocates or attorneys to intervene to help immigrant victims get charges against them dismissed.³⁴

Convictions whether by plea or after trial can lead to a victim's removal from the United States, even when the victim served no time in jail. Additionally, an immigrant can become deportable for violating a protection order if the court has determined that the immigrant's conduct violated the part of the protection order that involves protection against:

- credible threats of violence;
- repeated harassment; or
- bodily injury to the person or persons protected under the order.³⁵

Since violating a protection order is a deportable offense, immigrant victims should not agree to, and should contest to the issuance of, any civil protection order against them.³⁶ Perpetrators sometimes claim at protection order hearings that they had been abused as well, and judges may issue mutual protection orders against both parties in such cases. Such mutual protection orders violate Due Process and are unenforceable under the Full Faith and Credit Provisions of the Violence Against Women Act.³⁷ In other cases, after the victim has filed for a protection order, the perpetrator may file his own civil protection order against the victim to retaliate. In other instances, abusers may preemptively file a protection order against immigrant victims, to be the first to file such an order.

Many immigrant women who could benefit from protection orders do not file for them because they do not know protection orders exist.³⁸ When immigrant women learn about protection orders, they may choose to seek them, particularly when they are working with victim advocates or attorneys and when the abuse has been severe.³⁹ Immigrant women, like other battered women considering seeking a protection order, fear retaliation

³¹ <http://www.ojp.usdoj.gov/ovc/assist/nvaa99/chap8.htm>

³² For more information, please contact the National Clearinghouse for the Defense of Battered Women, 125 South Ninth Street, Suite 302, Philadelphia, PA 19107, T: (215) 351-0010, F: (215) 351-0779. The police have an obligation under Title VI and Executive Order 13166] to provide an interpreter to communicate with the victim in the victim's native language. For a further discussion of the laws government language access for limited English proficient individuals see chapter 2 of this manual and visit www.lep.gov.

³³ INA §237(a)(2)(E)(i) (1996).

³⁴ See Leslye Orloff, et. al., Battered Immigrant Women's Willingness to Call for Help and Police Response, 13 UCLA Women's L.J. 43 (2003).

³⁵ INA § 237(a)(2)(E); 8 U.S.C. 1227(a)(2)(E).

³⁶ See Chapter 5 of the Breaking Barriers Manual, "Protection Orders"

³⁷ 18 U.S.C.A. §2265(c) (2000).

³⁸ Protection orders are available to victims of domestic violence and sexual assault, regardless of their immigration status. See Legal Momentum, Immigrant Women Program, *Use and Outcome of Civil Protection Orders by Battered Immigrant Women in the U.S.* http://www.legalmomentum.org/site/PageServer?pagename=iwp_Montreal

³⁹ *Id.*

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through escalated violence (40%) and possible death or severe injury (11.5%).⁴⁰ However, immigrant women's fears are exacerbated by concerns that seeking a protection order will lead to the victim's deportation (16%) and that her children will be taken from her (5%).⁴¹

Unfortunately when the perpetrator files first and perpetuates the control by asserting that he is the victim, the true victim is placed in a position where she has to explain to the court that she was scared of the perpetrator yet chose not to file for a protection order until she herself was served with one against her. This argument although quite realistic, makes the victim appear less credible. It is critical that immigrant victims who fear retaliation from abusers and file for protection orders consult with attorneys who practice family and immigration law so that they can fully understand whether or not these fears may be alleviated by legal or social service protections they are entitled to receive under immigration and family laws.⁴² An immigrant victim who has not committed a domestic violence offense, or who acted in self-defense, should not consent to the issuance of a protection order against her and instead request a hearing on the protection order. The hearing will make the abuser have to prove his case.

C. Crimes of Moral Turpitude

A non-citizen who is convicted of a crime of moral turpitude committed within five years of admission for which a sentence of one year or longer may be imposed, or who has two or more convictions of crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, is deportable.⁴³ Crimes of moral turpitude are also a ground of inadmissibility and, thus, can render an immigrant survivor ineligible to reenter the U.S. or to obtain immigration benefits such as self-petitioning, adjustment of status, VAWA cancellation of removal, and citizenship.⁴⁴

1. *Definition and Examples of Crimes Involving Moral Turpitude*

When working with domestic violence or sexual assault victims, it is not always easy to determine if a conviction amounts to a crime involving moral turpitude. Courts have found that a number of different crimes involve moral turpitude, and an attorney will often have to compare the exact criminal statute to the case law. Crimes such as murder, rape, voluntary manslaughter, robbery, burglary, theft, arson, aggravated assault, forgery, prostitution, and shoplifting have consistently been held to involve moral turpitude.⁴⁵ In general, the following types of crimes have also been held to involve moral turpitude:

- Crimes that involve an intent to defraud or intent to steal⁴⁶
- Crimes which have as an element an intentional or reckless infliction of harm to persons or property⁴⁷
- Felonies and some misdemeanors that involve malice⁴⁸

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See, Nawal Ammar, Leslye Orloff and Mary Ann Dutton, "Use and Outcome of Civil Protection Orders By Immigrant Women in the United States," presentation at the 2008 Law and Society Association Conference, Montreal, Quebec, Canada May 31, 2008 and Dutton MA, Ammar N, Orloff L, Terrell D. Use and outcomes of protection orders by battered immigrant women (2003-WG-BX-1004). Washington, DC: National Institute of Justice, 2006.

⁴³ INA § 237(a)(2)(A); 8 U.S.C. 1227(a)(2)(A) (1996).

⁴⁴ INA § 212(a)(2)(A)(i)(I); 8 U.S.C. 1182(a)(2)(A)(i)(I); INA §101(f); 8 U.S.C. 1101(f).

⁴⁵ See generally, Ann Benson and Jonathan Moore, Practice Advisory on Representing Noncitizens Accused of Misdemeanor Assault Offenses – Both DV and Non-DV Cases- Under RCW 9A.36.041 (Washington Defenders Association, (February 2007); Washington Defender Association Immigration Project, An RCW Quick Reference Chart for Determining Immigration Consequences of Selected Washington State Offenses http://www.defensenet.org/immigration-project/immigration-resources/RCW_Immigration_Chart-1.pdf/view, (last visited August 2009); Ann Benson, Overview of Immigration Consequences of Criminal Conduct for Immigrant Survivors of Domestic Violence, In Breaking Barriers, A Complete Guide to Legal Rights and Resources for Battered Immigrants). (Legal Momentum 2004).

⁴⁶ INA § 212(a)(2)(A)(i)(I); 8 U.S.C. 1182(a)(2)(A)(i)(I); *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982).

⁴⁷ INA § 212(a)(2)(A)(i)(I); 8 U.S.C. 1182(a)(2)(A)(i)(I)

⁴⁸ INA § 212(a)(2)(A)(i)(I); 8 U.S.C. 1182(a)(2)(A)(i)(I); See e.g. *Matter of Adcock*, 12 Immigr. Rep. B1-175 (BIA 1994) (unpublished), in which the Board of Immigration Appeals held that a willful act or omission causing injury to a child is an offense involving moral turpitude. However, criminally negligent child abuse is not considered a crime of moral turpitude. *Matter of Sweetser*, 22 I. & N. Dec. 709 (BIA 1999).

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- Sex offenses that involve some “lewd” intent.⁴⁹

Sexual assault is generally defined as any unwanted sexual attention or sexual contact committed by force, manipulation, bribes, threats, pressure, tricks, or violence without consent.⁵⁰ This includes child molestation, rape and attempted rape, sexual harassment, and incest. Crimes that do not involve the above elements have generally been held not to involve moral turpitude.⁵¹ These include involuntary manslaughter, simple assault, breaking and entering, criminal trespass, malicious mischief, and various weapons possession offenses.⁵² Victims need to avoid convictions as much as possible so that they will not have to use the waivers available under VAWA and the U visa.

Aggravated assault, on the other hand, is considered a crime of moral turpitude. It is defined as an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury.⁵³ It is usually accompanied by the use of a weapon or through means likely to produce death or serious bodily injury.⁵⁴ Actual injury, however, is not a requirement of the crime of aggravated assault.⁵⁵

Victims who defend themselves and are later charged with simple assault are not considered to have committed a crime of moral turpitude. Yet if the victim uses force, depending on the severity of force, the victim’s defensive actions may qualify as aggravated assault, which is a crime of moral turpitude that renders the victim potentially deportable. Advocates and attorneys should be aware that the determination of whether a crime constitutes an act of moral turpitude is determined by closely examining the statute under which your client is accused and relevant court decisions, and requires expert analysis by an attorney with experience in immigration and crimes.⁵⁶ Advocates should work with the prosecutor to provide evidence of a history of abuse in these cases, and urge dismissal of cases where the immigrant acted in self-defense.

When assisting immigrant victims of sexual assault with criminal records, advocates and attorneys should always consult with an expert in immigration law and crimes to determine whether one of the exceptions or waivers applies to the facts of an immigrant client’s case.

D. Aggravated Felonies

An immigrant victim of domestic violence or sexual assault convicted of an aggravated felony while in the United States is deportable.⁵⁷ An aggravated felony is defined by immigration law, not state criminal law, and includes twenty-one sections of the Immigration and Nationality Act that encompass hundreds of offenses.⁵⁸ Some examples include: murder, rape, child sexual abuse, trafficking in controlled substances, firearms offenses, child pornography, obstruction of justice or perjury with a sentence of one year or more, fraud or deceit if the loss exceeds \$10,000, crimes of violence with a sentence of one year or more, and theft or burglary offenses (including receipt of stolen property) with a sentence of one year or more.⁵⁹

⁴⁹ Ann BENSON, WASHINGTON DEFENDER ASS’N, IMMIGRATION CONSEQUENCES OF CRIMINAL CONDUCT, 51 (2005).

⁵⁰ The Pennsylvania Coalition Against Rape defines sexual violence as violence that “violates a person’s trust and feeling of safety. It occurs any time a person is forced, coerced, and/or manipulated into any unwanted sexual activity. The continuum of sexual violence includes rape, incest, child sexual assault, ritual abuse, date and acquaintance rape, statutory rape, marital or partner rape, sexual exploitation, sexual contact, sexual harassment, exposure, and voyeurism.” Available at http://www.pcar.org/about_sa/index.html

⁵¹ Ann Benson & Jonathan Moore with Katherine Brady, Immigration and Washington State Criminal Law 57 (Washington Defenders Association, 2005) <http://www.defensenet.org/immigration-project/immigration-resources/Immigration%20Crimes%20FINAL%2001-06-09.pdf/view>

⁵² Ann BENSON, WASHINGTON DEFENDER ASS’N, IMMIGRATION CONSEQUENCES OF CRIMINAL CONDUCT, 51 (2005).

⁵³ Model Penal Code § 211.1(2) defines a person as guilty of aggravated assault if he: a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon

⁵⁴ http://www.fbi.gov/ucr/05cius/offenses/violent_crime/aggravated_assault.html

⁵⁵ <http://www.oregon.gov/CJC/county.shtml>

⁵⁶ *Id.* at 287.

