

WEBINAR

In Accordance with the Law: When Your Victim or Witness Speaks Limited English

February 6, 2020



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This webinar is supported by Grant No. 2017-TA-AX-K063, 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 and do not necessarily reflect the view of the Department of Justice, Office on Violence Against Women.

Learning Objectives

By the end of this webinar, you will be able to:

- Describe the language access requirements of Title VI and the American Disabilities Act
- Improve investigations and prosecutions by using language access tools
- Enhance victim safety and participation in the criminal justice system by improving language access

Poll 1: Let's see who is on the webinar with us

Please check the box that best describes you:

- A. Law enforcement
- B. Prosecutor
- C. Domestic violence/sexual assault systems based victim advocate
- D. Other – type in the chat

POLL

Missouri Demographics (2017)*

- ❖ Total foreign born population – 257,102*
- ❖ 4.2% of the state's 5.8 million people are foreign born
 - 41% naturalized citizens
 - 28% lawful permanent residents or temporary status**
 - 31% undocumented**
- ❖ 70.0% rise in immigrant population from 2000 to 2017
- ❖ 8.2% of children in the state under age 18 have 1 or more immigrant parents
 - 92.1% of children with immigrant parents in the state are U.S. native

**Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/MO> (Feb. 2018)*

***Source: <https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/authorized-immigrant-population-profiles>*

Missouri– Countries/Regions of Origin and Limited English Proficiency (2017)*

- ▶ Asia–39.9%
 - ▶ China (7.8%)
 - ▶ India (7.6%)
 - ▶ Philippines (4.3%)
 - ▶ Vietnam (3.3%)
 - ▶ Korea (2.8%)
- ▶ Latin America 28.8%
 - ▶ Mexico (16.5%)
 - ▶ Brazil (1.6%)
 - ▶ El Salvador (1.5%)
- ▶ Europe –18.9%
 - ▶ Germany (2.9%)
 - ▶ United Kingdom (2.3%)
- ▶ Africa – 9.2%
- ▶ Middle East – 4%
- ▶ Canada – 2.0%

Limited English Proficiency
(Speak English less than very well)

- ▶ Naturalized citizens 26.4%
- ▶ Non-citizens 49.3%

Languages Spoken at Home

- ▶ Spanish (147,568)
- ▶ Chinese (25,369)
- ▶ German (21,485)
- ▶ Arabic (12,371)
- ▶ Vietnamese (11,132)
- ▶ French (10,008)

*Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/MO>
(Feb. 2018)

Definition

- Limited English Proficiency (LEP)
 - the limited ability of individuals who do not speak English as their primary language to:
 - read,
 - speak,
 - write, or
 - understand English

Consequences of Lack of Language Access – Victims

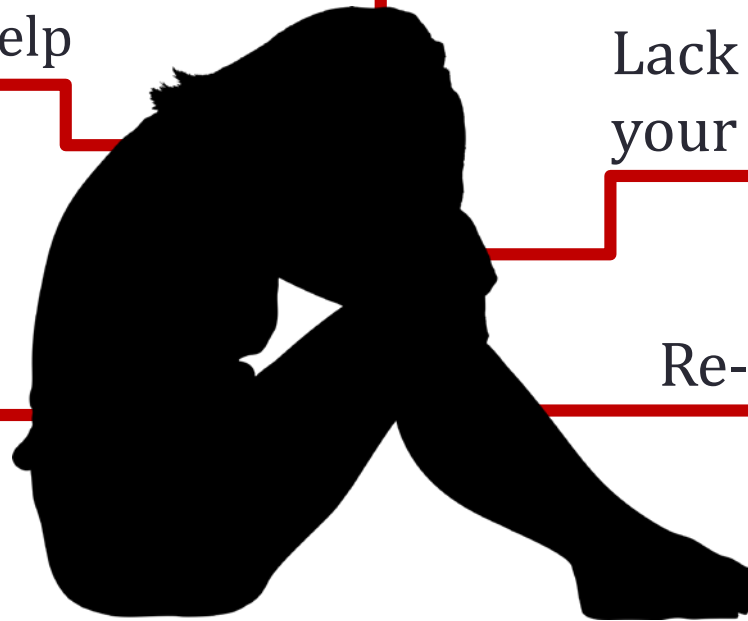
If programs are not accessible, survivors will not seek help

