



Confidentiality and Mandated Reporting: Immigration

Training Outline

- ▣ Legal requirements to serve survivors regardless of immigration status
- ▣ Limits on Immigration and Customs Enforcement
- ▣ Harboring Laws
- ▣ Legal Risk for failing to cooperate
- ▣ Shelter rights if Immigration and Custom Enforcement comes to shelter
- ▣ SB 54- California Values Act
- ▣ Supporting the Survivor

Legal Requirements- Serving Survivors

- Violence Against Women Act (VAWA) & Family Violence Prevention and Services Act (FVPSA)
 - ▣ 42 USC §10406(c)(2) prohibits discrimination based on national origin. HHS interprets this to include immigration status for VAWA and FVPSA.
- Victim of Crime Act (VOCA)
 - ▣ 28 CFR 94.103 & 94.116 – services are provided without regard to immigration status

Confidentiality

- Programs have a legal obligation not to discriminate and thereby provide meaningful access to all victims.
- Many federal and state laws prohibit programs they fund from discriminating on the basis of national origin, and require programs to maintain client confidentiality.

Immigration Agencies

- Department of Homeland Security (DHS)
 - ▣ Umbrella Organization
- United States Citizenship and Immigration Services (USCIS)
 - ▣ Issues documents
- Immigration and Customs Enforcement (ICE)
 - ▣ Detains individuals within the borders
- Customs and Border Patrol (CBP)
 - ▣ Patrols the border and determines who can and cannot enter ports of entry and borders.

Immigration Enforcement

- Criminal Legal System
 - ▣ County Jail
- Fugitive Operations
 - ▣ Deportation order already signed, ICE goes after them based on this or uses this as a pretext for a raid.
 - ▣ This is often the basis for workplace (e.g., I-9 audits) and apartment complex raids.
 - Removal order for one person but detain other individuals based questioning of others present.

VAWA Protections

- VAWA- 42 U.S.C. 13925 (b)(2)
 - ▣ Prohibits disclosure of victims' personal or personally identifying information unless
 - Written, Informed Consent
 - Statutory, Court Order
 - ▣ "Nothing in this section prohibits a grantee or sub grantee from reporting suspected abuse or neglect, as those terms are defined and specifically mandated by the State or tribe involved."
 - 42 U.S.C. 13925 (b)(2)(E)

VAWA Protections

- VAWA prohibits the Department of Homeland Security (and certain others in the federal government) from using information *solely* from a spouse or parent who has battered the individual as the basis for taking action against an undocumented immigrant with removability unless the individual has been convicted of certain serious crimes.
 - 8 U.S.C. section 1367 (a)(1)

VAWA Protections

- VAWA requires certification by ICE that confidentiality provisions have been complied with when enforcement actions leading to a removal proceeding at specified locations.
 - 8 U.S.C. section 1229 (e)

Exceptions to VAWA Protections

- ICE can disclose information about someone they pick up at a DV program or shelter to:
- Law enforcement, national security officials, immigration case judicial review
 - ▣ Solely for a legitimate law enforcement or national security purpose; and
 - ▣ In a manner that “protects confidentiality of such information”
- Public benefits purposes
- Congressional oversight and data collection
- If adult victim waives confidentiality protections

Location Based Prohibitions

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims.
 - A Shelter
 - Rape crisis center
 - Family Justice Center
 - Supervised visitation center
 - Victim services program or provider
 - Community-based organization
 - Courthouse in connection with any of the following: protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking or stalking.

FVPSA Protections

- Grantees and sub-grantees are prohibited from disclosing any personal or personally identifying information collected in connection with services requested, and are prohibited from revealing such information without the written, informed, reasonably time-limited consent of the individual.
 - ▣ 42 U.S.C. §§ 10406(a)(3), (c)(2) & (c)(5)

Victims of Crime Act

- Requires that programs ensure confidentiality of served individuals in order to maintain funding without penalty.
 - 28 CFR Part 22

Limits on ICE enforcement

□ VAWA Confidentiality Guidance

- https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001_0.pdf

□ Sensitive Locations Memo (2011)

- <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>

□ Directive on Civil Immigration Enforcement in Courthouses (2018)

- <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>

Sensitive Locations Memo

- Provides guidance on when ICE needs supervisor approval prior to conducting enforcement at specific locations.
- List is not exhaustive
- ICE employees should exercise particular care with any organization assisting children, pregnant women, victims of crime or abuse, or individuals with significant mental or physical disabilities.