⁵⁷ INA § 237(a)(2)(A)(iii); 8 U.S.C. 1227(a)(2)(A)(iii) (1996).

⁵⁸ INA § 101(a)(43); 8 U.S.C. 1101(a)(43) (1996).

⁵⁹ *Id.*

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Any offense that falls within the aggravated felony definition triggers drastic immigration consequences. An immigrant victim of sexual assault or domestic violence convicted of an aggravated felony will not be eligible for VAWA self-petition or cancellation of removal because she will be barred from establishing good moral character. She will generally be subject to deportation despite many years of residence in the U.S. or what family ties she might have here.⁶⁰ She also will be ineligible for most forms of relief from deportation.⁶¹ Immigrant victims with convictions that are considered under immigration law to be aggravated felonies, may be able to qualify for T-visa or U-visa immigration relief. The T-visa⁶² and U-visa⁶³ statutes granted discretion to DHS to waive many inadmissibility grounds based on convictions considered an aggravated felony.⁶⁴

1. *Helping Victims Accused of Self Defense/Assault*

Crimes of violence: A conviction for a crime of violence with a sentence of one year or more is an aggravated felony.⁶⁵ If an immigrant victim is convicted of domestic violence, assault, or an aggravated felony and sentenced to one year or more, even if all or part of her sentence is suspended, her conviction will be treated as an aggravated felony under immigration law.

Self-Defense/Assault: Self-defense generally refers to the use of force to protect oneself, one's family or one's property from a real or threatened attack. Generally, an individual is justified in using reasonable force, or force that is proportionate to the force or threat received or reasonably perceived. If the force used, however, is greater than that which was received, the force will not be considered self-defense and may be considered an assault.

An assault is defined as the intentional unlawful touching of another; intentionally placing another in understandable fear of receiving a physical injury; or intentionally, knowingly, or recklessly causing physical injury to another.⁶⁶ While a simple assault is not considered a crime of moral turpitude,⁶⁷ an aggravated assault,⁶⁸ or an assault with a sentence of one year or more would be considered an aggravated felony, thus triggering the immigration consequences described above.

Immigrant victims who have not committed crimes, but rather were acting in self-defense can be charged with crimes of violence or assault. This is particularly true for victims of domestic violence perpetrated by a family

⁶⁰ If she is a lawful permanent resident, or was admitted as a refugee, she will be entitled to a hearing before an immigration judge, but otherwise, she can be subject to an administrative order of removal with virtually no right to appeal.

⁶¹ Katherine Brady & Dan Kesselbrenner, *Grounds of Deportability and Inadmissibility Related to Crimes*, (2003), at http://www.fdo.org/pdf/lib/GroundsofDeport_Inadmiss.pdf.

⁶² INA § 212(d)(13); 8 U.S.C. 1182(d)(13) (1996); "A principle or derivative applicant, who is or becomes inadmissible under section 212(a) of the INA, will not be eligible for a T-nonimmigrant status unless the ground of inadmissibility is waived by the service." An alien should apply for a waiver on form I-192 *Application for Advance Permission to Enter as a Nonimmigrant*. The Service has authority to waive many grounds of inadmissibility under INA § 212(d)(3)(B); however, these waivers are discretionary not automatic. See T-visa Inadmissibility Waiver, 67 Fed. Reg. 4789 (Jan. 31, 2002) (to be codified at 8 C.F.R. 214.11).

⁶³ INA § 212(d)(14); 8 U.S.C. 1182(d)(14) (1996); "(INA § 212(d), 8 U.S.C. 1182(d) is amended), to provide for a waiver of inadmissibility if the Secretary of Homeland Security determines that such a waiver is in the public or national interest." See U-visa Inadmissibility Waiver, 72 Fed. Reg. 53,015 (Sept. 17, 2007) (to be codified at 8 C.F.R. pt. 214(1)(a)(3)).

⁶⁴ It is important to note that aggravated felony convictions can make a victim inadmissible and lead DHS to decide that she does not have "good moral character." Immigrant victims applying as VAWA self-petitioners, VAWA cancellation and VAWA suspension applicants and as T-visa applicants must prove good moral character. Aggravated felony convictions can severely limit an immigrant victim's ability to attain VAWA, T or U-visa immigration relief. It is best to help immigrant victims avoid such convictions. However, immigrant victims may seek help from advocates and attorneys who in the past before seeking your help entered pleas to convictions that are considered aggravated felonies.

⁶⁵ A crime of violence includes any offense that has the use, attempted use, or threatened use of force as an element of the offense, as well as any felony that by its nature presents a substantial risk that force will be used against a person or property in the commission of the offense. 18 U.S.C. § 16.

⁶⁶ Model Penal Code § 211.1(1)

⁶⁷ Model Penal Code § 211.1(1) defines a person as guilty of simple assault if he: "a) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or b) negligently causes bodily injury to another with a deadly weapon; or c) attempts by physical menace to put another in fear of imminent serious bodily injury"

⁶⁸ Model Penal Code § 211.1(2) defines a person as guilty of aggravated assault if he: "a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon"

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member or intimate partner. It can also occur when an immigrant victim acted in self-defense to try to stop the sexual assault. Thus, advocates and attorneys should work with both prosecutors and defense attorneys to have the charges dropped and should inform them about the potential immigration consequences of a conviction for the crimes of violence or assault.

E. General Exceptions and Waivers for Criminal Convictions

The crime of moral turpitude ground of inadmissibility that applies to most immigrants seeking lawful status (such as VAWA self-petitions, U and T Visas holders, and applicants for lawful permanent residency through adjustment of status) provides two exceptions and a waiver. These exceptions and waivers can remove a crime of moral turpitude as a legal bar to obtaining lawful status.

1. *Examples of Exceptions and Waivers*

The Petty Offense Exception

The petty offense exception applies to immigrants (including immigrant victims of domestic violence and sexual assault) who committed only one crime, as long as the maximum penalty for the crime does not exceed one year, and the immigrant victim was not sentenced to a term of imprisonment of more than six months (including time suspended).⁶⁹

The Juvenile Exception

The juvenile exception applies to immigrants (including immigrant victims of domestic violence and sexual assault) if the immigrant committed the crime when the immigrant was under 18 years old and was released from confinement more than five years before filing for an immigration benefit or admission to the United States.⁷⁰

The Extreme Hardship Waiver

Immigrants with convictions for crimes involving moral turpitude, prostitution, or one conviction of simple possession of 30 grams or less of marijuana (but not other drug crimes) may qualify for a waiver of inadmissibility under INA § 212(h). Normally the applicant must establish extreme hardship to a U.S. citizen or permanent resident spouse, parent, or child to qualify. Battered immigrant VAWA self-petitioners are eligible for the waiver if they can establish extreme hardship to themselves.⁷¹

F. Waivers Specific to Immigrant Victim Relief

1. *Violence Against Women Act Immigration Relief Cases*

Congress recognized that battered immigrant can have a criminal conviction despite being a victim of abuse. Congress in the legislative history of VAWA 200 stated their intent:

“The legislation also grants the Attorney General the discretion to waive certain bars to immigration relief for qualified applicants. For example, battered immigrant women acting in self-defense are often convicted of domestic violence crimes. Under the 1996 immigration law, they became deportable and are denied relief under the Violence Against Women Act. The Attorney General will be able to use the waiver authority to help battered immigrants who otherwise qualify for relief.”⁷²

Congress also stated:

“[Sec. 1505. Offering Equal Access to Immigration Protections of the Violence Against Women Act of 1994 for All Qualified Battered Immigrant Self-Petitioners] Grants the Attorney General the authority to waive certain bars to admissibility or grounds of deportability with respect to battered

⁶⁹ INA § 212(a)(2)(A)(ii)(II); 8 U.S.C. 1182(a)(2)(A)(ii)(II) (1990).

⁷⁰ INA § 212(a)(2)(A)(ii)(I); 8 U.S.C. 1182(a)(2)(A)(ii)(I) (1990).

⁷¹ No waivers are available for the crimes of murder or torture, INA §212(h); 8 U.S.C. 1182(h) (2000).

⁷² Vol. 146, No. 126 Congressional Record. Trafficking Victims Protection Act of 2000—Conference Report, Page S10169, S10170, (Senate-October 11, 2000)

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spouses and children. New Attorney General waiver authority granted (1) for crimes of domestic violence or stalking where the spouse or child was not the primary perpetrator of violence in the relationship, the crime did not result in serious bodily injury, and there was a connection between the crime and the abuse suffered by the spouse or child; (2) for misrepresentations connected with seeking an immigration benefit in cases of extreme hardship to the alien (paralleling the AG's waiver authority for spouses and children petitioned for by their citizen or lawful permanent resident spouse or parent in cases of extreme hardship to the spouse or parent); (3) for crimes of moral turpitude not constituting aggravated felonies where the crime was connected to the abuse (similarly paralleling the AG's waiver authority for spouses and children petitioned for by their spouse or parents); (4) for health related grounds of inadmissibility (also paralleling the AG's waiver authority for spouses and children petitioned for by their spouse or parent)⁷³

To help reduce the impact of criminal convictions, victims who are not the principal perpetrators of violence may be eligible for a waiver of deportation⁷⁴ for domestic violence or stalking crimes, if:

- the alien was acting [in] self-defense;
- the alien was found to have violated a protection order⁷⁵ intended to protect the alien; or
- the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime –
 - that did not result in serious bodily injury; and
 - where there was a connection between the crime and the alien's having been battered or subjected to extreme cruelty⁷⁶

These waivers are only available to victims, when the victim and the perpetrator have one of the following relationships:

- current or former spouse;
- parties who share a child in common;
- parties who are cohabiting or have cohabited as intimate partners;
- relationships covered by the state domestic violence or family violence laws of the jurisdiction in which the offense occurs; or
- any other relationship covered by the domestic or family violence laws of the United States, any state, an Indian tribal government or a unit of local government.⁷⁷

Victims of many, but not all, forms of non-intimate partner sexual assault may be able to qualify for this domestic violence victim waiver if they have been arrested or convicted of domestic violence, stalking, or violation of a protection order. Examples of the types of victims who could avail themselves of this waiver include victims whose relationship with their sexual assault perpetrator⁷⁸ is:

- father-in-law or mother-in-law
- uncle or aunt;
- cousin;

⁷³ Vol. 146, No. 126 Congressional Record. Trafficking Victims Protection Act of 2000—Conference Report, Page, S10195, (Senate-October 11, 2000)

⁷⁴ Crimes of domestic violence, stalking, child abuse, or a violation of a protection order may be waived as grounds of removability. See INA § 237(a)(2)(E), 8 U.S.C. § 1227(a)(2)(E) (*crimes*) and INA § 237(a)(7), 8 U.S.C. § 1227(a)(7) (*waiver*).

⁷⁵ Statutes and case law in virtually every jurisdiction that has addressed the issue state that the protection order is between the court and the abuser. Victims cannot be convicted of violating a protection order issued to protect them. See e.g. Ohio v. Lucas 795 N.E.2d 642, 647 (OH 2003); Cole v. Cole, 556 N.Y.S.2d 217, 219 (Fam. Ct. 1990); See also Catherine E. Klein and Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1114-17 (1993). Under 18 U.S.C. § 2262 (2000), an interstate violation of any protective order risking threats of violence or harassment would also qualify. See also Chapter 14 of this Manual "Protection Orders for Immigrant Victims of Sexual Assault."

