



SEXUAL VIOLENCE AGAINST FARMWORKERS: A Guidebook for Legal Providers



Southern Poverty Law Center

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**Created through a joint partnership of
California Rural Legal Assistance, Inc.
Esperanza: The Immigrant Women's Legal Initiative
of the Southern Poverty Law Center
Lideres Campesinas and Victim Rights Law Center**

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THE PROJECT

The Farmworker Sexual Violence Technical Assistance Project is a partnership of California Rural Legal Assistance, Inc.; Esperanza: The Immigrant Women's Legal Initiative of the Southern Poverty Law Center; Líderes Campesinas; and the Victim Rights Law Center. It was launched in September 2008 through a grant from the U.S. Department of Justice's Office on Violence Against Women.

Together, we offer training and technical assistance to OVW grantees to accomplish three shared goals:

1. Increase the availability and quality of legal assistance provided to victims of non-intimate partner sexual violence living within farmworker communities;
2. Establish safety plans for farmworkers who experience non-intimate partner sexual violence, particularly for those living in labor camps; and
3. Increase the knowledge base of attorneys, advocates and law enforcement on the challenges and issues facing farmworkers who experience non-intimate partner sexual violence.

To access resources created by our partnership, including one-on-one technical assistance requests, guidebooks and trainings, please visit www.crla.org/svi.



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INTRODUCTION

The goal of this guidebook is to increase the knowledge and skills of legal professionals so that you can better serve farmworkers who have experienced sexual violence. It provides helpful explanations about the life and work of farmworkers as well as unique issues that may impact the services you provide. Each section presents a distinct topic, concluding with questions designed to engage you in better assisting farmworker victims of sexual violence in your community.

Sexual violence within the farmworker community is a pervasive problem. Though farmworker men and children experience sexual violence, women are particularly vulnerable. Ninety percent of female farmworkers in the United States report that workplace sexual violence is a “major problem.”¹ The San Francisco District Office of the U.S. Equal Employment Opportunity Commission found that “hundreds, if not thousands, of [farmworker] women had to have sex with supervisors to get or keep jobs and/or put up with a constant barrage of grabbing and touching and propositions for sex by supervisors.”²

Farmworker victims of sexual violence often suffer in silence. They may have profound fears of losing their jobs, adverse action by law enforcement including immigration officials, and other forms of retaliation against them or their families. Victims may not know their legal rights. They may have no one to reach out to in an unfamiliar community, isolated by language, distance, culture and lack of transportation. They may experience deep shame if the community and family members learn about the sexual violence. Perpetrators of sexual violence, including employers, supervisors, co-workers and housing providers frequently use these fears and conditions to exert power and control over their victims.



Given this complicated position, the brave victims who come forward to report sexual violence may need help with a range of services including civil, criminal and immigration legal services. Their civil legal needs may encompass issues related to their physical and mental health care, physical and mental disabilities, privacy, housing, education, employment, and financial stability, including public benefits.

For the purposes of this guidebook, social service providers are defined as those professionals and organizations, both government and nongovernmental, who offer a broad range of services including health care, mental health care, case management, crisis intervention, victim advocacy, housing, food, public benefits, education and job skills training.

Few farmworkers report non-intimate partner sexual violence. This is, in part, because of the barriers farmworkers must overcome to seek help. It is also, however, due to the availability of few advocates, lawyers, social service providers, law enforcement, and medical and mental healthcare providers who are knowledgeable about both non-intimate partner sexual violence and farmworker communities. We welcome you to a growing cadre of professionals who are gaining experience in this underserved area of sexual violence response work. We are interested in learning more from you about your successes in creating connections with farmworkers, creating partnerships in your communities and creating new solutions to non-intimate partner sexual violence response and prevention.

Please visit www.crla.org/svi for more information and to contact us for technical assistance.



WHAT IS SEXUAL VIOLENCE?

Defining sexual violence: For purposes of this guidebook, sexual violence is defined as any unwanted sexual act, including but not limited to touching, voyeurism, exhibitionism, sexual assault and rape, perpetrated against a person through force or coercion. Coercion includes, but is not limited to, intimidation, threats of deportation and/or malicious prosecution, physical harm, being refused for hire or being fired from a job.

Sexual comments and some forms of sexual harassment fall within the definition of sexual violence used in this guidebook, but may not rise to the level of criminal acts. Sexual comments are often used to exploit, harass, demean, frighten and injure a victim. Perpetrators often make sexual comments and use sexual harassment as a way of testing (or “grooming”) victims to determine how they might respond to sexual assault or rape. In all cases of sexual violence—those that meet the criminal definition of assault, rape or stalking, and those that do not—there are often civil legal remedies available to victims. Legal providers should be prepared to make appropriate referrals to civil legal attorneys to address the broad scope of sexual violence victims’ needs. In some cases it may be necessary and important to ensure that a civil attorney or a criminal defense attorney is also available to help the victim through the criminal proceedings as a victim-witness advocate or, in the case of a defense attorney, where the victim has been accused of a crime by the perpetrator.



Non-intimate partner vs. intimate partner sexual violence: This guidebook focuses on non-intimate partner sexual violence. By this, we mean violence perpetrated by someone who is not married to, partnered with or involved in a consensual, ongoing sexual relationship with the victim. The perpetrator may still be someone known to the victim, such as an educator, employer, supervisor, co-worker, landlord, roommate or acquaintance, or the perpetrator could be a stranger. Sexual violence against farmworkers can occur at a workplace, labor camp, in an educational setting, housing development or in public generally. The incident itself may be a one time occurrence or the violence may continue over a period of time. Sexual violence in intimate partner relationships, (*i.e.* domestic violence-related sexual violence) is a distinct issue and is outside the scope of this guidebook.

Sexual violence perpetrators: In general, sexual assault perpetrators deliberately choose vulnerable victims who are perceived to be less likely to report and/or less credible due to their economic status, racial/ethnic identity, age, mental illness, intoxication, drug use and/or disability, among other factors. Statistically, 70% to 80% of sexual assault victims know their assailant, while only 22% of victims are assaulted by strangers.³ Perpetrators may use familiarity with victims to gain access to them and to carry out premeditated assaults. Though specific statistics are not available regarding the percentage of farmworker victims who know their assailants, it is likely that the rates would follow—or be higher than—national statistics. Rates may be higher within farmworker communities because farmworkers live, work and travel in close proximity with others, and perpetrators within the community are able to establish rapport with potential victims in order to facilitate an assault.

Farmworker vulnerability to sexual violence: Farmworkers are particularly at risk for sexual harassment, assault and rape as perpetrators factor in farmworkers' actual or perceived vulnerability, accessibility and lack of credibility when selecting them as victims. As discussed in more depth below, farmworkers are vulnerable to sexual harassment, assault and rape because of, among other things, their lack of familiarity with their legal rights, lack of access to service providers, lack of transportation, the extreme poverty in which they live and lack of formal education and, in some cases, English language skills.

Farmworkers are accessible to perpetrators of sexual violence as they often work in isolated areas, are often dependent on others for transportation and often live in shared housing with

many others. Perpetrators who are job recruiters may impose themselves on victims in exchange for work. Supervisors may leverage their control over employees' job duties and working location to gain access to victims. Finally, farmworkers are often perceived to lack credibility due to their actual or supposed lack of immigration documentation, their status as immigrants and their racial and/or ethnic identity. Perpetrators may prevent victims from seeking help by telling them that no one will believe them if they make a report (*i.e.* that no one will believe that a rape or sexual assault occurred, or that it wasn't consensual) because they are undocumented immigrants.

Ways in which sexual violence occurs in farmworker communities: Far too often, farmworkers are forced to endure sexual violence and exploitation in order to obtain a better life and a measure of economic security for themselves and their families. Outside the workplace, there are cases of farmworkers who are sexually assaulted by their landlords, roommates, an acquaintance or a stranger. Landlords may exploit the fact that it is difficult for farmworkers to get affordable, temporary housing. Farmworker children fall victim to sexual abuse in shared homes by adult roommates. At work, farmworkers have been forced to endure ongoing rape in exchange for employment, housing or transportation. Single-occurrence rape also occurs, such as when a victim is sexually assaulted by a co-worker or supervisor while working in a remote area. In addition, in some cases, farmworker victims experience violence that escalates over a period of days, weeks or months—beginning with inappropriate and lewd comments, progressing to unwanted touching and finally resulting in rape and repeated assaults.

WHO ARE FARMWORKERS?

Farmworkers are among the most hidden workers in the United States, despite the fact that they typically work in open air. The general public has very limited knowledge of farmworkers as they generally work in rural and remote locations, lack representation in mainstream society due to language and cultural differences, and at times fear interaction with law enforcement and immigration authorities. Yet they are responsible for planting and harvesting much of the food eaten both domestically and abroad. They are the engine that drives the agricultural sector of the U.S. economy and generates billions of dollars in revenue and employment for millions of Americans.

Farmworkers face a number of risk factors (discussed below) that make them especially vulnerable to sexual assault. Employers, supervisors, landlords and others in positions of power frequently take advantage of farmworkers' poverty, gender, culture, housing, immigration status, language or fear of law enforcement to exert power and control over them. That power is amplified when employers control

farmworkers' employment, housing and transportation or some combination thereof. In some cases a farmworker's immigration status is directly tied to the employer—where an agricultural guestworker visa is in place—heightening the worker's reliance on the employer to live, work and even be in the United States, even if only on a temporary basis. This means that farmworkers experiencing sexual harassment or assault at work may see their harasser on a daily basis—in the fields, in the employer-provided housing, on transportation provided to and from work or between job sites, and while migrating. It also means that more is at stake for farmworker victims than just their job. As a result, farmworkers are among the most vulnerable to sexual violence while also the least likely to report it.

