

NIWAP

CONFERENCE

Strengthening Community and Organizational Responses: Serving Immigrant Victims of Domestic Violence, Sexual Assault, and Stalking

Improving Access to Justice Through Language Access for Immigrant Victims

Plenary II
August 2023

Introductions



Canon Han
Senior Program
Manager, Asian Pacific
Institute on Gender-
Based Violence



Hon. Ramona Gonzalez
La Crosse County Circuit
Court La Crosse,
Wisconsin

Introductions



**Detective Shelli
Sonnenberg**
Boise Police Department,
Idaho



**Detective Natasha
Haunsperger**
Portland Police Department,
Oregon

Thank You to OVW

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The opinions, findings, conclusions, and recommendations expressed in this program are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

Learning Objectives

By the end of this workshop, participants will be better able to:

- Understand language access requirements for recipients of federal funding
- Recognize the importance of language access using police and investigative case studies
- Examine effective innovative strategies employed by Boise Police Department and Portland Police Bureau used for community engagement and overcoming language divides
- Understand court's language access obligations
- Identify key elements included in effective language access plans

Large Group Discussion

Kinner Case - 2018

- 9 people stabbed, including 6 children at a 3-year old's birthday party
 - 3-year-old, Ruya Kadir, was killed
 - Victims and witnesses were from Syria, Iraq, and Ethiopia
 - Responding officers needed to communicate with LEP victims and witnesses that spoke languages including Arabic, Amharic, and Oromo

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. § 2000

Meaning

Government & government funded programs must provide meaningful access to programs & benefits to persons with limited English proficiency (LEP)

American with Disabilities Act and Section 504 of the Rehabilitation Act

- Public accommodations and state entities are required to provide ASL interpreters, and other auxiliary aids, to ensure effective communication with deaf and hard of hearing individuals.
- Deference must be given to the deaf or hard of hearing individual's choice.
 - 28 C.F.R. S28 C.F.R. S35.160 (b)(2) (NAD Law Center, 2002)

Who's Covered?