⁷⁶ INA § 237(a)(7)(A); 8 U.S.C. 1227(a)(7)(A) (2000).

⁷⁷ INA § 237(a)(2)(E)(i); 8 U.S.C. 1227(a)(2)(E)(i) (2000).

⁷⁸ For a more complete discussion of the relationships covered by state protection order statutes see Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women*, 21 HOFSTRA L. REV. 801, 814-842 (1993) (describing the range of relationships covered by state protection order statutes). ABA Commission on Domestic Violence, Domestic Violence Civil Protection Orders by State, http://www.abanet.org/domviol/docs/DV_CPO_Chart_8_2007.pdf

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- parent or step-parent;
- sibling or step-sibling;
- same sex intimate partners;
- grandparents;
- dating relationships; and
- former unrelated household members.
- relationships covered by the state domestic violence or family violence laws of the jurisdiction in which the offense occurs; or
- relationships that are covered by the state protection order statute.

Victims of non-intimate partner sexual assault are eligible for these waivers only to the extent that the relationship with the perpetrator fits into one of these categories.

VAWA applicants may also be eligible for a specified range of inadmissibility waivers.⁷⁹ DHS has the discretion to grant waivers for VAWA self-petitioners who are inadmissible because of a criminal conviction that qualifies as a crime of moral turpitude, multiple convictions, or a prostitution conviction.⁸⁰ Waivers are also available to those who have been granted immunity through a criminal prosecution and those who have certain drug convictions.⁸¹ In addition to obtaining an inadmissibility waiver, VAWA self-petitioners must also demonstrate good moral character.⁸² DHS generally adjudicates good moral character in a particular case in line with whether or not the self-petitioner qualifies for a waiver, with the decision on inadmissibility generally guiding the good moral character adjudication. However, DHS has the discretion to make adverse determinations of good moral character independent of the waiver qualification.⁸³ As such since many VAWA self-petitioners will also qualify to file U-visa application, VAWA self-petitioners who could have problems proving good moral character should consider filing a U-visa application and seek an inadmissibility waiver as part of her U-visa case so that they may be granted lawful immigration status without having to prove good moral character.

2. *Assisting Immigrant Victims Who Have Pending Criminal Cases Filed Against Them*

Advocates and attorneys should work with the immigrant victim and her defense attorney to ensure that the defense attorney consults with an immigration expert on immigration law and crimes. A list of resources is provided at the end of this chapter. Advocates and attorneys should also work with the local prosecutor's office to try to convince the prosecutor to drop or reduce charges where appropriate. **The advocate or attorney should provide the following type of information and evidence:**

- **For sexual assault by a non-intimate partner:** Advocates and attorneys should provide evidence that an immigrant victim's crimes were in response to violence by the perpetrator, related to efforts to escape, or otherwise connected to the sexual assault. Such evidence may convince a prosecutor that prosecuting an immigrant victim for crimes connected to the sexual assault she has suffered may not be in the interests of justice.
- **For assault by an intimate partner:** Provide the prosecutor with information about the relationship between the perpetrator and victim, including any documented evidence of assault the victim can obtain (medical records, witness statements, photographs, protection orders) to establish the history of domestic violence in the relationship. This will help demonstrate that any offense the victim may

⁷⁹ See *waivers and exceptions* at INA § 204(a)(1)(C), 8 U.S.C. § 1154(a)(1)(C) (good moral character as a discretionary matter); INA § 212(h), 8 U.S.C. § 1182(h) (discretionary waiver for marijuana possession); INA §§ 212(d)(13) & (14), 8 U.S.C. §§ 1182(d)(13) & (14) (discretionary waiver if in the national or public interest); INA § 237(a)(7), 8 U.S.C. § 1227(a)(7) (waiver for acts of self-defense and acts resulting from extreme cruelty); INA § 237(a)(2)(A)(V); 8 U.S.C. § (a)(2)(A)(V) (may deport for failure to register as a sex offender).

⁸⁰ INA § 212(h), 8 U.S.C. § 1182(h); INA § 237(a)(7); 8 U.S.C. § 1227(a)(7).

⁸¹ INA § 212(h), 8 U.S.C. § 1182(h)

⁸² INA § 101(f), 8 U.S.C. § 1101(f).

⁸³ Yates, William. Determinations of Good Moral Character in VAWA-Based Self-Petitions. United States Citizenship and Immigration Services, January 19, 2005.

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have committed occurred under duress or in self-defense, and thus she should not be charged. These offenses need not be limited to violent crimes, and could include non-violent offenses like shoplifting, which the victim may have been coerced to do by the perpetrator, or merely to survive.

If the prosecutor does not agree to drop the charges, the defense attorney and advocate should try to convince him/her to continue the criminal case for a specific period of time without any finding or admission. If there are no new criminal acts by your client after that time period has passed, request the prosecutor dismiss the case. If the victim will pursue this approach it is very important that this be structured as a continuance, rather than as a pre or post-trial diversion program which may require a victim to stipulate to a finding or an admission that will be used against her should another violent incident occur during the one year period. Any pretrial agreement that requires a finding or admission is considered a conviction for immigration law purposes and can form the basis for DHS initiating a removal action against the victim either now or at sometime in the future.⁸⁴

If none of the above suggestions are effective, work with the immigrant client to convince her defense attorney to take the case to trial rather than enter a plea.⁸⁵ **A defense attorney who is not aware of the immigration consequences of entering a plea may advise the client that this is the best option for her because she may avoid going to jail by doing so. In many cases, however a guilty or no-contest plea may make the immigrant victim deportable or otherwise have negative ramifications in her U visa or VAWA case, as well as her accessibility to lawful permanent residency.** It is important that the defense attorney understand the immigration consequences before advising an immigrant to enter a plea.

The defense attorney may still decide that going to trial is not a good option due to the circumstances of the case and that the immigrant should enter a plea. If a plea agreement is the best option, the defense attorney should consult an attorney with expertise in immigration law and crimes for assistance in deciding on a plea to a charge that will not have immigration consequences, or to a charge for which an immigration waiver or exception is available, if these alternatives are possible.

3. Use of Interpreters⁸⁶

Advocates, attorneys, police, prosecutors, courts and health care professionals should use qualified interpreters and ensure that systems that encounter limited English proficient victims and witnesses employ the qualified interpreters in collecting evidence. Many immigrant victims of sexual assault and domestic violence who cannot speak English encounter justice, health care and social services personnel who do not have the capacity to effectively communicate with them in their native language. Police officers who do not employ qualified interpreters often communicate at the crime scene with those who do speak English. This can include the victim's abuser, crime perpetrator, or the abuser or perpetrator's friends and family members. In a survey conducted among battered immigrant Latinas in Washington, D.C., 31% of the victims who called the police for help stated that when the police officers arrived on scene, they spoke to other individuals rather than the victim herself.⁸⁷ Additionally, 11% stated that police officers only spoke to the abusers.⁸⁸

When law enforcement officials take detailed statements from limited English proficient victims without the assistance of a qualified interpreter they can undermine the success of any criminal prosecution based upon those statements. Although the victim in her native language relates exactly the same story factually about a rape to the police who arrive at the scene and to court on the witness stand, the two accounts may appear to be inconsistent because the police failed to use a qualified interpreter when taking the victim's statement. Differences in the victim's statements that were the result of failure to use qualified interpreters may be used

⁸⁴ Ann Benson and Jonathan Moore, Practice Advisory on Representing Noncitizens Accused of Misdemeanor Assault Offenses – Both DV and Non-DV Cases- Under RCW 9A.36.041, 24, 27(Washington Defenders Association, February 2007).

⁸⁵ However, it is important to note that for some undocumented immigrants, staying out of jail may be the most paramount concern, as this is where they are most likely to risk apprehension by immigration authorities. Thus, this factor should be taken into account if trial is likely to result in jail time.

⁸⁶ See Chapter 2 of this manual and www.lep.gov for more information.

⁸⁷ Leslye E. Orloff et al., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA WOMEN'S L.J. 43, 71 (2003) (citing the Ayuda Inc. research project).

⁸⁸ *Id.*

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by the perpetrator's defense attorney during cross-examination of the victim to undermine the credibility of the victim's testimony and can create difficulties for the prosecution to obtain a conviction of the perpetrator.

Any criminal prosecution must be based upon witness statements taken using qualified interpreters that assure the accuracy of the statements made from the initial evidence collected to all later testimony. Qualified interpreters assure that evidence presented by limited English proficient victims and witnesses is given the same value and the same opportunity to be judged as credible and to avoid bias as evidence presented by English speakers. When a victim advocate is present⁸⁹ law enforcement officials may request that the advocate interpret the communication between the law enforcement agent and the victim. Advocates must **not** interpret for police and should urge police to secure the assistance of a qualified and unbiased interpreter. Advocates, friends, witnesses or family members who interpret instead of trained qualified interpreters can create significant problems that can undermine the victim's credibility and the government's ability to prosecute the perpetrator.⁹⁰

An advocate or attorney should recognize that he or she is the immigrant victim's most important ally during any criminal prosecution. It is important for the immigrant victim to stay in close contact with her defense attorney, victim-witness advocate, and the prosecutor handling her case. The advocate or attorney should provide her with support by accompanying her to all hearings. It is not easy to protect an immigrant victim from the immigration consequences of a criminal charge, but the likelihood of deportation is minimized when knowledgeable and sympathetic advocates and attorneys become involved.

4. U-Visa Cases

For inadmissibility based on criminal convictions and most grounds of inadmissibility, a waiver is available for U-visa applicants if DHS determines that granting the applicant the waiver is in the public or national interest.⁹¹ Waivers are not available for those who have committed Nazi persecution, genocide, or an act of torture or extra judicial killing.⁹² Those who have committed violent or dangerous crimes and security-related crimes will only be granted waivers for extraordinary circumstances.⁹³ When preparing to file a U-visa, the applicant must request the waiver and submit documents to support the grant of such waiver.⁹⁴

5. T-Visa Cases

T visa applicants are also eligible for waivers of inadmissibility based on criminal convictions.⁹⁵ Given the nature of human trafficking, it is likely that a trafficking victim has been forced or coerced into an activity that led to a criminal conviction. It is also extremely likely that if she were under her trafficker's control, she would not have been able to access a criminal defense attorney unaffiliated with her trafficker. Waivers are available for T-visa applicants with most criminal convictions if it is in the national interest to do so and the facts leading to inadmissibility were caused by or incident to the trafficking.⁹⁶

III. Law Enforcement Response: What is the Likelihood That Immigrant Victims of Sexual Assault Who Call the Police Will Be Reported to Immigration Authorities?

A. Working with Law Enforcement

⁸⁹ This can happen, for example, in trafficking cases with a large number of victims.

⁹⁰ Leslye E. Orloff et al., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA WOMEN'S L.J. 76 (2003)

⁹¹ INA § 212(d)(14), 8 U.S.C. § 1182(d)(14)

⁹² INA § 212(d)(14), 8 U.S.C. § 1182(d)(14).

