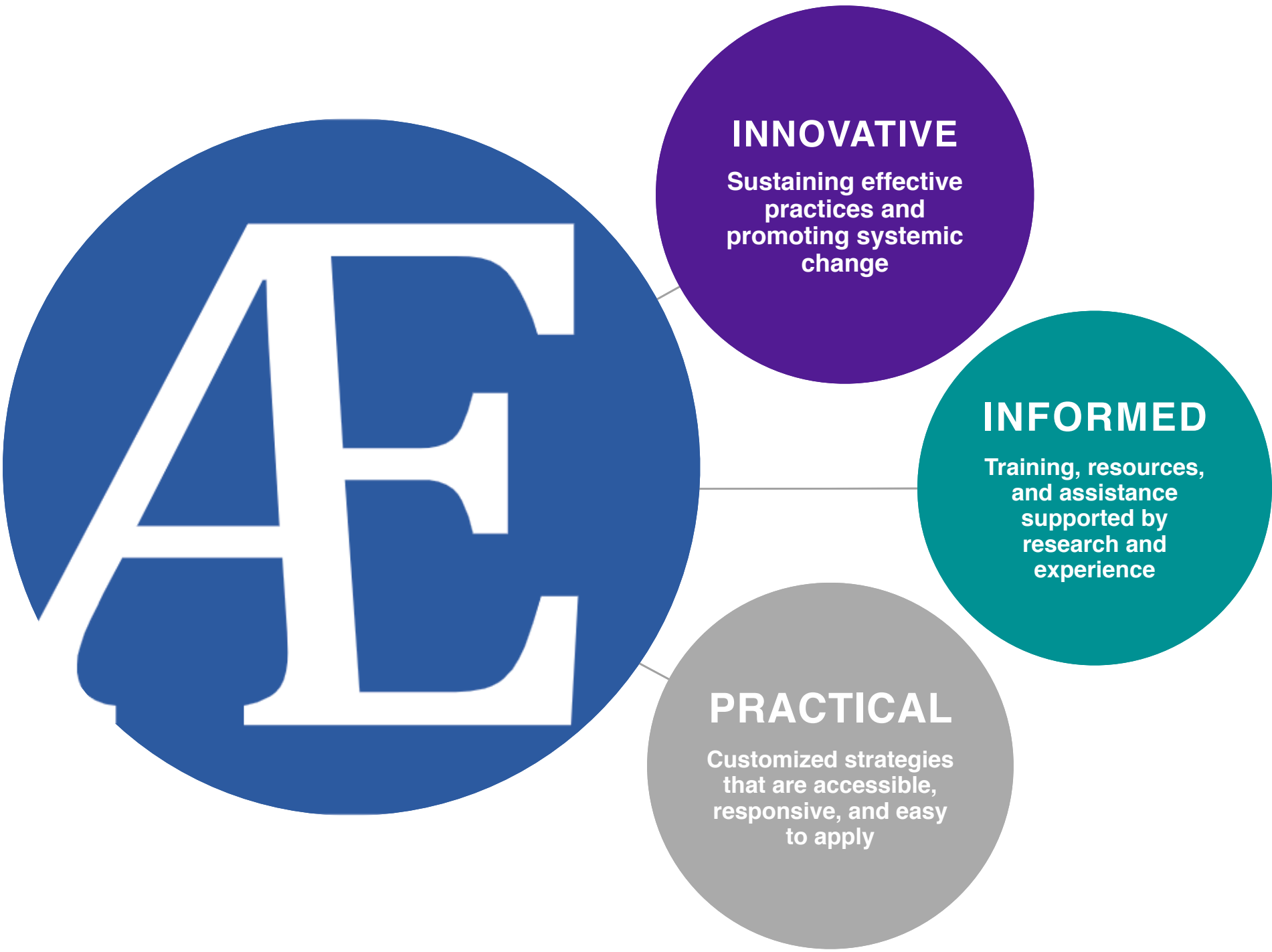
Training and Technical Assistance to Rural Law Enforcement on Response to and Investigation of Domestic Violence, Dating Violence, Stalking and Sexual Assault

FEDERAL LAWS




INNOVATIVE
Sustaining effective practices and promoting systemic change
INFORMED
Training, resources, and assistance supported by research and experience
PRACTICAL
Customized strategies that are accessible, responsive, and easy to apply

What We Do



Resources

Create, research, and curate publications, statutory and case law compilations, and other resources that strengthen prosecution practices



Consultations

Offer on-demand 24/7 consultations with our seasoned prosecutors to answer case-specific inquiries, discuss strategy, conduct research, and recommend data-driven solutions



Training Events

Develop curricula and facilitate a wide range of specialized in-person and web-based trainings designed to empower prosecutors and allied professionals



Partnerships & Initiatives

Provide long-term support in building frameworks for coordinated responses to gender-based violence including data collection and analysis, task force development, and training

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Stalking Prevalence

NEARLY
1 in 3 women



&

NEARLY
1 in 6 men



experience stalking in their lifetimes.

Smith, S.G., Basile, K.C., & Kresnow, M. (2022). The National Intimate Partner and Sexual Violence Survey (NISVS): 2016/2017 Report on Stalking. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease control and Prevention.

www.StalkingAwareness.org

*Practitioner guides

*Training modules

*Victim resources

*Webinars



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Order Stalking Awareness Brochures & Posters for your Community Today!





StalkingAwareness.org

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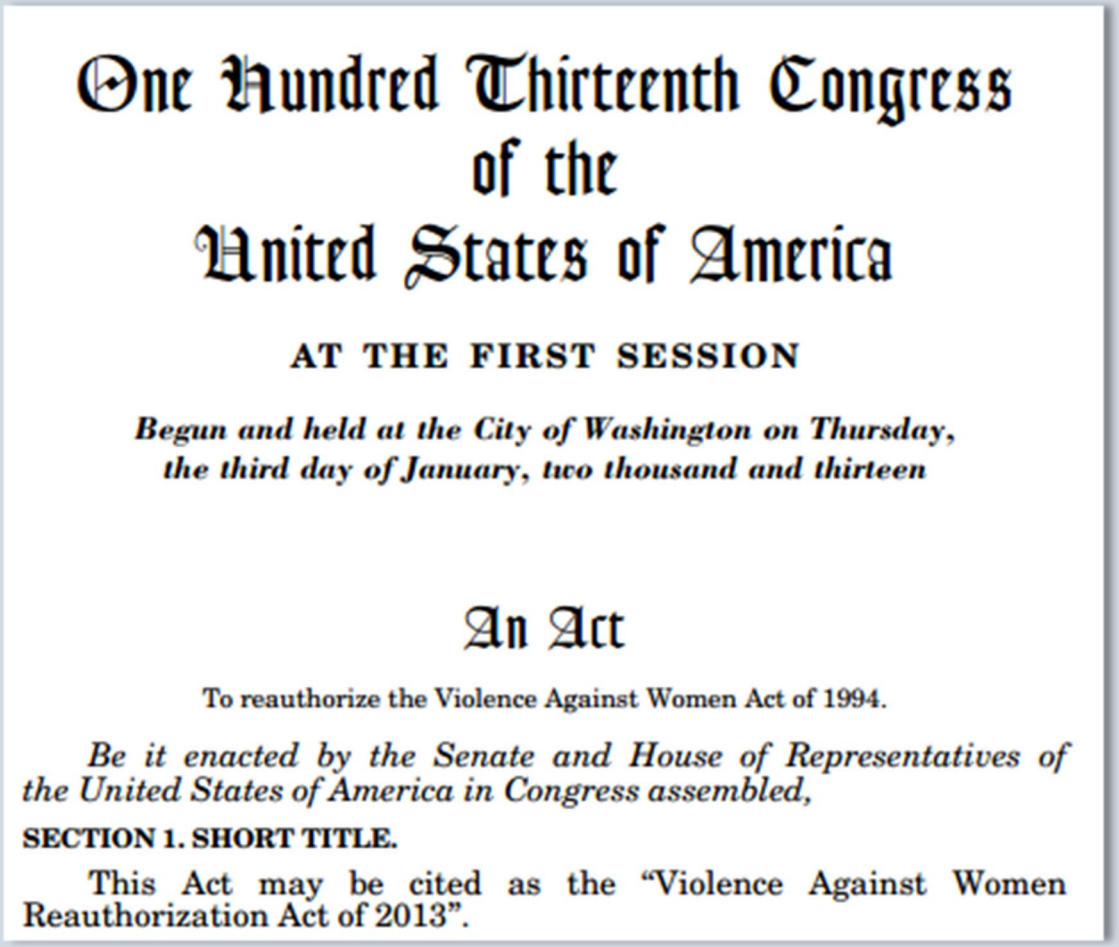
Federal Laws

- Violence Against Women Act (VAWA) – Chapter 110
- DV Related Federal Firearms Laws
- T Visas
- U visas
- Language Access (Title VI and LEP Executive Order 13166)

Violence Against Women Act (VAWA)



One Hundred Thirteenth Congress
of the
United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Thursday, the third day of January, two thousand and thirteen

An Act

To reauthorize the Violence Against Women Act of 1994.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Violence Against Women Reauthorization Act of 2013".

VAWA Full Faith and Credit

- Honor laws of each other
- Issuing and enforcing jurisdiction control terms
- Protection orders are enforceable on military installations
- 18 U.S.C. §2265

Evaluating the Enforcement of Protection Orders

An order of protection issued in another jurisdiction is enforceable when:

- *Order appears to be valid*
- *There is probable cause to believe that a violation of the order occurred in the enforcing jurisdiction*
- *This includes protection orders issued by tribal courts*

Protection Orders Presumed Valid When…

- The order lists names of the parties
- The order contains issue date
- Order's date of expiration has not occurred
- Order specifies terms and conditions against the abuser
- The order contains the name of the issuing court
- The order is signed by or on behalf of a judicial officer

Keys to Remember

- The laws of the issuing jurisdiction control the validity of the terms of the order

- States shall honor each other's laws- The laws of the enforcing jurisdiction control the terms of enforcement

Violence Against Women Act (Chapter 110A)

- Enacted in 1994/amended 1996, 2000, 2006 and 2013
- Interstate Domestic Violence – 18 U.S.C. § 2261
- Interstate Violation of a Protection Order – 18 U.S.C. § 2262
- Interstate Stalking – 18 U.S.C. § 2261A
- These are crimes of general application
- Why is that significant?

Interstate Domestic Violence – 18 U.S.C. § 2261

Travel of Conduct of the Offender – § 2261(a)(1)

- *It is a federal crime to cross state or foreign lines or enter or leave Indian country or while present within SMTJ*
- *with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and*
- *who, in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner*
- *There is no injury requirement*

Interstate Domestic Violence (continued):

Causing Travel of Victim -18 U.S.C. § 2261(a)(2)

A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner.

Interstate Violation of a Protection Order

Travel of Conduct of the Offender – § 2262(a)(1)

A person who travels in interstate or foreign commerce, or enters or leaves Indian country or is present within the SMTJ of the United States,

with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person or the pet, service animal, emotional support animal, or horse of that person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct.

Interstate Violation of a Protection Order (continued):

Travel of Conduct of the Offender – § 2262(a)(2)

A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person or the pet, service animal, emotional support animal, or horse of that person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued.

Interstate DV or PPO Violation – Penalties

- A person who violates this section or section 2261A shall be fined under this title, imprisoned:

- (1) for life or any term of years, if death of the victim results;
  - (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
  - (3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
  - (4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and
  - (5) for not more than 5 years, in any other case.

Interstate Stalking
18 U.S.C. § 2261A

- (1) travels in interstate or foreign commerce or is present within the SMTJ of the U.S., or enters or leaves Indian country, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel or presence engages in conduct that--

- (A) places that person in reasonable fear of the death of, or serious bodily injury to
  - (i) that person;
  - (ii) an immediate family member (as defined in section 115) of that person;
  - (iii) a spouse or intimate partner of that person; or
  - (iv) the pet, service animal, emotional support animal, or horse of that person; or

- (B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (A);

Cyberstalking
18 U.S.C. § 2261A(2)

- (2) with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that—
  - (A) places that person in reasonable fear of the death of or serious bodily injury to a person, a pet, a service animal, an emotional support animal, or a horse described in clause (i), (ii), (iii), or (iv) of paragraph (1)(A); or
  - (B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of paragraph (1)(A)

Definitions – 18 U.S.C. § 2266

- Course of conduct means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.
- Enter or leave Indian country includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.
- The term "Indian country" has the meaning stated in 18 U.S.C. § 1151
- The term "travel in interstate or foreign commerce" does not include travel from 1 State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.
- The term "pet" means a domesticated animal, such as a dog, cat, bird, rodent, fish, turtle, or other animal that is kept for pleasure rather than for commercial purposes.

Cyberstalking (continued):

- VAWA 2013 (effective 10/1/13) removes the requirement that the stalking victim be in "another jurisdiction." This allows for federal prosecution of intrastate stalking if the interstate commerce requirement is met.

Stalking Penalties

- 5 years to life depending upon the seriousness of the bodily injury inflicted
- VAWA 2006 Amendment - 2261(b)(6)
  - A defendant convicted of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in Section 2266, shall be imprisoned for no less than one year.

Gun Control Act
Domestic Violence Offenses

- 18 U.S.C. § 922(g)(8) – Federal crime for respondents of domestic violence protection orders to own, possess, buy, transport guns and ammunition
- Official use exemption for on-duty law enforcement, military personnel [18 U.S.C. § 925(a)(1)]

STATE OF MAINE

DISTRICT COURT
Location _____
Docket No. _____

Plaintiff: [redacted]
☒ individually and on behalf of: [redacted]
☐ on behalf of:

v.

Defendant: [redacted]
☐ on behalf of:

Amended

ORDER FOR PROTECTION FROM ABUSE
(19-A M.R.S.A. §§ 4007)

Defendant's motion to modify

After due notice and ☐ opportunity for full hearing ☒ full hearing on the merits of the ~~Complaint for~~ Protection from Abuse, the following parties being present: ☐ ~~Plaintiff~~ ☑ ~~Defendant~~.

THE COURT FINDS THAT: *(only checked boxes apply)*
☑ (1) The parties are family or household members;
☐ (2) The plaintiff was abused by the defendant;
☐ (3) The defendant presents a credible threat to the physical safety of the plaintiff/minor child(ren);
☑ (4) The parties have agreed to the following Order, which is made without findings of abuse.

THEREFORE, it is hereby ORDERED that:
☐ (A-1) The defendant is prohibited from threatening, assaulting, molesting, attacking, harassing or otherwise

☐ (H) ~~The parties' personal property and household goods are divided as follows:~~ Defendant shall not threaten or Harass Plaintiff + shall not possess any Firearm ~~and the following order for protection of property is entered:~~ while in Cumberland County He may possess a Firearm for Hunting purposes only outside Cumberland County

☐ (H) ~~The parties' personal property and household goods are divided as follows:~~ Defendant shall not threaten or Harass Plaintiff + shall not possess any Firearm ~~and the following order for protection of property is entered:~~ while in Cumberland County He may possess a Firearm for Hunting purposes only outside Cumberland County

☐ (I) The plaintiff is awarded temporary parental rights and responsibilities (custody) of minor child(ren), whose names and dates of birth are as follows:
parental rights + contact shall be governed by
The defendant's rights of contact are limited as follows:
the order in the parties' divorce case

VIOLATION OF AN ORDER CONTAINED IN PARAGRAPHS (A) THROUGH (I) IS ALWAYS A CLASS D, AND SOMETIMES A CLASS C CRIME.
POSSESSION OF A FIREARM OR AMMUNITION WHILE THIS ORDER IS IN EFFECT IS PROHIBITED UNDER FEDERAL AND/OR STATE LAW IF ANY ONE OR MORE OF THE FOLLOWING BOXES HAVE BEEN CHECKED: A-1, A-2, OR F.

Gun Control Act
Domestic Violence Offenses
Lautenberg Amendment

- 18 U.S.C. § 922(g)(9) – Federal crime for person convicted of misdemeanor domestic violence crime to own, possess, buy, transport guns and ammunition
  - Lifetime ban
  - **Retroactive**
  - Applies to law enforcement, military personnel – no official use exemption
  - Must be a "qualifying" misdemeanor crime of domestic violence (MCDV):
  - Misdemeanor under federal or state or tribal law.
  - MCDV has as an element the use or attempted use of physical force or threatened use of a deadly weapon.

When your Victim is not a U.S. Citizen

Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes without fear of deportation
- Enhance victim safety
- Keep communities safe

General VAWA Self-Petitioning Requirements

- Subjected to battery or extreme cruelty
- By a U.S. Citizen or permanent resident
- Spouse
- Parent
- Adult son/daughter (over 21)
- With whom self-petitioner resided
- No time period required
- Good moral character
- Good faith marriage

U Visa Facts

- Only 10,000 U visas can be granted annually
- The U visa grants a temporary 4 year stay
- Only some U visa holders will qualify for lawful permanent residency– no guarantee
- U.S. citizenship can only be attained after lawful permanent residency for 5 years + proof of good moral character

U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
  - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law
  - Certification of 918b Required

Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Female genital mutilation
- Felonious assault
- Manslaughter
- Murder
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Peonage
- Fraud in Foreign Labor Contracting
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

***Attempt, conspiracy or solicitation to commit any of these crimes or similar activity**

U Visa Benefits

- Encourages victims to report crimes
- Improves investigation and prosecution of violent crimes
- Increases potential to convict most dangerous criminals
- Demonstrates commitment to protecting immigrant community members
- Enhanced immigrant community involvement
- Makes it easier to identify victim witnesses
- Reduces repeat calls and recanting victims
- Fosters community policing partnerships
- Enhances officer and community safety

Language Access *Complying with Title VI of the Civil Rights Act of 1964*

Source of Law

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

- LEP Executive Order 13166 (2001)
  - Requires all agencies receiving any federal financial assistance to:
    - Ensure meaningful language access
    - Develop and implement language access plans
    - "Where the denial or delay of access may have life or death or other serious implications, the importance of the full and effective delivery of LEP services is at its zenith."

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

The 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

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
  - Protection Orders

Using Qualified Interpreters

Benefits

- Safety
- ID offender
- Locate weapons
- Admissible statements (Excited Utterances)

Harms

- Mistaken ID of offender
- Arrest of victim
- Misinterpretation results in inaccurate statements
- Trauma to children

Bilingual Officer v. Interpreter

- **Bilingual officers**
  - When they are interpreting, they are not investigating
- **Effect of Dialect and Culture**
  - Different words have different meanings:
    - e.g.: Variations on the word “highway” depending on what state you’re from

Tips for Working with Interpreters

- Control the interview
- Pre-session with the interpreter
  - Where are they located?
  - Establish what your rules are
    - How do you want the interpreter to interpret?
- Interpreter has to interpret everything that you say
  - Example: when you are explaining confidentiality

VAWA
Victims' Rights Laws

- Notification of proceedings and release
- Input during proceedings
- Compensation
- Notification of services and legal remedies

Conclusion

- Questions?
- Resources
- Additional Training Opportunities



THANK YOU – **BE SAFE**