Sexual Assault, Dating Violence, and Stalking on Campus: When Foreign-born Victims Become Targets

Day 1
Plenary II
New Orleans, LA

Introductions

- Leslye Orloff
  - Director, National Immigrant Women's Advocacy Project
- Jessica Mindlin, Esq.
  - National Director of Training and TA, Victim Rights Law Center
- Michael LaRiviere
  - Investigator, State of Massachusetts– Salem Police

Objectives

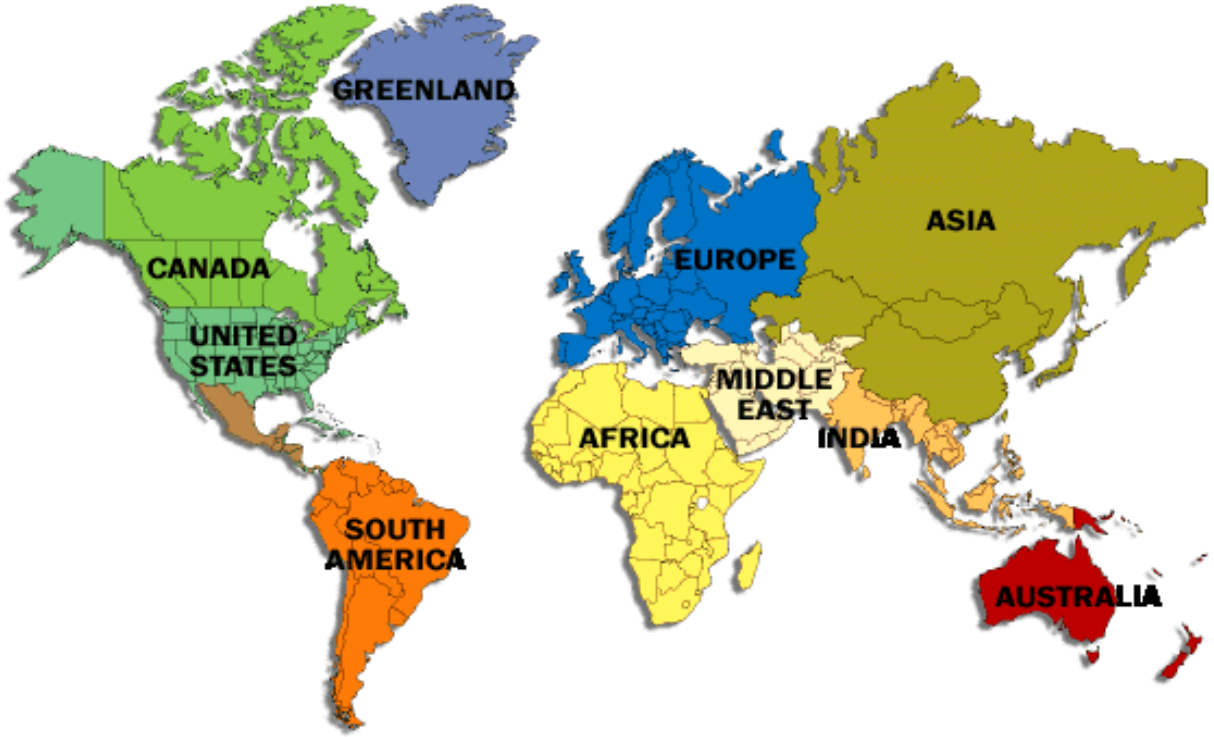
By the end of this plenary you will be able to:

- List 5 interim measures helpful to foreign born student victims
- Identify at least 4 actions you can take to encourage post-secondary schools to provide legal rights information to foreign born students
- Explain when campus police may provide U visa certification
- List at least 5 civil legal remedies to employ to help advance foreign born student survivors' rights

Foreign Born Students' Presence in the U.S.

- Student visa holders (F, M, J)
- DACA students
- Undocumented students
- VAWA, T and U visa students
- Students on other visas
  - Children of workers and diplomats
- Lawful permanent residents & citizens

What Regions of the World Send the Most Foreign Student Visa Holders?