Overall, there are four broad categories of agricultural workers⁴:

❖ **Migrant farmworkers** are persons employed in agricultural work of a seasonal or temporary nature who are required to be absent overnight from their permanent place of



residence. For example, a person who lives in Salinas, California, migrates to Yuma, Arizona to cut lettuce each winter and then returns to Salinas at the end of the Yuma lettuce season is a migrant farmworker.

- ❖ **Seasonal farmworkers** are persons employed in agricultural work of a seasonal or temporary nature who are not required to be absent overnight from their permanent place of residence. For example, a person who lives in Immokalee, Florida, picks tomatoes during the harvest season and then either finds other employment or is unemployed during the remainder of the year is a seasonal farmworker.
- ❖ **Guestworkers** are noncitizens admitted temporarily to the U.S. on special employment visas under the Immigration and Nationality Act to perform agricultural labor if unemployed U.S. workers can not be found to perform the job. For example, a Jamaican who resides permanently in Jamaica and receives an H2A visa to pick cherries in upstate New York for the summer and then returns to Jamaica when the season is over is a guestworker.
- ❖ **Farmworkers in permanent annual employment** are persons employed in agriculture to work in certain industries or operations that may operate year-round, such as dairies, packing sheds or certain nurseries. For example, a person who works planting seeds, labeling plants, weeding and pruning trees for a nursery in Oregon is a farmworker with permanent annual employment.

Agricultural work encompasses more than just work in fields of row crops such as lettuce, tomatoes or strawberries. For the purposes of this guidebook, work in the following areas is also included within the meaning of agricultural work:

- ❖ Orchards, such as apple, cherry, peach, avocado, citrus and other tree fruits and nuts;
- ❖ Tree nurseries for reforestation and Christmas;
- ❖ Nurseries including seed production, lawn production, plants for landscaping, indoor and outdoor plants for sale at hardware stores, roses and other cut-flowers;
- ❖ Meat production such as beef, poultry and pork;
- ❖ Vegetable and fruit canneries and packing sheds located on the farm or off-site; and
- ❖ Dairy and egg production.

There are dramatic regional variations in agricultural operations. To provide effective services to farmworkers, it is critical to have at least a general knowledge of the agricultural activities in your local area, such as the major crops in production, the peak work seasons, and the typical demographic characteristics of the local agricultural work force. This information can be obtained from university-based agricultural programs, state departments of agriculture, county agricultural commissioners' offices, local agricultural employer organizations, and farmworker advocacy organizations.

Although limited to responses from crop workers, the National Agricultural Workers Survey (NAWS)⁵ by the U.S. Department of Labor is an excellent source of general demographic information about farmworkers nationwide. Much of the demographic data on farmworkers in this guidebook is based on the NAWS survey. Please note, however, that the NAWS data may not necessarily match the demographic characteristics of the agricultural workers in your area. As you plan to implement the concepts set forth in this guidebook, we encourage you to utilize an expansive view of



“agricultural worker” that is not limited to crop workers and, depending on the type of work performed in your area, may include people who work in poultry, dairy, pork, vegetable processing, fruit packing and other agricultural operations.

Nationality. The survey found that the hired agricultural workforce is predominantly foreign born with 75% born in Mexico, 23% born in the U.S., 2% born in Central American countries, and 1% born elsewhere. Perpetrators of sexual violence may view foreign born farmworkers as vulnerable because they are less likely to report the violence; they may not know their legal rights, speak English or have access to health care and social services.

Age. On average, farmworkers are young; more than half are under the age of 31. The vast majority are aged 20-44. Youth is an identified risk factor for sexual violence victimization, with youth ages 16-24 at greatest risk.⁶

Gender. Seventy-nine percent of crop farmworkers nationwide are male. While some parts of the country continue to see men dominate the agricultural workforce, other parts of the country are seeing the number of farmworker women equal or exceed the number of farmworker men. This is also true in operations such as packing sheds and nurseries. Gender itself is a significant risk factor for sexual violence; in the United States, one in 6 women

is sexually assaulted in her lifetime compared to one in 33 men.⁷

Gender also plays a significant role in victims’ inability to come forward. For a woman, reasons for not reporting sexual violence can include the stigma related to sexual violence, fear of her partner’s response, fear of upsetting her children, pressure to be the source of emotional support and stability for her family, and concern about how she will be perceived in her community. Male victims may feel confined by gender norms that prevent them from being emotional, fear the stigma that may come from disclosing the sexual violence, and fear more harm to themselves and their families. Thus, gender plays a significant role in both men’s and women’s ability to disclose incidents of sexual violence.

Family. Fifty-eight percent of farmworkers are married; however, more than half are unaccompanied young males living apart from their family members. The NAWS findings indicate that women are more than twice as likely as men to be living with at least one family member. Fifty-one percent of farmworkers are parents, regardless of whether they are married or single.

Some farmworker parents may leave their children in their home country with relatives; others migrate with their children. It is not uncommon to find children working alongside their parents in the fields, employed either under a parent’s name or under an alias often provided by the employer. This occurs despite the existence of child labor laws that vary from state to state. While some states have federally mandated Migrant Education Programs in place, children living in rural areas are routinely overlooked by the educational system. It can also be difficult for farmworker children to progress and excel at school due to the migratory pattern that some families follow, which causes children to leave school

early and start the school year late. Alternatively, some children remain in the labor camps to be cared for by older children, leaving them vulnerable to sexual violence committed by other children, workers or employers. Children, too, may be harmed or retaliated against if their parent reports an assault.

Language. Eighty-one percent of farmworkers speak Spanish, 18% speak English, and 2% speak other languages such as Tagalog, Creole and Thai. Close to 60% of foreign born farmworkers cannot speak or read English at all and only 35% are able to speak a little English. While there are limited statistics available, there are growing numbers of indigenous farmworkers working in the U.S. from Mexico, Guatemala and other countries. Farmworkers from indigenous communities in Latin America often do not speak Spanish or English. Instead, they speak pre-Columbian languages such as Mixteco, Zapoteco, Triqui, Mam and other indigenous languages. Many farmworkers from indigenous communities are exploited due to language barriers and the difficulty of finding multilingual interpreters.

Language barriers often prevent farmworkers from knowing their rights and locating local service providers. There may be even larger barriers for farmworkers who speak languages other than Spanish and English to overcome, particularly those for whom interpreters may not be readily available, such as Creole, Tagalog, Marshellese or Chukese. Non-English and non-Spanish speakers may be even more vulnerable to sexual assault. In order to seek help from a service provider, they must find an interpreter who speaks both their language and Spanish or English, often forcing these farmworker victims to use family or community members as interpreters or to remain silent.

LGBT. Just as lesbian, gay, bisexual and transgender (LGBT) people are part of the

general population, they are also part of the farmworkers population. No statistics exist regarding the number of LGBT farmworkers; however, an analysis by researchers on behalf of California Rural Legal Assistance, Inc., revealed that approximately 136,000 self-identified lesbian, gay and bisexual individuals reside in rural California counties and roughly one-third of this population lives below the poverty line. Census data also show wide geographic and racial diversity among same-sex couples.⁸

Furthermore, the experiences of advocates indicate that LGBT farmworkers face egregious discrimination and violence in the workplace. LGBT farmworkers are vulnerable to sexual violence and hate crimes due to extreme social ostracism. At times, farmworkers who are not LGBT-identified, but who are questioning their sexual orientation or gender identity, or who are mistakenly thought to be LGBT, are targeted for anti-LGBT violence and discrimination.

Income. The average individual income of farmworkers in 2001-2002 was between \$10,000 and \$12,499, while the total average income for a farmworker family averaged between \$15,000 and \$17,499.

Poverty is a risk factor for sexual violence. Farmworkers live at or below the poverty level and are, therefore, keenly dependent on their income. Losing a job may mean no food, housing, medical care or financial support for their family in the United States and abroad. A farmworker woman who is the head of the household and supporting her children is extremely vulnerable. Recognizing this, workplace perpetrators condition obtaining and keeping employment on sex; farmworkers are frequently denied employment or fired for refusing or reporting unwanted sexual harassment and/or assault.

Education. The NAWS findings indicate that the majority of farmworkers have completed only a few years of basic formal education. Four percent of farmworkers reported never having attended school, while 5% reported completing some education beyond high school. According to NAWS, on average, the highest grade level crop workers completed is the seventh grade. Given this, it is no surprise that few immigrant farmworkers come to the U.S. speaking anything but their native language. The low levels of education attained by farmworkers and the inability to speak English make the workforce vulnerable to exploitation and sexual violence.

Immigration status. Fifty-three percent of farmworkers are undocumented, 25% are citizens, 21% are legal permanent residents and 1% are authorized in some other manner to work. Perpetrators of sexual violence against undocumented farmworkers often threaten to report victims to immigration authorities and have them deported. Deportation may be devastating and result in a loss of current and future employment, separation from family in the U.S. and a return to the poverty from which the victim fled. Even when victims are documented, perpetrators threaten to report their undocumented family members to the authorities for deportation.

Guestworkers, though present with lawful immigration status, are in an equally vulnerable position. Guestworkers hold visas that require them to work only for the stated employer—the visa is no longer valid if and when the employment relationship ends. Perpetrators from the workplace often threaten that if their victims report the violence, the victims will lose not only their jobs but also their immigration status. These threats are typically coupled with a threat to call immigration authorities and other law enforcement if the worker does not comply with the perpetrator's demands.

Housing. Fifty-eight percent of farmworkers live in rental housing while 21% live in employer-owned and provided housing. When housing is provided by the employer, a perpetrator from the workplace has yet another venue to assault farmworkers. Employer controlled labor camps are often located in isolated rural areas, separated by fences with locked gates, and lack phones, public transportation and access to agencies that can help farmworkers. Crew leaders and foremen, who are the eyes and ears of the employer, often live in the same camp and take note of what workers do, with whom they speak, and whether anyone complains. Lack of personal transportation and the reliance on a *raitero*, an individual paid by farmworkers to drive them from place to place, can keep farmworkers further confined to the labor camp.