Perpetrators are rewarded: cycle of victimization continues and worsens

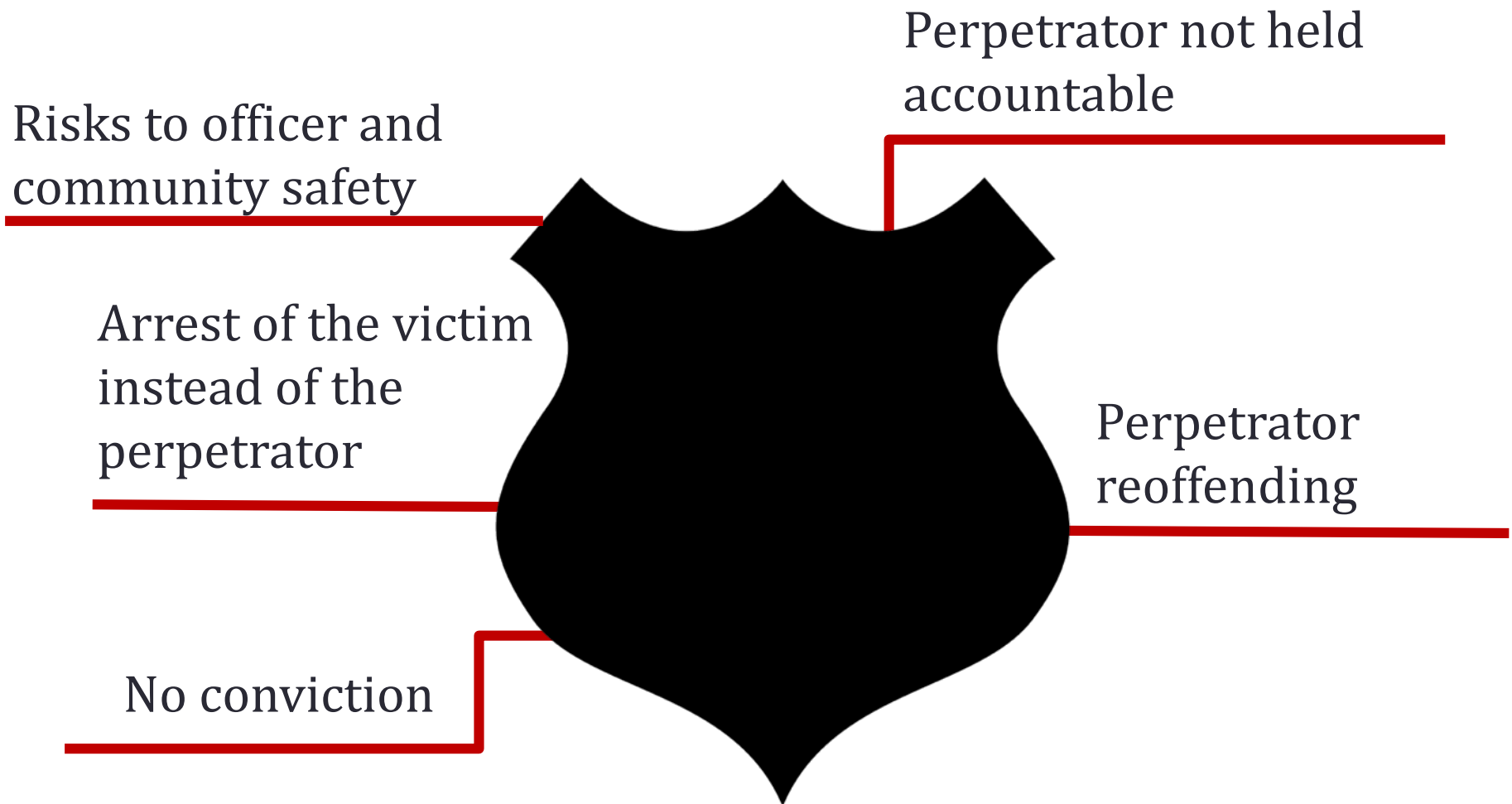
Lack of community trust in your organization

Risk to life and safety of the victim

Re-victimization



Consequences of Lack of Language Access – Police & Prosecutors



Language Access

Best practices to successfully investigate
and prosecute cases involving limited
English proficient victims

Poll 2: How is language access important to your work?

Please check all boxes that apply:

- A. Better investigations
- B. Decrease re-offending
- C. Better prosecutions
- D. Enhances officer safety
- E. All of the above

POLL

Language Access

Ensures that persons

with limited or no English language proficiency

or are deaf or hard of hearing

Are provided **meaningful language access** and

Are not excluded from or denied access to information, programs, and services

Title VI of the Civil Rights Act 1964

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.

Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d

Meaning of Title VI

- If an organization receives any federal funds
- All aspects of the organization must take reasonable steps to provide meaningful access to programs, benefits, and services offered by the organization to persons with LEP

What is Meaningful Access?