Students' Home Regions

- Asia – 77%
- Europe – 7.3%
- Canada and Mexico 5.9%
- South America – 4.9%
- Africa – 4.4%
- Pacific – 0.5%
  - Department of Homeland Security, Student and Exchange Visitor Program (March 35, 2015) available at https://www.ice.gov/sites/default/files/documents/Document/2015/by-the-numbers.pdf

Top Countries of Student Visa Holders

- China – 331,371
- India – 146,336
- South Korea – 87,384
- Saudi Arabia – 80,941
- Canada ≈ 35,000
  - Department of Homeland Security, Student and Exchange Visitor Program (March 35, 2015) available at https://www.ice.gov/sites/default/files/documents/Document/2015/by-the-numbers.pdf
- Japan – 26,187
- Vietnam -25,982
- Taiwan – 23,503
- Mexico ≈ 22,000
- Brazil ≈ 20,000

F, M, and J Visas

- F-1: *Full-time* students in academic programs
  - Primary, high school, college, and university
- M-1: *Full-time* students in vocational and language programs
  - Up to time listed on I-20 visa
  - Not to exceed 1 year + 30 days to leave the country
- J-1: Exchange visitors, including scholars, participating *full-time* in an approved exchange program
  - High school, university, college
  - Approved for specific levels of education and subjects
  - Usually only last for a semester up to a year
- Full time = generally 12 credit hours