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



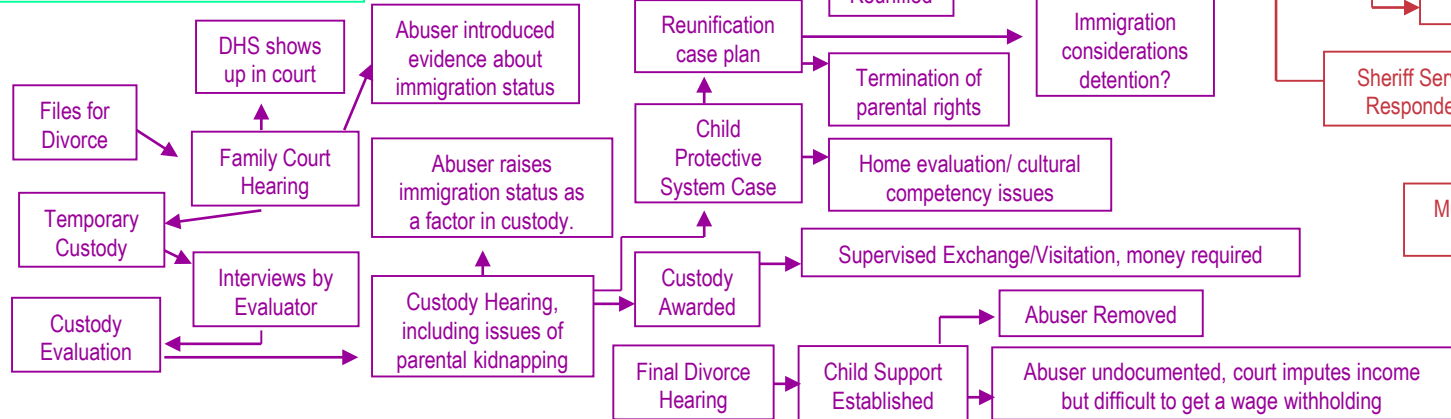
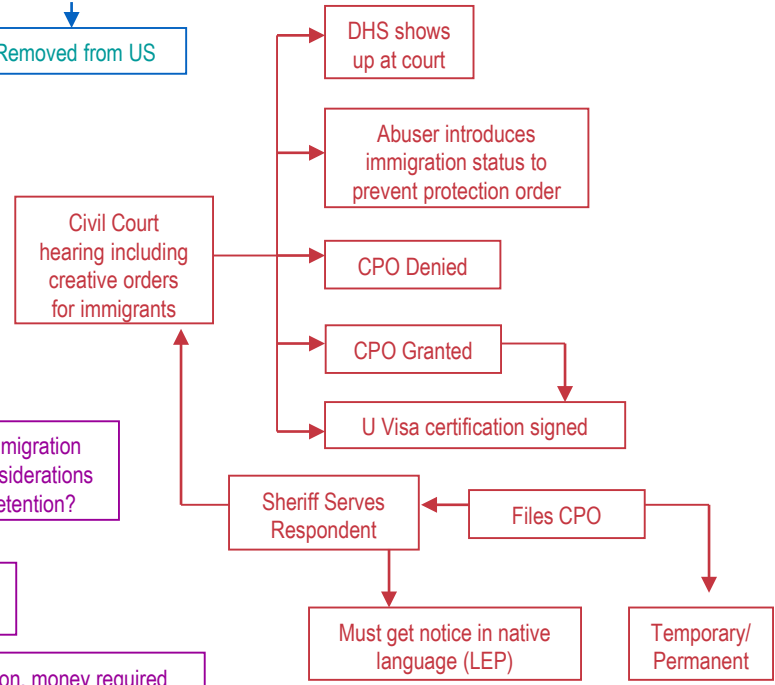
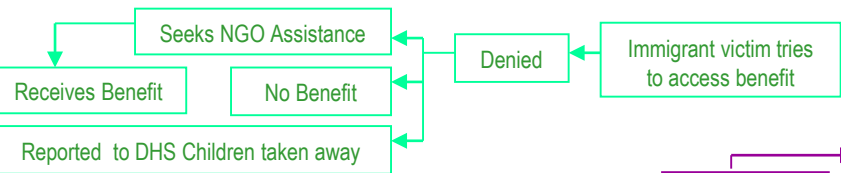
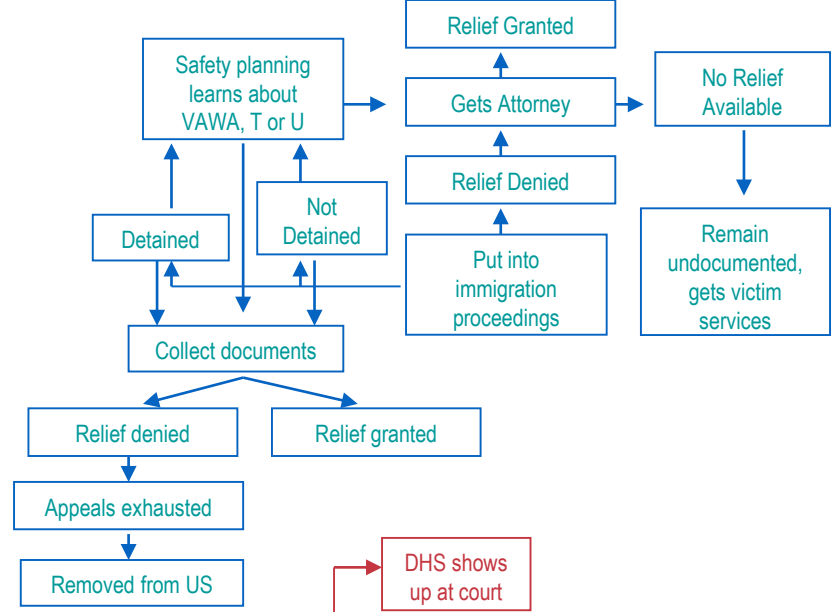
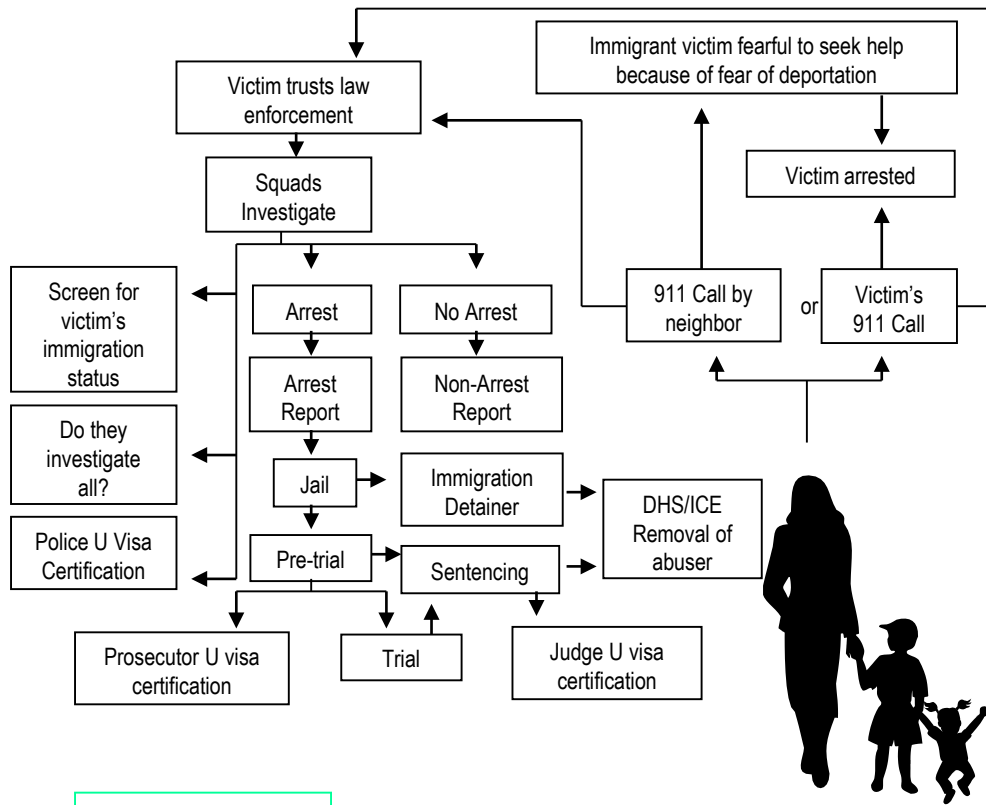
Recipients of Federal Financial Assistance and Title VI Compliance



Small Group Activity

The LEP Experience





Key Role of Advocacy for Immigrant and LEP Survivors

- Research has found that with support from advocates and attorneys who
 - Provide/help secure language access
 - Are knowledgeable about legal rights of immigrant survivors
- Immigrant and LEP survivors will
 - Access services, protection orders, immigration relief and justice system help

Mary Ann Dutton, Nawal Ammar, Leslye Orloff, and Darci Terrell, Use and Outcomes of Protection Orders by Battered Immigrant Women: Revised Final Technical Report to the National Institutes of Justice (November 19, 2006)

Language Access in the Courts

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

- LEP individuals are to be provided qualified interpreters
 - For all parties, defendants and witnesses and all persons whose presence is necessary or appropriate (e.g., parents of minor crime victims)
 - In ALL court room proceedings whether civil, criminal, administrative, includes motions and status hearings
 - 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

- LEP individuals are to be provided qualified interpreters
 - Not restricted to court rooms, also other court functions including:
 - Clerks' offices, records room
 - Alternative dispute resolution
 - *Pro se* clinics
 - All interactions with court appointed personnel (e.g., batterers treatment, guardian's ad litem, court psychologists, testing)

Raise Your Hand if Your State Courts Routinely Provide Language Access In

- Civil protection order cases
- Custody and divorce cases
- Criminal Cases



Law Enforcement Language Access Obligations

DOJ Model Guidance

- Provide free language access to:
 - LEP persons who request it
 - When officer decides it is helpful to the criminal investigation or prosecution
- Inform members of the public that language assistance is available free of charge
- Language access provided in person's primary language

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

Consequences of Lack of Language Access - Victims

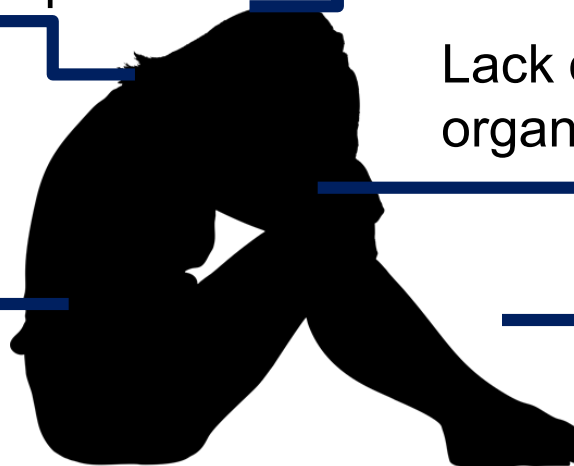
If programs are not accessible, survivors will not seek help