Defined in the DOJ's own Language Access plan as:

“Language assistance that results in accurate, timely and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed or inferior, as compared to programs or activities provided to English proficient individuals”

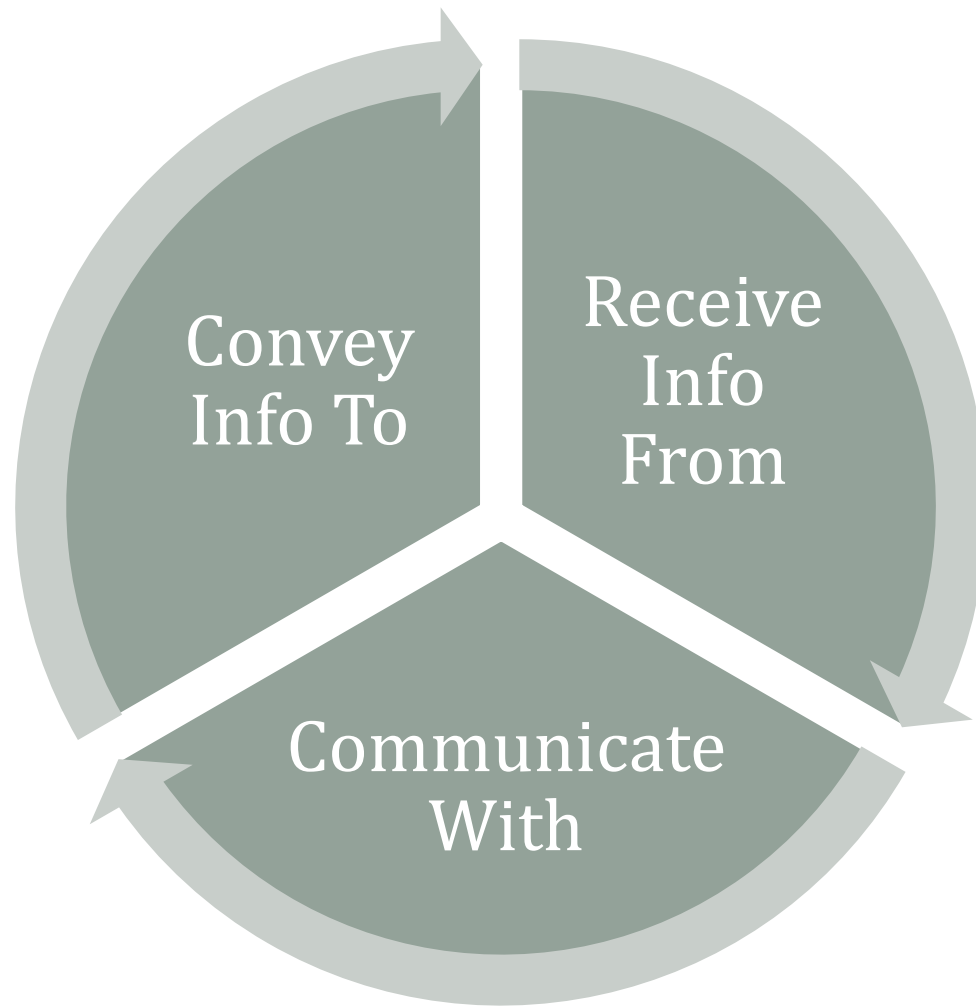
Language Access Standards

The diagram consists of two large, dark blue arrows pointing towards each other, meeting at a central point. The arrow on the left is filled with a darker shade of blue and contains the text 'Meaningful Access'. The arrow on the right is filled with a lighter shade of blue and contains the text 'Effective Communication'. The overall shape formed by the two arrows is a stylized 'X' or a diamond.

Meaningful
Access

Effective
Communication

Effective Communication



Americans with Disabilities Act and Section 504 of the Rehabilitation Act

- Regardless of funding source the ADA requires
 - Entities that serve the public are required to provide ASL interpreters, and other auxiliary aids, to ensure effective communication with deaf and hard of hearing individuals.
 - 28 C.F.R. S28 C.F.R. S35.160 (b)(2)
- Must ensure that communication with people who are Deaf or hard of hearing is equally effective as communication with people without disabilities

Equal Language Access

Any individual who is LEP or who is Deaf/Hard of hearing is not denied the opportunity to access or obtain services and supports necessary for their safety and well-being as a result of language barriers.



Who's covered?

1. Federally conducted programs
2. State/local government grantees
3. Non-governmental organization grantees



Recipients of Federal Financial Assistance and Title IX Compliance



Poll 3:



Title VI only covers the recipient's program or activity that is federally funded?



- ✓ Title VI covers a recipient's entire program or activity -even if only one part of the recipient receives the federal assistance
- ✓ Sub-recipients are also covered
- ✓ Includes- grants, training, use of equipment, donations of surplus property, and other assistance

Executive Order 13166

Goal

Provide meaningful access to people with limited English proficiency

Provides

Instruction and guidance about what Title VI and Lau v. Nichols means for federal agencies and grantees

Encourages

the development of language access plans

Poll 4: Which one of these factors outweighs the others for law enforcement, prosecution and victim services agencies?