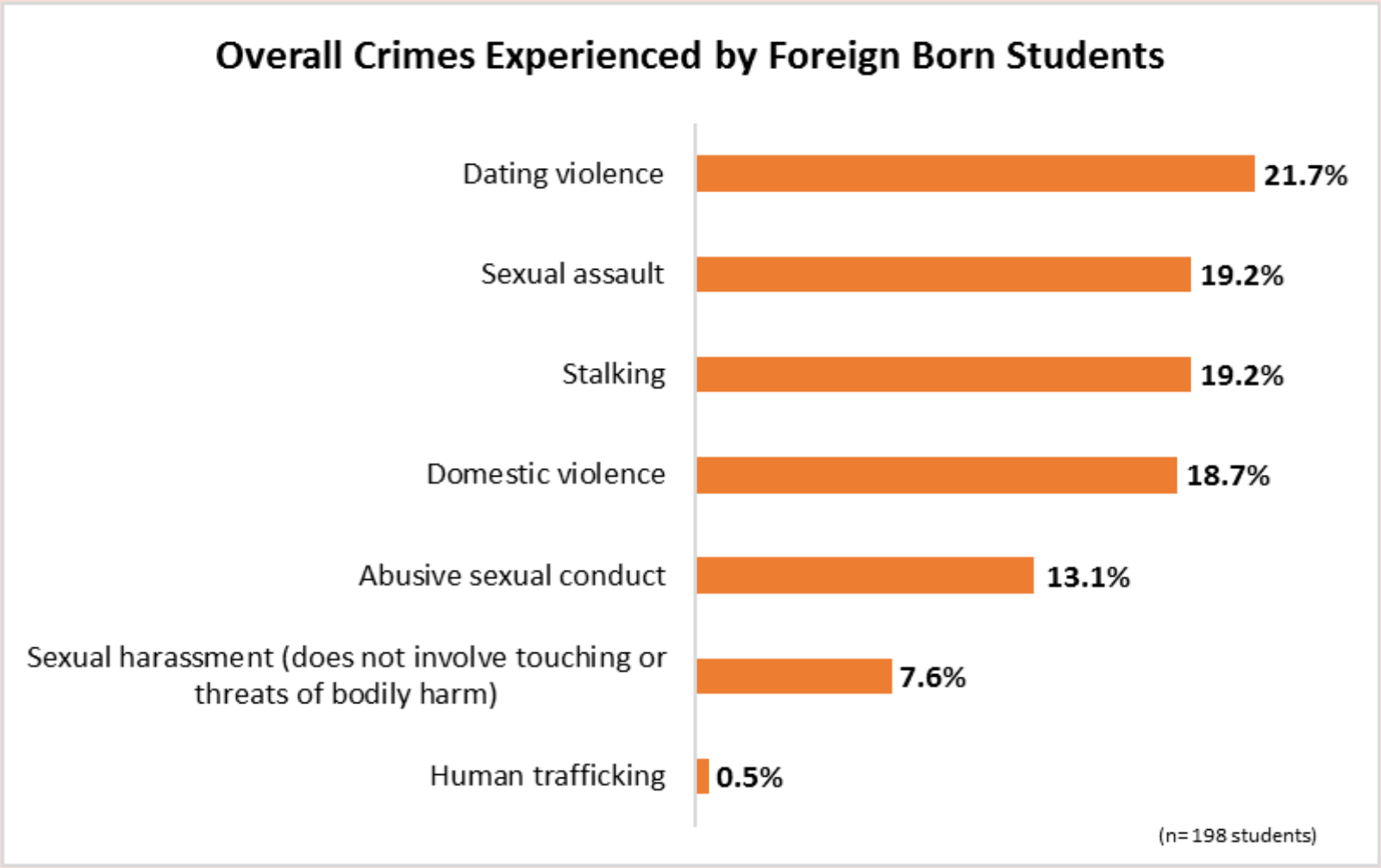
Foreign Born Students in U.S. Schools

- F-1 and M-1 student visa holders (1.13 million)
  - 8,979 different schools
  - 45% female
- J-1 exchange visitors (200,799)
  - 1,444 different schools
    - Department of Homeland Security, Student and Exchange Visitor Program (March 35, 2015) available at https://www.ice.gov/sites/default/files/documents/Document/2015/by-the-numbers.pdf
- 61% of undocumented students who arrive in the U.S. under the age of 14 go to college
  - Passel, Jeffrey, and D'vera Cohn. "A Portrait of Unauthorized Immigrants in the United States." *Pew Hispanic Research Center*. N.p., 14 Apr. 2009. Web. 27 Jan. 2013

Foreign Born Student Survivors: NIWAP's Spring 2016 Survey

- Eleven agencies from six states:
  - 73% = victim advocacy organizations
  - 27% = universities and colleges
- Programs served a total of 12,039 foreign born students including:
  - 198 victims of sexual assault, dating violence, stalking, domestic violence and sexual harassment
    - On campus - 84.3%
    - Off campus - 15.7%
      - Davis, Amanda and Leslye Orloff. "National Findings on University and College Responses to Foreign-born Student Victims" (October 27, 2016).

Types of Crime Victimization Experienced By Foreign Born Students Programs Reported Working With



- Resource: Davis, Amanda and Leslye Orloff. "National Findings on University and College Responses to Foreign-born Student Victims" (October 27, 2016).

Foreign Born Student Survivors Reporting to Law Enforcement

- 48.4% of those who did report, reported to campus or local police
- Of the crimes reported when the crime was committed:
  - Off campus the reporting rate was 57.1%
  - On campus the reporting rate was 47.9%
    - **Resource:** Davis, Amanda and Leslye Orloff. "National Findings on University and College Responses to Foreign-born Student Victims" (October 27, 2016).

To Whom Do Foreign Born Students Report?

- Most
  - Campus police - 54.8%
  - Other students – 36.6%
  - Campus staff – 36.6%
- Least – 9.3% each of the following:
  - Student organizations
  - Campus healthcare
  - Campus faith-based organizations/community
    - **Resource:** Davis, Amanda and Leslye Orloff. "National Findings on University and College Responses to Foreign-born Student Victims" (October 27, 2016).

What Reasons are Most Likely to Deter a Victim from Reporting?



Deterrents to Reporting

- 72.5% - Fear of perpetrator retaliation
- 52.5% - Fear they won't be believed
- 45% - Fear of being ostracized by students
- 42.5% - Fear of deportation
- 42.5% - Fear they would be blamed
- 40% - Fear they will be ostracized by cultural community

Deterrents to Reporting

- 37.5% - Did not know their legal rights
- 37.5% - Fear of how school officials will treat them
- 25% - Did not know what happened was a crime
- 20% - Believed they could not continue in school if they reported the crime

Campus and Local Police

- Best practices for collaboration between
  - Campus police
  - Local Police



Poll of Participants on

- U visa certification by campus police

U Visa Certification by:

- Campus law enforcement
- Campus security officials with investigative authority