⁹³ 8 C.F.R. § 212.17(b)(2).

⁹⁴ 8 C.F.R. § 212.17 (a) and 8 C.F.R. § 214.14 (c)(2)(iv)

⁹⁵ INA § 212(d)(13), 8 U.S.C. § 1182(d)(13).

⁹⁶ INA § 212(d)(13), 8 U.S.C. § 1182(d)(13).

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Immigrant victims of sexual assault face multiple barriers when trying to access services after a sexual assault or domestic violence incident.⁹⁷ Immigrant victims are often afraid to call the police for many reasons: fear of deportation; fear of retribution from their partners or victimizers; fear of being arrested themselves; fear of being separated from their children; fear that police will report them to immigration authorities; fear of future economic, social, cultural, or employment-related repercussions of having publicly exposed the facts of their having been sexually assaulted; and negative experiences with the police in their home countries.⁹⁸ These barriers preclude many immigrant victims of sexual assault from seeking the help they need to escape from an abusive intimate partner or report a sexual assault by a non-intimate partner. The barriers become even more pronounced when the perpetrator is a U.S. citizen or permanent resident, and the victim does not have permanent immigration status.⁹⁹

In many cases, the most difficult hurdle for immigrant victims is the fear of being reported to immigration officials by police.¹⁰⁰ Local police officers may inquire into the immigration statuses of immigrant victims of crimes.¹⁰¹ The Supreme Court has held that an individual's immigration status can be inquired into without first establishing some independent reasonable suspicion.¹⁰² There is no exception for those who are victims.

However, under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and current federal law, police officers are not required to inquire into or report the immigration status of crime victims who call for help.¹⁰³ However, IIRAIRA does allow the Attorney General to enter into agreements with state or local law enforcement to delegate to specially trained police officers the authority to enforce federal immigration laws.¹⁰⁴ The Anti-Terrorism and Effective Death Penalty Act of 1996 provides state and local police, if authorized by state law, with limited authority to arrest non-citizens in the U.S. when the non-citizen is present illegally and has previously been convicted of a felony and was deported or left the U.S. after such a felony conviction.¹⁰⁵

Advocates and attorneys working with immigrant victims should learn the police practices in their local jurisdiction. Advocates and attorneys should investigate whether or not there is a 287(g)¹⁰⁶ agreement between DHS and their local law enforcement agency. If there is no such agreement, investigate the practices of local

⁹⁷ See generally Sandra D. Pressman, *The Legal Issues Confronting Conditional Resident Aliens Who are Victims of Domestic Violence: Past, Present, and Future Perspectives*, 6 Md. J. Contemp. Legal Issues 129 (1995); Mary Ann Dutton 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, 249-253 (2000); Leslye E. Orloff and Dave Nomi, *Identifying Barriers: Survey of Immigrant Women and Domestic Violence in the DC Metropolitan Area*, Poverty and Race 9-10 (Jul/Aug 1997); Mary Ann Dutton and Giselle Aguilar Hass, *Use of Expert Testimony Concerning Battering and Its Effects on Immigrant Women*, in *Domestic Violence and Immigration: Applying the Immigration Provisions of the Violence Against Women Act: A training Manual for Attorneys and Advocates*, Appendix C (2000); Leslye E. Orloff and Rachel Little, *Somewhere to Turn: Making Domestic Violence Services Accessible to Battered Immigrant Women*, A 'How To' Manual for Battered Women's Advocates and Service Providers 279 (May 1999); Leti Volp, *WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE* 16-20 (1995); Catherine Klein and Leslye Orloff, *Providing Legal Protection for Battered Women: An Analysis of Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1019 (1993).

⁹⁸ Leslye E. Orloff, et al., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA WOMEN'S L.J. 43, 55 (2003).

⁹⁹ *Id.* See generally Giselle Aguilar Hass, Nawal Ammar, and Leslye Orloff, *Battered Immigrants and U.S. Citizen Spouses*, 4-7, (April 2006)

¹⁰⁰ *Id.* See also, Mary Ann Dutton, 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, 251-56 (2000).

¹⁰¹ See Kris W. Kobach, *The Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests*, 69 ALB. L. REV. 179, 302 (2005-2006).

¹⁰² *Muehler v. Mena*, 544 U.S. 93, 101 (2005).

¹⁰³ INA § 287(g), 8 U.S.C. § 1357(g) (1996). (Allows state/local law enforcement to "perform functions of immigration officer." In performing this function they are required to "[h]ave knowledge of, and adhere to" federal immigration laws. This requires that § 287 appointed officers to enforce, follow and comply with all, not only some, federal immigration laws. Thus, § 287 officers are to comply with the protections offered by VAWA confidentiality in the same manner as all other DHS employees.

¹⁰⁴ INA § 287(g), 8 U.S.C. § 1357(g) (1996). Section 287(g)(10) further states that this section does not require states or municipalities to seek a similar agreement to allow their employees to report undocumented immigrants or otherwise cooperate with the immigration authorities.

¹⁰⁵ The police officer must obtain confirmation from immigration officials of the status of such an individual and may keep the individual in custody only as long as necessary for immigration officials to take the person into federal custody for removal. Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996 § 439 8 U.S.C. § 1252(c) (1996).

¹⁰⁶ INA § 287(g), 8 U.S.C. § 1357(g) (1996). For a list of which jurisdictions have 287(g) agreements with DHS visit: http://www.ice.gov/partners/287g/Section287_g.htm.

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law enforcement and whether police routinely inquire into and report to DHS the immigrant status of crime victims and/or witnesses. When local police inquire about immigration status of victims, immigrant victims will be unlikely to want to choose to report crime victimization and the potential for reporting needs to be taken into account when safety planning with immigrant victims.

Some police officers, prosecutors, and judges have misinterpreted these sections to justify their voluntary decisions to inquire into the immigration status of crime victims and have reported victims to immigration authorities.¹⁰⁷ When this occurs, it can become very difficult to bring criminals to justice, because victims of crime will be afraid to come forward out of fear of deportation. Furthermore, when police officers inquire into the immigration status of crime victims, the police may also inadvertently affect the community relations between police departments and immigrant communities.

Addressing immigrants' fears about calling the police is essential to the safety of victims, their children and our communities, and is critical to advocate effectively for an immigrant victim of sexual assault who may be eligible for U-visa or VAWA immigration relief. Furthermore, when an immigrant who calls the police for help is turned into the immigration authorities, word spreads quickly in that immigrant community.¹⁰⁸ As a result, immigrant victims of crimes are silenced and will be afraid to call the police and report crimes.

The U visa was created to facilitate investigation and prosecution of criminal activity and to simultaneously expand access to immigration relief and other help for immigrant crime victims.¹⁰⁹ The purpose of this legislation was to:

“create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking and other crimes ... committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.”¹¹⁰

Congress specifically found that the U Visa is:

“for victims of certain serious crimes that tend to target vulnerable foreign individuals without immigration status if the victim has suffered substantial physical or mental abuse as a result of the crime, the victim has information about the crime, and a law enforcement official or a judge certifies that the victim has been helpful, is being helpful, or is likely to be helpful in investigating or prosecuting the crime. The crime must involve rape, torture, trafficking, incest, sexual assault, domestic violence, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, attempt or conspiracy to commit any of the above, or other similar conduct in violation of Federal, State, or local criminal law.”¹¹¹

To qualify for a U visa, the applicant must have information about the crime, and cooperate with law enforcement and the courts to investigate or prosecute the applicant's crime perpetrator.¹¹² The applicant must also obtain a certification from a federal or state official responsible for “detecting, investigating, prosecuting, convicting or sentencing criminal activity.”¹¹³ In the certification the federal or state official attests to the fact that the applicant has been helpful, is being helpful, or is likely to be helpful in the prosecution or investigation

¹⁰⁷ Leslye E. Orloff, et al., *Battered Immigrant Women's Willingness to call for Help and Police Response*, 13 UCLA WOMEN'S L.J. 43, 88 (2003).

¹⁰⁸ Mary Ann Dutton, 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, 251-6 (2000).

¹⁰⁹ H.R. REP. No. 106-939, at 73 (2000) (Conf. Rep.).

¹¹⁰ H.R. REP. No. 106-939, at 73 (2000) (Conf. Rep.).

¹¹¹ Vol. 146, No. 126 Congressional Record. Trafficking Victims Protection Act of 2000—Conference Report, Page S10196, (Senate-October 11, 2000)

¹¹² INA § 101(a)(15)(U)(i)

¹¹³ INA § 214(p)(1); 8 U.S.C. 1184(p)(1)

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of the crime and will state what state or federal law was violated.¹¹⁴ To obtain certification and to be able to file a U-visa case immigrant victims must come forth, report and be willing to help law enforcement in the investigation or prosecution of the perpetrator of criminal activity.

This requirement can be burdensome for sexual assault victims who may have great difficulty reporting rape and sexual assault crimes to law enforcement. Rape is the least reported, least indicted and least convicted felony in U.S. Only 16-32% of rape victims report the crime to law enforcement and only 5% of college victims report.¹¹⁵ When victims have found the courage to come forward and report rape, approximately 25% of the reports result in an indictment.¹¹⁶ This means approximately 75% of the rapes reported to law enforcement are never prosecuted.¹¹⁷

The law enforcement system expects victims to report sexual assault within days of the assault.¹¹⁸ However, trained legal decision-makers view “late” complaints as less credible and are less likely to seek serious sanctions against the assailant.¹¹⁹ Most victims, however, are not prepared emotionally to deal with the requirements of the legal system until months have passed after the assault.¹²⁰ This is particularly true of immigrant crime victims whose access to help and healing after sexual assault can be hampered by language and acculturation issues.

After the initial crisis stage has passed (usually three to six months after the assault), victims are more prepared to think about seeking legal remedies and confronting the assailant. Victims must first find an advocate or attorney to help them. Those who have successfully secured support from victim services providers and others are more able come forward and report sexual assault and rape. Effective communication between the victim, her advocate and attorney, police, and prosecutors often also needs to include the services of a qualified interpreter. Crime victims, particularly those who do not speak English or Spanish may not have been able to report crimes to police because the police fail to obtain language interpreters at the crime scene in contradiction to Title VI of the Federal Civil Rights Act’s requirements.¹²¹

When immigrant victims of sexual assault do report criminal activity, sometimes the prosecutors may choose to prosecute another crime. In these instances an immigrant victim may prefer to cooperate with law enforcement about the other crime and not report the sexual assault to avoid the vulnerability of being exposed to stigma in her community as a sexual assault victim. The U-visa does not require any specific timing of reporting of crime victimization. The statute was designed to consider the time an immigrant victim may need to find the support she needs to report a crime. Prosecutors may alternatively seek the victim’s cooperation on another criminal activity rather than the sexual assault which may also be less retraumatizing.

When an immigrant victim is not ready to take immediate legal action against the perpetrator, it is imperative that she file some type of formal report about the assault as soon as possible. Most police departments, school administrators, and employers recognize this and will prepare a formal incident report, but take no further action without the victim’s consent. Officers taking these police reports should be encouraged to sign certifications verifying that the individual is a crime victim and that the victim has been and is being helpful in a criminal investigation or prosecution.