Sensitive Locations Memo

- Enforcement actions are not to be taken unless supervisor has approved the action.
 - Schools
 - Hospitals
 - Institutions of Worship
 - Site of Public Religious Ceremony
 - Public Demonstration

Harboring Laws

- Immigration and Nationality Act section 274
- 8 U.S.C. section 1324
 - ▣ Primary purpose is to prosecute people for facilitating immigrants' illegal entry into the US, for exploiting their labor and hiding them from Immigration and Customs Enforcement (ICE)
 - ▣ Very few cases in which any person has been convicted of harboring where they were not making money off it.

Harboring Laws

- Emergency Services are NOT “harboring”
 - ▣ Emergency Shelter/transition housing
 - ▣ Federal Law authorizes the provision of emergency services to undocumented immigrants
 - ▣ This makes it difficult to prosecute any DV program or staff for harboring unless there is additional evidence of harboring.
 - (i.e.- obstructing an ICE agent with a lawful warrant from entering DV shelter to find and detain an undocumented client.)

Legal Risks for Harboring

- Immigration and Nationality Act section 274 (a)(1)(B); 8 U.S.C. section 1324 (a)(1)(B)
 - ▣ Penalties for felony harboring conviction could range from probation to five years imprisonment for each undocumented immigrant. (no intent to profit)
- Immigration and Nationality Act section 274 (b); 8 U.S.C.1324 (b)
 - ▣ Program assets used to harbor the undocumented immigrant could also be seized and forfeited.

Interactions with Law Enforcement

- DV Counselor-Victim Privilege,
- *Law Enforcement requests for information:*
- “I can neither confirm nor deny that X has received services or is in our shelter. I can take a message and if X contacts us I can relay it to them.”
- Without judicial warrant, officers may not enter shelter or gather information about residents without valid consent
- Exceptions: officer reasonably believes warrantless search necessary to prevent immediate deadly or physical threat to someone’s safety; hot pursuit; and imminent destruction of evidence

Interactions with Law Enforcement

- DV Counselor-Victim Privilege, continued:
- If no warrant or emergency, officer needs consent of staff person in control of shelter before search
- Also needs consent of resident being searched
- If search could expose information about other residents, officer needs their consent before search
- Consent can be refused or withdrawn at any time
- Search limited to scope of consent

Interactions with Law Enforcement

- DV Counselor-Victim Privilege, continued:
- Shelter employee may consent to officer entering building (if so, **ONLY** in **PUBLIC** places like a lobby)
 - But **NEVER consent** to give information about residents without search warrant for this information
- Read the warrant – what exactly does it say?
 - See annotated ICE administrative warrant from ILRC (handouts):
 - <https://www.ilrc.org/annotated-ice-administrative-warrants-2017>
- Ask that this happen during normal business hours so director/manager can be present

Interactions with Law Enforcement

- DV Counselor-Victim Privilege, continued:
- Even names of residents are protected by privilege
- **Only the victim can waive the privilege**
- When in doubt, **contact an attorney right away**

What Does a Real Warrant Look Like

United States District Court

NORTHERN

DISTRICT OF

CALIFORNIA

In the Matter of the Search of
(Name, address or last location of the person or property to be searched)

[REDACTED], San Francisco, California, More Particularly Described in
Attachment A, and Closed Items and Containers Contained Therein

SEARCH WARRANT

CASE NUMBER:

[REDACTED]

[REDACTED], 2000, at 4:00 pm at San Francisco, California
Date and Time Issued City and State

HON. [REDACTED] U.S.M.J. [REDACTED]
Name and Title of Judicial Officer Signature of Judicial Officer

Shelter Policies for ICE

- Be pro-active in setting up policies and starting the discussion.
- Rely on confidentiality obligations to not provide information.
- Be Aware of difference between administrative warrant vs. a court issued warrant signed by a judge.

Shelter Policies for ICE

- Develop internal protocols to respond effectively to clients at risk by including an authorization to release their files. Give direct line to clients in case of emergencies.
- Train staff and residents on handling ICE interactions, provide residents red cards.