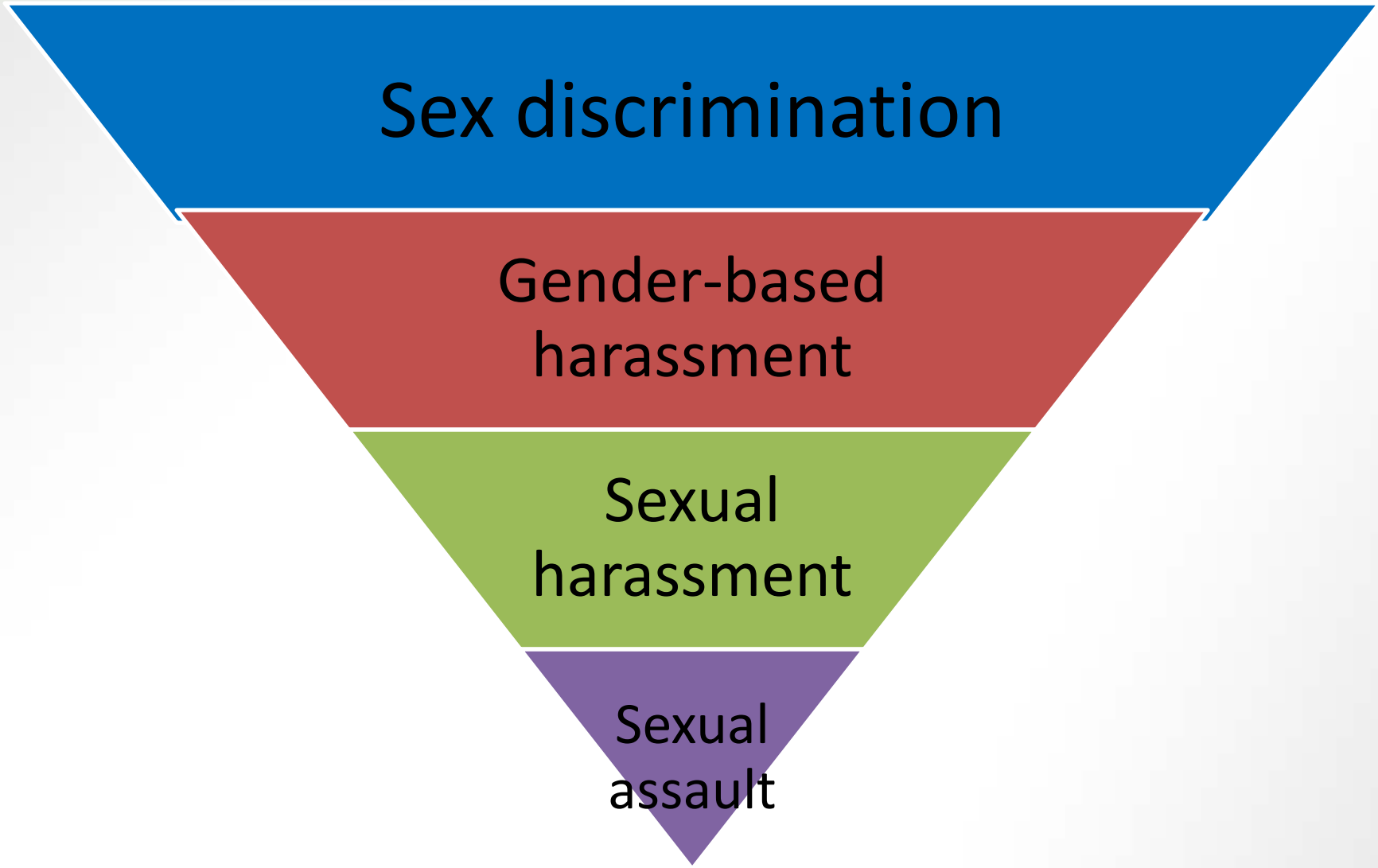




Title IX

- Recipients of federal financial assistance may not discriminate on the basis of sex in education programs or activities
- Schools that "receive federal funds"
- Qualifying federal $$ may be in the form of:
  - Award or grant of money
  - Use or rent of federal land or property
  - Federal training
  - Students receiving federal financial aid

© 2016 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.



© 2016 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

How Does Title IX Protect Students?

- Pre-k to post-secondary
- To academic, educational, extracurricular, athletic, and other programs of the school
- Beyond school grounds or outside a school's education program or activity, if offender is a fellow student
- Requires interim measures while investigation

© 2016 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

School's Obligation

- Must consider Victim's request for confidentiality
- "Prompt and thorough" investigation
- May not mediate
- Preponderance standard
- Offer interim measures

© 2016 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

Interim Measures

- Must take steps promptly if have notice
- Periodic updates to Victim
- Minimize burden on Victim
- If perp responsible, must continue measures
- Must make Victim aware of resources, including the right to file a criminal complaint
- Partner w/ local organization if school doesn't provide
- Measures = on case-by-case basis

© 2016 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

Interim Measures

- The Department of Education lists the following factors to consider when creating interim measures:
  - Specific need expressed by the victim
  - Age of students involved
  - Severity, pervasiveness of the allegations
  - Any continuing effects on the victim
  - Does the victim and alleged perpetrator share similar locations?
  - Have other judicial measures been taken to protect the victim (civil protection orders)?