1. *Number or proportion of LEP individuals encountered or served in the eligible service population*
2. *Frequency of contacts*
3. *The nature and importance of the program, activity or services*
4. *Resources available* →
 - Dept. of Justice guidance states that lack of resources is no excuse for failure to comply.

Policy Guidance Four Factors - 67 Fed. Ref. 41455

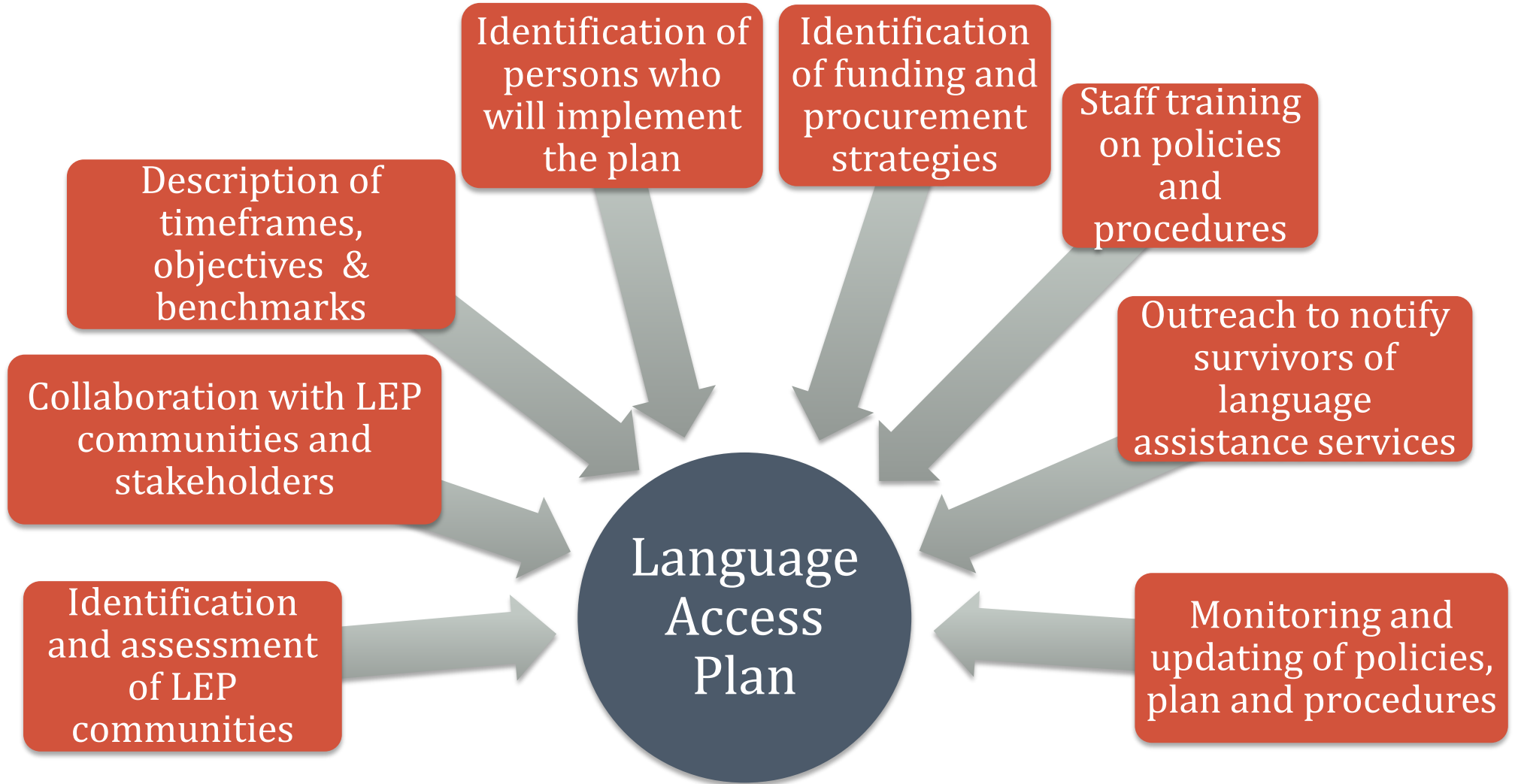
POLL

We Can't Afford Language Access

Financial limitations do not provide an exemption from language access requirements. Investigators will look at:

1. Demonstrated previous success
2. Whether other essential services are being restricted or defunded
3. Whether additional revenues secured or technology used
4. Whether the grantee has an implementation plan
5. Nature and impact on LEP persons