Sometimes employers house farmworkers in motels. In labor camps and motels, employers may place men, women and families together who are unknown to one another. They may be forced to share beds or sleep on the floor with strangers. In other cases, farmworkers and farmworker families may choose to share rental housing to save on expenses. These situations of cohabitation, whether arranged by the employer or out of financial necessity, increase farmworkers' vulnerability to sexual violence.

Farmworkers generally have the right to invite legal and social service providers to their housing, even if the housing is located on an employer's private property. However, it is not uncommon for providers to encounter access issues when visiting camps. Work with farmworker legal advocates in your area to obtain tips on best practices for meeting with and distributing information to farmworkers who seek your services and to learn the laws that provide you access.

Working conditions. Agricultural work is consistently ranked among the top three most hazardous jobs in the United States⁹ due to strenuous physical labor, pesticide exposure and dangerous equipment. Farmworkers are at great risk of respiratory and dermatological illnesses; dehydration, heat stroke and heat illness; and chronic muscular/skeletal pain.

Transportation. Farmworkers face unique transportation-related problems. Many farmworkers—farmworker women in particular—do not have cars. Many rely on their employers for transportation to and from the worksite. Other farmworkers pay private drivers, commonly known as *raiteros*, for transportation to and from work. Common transportation problems encountered include dangerous vehicle conditions that cause numerous farmworker deaths each year; excessive fees for transportation; poor driver training or unlicensed drivers; significant loss of time traveling or waiting for transportation; non-payment of wages during otherwise compensable travel time; and sexual harassment or assault by transportation providers.

Fear of law enforcement. Some immigrant farmworkers may have an inherent fear and mistrust of law enforcement and other government authorities based on their experience or perception of the government in their country of origin or from rumors and experiences suffered by other farmworkers. Non-immigrant farmworkers may also fear law enforcement based on a past experience. These farmworkers may be reluctant to report sexual violence to the police or contact any other government official for assistance.

Equipped with the knowledge of why sexual violence of farmworkers is pervasive and why farmworkers may be reluctant to report it, you are now in the position to identify and reduce the barriers they may face to accessing your help.



EXERCISE

- ❖ What types of farmworkers live in my state and my community?
Are there migrant, seasonal, guestworker or year-round farmworkers?
- ❖ What type(s) of agricultural work is performed?
- ❖ What is the nationality of the workers?
- ❖ What language(s) do the workers speak?
- ❖ What is the ratio of men to women?
- ❖ In what type of housing do they live?
Are there labor camps?
- ❖ How can I learn more about their experiences?
- ❖ How can I help farmworkers overcome barriers to accessing my professional services?
- ❖ Are there any local organizations conducting outreach to farmworkers with whom I could work or with whom I could cross-train?

HOW CAN I REACH OUT TO FARMWORKERS TO LET THEM KNOW I AM HERE TO HELP?

The best resource for reaching out to farmworkers is an organization that provides services to farmworkers, such as a farmworker unit of a legal service organization, a migrant education program, a migrant health center or agency, a farmworker union or other non-profit organizations dedicated to serving farmworkers. Even if there is no farmworker organization in your immediate area, there may be one in your state that is knowledgeable about your area and that might be helpful to you. National farmworker organizations can also provide you with basic information about the farmworker community.

Partnering with a farmworker organization can help you:

1. Learn about the agricultural industry and the farmworkers who support it;
2. Improve communication with farmworker victims;
3. Make contacts and gather information that will likely assist your ability to connect, work and build trust within farmworker communities;

4. Educate organizations, individuals and the farmworker community at large about your willingness to help victims of sexual violence.

Learn where to find farmworkers.

Farmworker organizations can help you learn about the life and work of farmworkers as well as the agricultural industry, all of which will be helpful in planning and conducting your outreach. In particular, you may want to focus on the following areas:

- ❖ **Housing:** Farmworkers may live in apartment complexes, trailer parks, labor camps, motels or private homes. Migrant workers and guestworkers generally live in farm labor camps. Some farmworkers are homeless and sometimes live out in the fields where they work. Familiarize yourself with where farmworkers are living in your area, then visit the communities and introduce yourself and your services.

Once you make contact with the local farmworker organizations and the community, you can create a list of contacts, including farmworker leaders. Call them and ask if they

would be willing to host a house meeting. Bring food, beverages and information. Make the meeting entertaining by having a relevant skit or short story to share that illustrates how you can help. Involve your audience by inviting them to participate in the skit, asking questions, listening and letting them tell their personal stories about life as a farmworker. Remind all participants not to share their personal experience with sexual harassment or sexual assault with the group in order to protect confidentiality and privilege. Encourage anyone who may need individual help to speak with you privately. Bring materials that are easy to read and understand such as one page flyers, fotonovelas, brochures, videos and audio recordings.

- ❖ **Work:** Know whether there are migrant farmworkers, seasonal farmworkers and/or guestworkers in your jurisdiction and to where they migrate. You can then plan your outreach to migrant workers and guestworkers during the time they are in your area, while outreach to seasonal workers can be conducted throughout the year. It may generally be helpful to know what agricultural work is

performed in your jurisdiction, when the season begins and ends, and when farmworkers' days begin and end. Additionally, be sure to learn about the local farm labor contractors and growers. Find out how many contractors are licensed, how they recruit workers, whether they provide housing to the workers, how many crews they employ, and where most of their work is performed.

- ❖ **Schools:** Schools and daycares specifically for farmworker children also exist in many agricultural communities along with specialized migrant education programs. Consider making presentations for parents at school health fairs and early morning or after-school programs.
- ❖ **Clinics/educational workshop.** Develop materials specific to sexual violence including a simple PowerPoint® presentation. Make your slides bilingual or monolingual in the language that the workers speak and read. Include photographs and interactive games to make it more appealing and to accommodate anyone who may be illiterate. Memorize your materials and keep your eyes on the audience.



❖ **Health fairs.** Health fairs are great opportunities to set up a table with your organization's information and speak to farmworker attendees. It can also be helpful to have a video or slideshow of photographs with music playing at your table to help attract community members to your table. Introduce yourself and begin by asking questions such as: Do you live here or nearby? Are you currently working? What are you picking/harvesting now? Where do you work? These questions can open the door for you to make connections with the farmworker community.

❖ **Religious institutions.** Places of worship also frequently host events that provide yet another opportunity to disseminate information to the community. Learn which places farmworkers in your area frequent.

Inform the community that you are available to help. Working with a farmworker organization, you can learn where farmworkers congregate, shop, worship, attend school and work, which may provide you the opportunity to inform the community that you are available to help. As you strategize ways in which to reach farmworkers, consider the following:

❖ **Provide written materials in farmworkers' languages.** Many farmworkers do not speak or read English or Spanish well or at all. Learn what languages the farmworkers

in your area read and make your written materials available in those languages. Additionally, use a professional translator who can accurately convey phrasing, idioms and culturally relevant language rather than simply providing a verbatim translation.

❖ **Provide your information in oral and culturally appropriate formats.**

Farmworkers may or may not be literate in their native language. Some languages may only be oral and not written languages, such as Triqui from Oaxaca, Mexico. To accommodate all farmworkers, provide information in oral formats. For example, record CDs with the information contained in your brochures or other written materials you typically provide to victims. Also consider producing short videos that detail information about farmworker rights, your services and the legal process. The videos can be shown in your waiting room or given to individuals to take home.

❖ **Use the fotonovela format.** Fotonovelas use photographs of real people acting out skits, which share a message and can be used as an outreach tool. As a resource to you, there is a fotonovela in Spanish developed by and for farmworker women available at www.crla.org/svi. It tells the story of a young farmworker woman experiencing



*“I told the owners of the ranch everything, but unfortunately,
they don’t pay attention to a farmworker woman.
No one cares what happens to you; you just come and go like a piece of trash.”*

- Maria Reyes

(“Female Farmworkers are the Most Vulnerable” [Essay] by Rebecca Clarren)

sexual violence at work and what she does to be safe, end the violence and get help. You can distribute the fotonovela in your own farmworker community and include your contact information on the back cover.

❖ **Radio/Television.** Local farmworker organizations can help you make contact with local radio and television networks that farmworkers use. Air public service announcements on radio and television with information about how to seek your assistance. Given the diversity in languages spoken by farmworkers, it is important to look for media in a wide range of languages in order to reach non-English speaking farmworkers. Have your phone number available if you are doing a television segment and ask for it to be displayed on the screen. Ensure that your intake specialists and receptionists know when these segments will be aired so that they are prepared to take the calls that will be generated.

Learn how to best communicate with farmworkers. Farmworkers may distrust someone outside of the farmworker community due to the exploitation that they have experienced. The knowledge you obtain about the community will be apparent when you interact with farmworkers and ask appropriate questions about their lives and work. Another way to

better communicate with farmworkers is to learn the work terminology—for the crops grown, tools used, seasons and jobs—which can vary depending on the crops grown in your area. Try to avoid terms that farmworker community members will not understand and, instead, use colloquial and slang terms. For instance, the Spanish translation of fields is *campo* but farmworkers tend to use the “Spanglish” word *fil*.

EXERCISE

- ❖ What farmworker organizations are in my area?
- ❖ With which farmworker organizations could I partner in order to provide improved services to farmworker victims of sexual assault?
- ❖ What national farmworker organizations exist that can provide me with helpful information about farmworkers and outreach to the farmworker community?
- ❖ What local community events do farmworkers attend?
- ❖ Who could help me develop culturally appropriate and relevant skit, brochures and other outreach materials?

HOW DO I WORK WITH FARMWORKER VICTIMS OF SEXUAL VIOLENCE?

Farmworker victims of sexual violence may have a wide range of needs as a result of the violence that they have suffered. It is extremely important that you think broadly in terms of all of the issues that may need to be addressed for victims to begin to heal. Assisting farmworker victims of sexual violence may entail working in collaboration with many different professionals who offer specialized care.