¹¹⁴ Id.

¹¹⁵ U.S. Department of Justice, National Institute of Justice, *Sexual Victimization of College Women* (2000); U.S. Department of Justice, Bureau of Justice Statistics, *National Crime Victimization Survey* (1994); D.G. Kilpatrick, C.N. Edmunds, & A.K. Seymour, *Rape in America: A Report to the Nation*. Arlington, VA, National Center for Victims of Crime; Charleston SC, Medical University of South Carolina (April 1992).

¹¹⁶ Cassia Spohn & Julie Horney, *Rape Law Reform: A Grassroots Revolution and Its Impact*, at 73, New York, Plenum (1992).

¹¹⁷ Susan H. Vickers, et al. “Beyond the Criminal Justice System, Transforming Our Nation’s Response to Rape” (Victim Rights Law Center, 2003). P. 1-2; p. 1-5 (“Like other kinds of criminal predators, these rapists are also adept at identifying vulnerable women; women who are least likely to fight off an assault, least likely to scream, and least likely to report the crime once it has been committed.”)

¹¹⁸ Susan H. Vickers, et al. “Beyond the Criminal Justice System, Transforming Our Nation’s Response to Rape” (Victim Rights Law Center, 2003). p. 1-15

¹¹⁹ Id at 26.

¹²⁰ Id.

¹²¹ 42 U.S.C. § 2000d (1964); Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000). See also Chapter 2 of this Manual “Ensuring Language Access to Immigrant Victims of Sexual Assault”

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Advocates, attorneys and law enforcement should collaborate to conduct trainings designed to improved police and prosecutors understanding of the role U-visas can play in helping an immigrant victim come forward to report criminal activities. These trainings should highlight how fear that law enforcement and crime perpetrators reporting victims to DHS and fear of deportation silence crime victims and keep them from reporting crimes. This is true even for victims who are eligible for legal immigration status through U-visas, T-visas and VAWA self-petition or cancellation often because victims do not know that they are eligible for immigration relief and protection from deportation. When immigrant victims are afraid to come forward, it can be very difficult to bring criminals to justice. To properly address the fears of immigrant victims of sexual assault, advocates and attorneys should develop good working relationships with the police, prosecutors, and judges in their communities. They should work with the justice system personnel on protections established for immigrant victims. Police, prosecutors, judges and advocates should work together to assure that perpetrators are held accountable for their criminal conduct without regard to the immigration status of the victim.

In some instances sexual assault victims are victims of human trafficking. Trafficking victims face unique challenges in working with law enforcement. Trafficking victims often do not identify themselves as trafficking victims or even understand the concept of human trafficking. Victims also experience extreme coercion and control by their traffickers and consequently distrust law enforcement. They are very unlikely to be forthcoming about their experience of exploitation. Law enforcement may then not identify these individuals as trafficking or crime victims. When a trafficking enforcement action is being undertaken victims are ideally given early access to non-governmental organization¹²² victim advocates to identify potential trafficking victims. It is critical that advocates work closely with law enforcement so that law enforcement and advocates can both effectively screen to identify trafficking victims. It is critical that law enforcement establish protocols for early referrals to service providers who may be more likely to develop trusting relationships with trafficking victims that will support victims in coming forward to cooperate in investigation or prosecution of traffickers. Early identification of trafficking victims is essential because trafficking victims are eligible for alternative release from immigration detention.

B. Department of Homeland Security Enforcement Actions

When immigrant victims of rape, sexual assault, and trafficking take steps to leave an abusive family member or employer, the likelihood of further abuse increases significantly.¹²³ Similarly the danger of retaliation from a rapist, trafficker or sexual assault perpetrator is highest when the victim is cooperating with law enforcement official in a criminal investigation or prosecution.¹²⁴ When the crime victim is a non-citizen the abuser or the crime perpetrator has another weapon often effectively used to silence victims-- threats of deportation and calls to DHS seeking arrest and deportation of the victim.¹²⁵

¹²² Non-Governmental Organization

¹²³ Daniel G. Saunders, . Child Custody and Visitation Decisions in Domestic Violence Cases:

Legal Trends, Risk Factors, and Safety Concerns 4 (VAWNET, Revised 2007); See generally, Thoennes, N., & Tjaden, P. (2000). *Full report of the prevalence, incidence, and consequences of violence against women: Findings from the National Violence Against Women Survey*. NCJ 183781, November 2000, Research Report. Available at <http://www.ojp.usdoj.gov/nij/pubs-sum/181867.htm>; Hardesty, J. L., & Chung, G. H. (2006). Intimate partner violence, parental divorce, and child custody: Directions for intervention and future research. *Family Relations*, 55, 200–210; Saunders, D. G., & Browne, A. (2000). Intimate partner homicide. In R. T. Ammerman & M. Hersen (Eds.), *Case studies in family violence* (2nd ed.). New York, NY: Plenum.

¹²⁴ Sarah Buel, *Witness Tampering*, Sexual Assault Family Violence Investigator Course, On the Scene Vol 2 Issue 2 June 2007 page 1; Regarding perpetrators use of the justice system to continue harassment of and contact with victims see, G. Saunders, Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns 5 (VAWNET, Revised 2007); Bancroft, L., & Silverman, J. (2002). *The batterer as parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks, CA: Sage; Hardesty, J. L., & Ganong, L. H. (2006). A grounded theory model of how women make custody decisions and manage co-parenting with abusive former husbands. *Journal of Social and Personal Relationships*, 23, 543-563.

¹²⁵ Immigration related abuse includes threats of deportation, threats report the victim to immigration authorities, threats to withdraw and to refuse to file immigration papers on the victim's behalf. Immigration related abuse is 10 times more likely in a relationship that is sexually and/or physically abusive than in psychologically abusive relationships. It coexists with or predicts escalation to physical or sexual violence. Mary Ann Dutton, Leslye E. Orloff & Giselle Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, Geo J. on Poverty L. & Pol'y, VII No. 2, 1-53 (Summer 2000). National Institute of Justice funded research among immigrant women has found that

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Prior to 2006 when DHS received additional funding to step up immigration enforcement, DHS seldom responded to calls from abusers reporting victims. With greater resources devoted to immigration enforcement DHS officers are able to respond to calls for enforcement in a wider range of cases. This combined with increases in immigration enforcement actions at workplaces and related to transportation (e.g. on buses and during traffic stops) has increased the danger of detention and deportation for VAWA, T and U-visa eligible victims. Additionally, because DHS is technically a law enforcement agency and DHS actions often result in detention, many people cannot differentiate between a criminal action and an immigration enforcement action.¹²⁶ DHS enforcement actions lead to a person being assessed for immigration violations and may ultimately lead to a person's detention and processing for removal (deportation) proceedings in immigration court. A criminal arrest happens for the purpose of investigating and prosecuting a crime. These are two separate and unrelated systems.¹²⁷

The Violence Against Women Act legislation was designed to insulate immigrant victims of sexual assault, domestic violence, trafficking and other crimes from perpetrator coercion related to the victim's immigration status.¹²⁸ With increased resources in immigration enforcement it is essential that advocates and attorneys screen victims as early as possible in the case to determine whether they may be eligible to attain legal immigration status under VAWA and for red flag problems that require representation by an immigration expert.¹²⁹

Victims with red flag problems should be referred to an immigration expert immediately. All eligible victims should find assistance to apply for immigration relief as soon as possible. This will help protect them against deportation should they encounter immigration enforcement officials. Victims considering traveling to a new location within the United States should file at least a basic U-visa or VAWA application and receive a prima facie determination before traveling. Victims with VAWA, T or U-visa cases filed should carry copies of receipt notices, prima facie determinations or approval notices with them and should show these documents to any immigration officials they encounter. Victims should also be provided the name and telephone number of an immigration attorney they can call should they be stopped by immigration officials

An immigrant detained by the DHS official has the following rights under the law to:

- ◆ Be provided to a telephone to call her attorney;
- ◆ Not answer *any* questions or display any documents until her attorney is present;
- ◆ Request a hearing before an immigration judge if a DHS officer tries to deport her;
- ◆ Not sign any forms -- if she signs a form, she could be waiving her right to a hearing before being deported;

perpetrators of violence against immigrant women are reluctant to stop using these threats to intimidate crime victims. When immigrant victims of domestic violence obtain protection order against their abusers, when abusers of immigrant victims violate protection orders 63.8% of those violations are continued immigration related abuse. Nawal Ammar and Leslye Orloff, Use and Outcomes of Civil Protection Orders by Battered Immigrant Women in the U.S., Paper presentation at the 2008 Law and Society Association International Conference, Montreal, Quebec Canada May 31, 20008.

¹²⁶ In communities that have joined the 287(g) program in which local law enforcement officers enter into a memorandum of understanding with the Department of Homeland Security to undertake enforcement of immigration law, victim's ability to distinguish between the law enforcement and DHS related arrests becomes more difficult for immigrant community members and immigrant victims to discern.

¹²⁷ There have also been cases in which immigration enforcement actions lead to federal criminal prosecutions for document fraud. Obtaining VAWA, T or U visa immigration relief can be significantly more difficult for victims who are charged as defendants in these cases. Such victims should be immediately referred to an immigration lawyer with expertise on immigration, crimes and violence against women for assistance.

¹²⁸ Violence Against Women Act OF 1993 140 Cong. Rec. H2645-03 168-169 Page H10370 (House of Representatives - November 20, 1993); See Orloff, Leslye and Kaguyatan, Janice. *Offering a Helping Hand: Legal Protections for Battered Immigrant Women*, 110-113 (1994)

¹²⁹ See Red Flags list in the appendix to chapter 6 "Introduction to Immigration Relief for Immigrant Victims of Sexual Assault" http://www.legalmomentum.org/site/DocServer/5_VAWARedFlags.pdf?docID=1320

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- ◆ Write down the name of the agency conducting the enforcement action and the name and the badge number of the officer. This information can help provide a factual history of the victim's immigration case;
- ◆ See a warrant if enforcement officers come to her home;
- ◆ Not be arrested by DHS if the victim is a U.S. citizen.

Victims also need to know that they:

- ◆ Must not give false statements and
- ◆ Should be allowed to contact their consulate

If a victim is arrested for a criminal violation and she is found to be undocumented, she will in most cases proceed through the criminal justice process. This will likely include being arraigned, having the judge set an amount for bail, and being appointed an attorney if she cannot afford one.¹³⁰ It is critical that the victim's defense attorney understand the immigration implications of a guilty plea in the case of an immigrant victim. Immigrant victims should be advised that their arrest for committing crimes or using violence¹³¹ could lead to their arrest. If they are detained in jail they can be screened for undocumented immigration status and be referred or transferred to DHS to be processed for removal proceedings. Those who serve criminal sentences and are undocumented are often immediately transferred to DHS upon serving their criminal sentences.