Interim Measures for Foreign Born Students

- Victimization creates
  - U visa eligibility
  - Eligibility for victim/witness protection
    - Includes sexual harassment cases
- Screen all foreign students for immigration relief eligibility for:
  - U visa, VAWA self-petition, T visa (student or parent)
  - DACA (student under 31)
  - SIJS (student under 18 and in some states 21)

Interim Measures for Foreign Born Students

- Schools should be required to:
  - Inform student victims about immigration protections including the U visa
  - Refer victims to programs with expertise serving immigrant victims
  - Provide U visa certification from campus police
  - Provide on campus health care for victims
  - Work with SANE/SART experts in the community to secure forensic exams
  - Provide interpreters to foreign born students reporting and seeking help following abuse

NIWAP's Survey Found

- Few schools provide any legal rights information about victim based immigration options including the U visa
- Campus police have received little training on and seldom sign U visa certifications

NIWAP's Findings: Foreign Born Student Interim Measures

- 66.7% counseling & help getting first appointment
- 44.4% on-campus medical/mental health services
- 55.6% off-campus medical/mental health services
- 33.3% changes in housing, dining, on campus employment, and safety escorts

It is Important to Know

- Student visas require a full-time course load
- Students may need a reduced or suspended course load as result of victimization
- DoE recommends school takes steps to ensure that foreign born students seek prior approval before dropping below a full-time course load

NIWAP's Findings: Foreign Born Student Interim Measures

- 44.4% received incompletes, leaves of absences or permission to drop out of school
- Academic accommodations
  - 55.6% change/reschedule exams; more time to complete assignments, final projects
  - 44.4% change classes, transfer sections
  - 33.3% tutoring

What Advocates & Students Need to Know

- Changes in course load and leaves of absence can lead to loss of student visa
- Limited exceptions to student visa requirements available
- Filing U visa early after victimization can provide path to lawful permanent residency and more options for students
  - Visa holders, DACA and undocumented students

F Visa and Interim Measures

- Full time students in academic programs
- USCIS may authorize exceptions to full-time schedule requirement for:
  - Academic reasons
  - Medical conditions, including:
    - "physical or mental abnormality, disease, or disability serious in a degree or permanent in nature amounting to a substantial departure from normal well-being"
- May not be for more than an aggregate of 12 months
  - This is a total of 12 months for student's full F-1 history
  - Includes time off taken in high schools or prior universities

M Visa and Interim Measures

- Vocational and language study
- USCIS may authorize exceptions
  - To full course of study requirement; and
  - May extend the M-1 visa beyond the date listed on the student's visa (I-20 form)
  - Reduction in course load and time off together cannot last longer than an aggregate of 5 months
- Exceptions granted only for:
  - A compelling medical reason

J Visa and Interim Measures

- Exchange visitors with foreign residency requirement
- Visa granted by the Department of State
- USCIS responsible for approving visa exceptions to full-time schedule requirement for:
  - Bona fide academic reasons
  - Medical conditions including:
    - "physical or mental abnormality, disease, or disability serious in a degree or permanent in nature amounting to a substantial departure from normal well-being"
- Reduced course load and leave of absence must not interfere with student's ability to complete their study/training within 24 months of receiving the J-1 visa

What do survivors need?



© 2015 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

Krista

Additional “facts:” Krista is Canadian. She has a work study job at the school library.

As you listen, consider:

- What might Krista need help with?
- What remedies or accommodations Krista might need.

© 2015 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

Krista



© 2015 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

Krista:
Needs & Potential Remedies















© 2015 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

What Referrals Might Krista Need?