Developing an Effective Language Access Plan



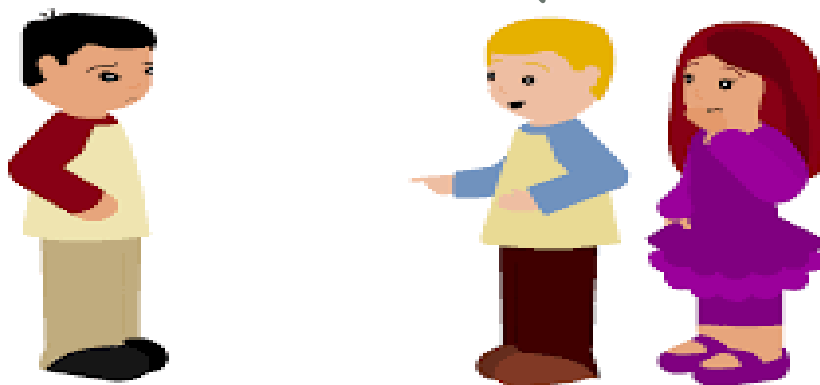
Interpretation

The conversion of spoken language into another language verbally

What is your name?

¿Cómo Se Llama?

Me llamo Raquel



Translation

The conversion of written text from one language into the written text of another language



DOJ Model Guidance

- Police provide free language access to:
 - LEP persons who request it
 - When officer decides it is helpful to the criminal investigation or prosecution
- Police will inform members of the public that language assistance is available free of charge
- Language access provided in persons primary language
 - DOJ Sample Policy Center City Police Department
 - DOJ Approach to language access outline in: Steps for Obtaining Interpreters

First Responders: What do you do when you arrive at a crime scene?



First Response

- Locate and secure the scene
- Are there any weapons?
- Is anyone injured?
- Identify the people involved
 - Victim
 - Offender
 - Witnesses
- If offender is not on the scene
 - Where is the suspect?
 - Are they a continuing danger?
 - Is suspect in possession of weapon?



DOJ and Exigent Circumstances

- Use the most reliable temporary interpreter available to address exigent circumstances
 - Fleeing suspect
 - Weapons
 - Life threatening to the officer /victim/or public

Poll 5: Choose someone who speaks English you would select to speak to under exigent circumstances?

Please check the box that best describes you:

- A. Child
- B. Perpetrator
- C. Neighbor
- D. Relative
- E. All of the above

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On Scene Considerations

- Separating parties
- Use of two interpreters
- Is the abuser threatening in a different language or making intimidating gestures?
- Headset and background noise
- Consider cultural differences
- Be aware of the perception of implicit bias

DOJ Requirements for Investigations & Interrogations

- “A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness’ legal rights could be adversely impacted”
 - Criminal interrogations
 - Crime witness interviews
- Vital written materials translated into primary language
 - Miranda warnings

Use of Unqualified Interpreters During Investigations At Crime Scenes - Effect

- When responding to 911 calls from LEP victims – police used unqualified interpreters who were
 - A child of the victim or perpetrator = 24.3%
 - A friend or neighbor = 22.9% or an adult relative = 17.8%
 - Officers spoke only to perpetrators
 - Domestic violence (9.6%); Sexual assault (8.1%) and human trafficking (4.8%) of cases
 - No police report taken often despite visible injuries
 - Domestic violence (10.4%), sexual assault (9.6%), human trafficking (11.8%)

Natalia Lee, Daniel J. Quinones, Nawal Ammar & Leslye E. Orloff, National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access (April 16, 2013) <http://niwaplibrary.wcl.american.edu/pubs/importance-of-collaboration-victims/>

Collaboration Promotes Language Access

- When law enforcement and victim services agencies collaborate = greater language access
- Common collaborations in cases of immigrant domestic and sexual violence survivors include:
 - 81.3% on cases of individual victims
 - 79.2% of agencies certifying U visas had ongoing collaborations
 - 71.9% collaborate on trainings
 - 69.2% on community education
 - 58.8% SART teams
 - 57.9% CCR teams
 - 51.5% on outreach to immigrant communities

Natalia Lee, Daniel J. Quinones, Nawal Ammar & Leslye E. Orloff, National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access (April 16, 2013) <http://niwaplibrary.wcl.american.edu/pubs/rsch-police-response-immigrant-victims/>

Poll 6: What evidence if interpreted incorrectly could harm a prosecution?

Please check the box that best describes you:

- A. Police reports
- B. Victim statements
- C. Witness interview
- D. All of the above

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What is a Qualified Interpreter?

A qualified interpreter is an interpreter that meets the standards adopted by an agency or organization needed to interpret. It can be as simple as signing up to be on a list, to requiring training and assessment.