C. Victim as Witness

1. *Assessing the Safety of an Immigrant Victims' Cooperation in the Criminal Prosecution of their Perpetrator*

In most states, prosecutors have adopted "no-drop" policies for domestic violence in criminal cases. This allows prosecutors to proceed with a criminal case regardless of the wishes of the victim. The no-drop policy is intended to prevent perpetrators from coercing victims not to press charges or cooperate in criminal prosecutions. Some prosecutors may subpoena the immigrant victim to testify as a witness for the prosecution, although the practice of subpoenaing victims in criminal cases is not favored. While the "no-drop" policy is intended to protect victims, it poses difficult safety planning problems for victims whose abusive partner or employer is a non-citizen, since criminal convictions for domestic violence, rape, sexual assault and other crimes can lead to a perpetrator's deportation.

For some immigrant victims, deporting an intimate partner or abusive employer or family member may enhance her safety. For others, however, the deportation may increase the danger to her or her family members. Many victims are afraid to cooperate in the criminal prosecution of their partners, employers or family members because of concerns about the victim's own immigration status and economic survival, violating cultural or religious norms, or the potential increase in danger because of retaliation to themselves or their family members in the U.S. and/or abroad. It is important for advocates, prosecutors and defense attorneys to understand how each of these factors affects the safety of an immigrant victim when considering asking them to cooperate in the criminal prosecution of the perpetrator.

For many victims, concerns about her own immigration status and potential deportation drive her decision making after victimization. This is true both for domestic violence victims and for victims of sexual assault committed in the work place by a stranger or an acquaintance. Many immigrant victims of sexual assault are

¹³⁰ The immigrant victim has a right to obtain counsel in immigration proceedings; however, unlike in criminal proceedings, the government is not required to appoint and pay for an attorney for the immigrant if she cannot afford one.

¹³¹ If a victim has acted in self-defense she should tell her defense attorney about these facts and may be able to advocate to have her case dismissed.

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terrified of any involvement in the criminal justice system because they believe their immigration status is fully dependent on their perpetrator's immigration status. When the victim's employer is a non-citizen perpetrator of sexual assault, the perpetrator's deportation could invalidate the work visa she obtained through him. She fears being separated from her U.S. citizen children or having to take the children to a country where neither the mother nor the children can be protected from the abuser's ongoing violence including sexual assault.

Obtaining legal immigration status and work authorization through the U-Visa or VAWA without the intimate partners or employer's cooperation or knowledge removes a significant barrier to her involvement in the prosecution. Advocates and attorneys should work with the immigrant victim to explore options she may have for attaining legal immigration status independent of either her intimate partner or employer.

Victims need assistance from advocates or attorneys with training in safety planning as well as knowledge about the legal rights of immigrant victims. Advocates should understand whether immigrant victims in the community can safely call law enforcement for help without risking deportation and the role they can play to help immigrant victims safely interact with law enforcement and prosecutors and obtain their help including U-visa certification. Knowledgeable advocates and attorneys can work with the victim to answer questions, to dispel misperceptions the victim may have about her legal rights and to provide the victim with the critical support she will need with regard to the criminal prosecution or investigation

Before undertaking any detailed interview advocates and attorneys should assess the victim's language access needs. If the victim does not fluently speak, understand, read or write English, she should be offered assistance from a qualified interpreter in her native language.¹³²

Advocates and attorneys should carefully interview the immigrant victim to determine what her needs, fears, and concerns are with respect to participating in any criminal investigation or prosecution. They should also assess whether her perpetrator's prosecution and potential subsequent deportation will enhance her safety or increase the danger to her. Discuss this with prosecutors to help them decide how to proceed in a manner that will hold the abuser accountable and protect the victim's safety. The role of advocates and attorneys is especially important in this process, as defense attorneys for intimate partners may try to convince your client not to cooperate. An advocate or attorney may be the only independent source of support and information for an immigrant victim in determining how best to protect herself and her children.

If it is determined that the perpetrator's deportation would increase the danger to the victim or her family members, prosecutors need not dismiss the case against the perpetrator. Prosecutors can employ measures to hold the perpetrator accountable without leading to his deportation. In this way the court can monitor his behavior with the goal of preventing future sexual assault and other future crimes. Judges can place perpetrators on probation or compel them to enter treatment programs. First time offenders can be generally treated more leniently than repeat offenders.

2. *Rape Shield Laws*

Rape shield laws are designed to prevent the admittance of a victim's prior sexual history during a criminal prosecution for sexual assault. Since the 1970s, every state has passed Rape Shield Laws to protect sexual assault victims from being re-victimized when they testify in court.¹³³ These laws limit the use of the victim's prior sexual history as a means to undermine the credibility of the victim's testimony. By 1978, Congress enacted Rule 412 of the Federal Rules of Evidence, which states that any evidence regarding the victim's prior sexual behavior or sexual predisposition is generally inadmissible in civil or criminal cases involving alleged sexual misconduct.¹³⁴ However, over times, rape shield laws have become weakened with exceptions that result in a high risk of a victim's sexual history being exposed.¹³⁵

¹³² See Chapter 2 "Language Access, Interviewing and Safety Planning" for a more detailed discussion of victim's legal rights to language accessible assistance from advocates, attorneys, court personnel, police and prosecutors.

¹³³ The National Center for Victims of Crimes, Press Center, FAQ: Rape Shield Laws (2007), http://www.ncvc.org/ncvc/main.aspxdbID=DB_FAQ:RapeShieldLaws927.

¹³⁴ Fed. R. Evid. 412.

¹³⁵ Michelle J. Anderson, *From Chastity Requirement to Sexuality License: Sexual Consent and a New Rape Shield Law*, 70 Geo. Wash. L. Rev. 51 (2002).

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For any rape victim, disclosing her victimization is very complicated and poses personal ramifications. The victim may have concerns over her loss of privacy or being treated as a witness rather than a victim in the criminal justice system. For some immigrant victims, cultural concerns include being shamed and ostracized by their community and/or family for their sexual activity and/or for having been sexually assaulted. Further, many immigrant victims may be wary of putting the perpetrator of the rape in criminal proceedings when he is a member of their community, and especially when he is also an immigrant who may face deportation if convicted. How an advocate or attorney should counsel the victim depends on the cultural ramifications and the personal support that the victim is receiving as well as an assessment of a victim's eligibility to access legal immigration status through VAWA or the U-Visa. A U-visa applicant is required to be helpful in the investigation or prosecution of the criminal activity. This requirement creates a challenging dilemma for undocumented victims. While providing information to law enforcement may lead to U-visa eligibility, applicants must weigh the benefit against the social stigma, safety concerns, and the potential for the perpetrator's retaliation.¹³⁶

Despite the fact that rape shield laws assist in barring the admission of a rape victims' sexual history, there are exceptions to the rules, and an advocate or attorney should counsel their client to understand those exceptions and the loss of privacy. The advocate or attorney should not only explain the process but also understand the numerous barriers an immigrant victim could face in her in her culture context. If the immigrant victim does choose to proceed with the prosecution, she should be counseled about what she is to expect and what the rape shield laws will mean for her testimony and case. This includes understanding the additional cultural and language barriers that can arise as the case moves forward. Advocates or attorneys should also work with prosecutors, their immigrant clients and trained interpreters to develop thorough pretrial testimony to diminish the potential trauma and distress of cross-examination for the victim.

3. Safety Planning

Key safety planning steps advocates and attorneys should take to enable victims to obtain immigration status include:

- Refer her to an immigration attorney to assess her eligibility for immigration relief, including relief under VAWA, the crime victim U-visa, the trafficking victim T-visa and any other immigration relief for which she may qualify.¹³⁷ If she was abused by a U.S. citizen or lawful permanent resident intimate partner, she may qualify for immigration status under VAWA.¹³⁸ If she was victimized by a non-intimate partner or an intimate partner who is not a U.S. citizen or lawful permanent resident, she may qualify for a U visa as a victim of violent crime if she is willing to cooperate in the investigation or prosecution of the perpetrator.¹³⁹ She may also qualify for a T visa if she was a victim of a severe form of trafficking and her trafficker sexually assaulted her.¹⁴⁰ If she qualifies for immigration relief, review the red flags list in the Manual¹⁴¹ to assess problems that could arise in her case and consult with an immigration expert to confirm her eligibility.
- Immediately begin preparing and file her immigration case.¹⁴²

¹³⁶ Deported perpetrators can retaliate against victims by harming family members abroad, by harming the victim if she were to travel abroad. For example, she may travel abroad to see an ailing family member, or by reenter the United States after deportation. See Karen Saunders. *Identifying and Helping Immigrant Victims of Violence Against Women*. Training for U.S. Border Patrol Department of Homeland Security San Diego Sector September 20, 2004. Slide..20-21

¹³⁷ Consult with an immigration attorney with expertise working with immigrant victims to determine the range of immigration options your client may have. See resource and TA list at the end of this Chapter.

¹³⁸ See Chapter 7 of this Manual "Preparing the VAWA Self-petition and Applying for Residence" and See also Chapter 9 of this Manual "VAWA Cancellation of Removal".

¹³⁹ For Alternative Forms of Relief for Battered Immigrants and Immigrant Victims of Crime, See also Chapter 10 of this Manual "U Visa Victims of Criminal Activity" and Chapter 12 of this Manual "Sexual Assault Survivors and Gender Based Asylum".

¹⁴⁰ See also Chapter 11 of this Manual, "Human Trafficking and the T Visa"

¹⁴¹ See Red Flags list in the appendix to chapter 6 "Introduction to Immigration Relief for Immigrant Victims of Sexual Assault" http://www.legalmomentum.org/site/DocServer/5_VAWARedFlags.pdf?docID=1320.

¹⁴² See Chapter 3 of this Manual "VAWA Confidentiality: History, Purpose and Violations VAWA Confidentiality Protections" for more information.

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- Identify and discuss helpful information for her immigration case. Consider using the protection order or the criminal bond or release order as a tool to require the perpetrator to provide the immigrant victim with the information she needs for her immigration case, such as proof of his U.S. citizenship or permanent resident status, turning over her passport or copies of any papers her abusive spouse or employer filed with the DHS on her or her children's behalf.
- Know that undocumented victims of sexual assault, domestic violence and many other forms of criminal activity who are willing to cooperate in an investigation or prosecution of the perpetrator's criminal activity may qualify to apply for a U visa. Advocates and attorneys should work closely with law enforcement, prosecutors, the Equal Employment Opportunity Commission personnel, state departments of labor and child abuse investigators who all can help victims by providing certifications needed in her U-visa immigration case. Victim's advocates and attorneys should confirm that these agencies will not inquire into the immigration status of crime victims or report them to immigration authorities.
- To prevent perpetrators from reporting victims to immigration authorities in retaliation for her testimony, ask the prosecutor to include in the perpetrator's pretrial release order an instruction prohibiting the defendant, or any of his agents from contacting immigration authorities.¹⁴³ If his attorney contacts immigration authorities on his behalf, urge the prosecutor to file a case against the defense attorney for witness tampering and consider filing an ethical complaint against the attorney with the appropriate bar authorities and a Rule 11 motion.¹⁴⁴

General safety planning tips for immigrant victims of sexual assault or domestic violence whose perpetrators have pending criminal cases:

Ask that any bond or release order in the criminal case contain at least the following provisions:

- Order perpetrator to stay away from the victim
- Order the perpetrator not contact or communicate with the victim either directly or through third parties
- Order perpetrator to not contact government officers with regard to or obtain information about the victim, including DHS, Internal Revenue Service, etc
- Order the police to patrol the neighborhood where the victim lives
- Order the eviction of the perpetrator if he shares a home with the
- Do not award custody of children to the perpetrator
- Order the perpetrator to pay child support

If the victim continues to reside with her partner, she should obtain a protection order that prohibits future abuse, orders the partner into treatment, and orders him not to communicate with her about the criminal case.

