

**OVERCOMING CRIMINAL JUSTICE SYSTEM
CHALLENGES FOR IMMIGRANT SURVIVORS
OF SEXUAL ASSAULT**

“This project was supported by Grant No. 2011-TA-AX-K002 awarded by the Office on Violence Against Women, 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.”

Portions of this workshop were developed and adapted from a curriculum developed by VIDA Legal Assistance, Inc. for the Florida Coalition Against Domestic Violence under contract No. LN966 awarded by the state administering office for the STOP Formula Grant Program.

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Course Goals/Objectives

- Identify and examine criminal system barriers which affect the effective access to justice for immigrant survivors of sexual assault
- Develop effective strategies to improve and facilitate access to the criminal system when immigrant survivors are seeking justice

CASE SCENARIO

SMALL AND LARGE GROUP DISCUSSION

Limited English Proficiency

- Lack of or limited bilingual professionals
- Need to cross train on DV, SA, and HT
- Need to screen for conflicts if immigrant community is small
- Access to justice and protections for immigrant survivors may be delayed if interpreter is not readily available
- Agencies receiving federal funding must comply with LEP requirements (Title VI)

Police Response

- Culturally sensitive and adequately trained police officers can make a difference in the victim's cooperation
- Advocate for trained interpreters to interview LEP victim
- Avoid telling an immigrant victim to just go back to her country
 - Validates what she has been told repeatedly

Police Response

- If possible, have an advocate and police officer take victim's statement at the scene
- Ensure victim knows she is protected by the police regardless of her immigration status

Investigation

- Explain that process may entail several interviews, line up/photograph identification
- Facilitate communication with detective
- Ensure there is always an interpreter available
- Make appropriate referral for counseling and support



Prosecution

- System advocate's role is critical to secure survivor's collaboration
- Survivor needs to understand legal process in the US
 - Perpetrator is represented by counsel
 - Victim not considered a party
- Legal system is complicated and could be re-victimizing
- Immigrant survivors may come from countries where police, prosecutors, and judges seen as corrupt

Prosecution

- LEP victim/witness needs independent interpreter
- Many times perpetrator, his friends, family, or community manipulate survivor into not testifying
- Many times survivors are charged with crimes when acting in self-defense
- Batterer intervention programs not appropriate for victim

Prosecution

- Immigrant survivors may not be able to discern between criminal/stay away and civil protective orders
- Survivors may be confused between criminal and civil processes
- Explain pleadings, trial and sentencing



Prosecution

- Perpetrator's Defense
 - Using Immigration Status
 - Subpoenas
 - Confidentiality

Case Story

Small and large group discussion



Immigration relief: U Visa Overview

- Non-immigrant visa designed to provide immigration status for non-citizens who are assisting or willing to assist authorities investigating certain crimes
 - No qualifying relationship to perpetrator required, ie. DV victim does not need to be married to perpetrator
 - Immigration status of perpetrator irrelevant

U Visa Requirements

- Must have been a victim of a qualifying criminal activity
 - which occurred in the U.S. or violated U.S. law
 - available for past crimes, no time limitation
 - non-exclusive list of crimes - may be a substantial similar activity



U Visa Requirements Continued...

QUALIFYING CRIMES:

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

- [Stalking](#)
- [Fraud in foreign labor contract](#)



U Visa Requirements Continued...

- Must possess information concerning the criminal activity
- Must have suffered “substantial physical or mental abuse” as the result of one of the crimes
and
- Must provide a certification from a federal, state, or local law enforcement official, prosecutor, judge, or authority investigating the criminal activity (Form I-918 Supplement B)

U Visa: Who Can Apply?

- Direct victims
- Indirect Victims
- Bystanders
- Definition of victim drawn from AG guidelines
(<http://www.ojp.usdoj.gov/ovc/publications/welcome.htm>)

Definition of Victim

- Direct Victim - One who is directly and proximately harmed by qualifying criminal activity

- Bystanders - Discretionary

Those who witness violent crime and suffer unusually direct injury

Ex: Pregnant woman who witness a violent crime and goes into labor, etc.

Definition of Victim Continued...

- Indirect Victims

- Of deceased victim or incapacitated or incompetent victim of crime
- Criminal activity includes murder & manslaughter, obstruction, perjury, and witness tampering

- Culpable Victim

Not eligible for U visa status if culpable of activity being investigated or prosecuted

Indirect Victims: Children, Incompetent or Incapacitated

- For child under 21
 - Children
 - Parents
 - Unmarried siblings under 18
- For incompetent or incapacitated over 21
 - Spouse
 - Children under 21
- Must meet all other eligibility requirements, i.e. information, collaboration, substantial harm



Helpfulness

- Is, has been or will be helpful to law enforcement agency in investigation and/or prosecution of crime
- Collaboration is ongoing, but request has to be reasonable
- Exception for victims under 16
 - Parent, guardian or next friend can provide assistance and possess the information

Who Can Certify? (Form I-918B)

- 8 CFR 214.14(a)(3): an agency that has authority to detect, investigate, prosecute, convict or sentence crime
- Head of federal, state or local law enforcement agency or any person designated to sign by the head
 - FBI, police, state troopers
 - Prosecutors
 - Child protective services
 - Department of Labor
 - Equal Employment Opportunity Commission

OR

- Federal, State or local judge
 - INA 214(p)(1), 8 USC 1184(p)(1)
- Signed within 6 months before filing U visa
- Adjudicator may contact signing agency

Bringing it all together...

- **Traumatic experience:** sexual violence
- **Positive police intervention:** police report completed, rape kit completed, victim advocate accompanies victim and makes referrals
- **Empowering participation in prosecution:** district attorney, paralegal, victim/witness advocate inform victim of legal process at every stage
- **Long term positive outcome:** access to lawful immigrant status in the US if helpful with investigation or prosecution