A Qualified Interpreter Should Be

- Someone who is able to interpret effectively, accurately, and impartially, both:
 - Receptively = understanding what the person that is LEP or with a disability is saying
 - Expressively = having the skill needed to convey information back to that person
- Training includes:
 - Distinct role, professionalism and ethics

***** Different than Certified Interpreter *****

“Qualified Interpreter”

“When considering whether an interpreter is qualified, the LEP plan discourages use of police officers as interpreters in interrogations except under circumstances in which the LEP individual is informed of the officer’s dual role and the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in interpreting and tape recordings are made of the entire interview.”

“Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” Department of Justice, 2002.

Certified Interpreter

- Has been tested through a valid and reliable testing instrument
 - Medical
 - Legal
- Sign Language Interpreters **MUST** be certified



Bilingual Officer v. Interpreter

- Bilingual officers
 - When they are interpreting, they are not investigating
- Biculturalism v. bilingualism
 - Different words have different meanings:
 - e.g. Variations on the word “highway” depending on what state you’re from.
 - Feet v. meters

First Responders: Once the emergency is over what are the next steps in the investigation where a qualified interpreter is required ?



Use a Qualified Interpreter

- Writing a police report
- Detective interviews
- Taking initial statements
- Crime scene interviews
- Communication relating to taking photographs
- Formal interviews at the station
- Developing probable cause
- Preparing case for prosecution

Case Study - Jose Lopez Meza (2008)

- Charged with first degree murder – Charge was dropped to manslaughter
 - Baby died after Meza shook his 3 week old son so violently the child's brain began to swell, ultimately killing him
 - Detectives used a Spanish speaking officer to assist with the interview
 - Review of the tapes by court appointed certified interpreters revealed that the officer interpreting left out some of the information, misinterpreted several statements made by the suspect and the detective

Working with Interpreters

- Control the interview
- Pre-session with the interpreter
 - Where are they located?
 - Establish what your rules are
 - Hand signals
 - Interpret everything said
 - Nature of the case

Red Flags



- Can you understand the interpreter?
- Does the LEP person look confused?
- Does the interpreter appear confused?
- Is the interpreter engaging in side conversations?
- Is the interpreter summarizing?
- Is there a change in the individual's demeanor?
- Are they using English words?

Interpretation Best Practices

- Evaluation systems
- Interpreter uses a dictionary, takes notes
- Interpreter comfortable with subject matter of the case
- Address cultural experiences ahead of time
- Ensure that they do not know the parties
 - If using telephonic interpreters: first ask where they are located
- Team interpreting and interpreter breaks

Promising Practices

- Face to face interpretation:
 - Qualified interpreter training for law enforcement, advocates and services providers
 - Training on how to interpret
 - Competency exam
 - Collaboration with university with language interpretation programs for student interpreters

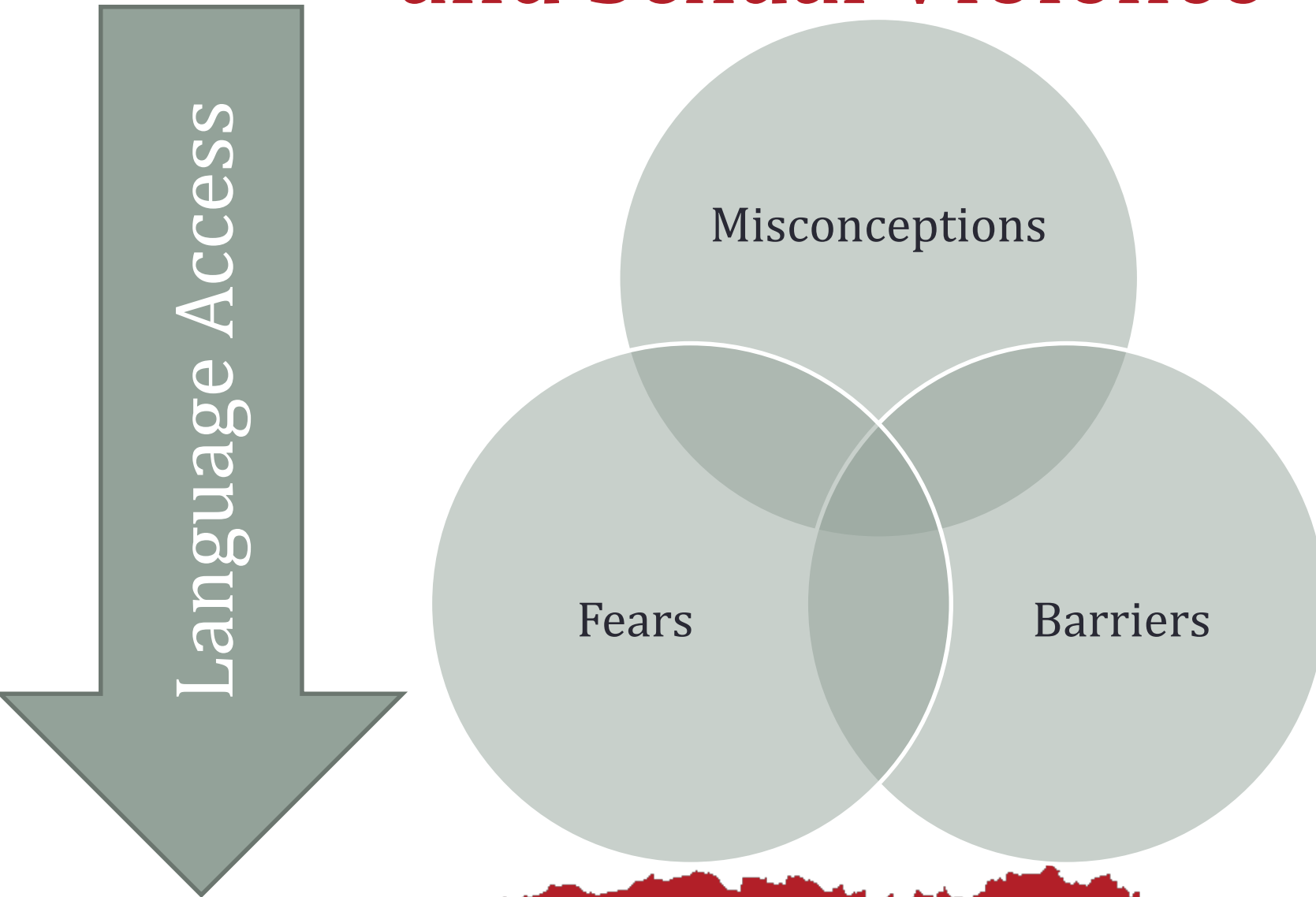
Promising Practices, cont.