- Help the victim obtain a sexual assault or domestic violence civil protection order containing same provisions¹⁴⁵
- Make sure that the perpetrator is ordered to turn over any weapons in his possession.¹⁴⁶
- Help the immigrant client develop a safety plan to protect herself and her children. If she is still living with her intimate partner, make sure that she has a safe place to which to flee during the prosecution if necessary. If she is in immediate danger, encourage her to go to a shelter.

¹⁴³ See Leslye Orloff and Kathleen Sullivan (Editors), *Breaking Barriers: A Complete guide to Legal Rights and Resources for Battered Immigrants*, Appendix 5.3.

¹⁴⁴ See Chapter 3 of this Manual "VAWA Confidentiality: History, Purpose and Violations VAWA Confidentiality Protections"

¹⁴⁵ See also Chapter 14 of this Manual "Protection Orders for Immigrant Victims of Sexual Assault."

¹⁴⁶ "18 U.S.C. section 922 (g) (8) prohibits some, but not all, abusers from possessing firearms. 18 U.S.C. section 922 (g) (9) only prohibits those who have been convicted of a misdemeanor crime of domestic violence from possessing firearms and ammunition. Because these two federal statutes leave some room for the abuser to still possess a firearm, when writing a protection order it is important to specify that any firearms be turned over and that the abuser is not allowed to obtain or use any firearms for the duration of the protection order. For more information on firearm possession and domestic violence, see Chapter 14 of this Manual "Creating a Jurisdictionally Sound Protection Order".

Economic Concerns

Some immigrant victims of sexual assault hesitate to cooperate in the prosecution of their intimate partner or employer because of economic concerns. Advocates and attorneys should discuss options available to immigrant victims so they can support themselves and their children and safely cooperate in the prosecution. The following issues should be addressed:

Domestic Violence Cases

- Does she qualify for legal immigration status?
- Does she currently receive financial help from her intimate partner, or is there a realistic possibility of such help in the future?
- Help her determine the extent to which she really depends on her partner for financial support.
- Has she actually received child support from him or is she only hoping to receive it in the future?
- Does she receive child support payments directly from the abuser through a court order, or through the partner's wages being garnished? Has her receipt of support been regular or sporadic?
- How would her ability to work legally mitigate her need for support from her partner?
- If she is receiving child or spousal support from her abuser, is she receiving payments through a wage assignment order?¹⁴⁷

Abusive Employer Cases

- If she leaves her current employment, can she work legally elsewhere on another form of legal immigration status?
- Is her work visa tied to her employment?
- Does her employer or coworkers know her family or community members?
- Is the perpetrator known to her family or community members?
- Does she live close to her place of employment?

If her abuser is her employer access to a form of immigration relief independent from her employer can provide her the economic stability she needs.

U visa holders receive work authorization.¹⁴⁸ Applicants for T-visas are eligible for the same access to public benefits as refugees once certified by the Department of Health and Human Services.¹⁴⁹ They also can receive work authorization valid for the duration of their T-visa.¹⁵⁰ A T-Visa applicant has likely experienced significant trauma as a result of the trafficking experience. She may not trust advocates who are working to get her benefits. Access to benefits and work authorization remove only some barriers to economic stability. Many trafficking victims may not be accustomed to working low-wage jobs or encounter stigma in their new place of employment. They may also face too much psychological trauma to work enough hours to sustain employment. It is critical that advocates work closely with trafficking victims so that a victim feels comfortable articulating these barriers or an advocate can find ways to help victims overcome these barriers.

Help her assess her resources and think about how she can survive independently. An immigrant victim who files a VAWA self-petition and receives a prima facie determination of VAWA eligibility may be eligible for public benefits.¹⁵¹ Any U.S. citizen children she has are eligible to receive public benefits.¹⁵² Once her case is

¹⁴⁷ Collecting court ordered support through assignment of wages can be a helpful option for domestic abuse victims because funds due under court order for support are deducted from the abuser's pay check and are sent through the court to the victim. This reduces the need for contact between the abuser and the victim with regard to support payments and can provide a greater potential for receiving support payments, so long as the abuser continues working at that employer.

¹⁴⁸ 8 C.F.R. § 274a.12(a)(19), (20).

¹⁴⁹ Section 107(b)(1)(A) of the Victims of Trafficking and Violence Protection Act of 2000 (TVPA), Pub. L. 106-386 (Oct. 28, 2000); T-visa applicants were also made qualified immigrants by the Trafficking Victims Protection and Reauthorization Act of 2008 § 211(a).

¹⁵⁰ 8 C.F.R. § 274a.12(c)(25).

¹⁵¹ See also Chapter 16, "Access to Programs and Services That Can Help Immigrant Victims: Public Benefits Access for Immigrant Victims of Sexual Assault," to assess the range of federal and state funded assistance she may be eligible to receive.

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approved, she can obtain work authorization.¹⁵³ Advocates and attorneys should brainstorm with an immigrant client about other options for supporting herself and her children without her abuser's assistance. These might include full or part time employment, self-employment that builds upon her existing skills and contacts, public benefits for herself or her children, court-ordered child support paid through wage withholding, temporary support from friends or family members, finding a roommate to share household expenses and seeking first and last month rent on a new apartment from the Red Cross or a faith-based program.

Danger to the Victim and Her Family if Her Partner, Trafficker, or Abusive Employer is Deported

For some immigrant victims, her abuser's deportation may increase danger to the victim, her children, or her family or friends in the United States or her home country. Advocate or attorneys should conduct a lethality assessment to help an immigrant victim determine whether cooperating in the prosecution is safe for her and her family. Factors to consider include:

- Whether the perpetrator is from the victim's home country or will be free to travel there;
- Whether the perpetrator has a history of stalking or is likely to stalk the victim or her children;
- Whether the victim has children or other family members in her home country that her abuser has threatened to or is likely to harm if he is deported;
- The likelihood that the partner will lie in wait for the victim abroad, so that she can never safely return to see family members;
- The likelihood that he will return to the United States after deportation and retaliate against the victim.
- Whether the victim chooses to cooperate in an investigation or prosecution of criminal activity the victim could be U-Visa eligible
- What non U-Visa related immigrant options can the victim realistically pursue?

The victim's safety needs should be paramount in any decision made by advocates and prosecutors about how to proceed in a criminal case to hold a perpetrator accountable.¹⁵⁴

If the deportation of a perpetrator would increase danger to the victim, or her family members (particularly when he is her spouse or intimate partner), prosecutors do not need to dismiss the criminal case against the perpetrator. In these cases, the justice system can employ measures to hold the abuser accountable while monitoring his behavior with the goal of curbing future abuse. Prosecutors can request continuances and charge perpetrators with non-deportable crimes. Judges can place them on probation and compel them to enter a treatment program. First time offenders are generally treated more leniently than repeat offenders. If an offender continues to perpetuate acts of domestic violence after being treated more leniently, he should be prosecuted and sentenced without regard to the immigration consequences rather than prosecute the criminal case against him.

4. Cultural and Religious Concerns

For some immigrant victims of sexual assault or domestic violence, cultural or religious factors may affect her willingness to talk to anyone about the sexual assault or domestic violence. Admitting that she has been a victim of rape may socially ostracize her. In her place of employment, despite existing legal protections, she may feel unsafe or reluctant confiding about a sexual assault and cooperating with law enforcement.

¹⁵² For a full discussion of immigrant victim eligibility for federal and state funded public benefits See Chapter 16 of this manual, *Access To Programs And Services That Can Help Victims of Sexual Assault*.

¹⁵³ 8 CFR 274a.12(c) (14); Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1505(f), 114 Stat. 1464, 1526; INA § 212(p), 8 U.S.C. § 1182(p) (2000).

¹⁵⁴ If the perpetrator is convicted, immigration authorities can deport him after he serves his full criminal sentence. Individuals who reenter the U.S. after being deported can be criminally prosecuted, and the penalties are enhanced for reentry after deportation for a criminal offense.¹⁵⁴ When law enforcement initiate removal of perpetrators by immigration authorities instead of requiring them to stand trial and serve sentences for their crimes perpetrators are very likely to return to the U.S. emboldened by their success at having avoided prosecution. Deportations prior to or instead of prosecution create a false sense of security for domestic violence victims. Karen Saunders, Customs and Border Parole, Department of Homeland Security, Domestic Violence Immigration and Law Enforcement, power point presentation at Seven State Capacity Building Summit, Miami Florida, May, 2004

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When her abuser is her spouse, culture and religious beliefs can undermine her ability to safely cooperate in her partner's prosecution. She may be blamed for her partner's deportation; stigmatized or ostracized by her family, friends, or community; blamed for breaking up the family or bringing shame upon her family; or held responsible for any reduction in financial support that was sent to family members residing in her home country. Advocates and attorneys should help an immigrant victim access culturally competent services and support that may help her navigate and weigh such considerations.

There are growing numbers of immigrant women's community based groups. These organizations provide woman-to-woman, culturally competent support and build the immigrant victim's self-esteem. Immigrant women groups can play a key role in connecting immigrant victims to service providers who help sexual assault victims. They can also help victims involved in cases before the justice system by providing support that respects the victim's culture rather than pressuring her to abandon it.

Resources and Publications

Maria Baldini-Potermin, Defending Non-Citizens in Minnesota Courts: A Summary of Immigration Law and Client Scenarios. (Distributed by the Minnesota Bar Association (612) 333-1183)

Ann Benson, Immigration Consequences of Criminal Convictions: An Overview for Criminal Defenders, Judges and Prosecutors in Washington State, Washington Defender Association's Immigration Project, (2002). Available at www.defensenet.org or by calling 206-726-3332.

Katherine Brady, with Norton Tooby & Michael Mehr, California Criminal Law and Immigration, Immigrant Legal Resource Center (2004). Available at www.ilrc.org or by calling (415) 255-9499.

S Breall, and D. Adler, Working with Battered Immigrant Women: A Guidebook for Prosecutors, (Volcano Press, 2000). Call (415) 553-1849.

Converse, K. "Criminal Law Reforms: Defending Immigrants in Peril", The Champion, August 1997 (National Association of Criminal Defense Lawyers). Websites: www.criminaljustice.org or www.nacdl.org

Ignatius, S. "Overview on Effects of Criminal Convictions for Immigrant Victims of Domestic Violence", (Political Asylum/ Immigration Representation Project). Call (617) 742-9296.

Indritz, Tova. "Immigration Consequences of Criminal Convictions". Cultural Issues in Criminal Defense. Ed. James G. Connell, III, and Rene L. Valladares. Juris Publishing Inc., 9 East Carver Street, Huntington, NY 11743 (415) 255-9499.