It is possible that a farmworker victim of sexual violence will not initially seek legal services for the sexual violence itself. Sometimes, victims seek services for a legal problem arising as a result of the sexual assault, such as termination of employment or loss of housing. Legal service intake forms for farmworkers should include questions regarding non-intimate partner sexual violence. Anyone conducting intakes

should create a safe environment so that victims of sexual assault feel open to share details of the assault if they choose.

Use a victim-centered approach. Sexual assault may take away a sense of control and dignity from victims' lives. Empowering victims to make their own decisions about whom to tell, from whom to seek services and which legal remedies to pursue can be a major step in the recovery and healing process. Work with victims so that their needs are central to the services and referrals you provide.

Adopt a holistic model of representation.

A holistic model of representation promotes addressing wide-ranging needs. It means identifying the victims' needs and making referrals to appropriate service providers and agencies. To the extent possible, your office should create broad referral networks to address the items on the list below in order to maximize the opportunity for victims to heal and thrive:

- ❖ Crisis intervention
- ❖ Safety planning
- ❖ Post-assault health care, such as Sexual Assault Forensic Exam (SAFE), Sexually Transmitted Infections (STI) testing and pregnancy testing
- ❖ Civil, criminal or immigration legal advice



- ❖ Privacy considerations
- ❖ Housing
- ❖ Food
- ❖ Health care
- ❖ Mental health care
- ❖ Spiritual support
- ❖ Victim advocacy
- ❖ Financial security
- ❖ Public benefits
- ❖ Education
- ❖ Job skills training
- ❖ Employment
- ❖ English language instruction
- ❖ Spanish language instruction
- ❖ Interpretation
- ❖ Transportation

Consider including questions about these issues on your intake form, such as whether victims feel physically safe, need to be relocated, are seeking employment, or need housing, etc. Begin implementing a holistic approach from the moment your office begins to serve victims. Continue to ask victims questions about their needs over time and as circumstances change.

Locate linguistically and culturally appropriate services. Finding linguistically appropriate services is central to reducing a major barrier for farmworkers to access services. The more services you find that are provided in victims' native languages, the more likely they will be to avail themselves of the services. Additionally, be sensitive and open to cultural preferences. For instance, victims may not believe in or use Western medicine and, therefore, may prefer healers from their own culture. Similarly, victims may not accept or practice counseling and therapy, but may prefer to visit a spiritual leader instead.

Join or create a multidisciplinary referral network. No single provider can meet the vast needs of farmworker sexual violence victims; therefore, it is essential to have a referral

network in place. This network should include professionals and organizations that provide emergency and short-term services, transitional services and long-term services. Additionally, support from family and community members may be important; the victim should be encouraged to decide to whom they will disclose information and who they will ask for support. Overall, this multidisciplinary network should strive for shared protocols, uniform intake questions and a quick response. This may appear to be a daunting task if you are new to sexual violence work; however, there are effective networks already in place in many areas that you might locate and join. If you are in an area without an existing network, over time your professional network will grow to include the organizations that can serve victims in ways that you cannot. Having a system and network in place increases your level of service to victims, aids victims' recovery, and reduces confusion and response time. Ideally, the network should consist of:

- ❖ Rape crisis advocates
- ❖ Criminal, civil and immigration attorneys
- ❖ Medical professionals
- ❖ Mental health care professionals
- ❖ Housing advocates
- ❖ Farmworker advocates
- ❖ U.S. Equal Employment Opportunity Commission representatives
- ❖ State anti-discrimination advocates
- ❖ Victim advocates
- ❖ Law enforcement official(s)
- ❖ Trained interpreters
- ❖ Sexual Assault Nurse Examiners
- ❖ Family members
- ❖ Spiritual leaders to address spiritual needs and, in some cases, the medical needs of individuals.

Refer members of your network to this guidebook and to our other guidebooks specifically written for social service providers and criminal justice professionals at www.crla.org/svi.

Building this network will take time and creativity. For example, rural areas may have fewer providers and they may not be bicultural and bilingual. You may need to reach out to resources in larger metropolitan areas in order to expand your referral network while you continue to provide services to farmworker victims of sexual violence.

Be accepting and creative. The farmworker community is culturally, linguistically and educationally diverse. Be prepared to embrace patience, an open mind, sensitivity, and creativity in getting to know victims and advocating for them.

Be aware of trauma's impact. Sexual violence often causes emotional disturbances such as post-traumatic stress disorder, anxiety, depression and memory loss. The degrees of trauma experienced will vary for each victim and can greatly impact your client's ability to relay details of the sexual harassment or sexual assault and to request services. Keep in mind that victims may have experienced violence previously, which may compound the effects of the most recent trauma. Immigrant victims may have fled violence in their country of origin or may have been assaulted or raped during migration to the U.S. Multiple traumas can dramatically impact memory, cognitive processes and the ability to discuss the incident of violence that has brought them to you. To better serve your clients, learn more about the impact traumatic experiences have on survivors.¹⁰

Be creative when building the timeline.

Memory loss due to trauma is common for many sexual violence victims. Additionally, due to high illiteracy rates, some farmworkers may not be accustomed to keeping track of

the month, date and hour or creating a written record of events. Therefore, it is possible that a farmworker victim will have difficulty remembering the timeline and sequence of events surrounding the assault; this may cause credibility issues in a criminal prosecution or when pursuing civil remedies. You can work with a victim to overcome these challenges by using markers such as type of harvest or holidays, rather than month of the year, to specify timed events. Educate other service professionals about these issues and strategies to overcome them.

Choose your words carefully. Discussing sexual violence is difficult in all cultures. For this reason, you must tread carefully when you prepare for an interview or meet with someone from a culture other than your own. It is important to ensure that you do not offend, create discomfort or re-victimize your clients. In some cultures, it is taboo to discuss sex, even if it was consensual. It may be difficult for individuals to share information about the sexual violence due to shame and embarrassment. Direct questions may make victims struggle to answer and feel uncomfortable; they may even shut down and not respond to any additional questions.

Therefore, try to ask indirect questions. Accept the fact that victims may talk around the issue and be less direct. Be aware that some words used in English to talk about sexual violence do not exist in other languages; therefore, victims may not use the same words to describe what happened as an English speaker might use. It can be helpful to learn from victims the most appropriate and non-offensive terms they wish you to use to describe anatomy and sexual acts.

Be comfortable talking about sexual violence.

It can be uncomfortable and awkward for service providers and victims alike to talk about sexual assault. However, if you are uncomfortable



talking about anatomy, sexual acts or sexual violence, you may miss opportunities to assist victims. Clients may not disclose to you or may not follow up post-disclosure because of your response. Ask for staff training from community partners, such as rape crisis centers, on how to talk about sexual violence. Practice mock interviews with co-workers until you are comfortable talking about sexual violence between individuals of the same and opposite gender, adults and children.

It may be helpful to start an interview saying “tell me what is going on” so that victims can begin the conversation. They may answer by talking about their most urgent needs and eventually circle back to the details of the sexual harassment or assault. When addressing the specific incident of sexual violence, it may be helpful for the interviewer to begin by asking straight-forward questions about the facts, such as when did it occur and what time of day. These are often much easier questions to answer as they have specific answers.

Ask only if necessary. Each time victims recount what happened, it may be painful and re-traumatizing. It is not uncommon for victims to walk through and relive the trauma while answering interview questions. Victims may move their bodies in the same way as the perpetrator did, move their hands as the perpetrator did, change their tone of voice and mimic the perpetrators’ voice, among other things. Do not force victims to go through this painful process unless you have a good faith belief that you will be able to assist the individual on a long-term basis. For instance, if you do not have the capacity to take on any more cases and intend to make referrals, do not ask victims to disclose more information than is necessary to make the referral.

Provide reassurance. You may be the one person to whom victims disclose the sexual assault.

Encouraging words, such as “This is not your fault” and “You are not responsible” and “You deserve respect and safety” may be helpful.

Eye contact. In some cultures, avoiding eye contact with a person of authority is a way to show respect. Additionally, eye contact may be difficult for victims, as they may feel ashamed about the sexual assault.

Give victims enough physical space. When interviewing sexual violence victims, give them enough physical space to make them feel comfortable. Try not to invade their personal space by moving closer. Victims may react out of fear if you get too close or try to touch them. Resist the urge to give a reassuring pat on the arm or back as such gestures may be unwanted and feel inappropriate.

Practical tips for your interview. Although you may require specific information to assist victims with their legal issues, you can try to make the process easier and more comfortable for victims by:

- ❖ Considering whether it is appropriate to offer the victim the option to conduct a joint interview, if more than one person from your legal team will be assisting the victim. For example, where more than one lawyer or paralegal in your office may be working with the victim, it may be appropriate to have more than one member of that team meet with the victim to conduct the interview. Victims should decide if they are comfortable with this approach. While other advocates outside of your office may support your client during the criminal process or civil litigation, it may not be in the victim’s best interest to be interviewed by a group of people that includes victim service providers with whom the victim does not have a privileged relationship. To include those providers in the interview will result in a waiver of the victim’s right to keep confidential information that would



otherwise be protected by an evidentiary privilege (such as attorney-client, therapist-patient, etc.).

- ❖ Scheduling interviews after farmworker work hours or on weekends;
 - ❖ Explaining the confidentiality, privilege and privacy implications of having a friend or family member present during the interview;
 - ❖ Explaining your mandatory reporting requirements;
 - ❖ Asking whether the victim prefers to be interviewed by a man or a woman, if the request can be accommodated;
 - ❖ Giving the victim choices about where to conduct the interview;
 - ❖ Explaining why you need to take notes during the interview and asking permission to do so;
 - ❖ Explaining how long you anticipate the interview will take;
 - ❖ Encouraging the victim to take breaks as needed;
 - ❖ Creating a road map for the interview so that the victim knows what to expect;
 - ❖ Using a holistic interview guide that includes questions regarding the victim's concerns about privacy, employment, housing, physical safety, financial stability, education and immigration;
- ❖ Telling the victim what information you are going to share, with whom and for what purpose;
 - ❖ Being organized and succinct;
 - ❖ Explaining safety planning and creating a safety plan;
 - ❖ Discussing any fears such as of immigration or law enforcement and any associated risks;
 - ❖ Discussing whether the victim would like to make a police report and any related risks to making one;
 - ❖ Describing what your role is in helping someone file a police report;
 - ❖ Being aware of your body language, eye contact, word choice, tone, mannerisms and reactions to victims' comments so that the victim feels supported rather than judged or hurried; and
 - ❖ Strategizing next steps with the victim.