- Over the telephone interpretation
 - Securing contracts for language access by telephone
 - Sharing contracts that one agency has with another
 - On scene access

Prosecutors, the Courtroom, and Language Access



LEP Victims of Domestic Violence and Sexual Violence



Accessing Justice

- Exercising legal rights
- Accessing victim services
- Communicating with the prosecutor
- Navigating the courthouse
- Participating in court proceedings
- Filing for protection orders, custody, divorce, and child support
- Understanding and responding to defense requests

Prosecutor's Role

Evaluate
Case

Charge the
Case

Represent
the
Community

Take Witness
Statements

Prepare for
Hearings and
Trial

Assure
Access to
Justice

Prosecutor and Victims

- The prosecutor does not represent the victim or any other witnesses
- However:
 - The prosecutor represents the people of the community in which they serve
 - Prosecuting a case of domestic violence or sexual assault includes representing the interest of the victim

Prosecutor Leadership



Poll 7: In which of these cases do courts provide qualified interpreters?

Please check all boxes that apply:

- A. Criminal cases
- B. Protection order cases
- C. Divorce/Custody cases
- D. All of the above
- E. Do not have the information

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In Courtrooms

- Qualified interpreters must be provided to:
 - All parties, defendants and witnesses and all persons whose presence is necessary or appropriate (e.g., parents of minor crime victims)
- All court room proceedings whether civil, criminal, administrative or other
- LEP individuals should not incur any fees for these services

DOJ LEP Directive to State Courts on Federal Civil Rights Requirements
(8/20/2010) - Interpreters

In the Courthouse

- Not restricted to courtrooms, also required in:
 - Clerks offices, records room
 - Alternative dispute resolution
 - Pro se clinics
 - All interactions with court appointed personnel such as guardians ad litem or court psychologists

DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010) - Interpreters

Translation

- Requirements for Documents
 - Translated petitions, court orders, and materials explaining rights and obligations
 - Post signs and public service announcements in foreign languages advertising free qualified interpreters
 - Language cards to accurately identify individual language needs

DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010)

Languages for Translation

- Translation Requirements for Documents
 - All languages spoken by the lesser of 5% of population or 1000 individuals
 - When fewer than 50 persons = 5% written notice in that language of right to receive oral interpretation

DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010)

Advocate for Language Access

- Alert the court in advance when a case involves any person with LEP
 - Note the victim's language on the court jacket
- Translate evidence in advance and provide in discovery
- Recognize when a case requires unique interpretation and prepare well in advance
- Insist on waiting for interpreter
 - When court proceeds without an interpreter, make a record and insure LEP individual is properly advised of the nature of the proceeding

Courtroom Interpreters

- With the court's permission advise interpreter of nature of the case
- Remain vigilant for red flags
- Have two interpreters present
- Approach the Court regarding:
 - Errors in interpretation
 - Quality of interpretation
 - Interpreters giving legal advice

Courts are to provide qualified interpreters at all stages of the case--

- Arraignments
- Motions
- Pre trial hearings
- Pleas and sentencing
- Trials and final orders
- For court orders treatment and testing
- Court clerks offices



What are some challenges
you have experienced
involving language access?