Kesselbrenner & Rosenberg, Immigration Law and Crimes (West Group, 1999). Call (800) 221-9428.

Kris W. Kobach, The Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests, 69 ALB. L. REV. 179 (2005-2006).

Maynard, W. "Deportation: An Immigration Law Primer for the Criminal Defense Lawyer", The Champion, June 1999 (National Association of Criminal Defense Lawyers). Websites: www.criminaljustice.org or www.nacdl.org

Norton Tooby and Katherine Brady, Criminal Defense of Immigrant. (Distributed by The Law Offices of Norton Tooby, 516 52nd Street, Oakland, CA 94604/ (510) 601-1300) or www.criminalandimmigrationlaw.com .

Manuel Vargas, Representing the Noncitizen Criminal Defendant (NY State Defender's Association, Criminal Defense Immigration Project, 1998). Call (212) 998-6476.

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Internet Resources

Board of Immigration Appeals Precedent decisions <http://www.usdoj.gov/roit/efoia/bia/biaindx.htm>

Immigrant Legal Resource Center <http://www.ilrc.org>

Law Offices of Norton Tooby. <http://www.criminalimmigrationlaw.com>

NACDL Immigration Articles
<http://www.criminaljustice.org/public.nsf/freeform/Immigration?OpenDocument>

National Lawyers Guild/ National Immigration Project <http://www.nationalimmigrationproject.org>

More Resources

For immigration questions regarding criminal convictions, contact Dan Kesselbrenner, National Immigration Project/ National Lawyers Guild- (617) 227-9727.

For immigration questions relating to battered immigrants and referrals to experts on immigration and crimes, contact the ASISTA - questions@asistaonline.org (515) 244-2469, the Washington Defender's Association - jonathan@defensenet.org (206) 623-4321 or the National Immigrant Women's Advocacy Project – niwap@wcl.american.edu (202) 274-4457

To obtain a directory of nonprofit agencies that assist persons in immigration matters, contact the National Immigration Law Center at (213) 938-6452.

To obtain a list of local immigration attorneys, contact the American Immigration Lawyer Association, National Office, 1400 Eye Street, N.W., Suite 1200, Washington, D.C. 20005 (202) 216-2400.

In California, contact the Immigrant Legal Resource Center (415) 255-9499

In Florida, contact the Florida Immigrant Advocacy Center (305) 573-1106

In Washington State, Johnathan Moore at the Washington Defender Association's Immigration Project at jonathan@defensenet.org (206) 623-4321. For further information see: <http://www.defensenet.org/immigration-project>

APPENDIX 1

Intake Questionnaire: Important Questions for Immigrant Victims of Sexual Assault Involved in a Criminal Case

Immigration cases are most successful when advocates or attorneys develop a trusting relationship with a victim that allows them to collect full and complete information about sensitive issues as early in the case as possible. It is essential, when an immigrant victim has a criminal history, to obtain information about that criminal history as soon as possible. In order to personalize an immigration and criminal strategy for an individual immigrant, advocates and attorneys must be aware of the victim's history. Obtaining this information may not be easy, as the victim may be afraid to divulge her immigration status and possible criminal history. Advocates or attorneys should develop a trusting relationship with the victim by explaining that factual information is necessary to protect her. Advocates and attorneys should demonstrate that they are there to help the victim, not harm her.

Advocates and attorneys can play a critical role in highlighting problem areas and quickly introducing immigrant victims to qualified criminal defenders and immigration attorneys. In order to coordinate these relationships, it is essential that advocates and attorneys obtain basic information regarding the victim's immigration status. The next section presents a number of questions that should become routine in any consultation. They are specifically designed to red flag and highlight areas of concern for an immigration attorney and present a basic blueprint for further consultation. These questions can also help immigration practitioners focus in on the nature of criminal conduct in the immigrant's history.

Advocates and attorneys should always ask for the following information, which will be helpful when help the victim consults an immigration attorney.¹⁵⁵

1. What is the criminal charge against the client?
2. What are any possible offenses that she might plea-bargain to?
3. What is the client's criminal history?
4. When did the client first enter the U.S.?
5. What is her visa type? Is her visa status still valid?
6. Any significant departures from the U.S., and if so what are the dates and reason for the departure?
7. Is the client a lawful permanent resident?
 - a. If so, when did she obtain her green card?
8. If not a lawful permanent resident, what other special immigration status might the client have?
9. Did anyone ever file a visa petition for the client? If so, get the details of name and visa number; what kind of visa; date filed; and whether it was granted.
10. Has the client ever been deported or gone before an Immigration Judge?¹⁵⁶
11. Does the client have an Immigration Court date pending? If so, why, and what is the date?
12. Has the client ever before received a waiver of deportability [§ 212(c) relief or cancellation of removal] or suspension of deportation?
13. Where was the client born? Does the client have any relatives who are U.S. citizens? Does the client have a lawful permanent resident spouse or parent?
14. Would the client's employer help her immigrate?
15. For purposes of possible unknown U.S. citizenship, was the client or the client's parent or grandparent born in the U.S. or granted U.S. citizenship? Or, was the client a permanent resident under the age of 18 when a parent naturalized to U.S. citizenship?
16. Has the client been abused by her spouse, parents, or anyone else?
17. Where was the client born?

¹⁵⁵ List adapted from ANN BENSON, IMMIGRATION CONSEQUENCES OF CRIMINAL CONDUCT: AN OVERVIEW FOR CRIMINAL DEFENDERS, PROSECUTORS AND JUDGES IN WASHINGTON STATE 39 - 40 (2005).

¹⁵⁶ The goal of this question is to help determine whether the client has a prior removal order but may be unaware that one has been issued. Attorneys working with immigrant victims should file a Freedom of Information Act Request to learn about prior contact the immigrant victim client may have had with DHS.

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18. Would the client have any fear about returning to her country of origin or habitual residence, and if so, why?

Following are some explanations of why some of these questions are important.

1) WHAT IS YOUR IMMIGRATION STATUS IN THE UNITED STATES?

This question is **important** because there are different rules for different categories of immigrants and waivers for criminal conduct and convictions may be available to one category of immigrants and not to others. For example, a naturalized U.S citizen has greater legal protections and is not subject to deportation or removal for crimes. The exception for naturalized citizens is that their citizenship can be revoked for conduct or crimes which occurred prior to their naturalization and which should have legally barred them from being naturalized. This occurs because the crime was either not revealed to the DHS, or it managed to escape their scrutiny. Crimes that a citizen commits after naturalization will not affect their immigration status.

Advocates and attorneys may not be able to directly ask this question, as immigrant victims may be afraid to admit their immigration status. While this question needs to be asked, advocates and attorneys need to phrase their questions carefully so that victims are not wary of utilizing their services. In addition, many immigrant victims of sexual assault may not have accurate information on their status, as intimate partners or employers may have given them incorrect information regarding their immigration status.

This question should be avoided if the victim's immigration status is not at issue. For example, if the immigrant victim is looking to obtain benefits for her citizen children, questioning her about her immigration status may lead her to be suspicious of the organization's intentions as well. However, if it is a woman who has been victimized by a U.S. citizen or lawful permanent resident, the question of her immigration status will be important to offering her the proper services.

In particular, it is important to obtain accurate immigration status information for immigrant victims accused of crimes. Each remedy will be different depending on the specific immigration status. There are different rules for different categories of immigrants and waivers of criminal conduct or convictions may be available to one category of immigrants and not to others. It is important to structure the legal advocacy according to the particular immigration status and the relevant waivers of criminal conduct and convictions.

2) IF YOU HAVE LAWFUL PERMANENT RESIDENT STATUS, WHEN AND HOW DID YOU GET IT?

It is important to know how an immigrant obtained her status because some lawful permanent residents are subject to different rules for crimes committed within five years of being granted lawful permanent residence. In addition, the length of time that a person has been a lawful permanent resident may be considered by immigration judges when using their discretion to rule in favor of an immigrant despite the existence of criminal convictions (e.g., through a waiver). Many immigrants with lawful permanent resident status obtained that status through family members or employers who got them visas. In the case of a battered immigrant, it is important to understand how her abusive relationship affected her immigration process as well as find out if she obtained lawful permanent residency through a VAWA self-petition or cancellation or a political asylum case.

3) WHEN DID YOU FIRST ARRIVE IN THE UNITED STATES AND HOW MANY TIMES HAVE YOU LEFT AND RETURNED SINCE THEN?

New immigration laws are being applied retroactively. Therefore immigrants who may have committed crimes in the past that were not then disqualifying crimes may now face immigration restrictions and possible deportation. Leaving and reentering the United States may trigger bars to

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reentry and may trigger the application of new and more severe definitions of disqualifying crimes. In addition, the number of illegal entries made by an immigrant may be a factor in the type of charges brought by immigration authorities, and, depending on the circumstances, may itself constitute a crime. It is also important for immigration attorneys to know the length of absences and the reason for the absence because it may affect those immigrants attempting to claim relief by way of cancellation of removal, in which case they must demonstrate a continuous physical presence for 10 years, (or 7 years for those still eligible for suspension of deportation), and 3 years for battered immigrants claiming VAWA cancellation of removal or suspension or VAWA deportation. The length of absences can also affect a legal resident's application for naturalization.

4) CRIMINAL HISTORY: INCLUDING CURRENT CHARGES, ALL ARRESTS, AND DISPOSITIONS (Include Dates or at Least the Year for Each Category)

This is VERY important for advocates and attorneys assisting immigrants with criminal convictions, and essential for any immigrant filing for immigration relief. A complete criminal history can assist an immigration attorney in deciding if a particular crime will have harmful immigration ramifications, if the rule against multiple convictions will have any bearing, and if waivers exist. (For more information on waivers, refer to 'waiver' section in this chapter) In a wide range of cases, immigration authorities require that applicants submit fingerprints (e.g. attaining lawful permanent residence, filing a VAWA self petition). Attorneys and Advocates need to know that at some point in a victim's immigration case her fingerprints will be taken and any criminal record she has will be discovered. It is important for advocates to work with victims and gain their trust so that advocates and attorneys can learn about any arrest, criminal convictions or pleas in her background as early as possible in the case. Attorneys should learn about the criminal history of VAWA-qualified battered immigrants as soon as possible. This allows the immigration attorney assisting in the victim's VAWA case to address criminal history and seek waivers as early as possible in the application process, as well as develop case strategy that takes any criminal history into account. If the battered immigrant fails to provide the advocate or attorney accurate information about her criminal history, DHS could discover it by scanning her fingerprints. This could be detrimental for the immigrant who may have had an opportunity to get a waiver, or could have possibly convinced DHS to use its discretion in her favor.

5) LIST FAMILY MEMBERS (Spouse, Parent or Child) WHO ARE U.S. CITIZENS OR PERMANENT RESIDENTS.

This background is important for advocates and attorneys attempting to get a complete picture of the immigrant's history. In addition, in the context of suspension or cancellation proceedings, the applicant might need to establish hardship to their legal resident or U.S. citizen family members.

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