EXERCISE

- ❖ In what ways do I employ a holistic approach in my work?
- ❖ Is my referral network updated, comprehensive and linguistically and culturally appropriate?
- ❖ What additional relationships do I need to build to make appropriate referrals?
- ❖ In what ways do the agencies within my referral network also follow a holistic approach?
- ❖ In what ways do I empower clients to make informed decisions?
- ❖ How do I show respect for my client's culture?
- ❖ Are my organization's outreach materials linguistically and culturally appropriate?
- ❖ How can I improve my interviewing skills?

WHAT ARE THE POTENTIAL PRIVACY ISSUES?¹¹

Privacy issues may weigh on farmworker victims significantly as victims may work, migrate and live in close proximity to the perpetrator. They may risk a great deal by telling anyone, including service providers, about the assault. Having control over who has access to what information about the assault can help victims feel safe enough to access social services and pursue legal remedies. Therefore, when clients do come forward, there are steps that you can take to protect their privacy.

Privacy Basics:

1. Do not make assurances of confidentiality unless you and the person to whom you are making assurances know what you mean.
2. Only certain relationships are privileged and are dependent upon your jurisdiction, e.g. attorney-client, therapist-patient, clergy-penitent, advocate-victim.
3. Not all privileges are the same, i.e. some are qualified and some are absolute.
4. Inform clients if you are a mandatory reporter and what obligates you to report.

Explain privacy to farmworkers. It is likely that farmworker victims will have had little or no experience with the concepts of confidentiality, privileged communications, mandatory reporting and releases and waivers. Take additional time to explain these issues and how they may affect decisions related to the assault. You should be able to explain clearly and understandably:

- ❖ The difference between a privileged and a non-privileged communication;
- ❖ How waiver of privilege might occur;
- ❖ The purpose and function of authorized releases;
- ❖ How released information might be used against a victim in the future;
- ❖ How mandatory reporting laws relate to minor and vulnerable adult victims of sexual assault; and
- ❖ If you are a mandatory reporter and what obligates you to make a report.

Explain privilege. Explain to victims how you can help protect their privacy *and* the limitations to those protections. While an attorney's private communications with a client are privileged, a victim's communications with providers such as a therapist, advocate, or medical provider may not be well protected from disclosure, depending on the applicable federal and state law. Advise your clients on whether privilege exists with each of the providers with whom they work.

Friends/family at appointments. Often female farmworkers bring their husband or a friend to a provider appointment. In this case, explain to the victim and her husband or friend that you must speak with the victim alone because if anyone else is present, your privilege, if applicable, may be waived. Waiver of a privilege means that you or your files could be subpoenaed in a court proceeding. Be cognizant that some sexual assault victims are also victims of domestic violence. Telling a victim's intimate partner that he cannot attend the meeting might put the victim at risk for violence in the home. This should be discussed with your client and you should help the client with the related safety concerns.

Taking the time to talk about privacy and confidentiality is an opportunity for attorneys to build trust with victims. It validates victims' needs for autonomy and control and empowers them to make informed decisions about issues related to the sexual assault.

Identify privacy issues. Farmworker victims may not identify their privacy concerns as such. It is more likely that they will express concerns about others finding out about the sexual violence or ask about what information must be revealed in order to pursue social services or



legal remedies. You can help victims weigh the benefits of receiving social and medical services and pursuing civil and criminal remedies with the burdens of releasing private information. Additionally, you can help victims strategize how to protect private information when services and remedies are sought.

Help victims identify what information:

- ❖ Is in the public sphere about the victim and about the perpetrator, including information in electronic formats such as text messages, voice mail messages and emails;
 - ❖ Has been disclosed about the assault and to whom and how it was disclosed;
 - ❖ Has not yet been released that the victim is concerned may be released; and
 - ❖ The victim wants to keep private.
- Once privacy concerns are identified, work with the victim to address the concerns.



Schmidt says the abuse

“is so prevalent, the women view it as something they have to put up with.”

-Sally Schmidt

(Tales from the Green Motel by Margo Harakas, South Florida Sun-Sentinel, Feb. 12, 1989)

Explain the Sexual Assault Forensic

Examination (SAFE).¹² Be prepared to explain the purpose and steps involved in undergoing a SAFE exam including how evidence is collected and how it may be used in civil and/or criminal litigation. Be aware that some farmworkers may never have undergone such an exam; even if they have, it can be especially violating and retraumatizing. Victims must make informed decisions about whether to undergo the exam, including understanding how medical records may be subpoenaed or used in legal proceedings.

It is critical to remember that your client’s privacy concerns are not static. Indeed, they often change throughout the course of representation. For this reason, it is important to check back often with your client to discuss whether and how privacy concerns and needs may have changed.

Victim privacy within your organization.¹³

Unintentional disclosures of victims’ private information may occur within a law office. Some ways your agency can rigorously protect victim privacy:

❖ Have confidentiality practices—including record-keeping policies—that protect victim privacy and are reviewed and updated often, as laws regarding victim privacy change;

- ❖ Avoid casual conversations about clients within your agency and in public spaces such as hallways, elevators, lunchrooms, etc.;
- ❖ Impress upon farmworker victims the urgency in maintaining contact with you and other service providers when migrating, so that releases and other communications can be kept current;
- ❖ Have and follow your organization’s subpoena response policy, as victim’s private information is in danger of being released due to an improper subpoena or record request;
- ❖ Understand all partners’ information-sharing policies if your agency participates in community collaborations, including coordinated community response teams. Farmworker victims should decide what information can or cannot be disclosed to each partner.
- ❖ If your agency is an Office of Violence Against Women grantee, ensure that your release of information forms are VAWA compliant—written, reasonably time limited, revocable, sufficiently specific and signed with the victim’s informed consent; stay current on funders’ confidentiality requirements, especially VAWA, Victims of Crime Act (VOCA), Family Violence Prevention and Services Act (FVPSA), etc.¹⁴



Practical tips for how you can help protect a farmworker client's privacy:

- ❖ When interviewing your client, determine who knows what about the sexual assault—e.g. friends, family, employers, landlords or medical providers—and how they received the information (*i.e.* letters, verbally, cell phone message or text message);
- ❖ Strategize with clients about how you can protect their privacy after disclosure;
- ❖ When creating a case plan, work directly with the client to determine what information needs to be disclosed to achieve the client's goals;
- ❖ Be proactive about private information:
 - Send written notice to record holders;
 - Request notice before records are released;
 - Explain to clients how private information can be used against them in legal proceedings; and
 - Pay attention to how minor's privacy rights may be different (more limited) than adults;
- ❖ Challenge subpoenas, as appropriate, including subpoenas issued by the prosecutor's office and received by a third party or victim;
- ❖ Request notice from third parties if they receive a subpoena;
- ❖ Protect victims in defense interviews to the extent permitted; and
- ❖ With client's consent, contact service providers and others to explain laws governing privacy.

EXERCISE

- ❖ What words would I use to explain attorney-client privilege and waiver of privilege to a farmworker victim of sexual violence?
- ❖ Does our intake form for legal services include questions about the client's most pressing privacy issues?
- ❖ What additional training and policies does my organization's legal program need regarding protecting victim privacy?

WHAT IS MY POTENTIAL ROLE IN HELPING FARMWORKER VICTIMS THROUGH THE CRIMINAL JUSTICE SYSTEM?¹⁵

Sexual violence victims may have many questions about what will happen if they report the crime to law enforcement. It is probable that a farmworker victim will have little or no experience with the U.S. criminal justice system. When you first meet, assess whether the victim:

- ❖ Is aware of the option of reporting the crime to the police;
- ❖ Needs any additional information to help decide whether or not to report;
- ❖ Is aware of any risks that might be present by reporting;
- ❖ Wants to report to the police but needs logistical help such as locating a police station, communicating with a police officer or arranging transportation to the police station;
- ❖ Needs information to help understand the potential implications of reporting the assault to law enforcement; and
- ❖ Has already reported to the police and needs help navigating the criminal justice system.

Take the time to inform your client about the criminal justice system. This discussion may take longer than you anticipate but it is important not to rush or omit it. Allow ample time to educate farmworker victims about the criminal justice system so that they have sufficient information to make an informed decision about whether to report the assault to the police. It is paramount for victims to understand that if they report to law enforcement and the perpetrator is charged, the prosecutor represents the state's interests—not the victim's interests. Some police departments may allow a victim to file an incident report and not press criminal charges. Contact the local police department to determine if and when this option is available to victims.



Immigrant victims may have a heightened fear because of widespread immigration raids nationwide as well as partnerships between immigration and local law enforcement—known as 287(g) agreements—that permit local officers to enforce immigration law.¹⁶ In some of these communities, victims of crime have been reported to immigration authorities for deportation which has a chilling effect on the willingness of immigrant crime victims to report the crime and cooperate with law enforcement. Know whether you are located in a jurisdiction that

has a 287(g) agreement and whether crime victims are impacted.

Be realistic about outcomes. It is common for farmworker victims, when asked what they want from the legal system, to reply “justice.” It is vital to explore what “justice” means to each victim and to discuss how and whether it can be achieved. For example, inform victims that only 2% of rape victims who report the rape to law enforcement ever see their assailant apprehended, convicted and incarcerated.¹⁷ Because of biases against immigrants, language barriers, and migratory and relocation issues of victims and witnesses, farmworker victims may face even greater prosecution hurdles and lower conviction rates.