Group Activity

- *Role Play:*
- Divide into new pairs
- One is a shelter employee, the other is an ICE officer
- Officer is knocking on the door, asking to enter the shelter and search for information about a resident, the officer indicates he does not have a warrant
- What would you say and do? Practice
- Report back: What did you learn? What was hard? Best practice?

Group Activity

- *Role Play:*
- Divide into new pairs
- One is a shelter employee, the other is a ICE officer
- Officer is knocking on the door, asking to enter the shelter and search for information about a resident, the officer indicates he has a warrant signed by ICE administrator
- What would you say and do? Practice
- Report back: What did you learn? What was hard? Best practice?

Group Activity

- *Role Play:*
- Divide into new pairs
- One is a shelter employee, the other is a ICE officer
- Officer is knocking on the door, asking to enter the shelter and search for information about a resident, the officer indicates he has a warrant signed by judge to arrest someone
- What would you say and do? Practice
- Report back: What did you learn? What was hard? Best practice?

Tips on Warrants

- Signed by a Judge?

If not, it does not defeat your confidentiality and privilege. “Get a Judge to sign this”

Tips on Warrants

- If it is signed by a Judge:
- Search Warrants – limited to just what it says.
 - Example: to inspect employee files does not mean you can inspect the rest of the shelter
 - Call your attorney. Ask if the officer will wait until you do.
- Arrest warrants frequently do not allow law enforcement to **enter** and look for someone. Check

Tips on Warrants

- Follow what the warrant says, but do not SAY anything.
- You still have to maintain confidentiality of your clients and services. What you say can be used against them.

SB 54- Law Enforcement Sharing Data

- California Values Act went into effect 1/1/18
- State is a Sanctuary for Immigrants without legal residency in the country.
- Limits state and local law enforcement agencies from communication with federal immigration authorities and prevent all state and local police forces from questioning and holding people on immigration violations.
- Officers can continue to share information and transfer people to immigration authorities if they have convictions of certain crimes. (violent/serious crimes)

SB 54- Employer Restrictions

- California employers are prohibited from providing federal immigration enforcement agents access to nonpublic areas without a judicial warrant
- Prohibits giving access to employee records without a subpoena or judicial warrant
- Prohibits re-verifying an employee's work eligibility unless required by federal law
- Requires providing notice to all employees of any upcoming immigration agency inspection of employee records within 72 hours of getting a Notice of Inspection

Sanctuary Cities or Counties

- Formal or Informal limit on local police cooperation with federal immigration authorities.
- Sanctuary Cities do not have the power to stop enforcement of Federal immigration law.
 - ▣ If you are in a sanctuary city your shelter may face a lower risk due to reduced cooperation.
 - ▣ Individual officers may violate noncooperation policies and work with ICE.

Supporting the Survivor

- ICE cannot come in without a signed warrant unless you consent to letting them in.
- You and your clients can invoke the right to remain silent- Anything you say can be used against you – but you must affirmatively say you are invoking this right.
 - ▣ Red Card
 - ▣ Statement
- Advise clients not to sign anything from ICE without talking to an attorney.
- Take notes of badge numbers, number of agents, time and type of car and exactly what happened!
- CA has lots of pro bono legal help to get a trustworthy attorney to explore all options to fight deportation cases.

Supporting the Survivor

- Private Homes- ICE can only enter if they have a search warrant signed by the judge. Usually they have an administrative arrest warrant.
- Leave door closed, slide red card under door. If you open the door you are voluntarily giving consent to enter and search immediate area. Even if ICE enters home, right to remain silent.
- If you open security screen not the door to the shelter you are not granting access to property.

Safety Planning

- Family Preparedness Plan that includes:
 - Plan for where the children will go if parent is detained
 - Document emergency contact
 - Children's medical information
- Example Family Preparedness Plan
https://www.ilrc.org/sites/default/files/resources/family_preparedness_plan.pdf

Legal Resources

- Immigrant Legal Resource Center ([ILRC](#)):
415-255-9499
- National Lawyers Guild-SF Chapter ([NLG-SF](#)):
415-285-5067
- ACLU-[Northern California](#):
415-621-2493
- Emergency ICE raids hotlines
510-241-4011 (Alameda County)
- Social Justice Collaborative ([SJC](#))
510-992-3964

If someone is detained write this # on their arm in sharpie: **415-285-1011** (NLG Legal Support Hotline)

Thank You!

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