Boise Police Department Addressing Language Access

Boise Police Department Challenges

- Informal interpreters making mistakes
- Time issues when dealing with LEP persons
 - Officers were often tied up on calls for hours or they cleared the call before proper measures were taken
- Frustration for officers and LEP persons involved
- Limited resources currently available
 - Use informal interpreters due to lack of alternative options
 - Language line is extremely expensive (ex: \$192.00/62 minutes) and the dialects are not always compatible

Idaho Refugees

- Bosnia, Serbia, Albania, and Kosovo
- Columbia, Cuba, and Haiti
- Afghanistan, Uzbekistan, Iran, and Iraq
- Sudan, Ethiopia, Somalia, Kenya, and Burundi
- Liberia, Sierra Leone, Niger, Rwanda, and Congo
- Russia, Turkey, and the Ukraine
- Burma, Vietnam, Nepal, and Bhutan

100 different languages spoken in Boise

BPD Interpreter Program

- Interpreters are identified by established refugee agencies, and/or established interpreter lists (letters of recommendation)
- Application/background checks completed
- BPD training completed both for interpreters and officers
- Payment: \$20.00/hr. – scheduled appointments
\$25.00/hr. – call out (2 hr. minimum)
- Invoice and accountability form completed by supervisor



Be creative in developing and
tapping into existing resources

Language Resources

- Language line
- Video remote interpretation
- Video relay interpretation
- Department interpreters line developed in response to large local refugee population
- Immigrant community based organization partners
- Health care providers
- School systems
- Court systems



Resources, Training and Technical Assistance

Limited English Proficiency (LEP)

LEP.gov

A Federal Interagency Website

Search LEP.gov

LEP Resources and Information

[Frequently Asked Questions](#)

[Executive Order 13166](#)

[Resources by Subject](#)

[Recipients of Federal Assistance](#)

[Interpretation and Translation](#)

[LEP and Title VI Videos](#)

[Demographic Data](#)

[LEP Mapping Tools](#)

LEP Compliance

[Federal Agency LEP Plans](#)

[LEP Guidance for Recipients](#)

[LEP Guidance for DOJ Recipients](#)

[File a Complaint](#)

[LEP.gov](#)

[Suggest LEP Resources](#)

[Report Broken Links on LEP.gov](#)

[Last Updated: November 19, 2018](#)

Department of Justice LEP Guidance for Recipients and Agencies

Department of Justice LEP Guidance for Recipients and Agencies

[LEP Guidance for DOJ Recipients](#)

[Language Access Guidance Materials](#)

[State Courts](#)

[Corrections](#)

[Police and Sheriff's Departments](#)

[Guidance to State and Local Government](#)

[Guidance for Federal Agencies](#)

LEP Guidance for DOJ Recipients

[\[TOP\]](#)

[2002 LEP Guidance for DOJ Recipients - June 18, 2002](#)

[General Guidance Issued with Executive Order 13166 - August 16, 2000](#)

[LEP Enforcement and Compliance Activities](#)

Language Access Guidance Materials

[\[TOP\]](#)

LEP.gov website

Virtual Roundtables

- Only law Enforcement & Prosecutors
- Interactive discussion
 - Strategies to build rapport, establish trust, and ensure safety
 - Ask questions from subject-matter experts and peers
- To register, visit <http://www.niwap.org/go/LEAroundtables/>



Technical Assistance

- Technical Assistance
 - Call: 202.274.4457
 - Email: niwap@wcl.american.edu
- Asian Pacific Institute on Gender Based Violence
 - <https://www.api-gbv.org/culturally-specific-advocacy/language-access/>
 - Cannon Han chan@api-gbv.org
- AEquitas at www.aequitasresource.org
 - Jane Anderson janderson@aequitasresource.org

API-GBV Resources and Trainings

- Developing a Language Access Plan: language access planning models and templates for law enforcement.
- Title VI Compliance.
- Interpretation skills building for bilingual officers, advocates, and community partners.
- Interpretation best practices when interpreting for victims of domestic violence, sexual assault, and trafficking.
- Working with interpreters.
- Interpretation and Translation Technology.

Resources

- Materials on Language Access
- NIWAP's Library
<http://niwaplibrary.wcl.american.edu>
- Materials and tools for law enforcement and language access available at
<http://niwaplibrary.wcl.american.edu/language-access-materials-for-police-and-prosecutors/>

Thank You!