Perpetrators are rewarded: cycle of victimization continues and worsens

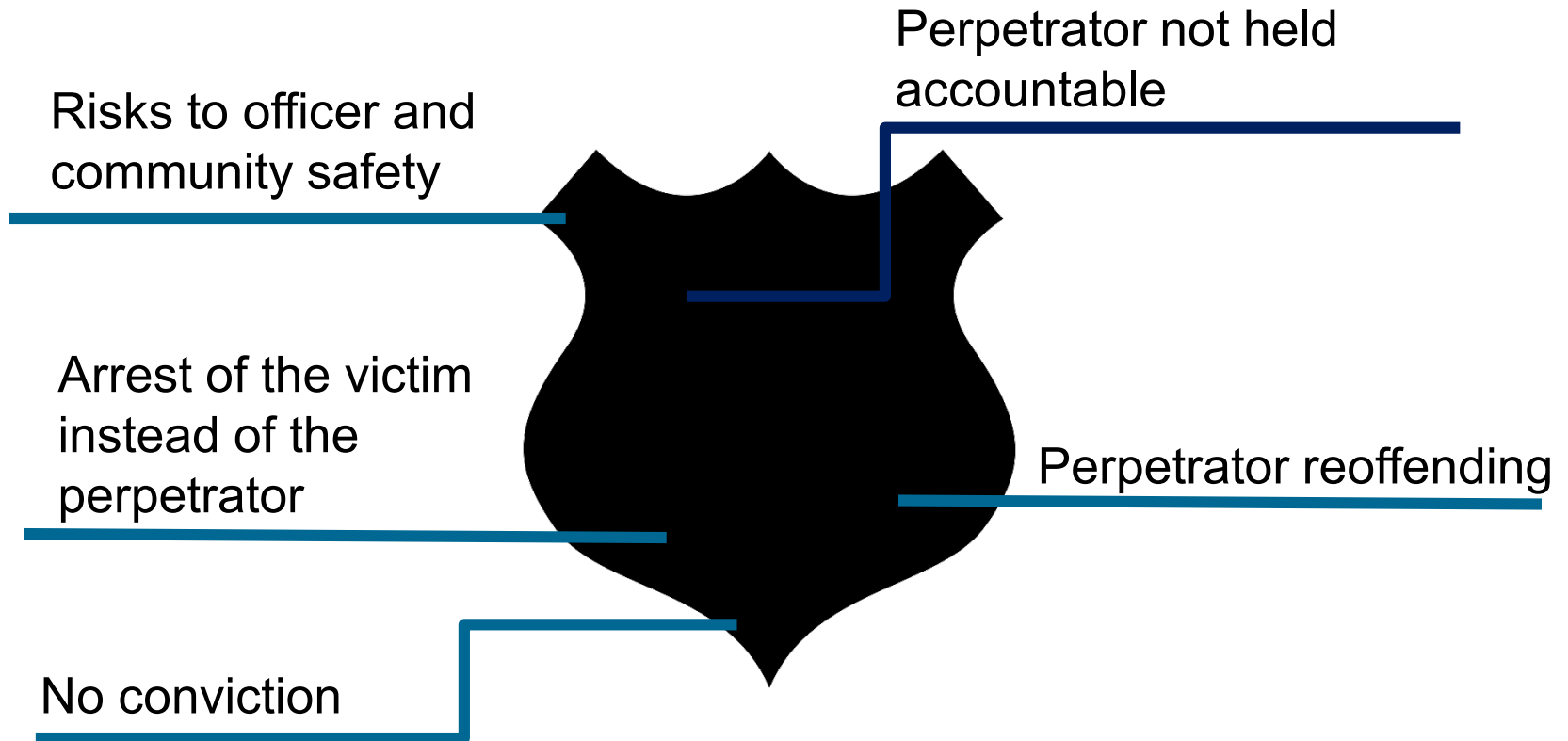
Risk to life and safety of the victim

Lack of community trust in your organization

Re-victimization



Consequences of Lack of Language Access – Police & Prosecutors



Large Group Discussion

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?



Large Group Discussion

What do you do when the people at the scene are limited English proficient?

How can you get the information you need to secure the scene?

Raise Your Hand if You have worked on cases where the following persons who speak English have been chosen to speak to under exigent circumstances?

- Child
- Perpetrator
- Neighbor
- Relative
- All of the above

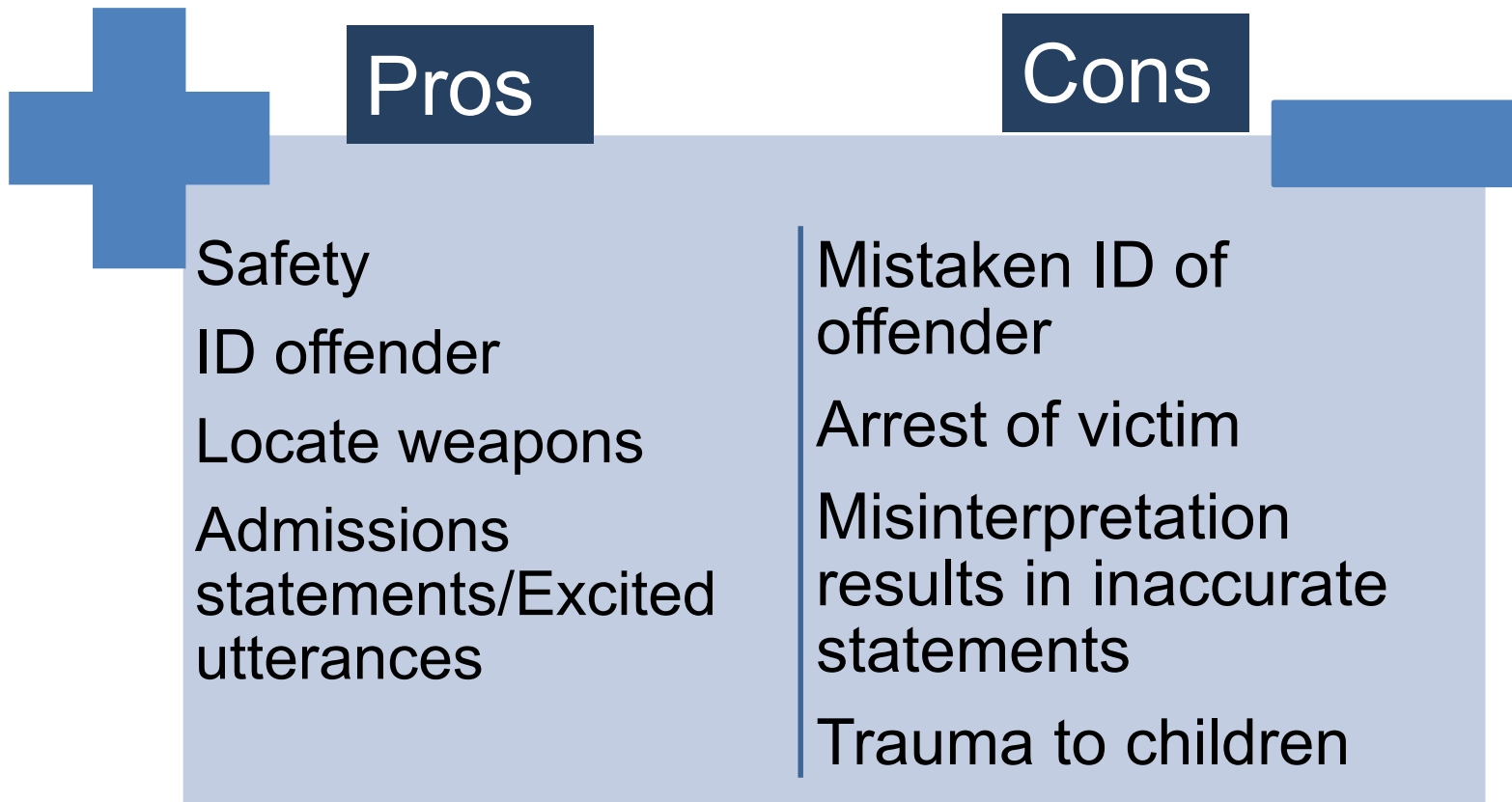


DOJ and Exigent Circumstances

Use the most reliable temporary interpreter available to address exigent circumstances

- Fleeing suspect
- Weapons
- Life threatening to the officer/victim/or public

Exigent Circumstances: What You Do Now Matters Later



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

Difference Between

- Securing the scene
- Interviewing victims and witnesses



Investigation Begins

- Call detective
- Call fire/rescue
- Take initial statements
- Call crime scene
- Photograph
- Formal interviews at the station
- Develop probable cause
- Prepare case for prosecution

If you have time to do any of the above, you have time to get an interpreter

Large Group Discussion

Meza Case - 2008

- Charged with First degree murder – Charge was dropped to manslaughter
 - Baby died after Meza shook his 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 revealed that the officer interpreting left out some of the information, misinterpreted several statements made by the suspect and the detective

Judicial Perspective



GOT A LANGUAGE ACCESS PLAN?