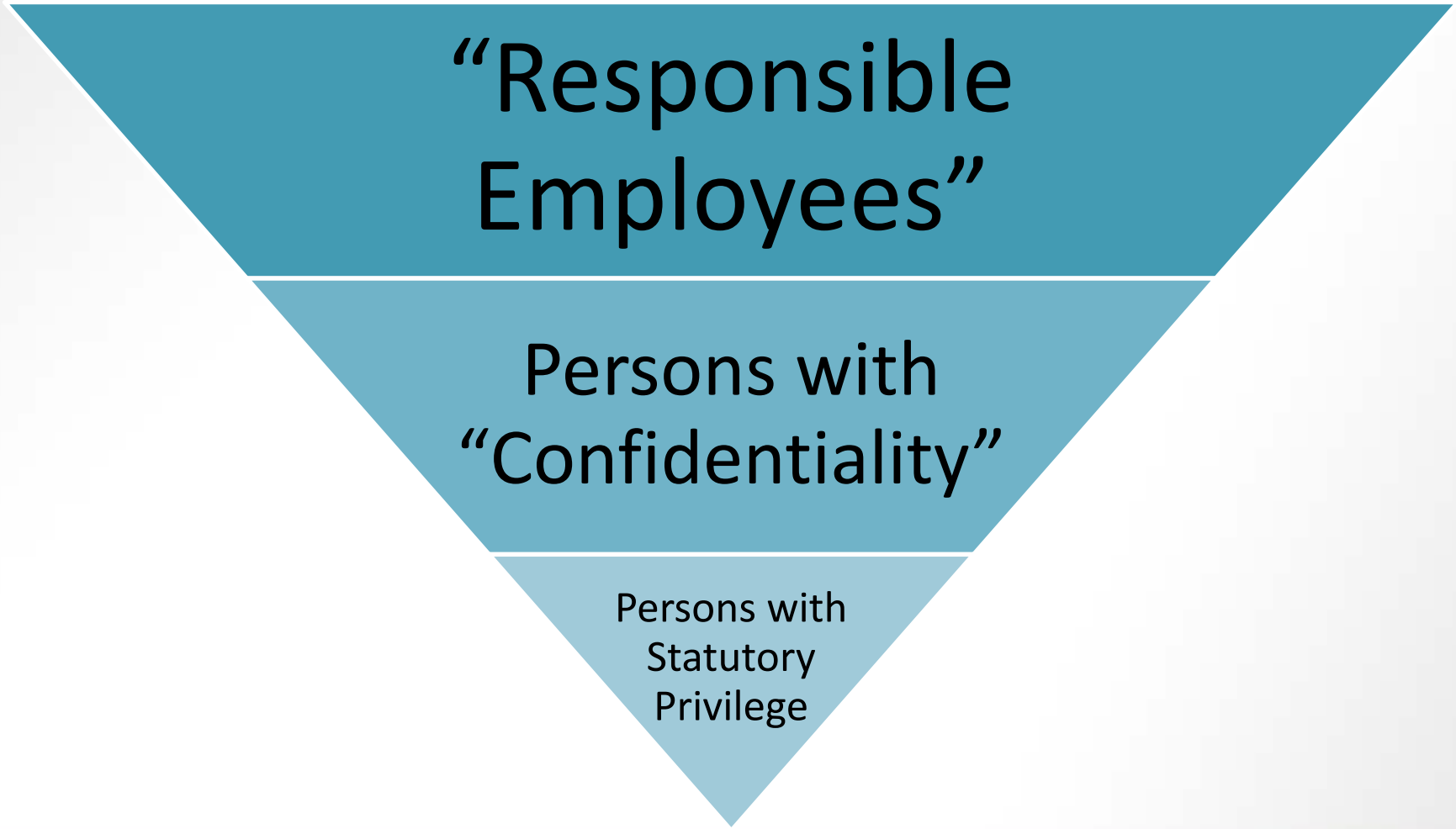






© 2016 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

Title IX:
What Must Be Reported



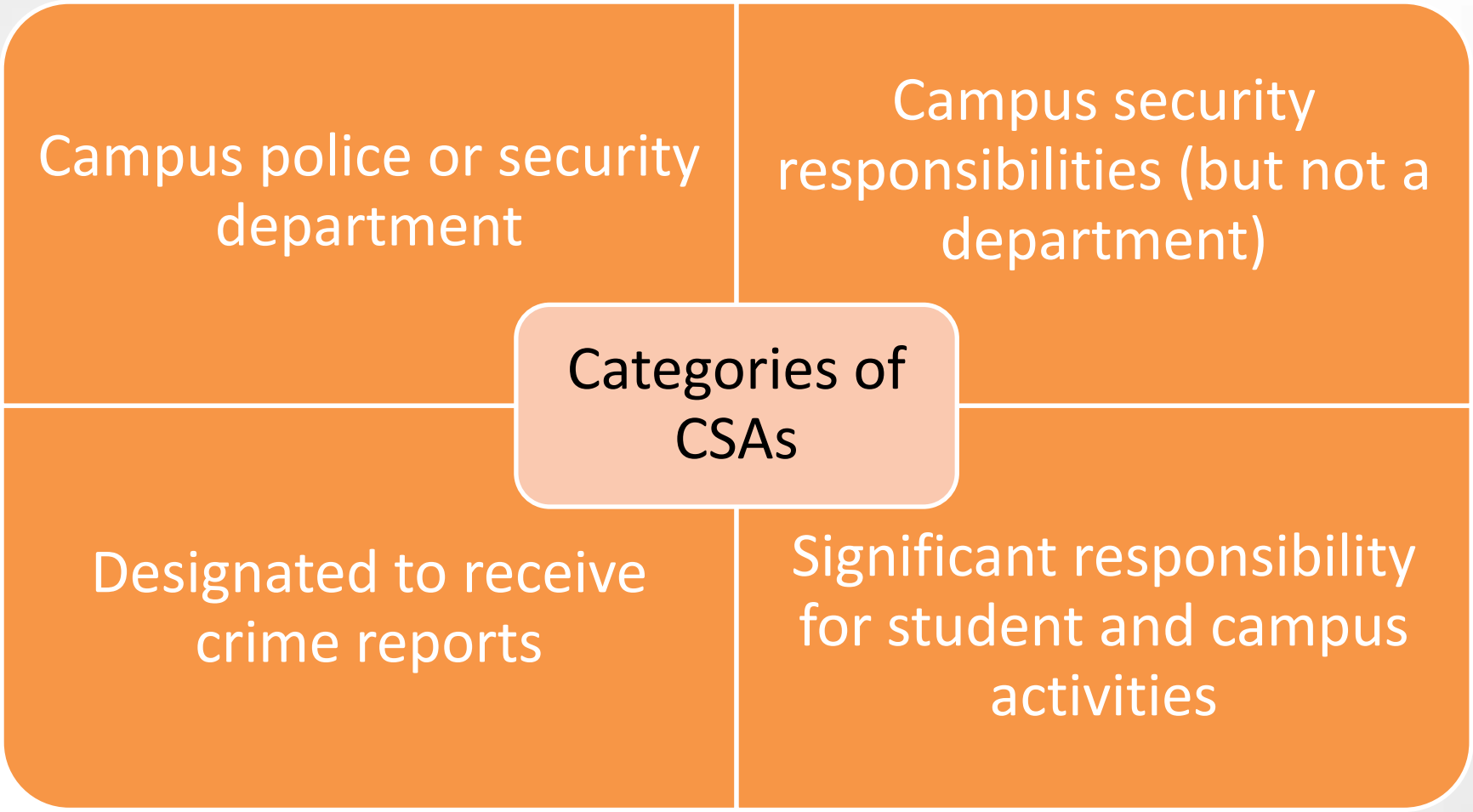
© 2016 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

Clery Reporting Requirements: A Three-Tiered Approach



© 2016 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

Who Are the CSAs?



© 2016 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

Some Possible CSAs















© 2016 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

CSA's and U Visa Certification

- Which CSA's can certify U visas?
- What role can CSA's play in getting U visa certification

Employment & the Student Visa

- F-1 visa: Allows p/t work (<20 hrs/week)
- J-1 visa: Similar to F-1, sponsor must approve
- M-1 visa: Exchange student must evidence sufficient $$ for tuition + living expenses for entire stay

© 2016 Victim Rights Law Center. All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission.

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2016

- **NIWAP Technical Assistance:**
  - Call (202) 274-4457
  - E-mail niwap@wcl.american.edu

- Web Library: www.niwaplibrary.wcl.american.edu

Questions



Evaluations



Thank you!

THIS PROJECT WAS SUPPORTED BY GRANT NO. 2015-TA-AX-K043 AWARDED BY THE OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEPARTMENT OF JUSTICE. THE OPINIONS, FINDINGS, CONCLUSIONS AND RECOMMENDATIONS EXPRESSED IN THIS PUBLICATION/ PROGRAM/ EXHIBITION ARE THOSE OF THE AUTHOR(S) AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN