The Other Legal Advocacy: Holistic Support for Survivors using Civil Legal Advocacy

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Learning Objectives

• Identify areas of civil law that can benefit survivors
• Articulate the components required to develop a legal services program
• Understand how Rape Crisis Centers use civil law to assist survivors
• Describe how civil legal services can assist survivors
Holistic Look At Survivors Needs

- Safety & Basics (Food, Shelter)
- Emotional Support and Healing
- Medical Care
- Legal Advocacy and Assistance
- Many other needs specific to individual (is there a disability, are there child care issues)
Why do we need civil legal assistance?

- The prosecutor will take care of everything? Right?
Sexual Assault Criminal Court Statistics

- More than 60% don’t get reported to the police (a requirement for a prosecution of a case in criminal courts)
- A rape is more than twice as likely as a murder to be dismissed
- 54% of sexual assault convictions end in either a dismissal or an acquittal
- Some remedies are not available to victims in a criminal court

Therefore, we must provide survivors with access to other legal remedies

Justice Department, National Crime Victimization Survey: 2008-2012
FBI, Uniform Crime Reports: 2006-2010
National Center for Policy Analysis, Crime and Punishment in America, 1999
Department of Justice, Felony Defendants in Large Urban Counties: average of 2002-2006
Department of Justice, Felony Defendants in Large Urban Counties: average of 2002-2006
Of 100 rapes committed, an estimated 5-20 are reported to police. Of these, 0.4-5.4 are prosecuted, resulting in a conviction for 0.2-5.2, with 2-2.8 leading to incarceration.
Types of Legal Systems

- **Criminal (Punishment)**
  - Must get reported
  - Most SA reports are charged and prosecuted as felonies
  - Standard of Proof
  - Harder to get convictions

- **Civil (Private Rights/Liabilities)**
  - Police Report often not required (U Visa)
  - Victim is party, not just witness
  - Potential long term remedies
  - Address issues not available in criminal prosecutions

- **Administrative**
  - Quasi-judicial
  - Hearings instead of cases
Potential Civil Legal Issues of Sexual Assault Survivors

- Privacy Rights
- Immigration Issues
- Physical Safety
- Housing
- Education
- Employment
- Financial Loss and Compensation
Privacy & Confidentiality

- Protecting Confidential Information
- Subpoena response
- Rape Crisis Counselor Privilege
- Rape Shield Laws
- Who has to keep Sexual Assault information confidential?
  - Employers: HIPAA vs. OSHA
  - Schools: FERPA vs. Safe Schools Act/Clery
Immigration Remedies

- Victim of Crime Visa (U Visa)
- Trafficking Visa (T Visa)
- Work Visa
- Student Visa
- Sexual Assault Within Marriage
  - VAWA Self-Petition
Physical Safety or Protection Orders

- DVPA: where there is a required relationship to the perpetrator
- Civil Harassment Orders (free if violence or threat of violence, sexual assault, stalking)
- Criminal Protective Orders
- SAPO’s (Sexual Assault Protection Orders-not available at this time in California)
Housing Issues

- Landlord Responsibility
  - Respond to dangers
  - Safe Premises
- Private Housing
  - Eviction of Wrongdoer
  - Rights to housing remedies
- Public Housing
  - Grievance Policies
  - Transfers
Education Issues

- Student Visa’s (previously discussed)
- Responsibilities of Campus as Educational Institution
  - California Constitution, State Law, Federal Law (Title IX) require schools to provide safe environment
  - Clery Act requires schools to report crime statistics
  - FERPA (Family Educational Right to Privacy Act)
- Responsibility of Campus as Employer (see employment)
- School Based Protection Orders
- Campus Sexual Assault Victim Bill of Rights (HR 2363) – see handout
- Disciplinary Proceedings
Employment Issues

- Unemployment Benefits
- Paid Vacation
- Unpaid job guaranteed leave (FMLA, Victim Rights Leave)
- Job Accommodations
- Worker’s Compensation
- Health Insurance
- Personal Days
- Sexual Harassment Issues
- Employer Protection Orders
Financial Loss & Compensation

- State Victim’s Compensation Fund
- Restitution
- Paid Leave
- Insurance Claims for Injuries
- Civil Law Suits Against Assailant
- Civil Law Suits Against 3\textsuperscript{rd} Parties
Developing a Program

- Needs Assessment
- Determine areas of need & capacity
- Agency & Community Buy-In
- Identify/Hire appropriate staffing based on model
- Educate and train organizational staff
- Internal program readiness
  - Liability Insurance
  - Funding
  - Technical Assistance and Support
    - CALCASA
    - CLINIC (immigration specific)
    - Local Bar/other

Adapted from CLINIC’s Starting a Legal Immigration Program Manual
Programmatic Issues to Consider

- Model
  - Attorney
  - Pro Bono
  - Attorney/Paraprofessional Model (BIA Accreditation)
  - Collaboration

- Supervision

- Ethics
  - Assistance vs. Advice

- Funding
  - OVW Legal Assistance for Victims
  - Legal Services Corporation (only for LSC organizations)
  - Legal Services Trust Fund
  - Private Bar Associations
Program Examples

- Peace Over Violence (Los Angeles)
  - Sandy Monroy
Program Examples

- WEAVE (Sacramento)
  - Jaya Badiga
Scenario #1

Linda is a 36 year old stay-at-home mother with three children ages 2, 13 and 14. Her husband, Carl, is the father of her two year old son and a regional sales representative for an automotive parts distributor. Linda and her family live in a small rural township, so Carl spends much of his time on the road away from home. Linda mostly appreciates these absences because Carl’s behavior at home is violent and unpredictable. Linda strongly suspects that he sleeps with other women when he goes out on sales trips, so she tries to avoid sexual contact with him. More recently, as his trip frequency has decreased, Carl has forced Linda to have sex with him upon his return from being out of town. Not long after Carl returned from his most recent trip, Linda began noticing yellow discharge with a funny odor and a burning sensation during urination.

Later that week, when her 13 year old daughter, Kaylee, complained of a burning sensation during urination, Linda panicked and asked a neighbor for a ride to the county health department. After both Linda and Kaylee are treated, a clinic social worker is asked to speak with them and provide brief counseling and referrals. At Linda’s request, Linda’s neighbor drops off Linda and her children at the local domestic violence agency.

As you review the following questions, consider how the proposed service guidelines can be individualized to Linda’s needs and background.
Scenario #2

Tyler is a 27 year old Caucasian woman who works at a consulting firm in a large urban area. She recently moved in with her partner, Ali, but she has been struggling with labeling her sexuality and has not disclosed her relationship to any of her colleagues at the firm. Her lack of candor about being a lesbian has caused a painful rift between Ali and Tyler and contributed to Tyler’s worsening depression. After landing a management consulting contract with a large supermarket chain, her team decides to celebrate at a local sports bar, where the firm frequently picks up the tab. After a few drinks, Tyler makes her way to the restroom, followed by an intoxicated male colleague with whom she has been chatting all evening. He pushes her in from behind, locks the door, and rapes her. She calls your crisis line at 1 AM from her home and asks to speak with someone from the agency as soon as possible. She would like for someone to meet her at the hospital. Her partner can be heard in the background angrily accusing Tyler of not really being a lesbian.
Contact Information

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