Signs You Need a Policy and Plan

1. Relying on relatives, children, or friends to interpret for victims, witnesses, and suspects
2. Only bilingual employees are used as interpreters, in addition to the other the employees' job responsibilities
3. No formal arrangements are in place to hire competent interpreters
4. Employees do not know how to connect with interpretation services
5. Staff are turning away LEP individuals
6. No translated materials

ALL organizations need a language access plan

LANGUAGE ACCESS PLAN: 5 CORE ELEMENTS

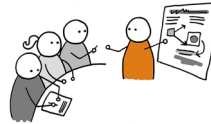
1. KNOWING YOUR LEP POPULATION



2. LANGUAGE ASSISTANCE



3. STAFF TRAINING



4. NOTICE AND OUTREACH



5. MONITORING AND EVALUATING



Developing an Effective Language Access Plan



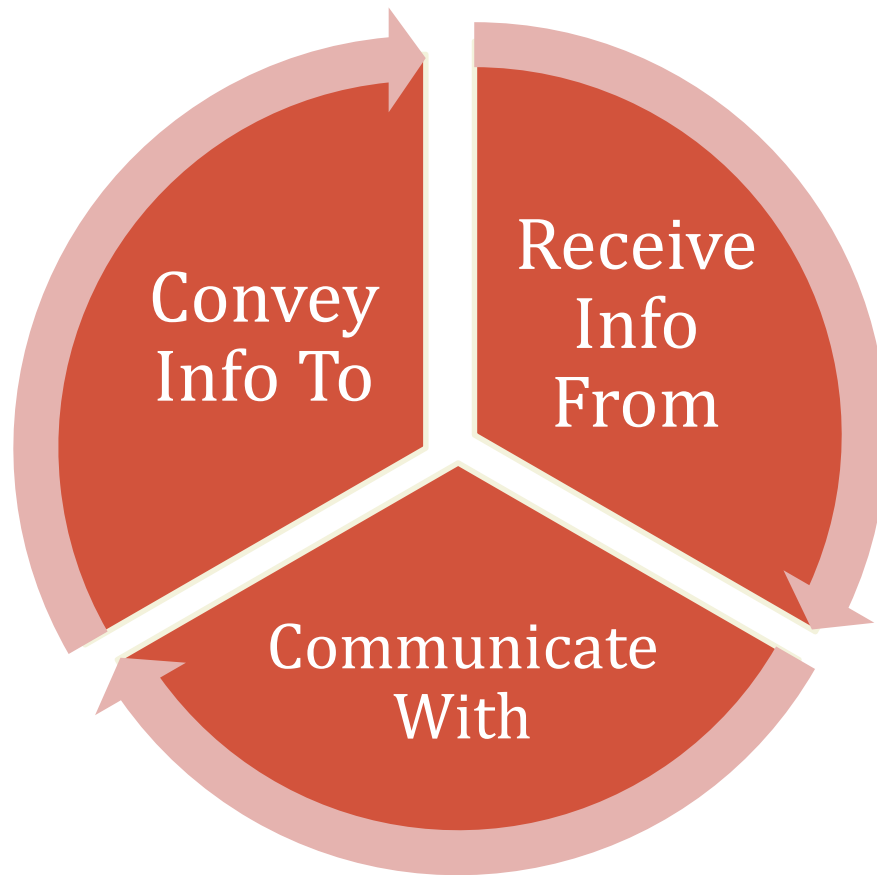
Interpretation



Definitions

- **Interpretation**: Process of orally rendering communication from one language to another language (Interpreter)
- **Translation**: preparation of a written text from one language into an equivalent form in another language (translator)
- **Qualified Bilingual Employee**: **Employees** who identify themselves as “bilingual” must demonstrate, through a formal procedure which has been established by the agency, competency to communicate in the source language by demonstrating the ability to listen to a communication in one language (source language) and orally convert it to another language (target language) while retaining the same meaning
 - The agency will provide all members with training in interpreting techniques, roles, and ethics so that they may understand and follow confidentiality and impartiality rules for interpreters. This also includes qualified bilingual members from other agencies.

Effective Communication



Modes of Interpretation

Simultaneous – The process of orally rendering one language into another language virtually while the speaker is speaking

Consecutive – The process of orally rendering one language into another language after the speaker has completed a statement or question

Sight translation – The rendering of material written in one language into spoken speech in another language.

Interpretation Exercise

1. Person A will read the paragraph out loud and Person B will attempt to reiterate/interpret the entire paragraph consecutively, in either English or the target language.
2. Person B should not look at the material being read by Person A.
3. Person A should read the paragraph without pausing and Person B will not be able to ask Person A to repeat the sentences or utterances. Person B, however, can take notes as Person A is reading.
4. When Person B has finished, Person A will then be the interpreter and Person B will read a different paragraph or exercise with the same rules as #2.

Summary Interpretation

How much information can you miss?

- Can cause crucial information in interviews to be excluded
- Untrained interpreters resort to this mode because they lack the skills for simultaneous or consecutive interpretation and cannot accurately reproduce rate of speech and density of information
 - Using a bilingual individual who may use his/her discretion to say what is important
 - Using a bilingual staff or member who has not been qualified – instances in interrogation where a bilingual member does not accurately and completely interpret

Judicial Perspective



Bilingual Employee vs Interpreter

- Bilingual employee - 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
 - Intoxication vs intoxicar

Qualified Interpreter

- Proficiency in English and interpreted language
- Can interpret using either the consecutive or simultaneous modes of interpretation
- Knowledge and use of a broad range of vocabulary, subject-specific terminology, and slang
- Knowledge and use of cultural nuances, regional variations, idiomatic expressions, and colloquialisms in all working languages
- Speak with proper pronunciation, diction, and intonation in all working languages
- Ability to listen to and comprehend various regional accents and/or dialectical differences in all working languages
- Following interpreter ethical standards

The Employee as Interpreter

Are they really qualified to interpret?

Portland Police Bureau

Cross examining law enforcement officers who interpret on the stand

Working with an Interpreter

- Tell the interpreter your circumstances
 - Speakerphone vs. Passing the phone – ensuring telephonic interpreter pauses
- Everything will be interpreted – false starts, mumbling, cursing and thinking out loud
 - This includes you and the LEP individual
- Be attentive to extraneous noise
- Conduct team interpreting for events more than two hours.
- Explain and break down the system and legal concepts
- Do not give the interpreter any explanatory responsibilities

Additional Best Practices

- Use straight, simple, direct language, short phrases and first and second person
- Talk through, not to, the interpreter- Continue to speak to the LEP witness/victim/suspect and maintain eye contact as if the interpreter is not present
- Don't ask interpreter for his/her opinion about the LEP individual
- Have patience - Interpreted interviews will take longer
- Be aware of interpreter fatigue
- Check and recheck to be sure the client understands using open-ended questions
- Don't be afraid to step in if you see something amiss

Spotting a Bad Interpreter



- Can you understand the interpreter?
- Does the individual look confused?
- Does the interpreter appear confused?
- Is the interpreter engaging inside conversations?
- Is the interpreter engaging in conversations with the individual before/after the interpretation meeting?
- Is the interpreter summarizing?
- Is everything being interpreted?
- Is there a change in the individual's demeanor?

Judicial Perspective



Recordings/Body Cams



Vetting and Preparing Non-interpreters

- In some emergencies and exigent circumstances, it may be necessary to use a third-party bilingual individual until a phone, interpreter, or qualified bilingual member arrives
- Qualifying Questions
 - Ask experience or credentials – Is the person educated in both languages? Have they worked in both languages?
 - How did they learn the language?
 - Relationship to the party?
- Review interpreter role
 - Complete
 - Accurate
 - Neutral
- Record the use of a third-party bilingual speaker

“Exact Change Only”

A word about *Google Translate* and other forms of mechanized translation.

Questions



Technical Assistance and Materials

- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail info@niwap.org
 - Web Library:
www.niwaplibrary.wcl.american.edu
- Materials for this Workshop:
 - <https://niwaplibrary.wcl.american.edu/BostonLanguageAccess>
- Contact NIWAP to provide training for your jurisdiction

Thank You!