Respect the decision not to report or pursue.

It is possible that clients may decide not to report the assault for any number of reasons, including concerns regarding safety, economic stability, immigration status, migration, time away from work to pursue prosecution, and/or fear of putting their family in jeopardy. It is vital to advise your clients that they do not need to report the sexual assault to law enforcement, and for you to respect their decision.





It is important, however, to advise them about what to do in an emergency. Additionally, refer clients to an immigration attorney or advise them about immigration remedies that may be available if the sexual assault is reported to law enforcement.

Educate law enforcement and fact-finders about rape myths and the power and control dynamics within the agricultural industry.

Rape myths affect the way that sexual assault victims' credibility is assessed. One is that "real rape" is violent and results in profound physical injury to the victim. In truth, most sexual assault victims do not suffer serious physical injuries as a part of the rape. Moreover, farmworker victims may be less likely to physically resist an assault in cases where they—and their

family—are vulnerable to the perpetrator in various ways, including relying on the perpetrator for income, housing, transportation, etc. Another myth is that victims lie—that they claim rape, when it was consensual sex. Outsiders may perceive that rape victims consented such as when there is continued contact with the perpetrator post-assault. Here again, farmworker victims may be even more vulnerable to attacks on their credibility because of on-going dependence upon the perpetrator for food, transportation and shelter. An additional myth is that victims of real rape report to law enforcement immediately after being assaulted. Few sexual assault victims report immediately to law enforcement, if at all; farmworkers may take even more time to report due to additional barriers such as transportation, language and fear of retaliation. You can help debunk these myths—and acknowledge the enormous power imbalance in the rural workplace—with law enforcement, prosecutors, judges and juries, among others. Finally, law enforcement and fact-finders must be educated about cultural backgrounds and mores and how they might bear on credibility. For example, victims may be reluctant to make eye contact with an interviewer not because they are being untruthful but because they have grown up in a culture in which averting someone's eyes is a way of showing respect.

"In order for a woman to get employment in agriculture, in many instances," says Randy Cecil, a Fort Pierce recruiter for the United Farm Workers of America, "she has to make a deal men don't have to make."

-Randy Cecil, Recruiter for the UFW
(Tales from the Green Motel by Margo Harakas)

Ensure accurate explanation of legal terms.

Understanding and interpreting legal concepts is another challenge farmworker victims may face in a criminal or civil case. It is possible that certain legal concepts or vocabulary do not exist in the victim's native language. Allow ample time to make certain that farmworker victims understand legal terms and work closely with qualified and culturally sensitive interpreters.

Assist your client through the criminal justice process.

If your client decides to report to law enforcement and the perpetrator is prosecuted, the following are ways in which a civil attorney or advocate may assist the victim through the criminal justice process:

- ❖ Answer clients' ongoing questions about the criminal justice system;
 - ❖ Explain to your client the interaction between civil and criminal legal systems;
 - ❖ Help protect your client's privacy;
 - ❖ Ensure that your client's safety is protected and help access any civil or criminal safety remedies, including relocation;
 - ❖ Explain that the prosecutor is the state's attorney and not the client's attorney;
 - ❖ Explain the role of the prosecutor's victim advocate as well their duty to turn over information about the victim to the prosecutor and to the defense; explain the role of a community-based victim advocate and the potential for their records to be subpoenaed as well.
 - ❖ Help prepare your client for interviews with law enforcement, prosecutors and defense attorneys;
 - ❖ Help your client understand evidentiary rules, hearings and motions, etc.;
 - ❖ Help your client recoup financial losses through restitution and the victim compensation fund;
- ❖ Help your client access immigration remedies available to certain victims of sexual assault;
 - ❖ Oppose the use of a victim polygraph test;
 - ❖ If necessary, work with criminal defense attorneys to represent your client or handle necessary defenses for your client;
 - ❖ Explain the Sexual Assault Forensic Examination (SAFE) process; and
 - ❖ Work with the District Attorney's Office for updates on the case.

EXERCISE

- ❖ How would I describe the difference between the criminal and civil legal justice systems to a farmworker?
- ❖ Do Immigration and Customs Enforcement (ICE) and my local law enforcement agency have a partnership that permits local officers to enforce immigration law?
- ❖ What types of protection orders are available to victims of non-intimate partner sexual assault in my state, tribe or territory?
- ❖ How will I support my client if she requires criminal defense?
- ❖ Who are members of the local criminal bar association to whom I can refer my client, if necessary?
- ❖ What opportunities for cross-training exist in my community between social service providers, legal service providers and law enforcement interested in assisting farmworker victims of sexual violence?

WHAT HEALTH NEEDS SHOULD I PLAN TO ADDRESS WITH FARMWORKER VICTIMS?

Sexual violence creates both short-term and long-term health care needs. A sexual assault victim's injuries can range in severity and therefore require varying responses such as:

- ❖ Immediate treatment of physical injuries such as cuts, bruises, dislocations, sprains, weapon wounds, strangulation or broken bones;
- ❖ Completion of a Sexual Assault Forensic Examination (SAFE) to collect and preserve evidence of the sexual assault for criminal prosecution or civil litigation;¹⁸
- ❖ Prenatal care or abortion for a resulting pregnancy;
- ❖ Testing and treatment for sexually transmitted infections (STI) and HIV/AIDS;
- ❖ Diagnosis and treatment for mental health issues including anxiety, depression and post-traumatic stress disorder;
- ❖ Mental health counseling and therapy or spiritual counseling; and
- ❖ Drug and alcohol abuse treatment.

Additionally, a farmworker's health needs may extend beyond the more immediate and resulting

injuries from the sexual assault. They may have any number of health needs related to their agricultural work, including:

- ❖ Respiratory and dermatological illnesses from exposure to pesticides, dust and fungi;
- ❖ Dehydration, heat stroke and heat illness from unsafe or inadequate amounts of water in combination with heat; and
- ❖ Chronic muscular/skeletal pain from heavy lifting, repetitive motions and bending over.

Farmworkers may also suffer from health issues related to substandard living conditions. They may live in makeshift housing, remote and unsafe labor camps or crowded housing—any of which may expose them to mold, unsafe drinking water, raw sewage and poor heating and ventilation. Living in labor camps located near the fields may increase their exposure to pesticides through drift and water contamination.

Even with great health risks and injuries, few farmworkers seek medical care for a variety of reasons. One is that medical care is cost prohibitive for farmworkers who earn

low wages. Another is that clinics keeping regular business hours are closed before and after farmworkers' long days. Additionally, few farmworkers have sick leave benefits, and many fear they will lose their jobs if they ask for time off to go see a doctor during working hours. There may also be language or cultural differences with staff at clinics. Transportation to a clinic is yet another issue because farmworkers may be in remote and rural locations where they are dependent upon their employer or others for transportation. The result of these many barriers is that:

- ❖ Farmworkers typically forgo treatment, allowing the condition to worsen, and go to a hospital emergency room when the situation is urgent;
- ❖ Routine dental, vision and reproductive care does not occur; and
- ❖ Illnesses such as diabetes, tuberculosis and hepatitis may go undiagnosed and untreated.

Given the serious potential health needs of farmworker victims of sexual violence, and the barriers to accessing medical care, you may need to be prepared to help victims by:

- ❖ Providing transportation assistance to appointments;



- ❖ Finding a low-cost health care provider with flexible hours and preferably bilingual, bicultural staff;
- ❖ Locating low-cost mental health care providers with flexible hours and preferably bilingual, bicultural staff;
- ❖ Locating a sexual assault advocate who can explain the SAFE process and purpose; and
- ❖ Locating a culturally competent sexual assault nurse examiner to conduct the SAFE.

EXERCISE

- ❖ What are the living and working conditions of the farmworkers in my area?
- ❖ Who are the farmworker attorneys in my community to whom I can refer a victim living in unsafe working conditions and substandard housing?
- ❖ Which are the state and federal agencies to whom I can report unsafe working conditions and substandard housing?
- ❖ Where is the nearest migrant health service in my area? What are its hours of operation? How accessible is it to farmworkers?
- ❖ Do the health care providers on my referral list offer appointments at times that farmworkers are available?
- ❖ Is my agency able to provide transportation assistance to victims? If not, who can?
- ❖ What alternatives to counseling are available for farmworker victims of sexual violence?
- ❖ Who are the Sexual Assault Response Teams (SARTs) and Sexual Assault Nurse Examiners (SANEs) in my area? Are they bilingual and bicultural?

WHAT ARE THE POTENTIAL HOUSING REMEDIES?

Regardless of sexual violence, farmworkers struggle to find affordable, habitable and safe housing. When farmworkers live in employer-controlled housing, federal and state law provides for the minimal requirements that an employer must abide by when providing housing; however, these laws are frequently violated. When housing is not provided by the employer, low wages and temporary work leave farmworkers with limited options. Frequently, what they can afford is in substandard conditions such as housing with leaky plumbing, lack of hot water, inoperable power, missing window screens, broken windows, and/or no locks on doors or windows. This is not only potentially unhealthy, but it is also unsafe for victims of sexual violence. As described previously, farmworkers may share living space with many others—some of whom they may not know—to either save money or simply afford housing. High density living situations put a strain on the housing and its condition, for instance, when there are 20 people in three rooms and one bathroom meant for a family of four. These cohabitation situations also increase farmworkers' vulnerability to sexual violence.

Farmworkers are often faced with unsafe and unhealthy living conditions regardless of whether they seek public, private or employer-owned housing. However, if farmworkers live in housing that is owned and controlled by the employer, there is an additional concern that the



perpetrator—if a coworker or supervisor—may also have access to victims' residences. If possible, create a safety plan that includes support from other co-workers residing at the same location.

Some farmworkers may need assistance reading and understanding a lease—if one exists—and negotiating with a landlord. It is possible that a landlord could be persuaded to assist victims by improving safety conditions or that lease provisions exist that assist victims of sexual violence, such as early termination of the lease without penalty, improved lighting, lock replacement or other physical safety measures. Some states have laws that provide housing remedies to victims of sexual assault, including early lease termination and lock replacement.

Many of the potential legal claims a tenant may have against the landlord are dependent upon

the landlord having knowledge of the sexual harassment/violence. Therefore, as a practical matter, with your client's consent, provide the landlord with a copy of the tenant's criminal or civil protection order if one exists. It is not necessary to give the landlord any more details about the victim's circumstances than is absolutely crucial to put the landlord on notice. A simple letter citing the statute and authorized by the victim may suffice. The following are potential claims that sexual violence victims may have against their landlord:

Discrimination: Discrimination against victims of sexual violence can be gender and/or sex discrimination. Moreover, there are tort actions that may provide additional relief. The majority of claims against landlords require some type of prior notice, so make sure that all efforts to notify landlords of problems related to victims of sexual violence are well documented.

The following are potential claims for victims living in private housing:

The Fair Housing Act, 42 USC §§ 3601 et seq., and comparable state laws: Claims for gender and/or sex discrimination can protect against evictions based on a tenant being a victim of sexual violence and also may provide an affirmative claim of discrimination.

- ❖ If the perpetrator is the landlord, building manager or owner, your client may be able to bring a claim of sex and/or gender discrimination.

- ❖ If the perpetrator is another tenant and your client can show that landlord knew or should have known about the ongoing harassment/violence and did nothing to prevent it, your client may be able to assert a hostile environment claim under state and federal discrimination laws. This theory of recovery continues to develop.
- ❖ Affirmative claims can be filed with the U.S. Department of Housing and Urban Development, state enforcement agencies, and state or federal court.
 - Both courts and government agencies have the ability to award the following: 1) order that the victim be allowed to remain in or secure housing; 2) the elimination of the unlawful practices and for owners to change certain policies; 3) award actual damages and out-of-pocket expenses; and 4) award punitive damages (civil penalties by government agencies). In addition, courts can order injunctions and/or protective orders to help secure victim safety while the matter moves forward.

State Tort Claims: Office of Violence Against Women grantees are not permitted to represent clients in tort actions. Be sure to make referrals to experienced civil attorneys for the tort remedies available to victims. For example, perpetrators can be sued on a personal injury theory. Additionally, private landlords may be liable on state tort claims if they refuse to take





action to help protect victims. Possible tort claims include:

- ❖ **Negligence:** If a landlord is made aware of unsafe conditions in the home such as doors and windows that do not properly lock, the landlord may be liable for negligence if the victim is damaged by the landlord's failure to provide safe housing or otherwise breaches the duty owed to his/her tenant.
- ❖ **Breach of Warranty of Habitability:** State laws requiring minimal safety standards in homes may have been violated by the unsafe conditions in the home. These laws require a landlord to have prior actual or constructive notice; therefore, it is vital that any safety problems be reported to the landlord as soon as they are discovered.
- ❖ **Breach of Covenant of Quiet Enjoyment:** When there is a substantial interference with the tenant's right to enjoyment of the premises, there may be liability. This claim is best brought in tort rather than in contract because of the availability of emotional distress damages.
 - Remedies for these claims can include money damages, and orders to repair defective conditions.

The above claims are also available to victims living in subsidized housing; however, the statute of limitations may be very different if the landlord is a state or federal agency.

There are additional protections available to victims living in *public* housing. Many areas may have very few or no public housing facilities utilized by farmworkers, but in some areas with long agricultural work seasons it is not uncommon for farmworkers to reside in public housing. Thus, where appropriate, the following remedies should be considered:

Preference and priority vouchers. Victims of sexual violence may be given a preference by local Public Housing Authority (PHA) administrative plans and be entitled to a priority voucher. Migrant farmworkers may have trouble securing public housing because of the migratory nature of work and experience limits on eligibility based on their immigration status. However, the above regulations and protections apply to all Rural Housing Section 515 projects.

Undocumented immigrants' eligibility.

Undocumented farmworkers may be eligible for subsidized housing if they meet the requirements for “eligible non-immigrants.” See, 42 USC § 1436a(a)(5). However, eligibility is not automatic and may affect future immigration options based on being deemed a “public charge.”

Early termination of the lease. Landlords of subsidized housing must allow early termination of the lease for domestic violence victims. Advocates should argue that the same right should be extended to sexual assault victims. Many state laws also allow sexual assault victims to terminate their leases early in private housing (e.g. Cal. Civ. Code § 1946.7).

Preventing violation of restraining order.

Landlords are often willing to work with tenants on preventing violations of a protection order. With client consent, be sure to provide the landlord with a copy of the protection order. The landlord should then request a no-trespass order on the victim's behalf. Additionally, request that the landlord change the locks; if unable to communicate with the landlord, the tenant can change the locks and then provide copy of keys to landlord.

Translated lease. Because of farmworkers' low literacy rates and the fact that many leases are executed in English, it is probable that farmworker victims will not be aware of the terms of the lease. Many states provide mandatory translation laws requiring contracts negotiated in certain languages to be translated. (e.g. Cal. Civil Code § 1632(b)(3)). Often, failure to provide a translated lease can serve as a basis for invalidating the lease and transforming it into an oral month-to-month tenancy.

Relationship with the landlord. Since many farmworkers share housing with unrelated and/or unfamiliar persons, they may not know who is responsible for the lease. Therefore, your client may not have much information about the lease or know where to obtain the information. Because of language and cultural barriers, landlords and tenants may have little communication or the landlord may not be willing to assist victims in seeking solutions to housing issues. However, as stated above, landlords open themselves up to potential liability if they refuse to assist victims in making their homes safe.

Fear of retaliation. Your client may be reluctant to ask the landlord to make provisions due to fear of retaliation such as eviction or reporting tenants to immigration authorities. These are valid fears. Strive to provide answers to questions about tenancies and be able to explain remedies to unlawful retaliation.

EXERCISE

- ❖ What federal housing laws exist that protect my farmworker clients?
- ❖ What state housing laws exist that protect my farmworker clients?
- ❖ Which federal and state agencies are responsible for accepting and investigating housing complaints?
- ❖ What training can I receive to better understand public and subsidized housing?
- ❖ How can I educate service providers about housing rights so that they are able to identify violations?
- ❖ What service providers are available to assist my client in finding alternative, affordable and safe housing?

WHAT ARE THE POTENTIAL EMPLOYMENT CLAIMS/REMEDIES?

When farmworkers are sexually assaulted—regardless of whether the sexual assault is work-related—there are many ways in which victims’ employment may be adversely affected. Victims may need modified work schedules, changes in job duties, transfer or termination of the perpetrator, and/or time away from work to participate in legal proceedings or to seek medical care, mental health care or a protection order. However, employers are often unwilling to make such accommodations for farmworkers.

Federal and state employment laws and related laws can provide various remedies to victims of sexual assault. If the sexual assault occurred during work hours or if the supervisor or a co-worker was the perpetrator, for instance, the sexual assault will likely be a form of sex discrimination that may be protected by Title VII of the Civil Rights Act or state anti-discrimination laws. Discrimination claims offer remedies such as protection against further harassment and retaliation, financial recovery for lost wages and emotional harm, reinstatement of employment if the victim has been fired, and protected leave time to access services.

Some laws require that employees file claims with administrative agencies like the U.S.



Equal Employment Opportunity Commission (EEOC) before proceeding in court. Other times, a collective bargaining agreement might impact how an employee should proceed. Very few farmworkers are unionized however, in part because farmworkers are excluded from coverage under the National Labor Relations Act. It is important to note that most of the laws mentioned below apply to both documented and undocumented workers, though the remedies may vary.

While many laws exist to protect employee victims from retaliation for exercising their

rights, retaliation is a very real problem. For example, over 30% of all recent sexual harassment claims made to the EEOC incorporated a retaliation claim.¹⁹ Given the reality of retaliation, many farmworkers are afraid to exercise rights afforded them by law. Lawyers must educate themselves about retaliation and be prepared to defend farmworker victims who suffer adverse effects of retaliation.

The following are some of the potential employment law claims if the sexual assault arose in an employment context:

Title VII of the Civil Rights Act of 1964 or similar state anti-discrimination laws: On-the-job sexual harassment—including sexual assault—is a form of sex discrimination. Such a claim can be filed in either state or federal court, but victims may be required to first exhaust the administrative remedies with the EEOC or similar local or state agencies. The agency will conduct an investigation and/or will give you a “right to sue” letter which allows you to file the claim in court. Farmworkers are protected from sex discrimination regardless of whether the harasser/assailant is the owner of the company, co-worker, supervisor, customer or subcontractor. Among other remedies, a court or the EEOC can order the employer: a) to take immediate steps to protect the farmworker from additional harassment; b) pay the employee lost wages; c) reinstate the worker if s/he has been fired; and d) train supervisors and other personnel regarding sexual harassment. Title VII applies when the employer has 15 or more employees; state laws may cover smaller employers.

Form good working relationships with your local EEOC and state agency offices. Offer to train agency staff on issues related to the unique needs of farmworker victims of sexual assault.

Wrongful Termination in Violation of Public Policy and Other Torts: These state laws provide protection from being terminated for a reason contrary to public policy, even in an at-will employment situation. Examples of activities protected by public policy may include an employee opposing or complaining about sexual harassment or an employee taking time off work to obtain a protective order. Other state torts that may apply are intentional infliction of emotion distress, assault and battery, false imprisonment, and negligent hiring or retention. Tort laws vary by state and their application is very fact specific; some tort laws are applicable regardless of whether the assault occurred on or off the job. If your organization is restricted from pursuing tort claims, for example as a recipient of OVW funding, make an appropriate referral.

Workers’ Compensation: The vast majority of states have laws that provide an employee with medical treatment, compensation and other benefits if employees are injured in the scope of their employment. In some states, these laws cover physical and emotional injuries caused by violence at the workplace or during the course of the employment. These laws vary widely by state.

Occupational Safety and Health Laws: Though infrequently used in the sexual harassment and sexual assault context, employers may be liable if they failed to take proper measures to maintain a safe workplace. This may include when an employee or other person commits an act of violence at work and the employer takes no action to prevent the dangerous condition. Complaints may be made to the Occupational Safety and Health Administration of the U.S. Department of Labor or similar state agencies; in some states, claims can be filed directly in the courts.

Other laws protect the employment rights of employees regardless of where the sexual harassment or assault occurred:

Family Medical Leave Act and similar state leave laws: The Family Medical Leave Act (FMLA) provides workers up to 12 weeks of leave if they or an immediate family member suffer from a “serious health condition,” including both physical and mental health conditions. FMLA permits employees time away from work to recover and to receive treatment for mental and physical injuries stemming from the violence. FMLA applies when employees have held their job for at least one year, have worked at least 1,250 hours during the last year, and the employer has at least 50 employees within a 75-mile radius of the workplace.

Americans with Disabilities Act (ADA) and similar state disability laws: The ADA provides protections to those individuals who have a “disability,” which is defined, in part, as an impairment that substantially limits one or more major life activity. A disability does not have to be permanent for the ADA to provide protection. An employee with a qualifying disability is entitled to reasonable accommodations. This may include changes in work schedule, tasks and conditions that enable the employee to remain employed. These accommodations can be helpful to a victim of sexual

violence who has a physical disability or mental disability such as post-traumatic stress disorder. Additionally, an employee with a qualified disability cannot be harassed, fired or discriminated against as a result of the disability. If there is a violation of the ADA, a charge must be filed with the EEOC in order to exhaust administrative remedies before filing a claim in civil court. Be sure to check your state law, which may provide greater protections regarding disabilities.

Leave for Victims of Crimes: Many states provide job-protected leave to: a) victims or witnesses to crimes who must appear in criminal court; b) victims of sexual assault or domestic violence who need time off work to seek a restraining or protection order; and/or c) victims of sexual assault or domestic violence who need time off work to seek medical, psychological or other treatment or counseling. Laws vary widely, so be familiar with the laws in your jurisdiction.

Workplace Protection Orders: While not available in all states, some states have laws that allow sexual violence victims to request restraining or protection orders against the harasser. This prevents the harasser from coming within a particular distance of the victim’s person, home, family, place of employment and vehicle.



*“When she pleaded with the foreman to stop, she says he replied
“You need your job, don’t you?”*

-Sue Kahn, farmworker

(Tales from the Green Motel by Margo Harakas)

State Anti-Discrimination Laws Protecting

Victims: A promising example to other states, a few states now have laws that prohibit discrimination and retaliation against an employee who is a victim of sexual assault.

Other sources of compensation for victims of sexual violence may include:

Unemployment Benefits: If a worker is terminated without cause, a documented employee has the right to claim unemployment benefits. Your state employment office or its website can provide information regarding the process and qualifications required to apply for such benefits.

Social Security Disability Insurance (SSDI):

SSDI pays benefits to individuals who cannot work because they have a medical condition that is expected to last at least one year or result in death. Similar state laws may provide broader protections.

Supplemental Security Income (SSI):

SSI is a federal income supplement program that is designed to help aged, blind, and/or disabled people who have little or no income. The program is designed to provide cash to assist documented individuals with basic needs of food, shelter and clothing.

Crime Victim Compensation: Most states have a crime victim compensation fund or program that can be used to pay for expenses related to the crime, including medical bills, counseling expenses, travel reimbursement and, in some

cases, even lost wages. Some states require recipients to be legally present in the United States, while others do not.

Conduct careful intakes. Organizations that routinely assist farmworkers with employment issues should carefully screen farmworkers for sexual harassment and sexual assault. Victims may be seeking assistance because they were fired and are wondering what legal recourse they have. Only through careful questioning will you discover the underlying reason for the termination was, for example, refusal to exchange sex for work. Again, if sexual assault or harassment is revealed, refer victims to employment law and/or farmworker attorneys.

EXERCISE

- ❖ What laws exist in my state that protect farmworker clients, such as anti-discrimination, disability, workers' compensation, medical leave, leave for victims of crime, and workplace protection orders?
- ❖ What training is available regarding employment rights of sexual assault survivors?
- ❖ How can my state's crime victim compensation fund/program be used by farmworker victims of sexual assault?
- ❖ Which employment remedies require that my client be documented?

WHAT ARE THE POTENTIAL IMMIGRATION REMEDIES?

Immigration is an issue that many farmworker clients confront. Securing immigration relief has a profound impact on your clients and their families. With documented status, individuals may be able to access additional services, benefits, and legal remedies. In addition, victims may be able to reunite with their family, potentially secure improved employment and be free from the fear of deportation.

However, immigration law is incredibly complex and ever-changing. It should not be undertaken lightly and without experience. The potential consequence of a mishandled case is dire—your

client's deportation. Filing an immigration application or claim notifies the U.S. Government that your client is in the country without status and provides the client's exact location. On its face, deportation is the removal of the client from the country. What this may mean to your client is separation from any U.S. citizen children and other family members in the U.S. It may also cause a victim's family here and abroad to lose its sole financial support.

It is important for you to consider being involved in every aspect of your client's case, from the civil litigation to advocacy through



*“It is important to know we’re not insignificant just because we’re farmworkers,”
said Ladino, 37. “All of us have our rights, even though, at times, we don’t know what our rights are.”*

–Maricruz Ladino

(Taking a Stand for Women: Lawsuit Targets Sex Harassment in Ag Industry by Virginia Hennessey, Monterey Herald, April 14, 2009)

the criminal prosecution of the perpetrator to any immigration relief that your clients are eligible to receive. This reduces the number of people with whom your clients works, which may be easier for victims emotionally and logistically. Consider whether you will handle the immigration component, co-counsel the immigration case, or refer to a qualified attorney.

We encourage you to cultivate general knowledge of the types of immigration remedies available to your clients so that you know when to make appropriate referrals to immigration attorneys. Here are some of the most common remedies and a brief description of each:

❖ The **U Visa** is for noncitizen victims of certain, designated crimes, including but not limited to rape, sexual assault, abusive sexual contact, sexual exploitation, trafficking and domestic violence. The applicant must have suffered substantial physical or mental abuse as a result of a crime in the United States, possess information about the crime and be helpful to law enforcement. A federal, state or local government official investigating or prosecuting the crime must complete a certification form regarding the crime and helpfulness of the victim. Note that the U.S. Equal Employment Opportunity Commission (EEOC) may complete the certification.

The applications are adjudicated by the U.S. Citizenship and Immigration Services. The U Visa’s duration is four years and provides for work authorization. After the third year in possession of the U Visa, the U Visa holder is eligible to apply for legal permanent residence. See 8 U.S.C. section 1513 (2008). You should note that:

- “Has been helpful” refers to victims who assisted in an investigation or prosecution that is now closed; there is no time limitation on providing a certification for closed cases;
- Law enforcement agencies nationwide are consistently determining “helpful” to have broad meaning, including reporting a crime and answering first responders’ questions;
- The certification is one small but important part of an extensive application that the victim completes and submits. A victim must also meet other eligibility criteria, pass a fingerprint and immigration records check and qualify for a waiver of any immigration violations; and
- Victims cannot submit a U Visa application without the accompanying law enforcement certification; thus, law enforcement plays a critical role.



❖ The **T Visa** is for noncitizen victims of human trafficking, which generally is forced labor, forced prostitution or prostitution of someone under 18 years of age. An applicant must also have complied with reasonable requests in the investigation or prosecution of the trafficking, be present in the United States on account of the trafficking and would suffer extreme hardship if removed from the United States. Federal, state or local law enforcement must complete a certification form regarding the crime and the victim's compliance with reasonable requests. The T Visa's duration is three years and provides for work authorization and public benefits after which time the T Visa holder may apply for legal permanent residence. See 22. U.S.C. sections 7101 – 7102 (2008). You should note that:

- Compliance with “reasonable” requests depends on the totality of the circumstances, such as general law enforcement practices and the victim's fear, maturity and extent of trauma suffered;
- Victims are eligible based on compliance with reasonable requests in the investigation OR prosecution; therefore, a full prosecution is not required. A certification is appropriate even in cases where an investigation is conducted and the trafficker accepts a plea

bargain or if there is insufficient evidence to warrant a prosecution.

- Similar to the U Visa, the certification is just one part of an application that requires the victim to submit extensive corroborating evidence. A victim must also meet other eligibility criteria, pass a fingerprint and immigration records check and qualify for a waiver of any immigration violations; and
- Victims may submit applications without a signed law enforcement certification provided they submit other forms of proof of compliance with reasonable requests for assistance from law enforcement, though your assistance makes the process easier for victims.

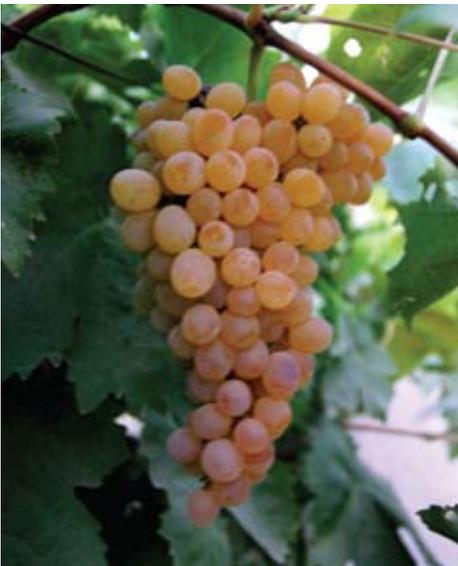
Obtaining U Visa and T Visa certifications can be challenging. Educate the investigating and/or prosecuting agency about the applications, advocate for your client and be persistent.

❖ An **S Visa** is available to noncitizens who have knowledge of criminal activity, are assisting law enforcement with the investigation or prosecution and whose presence in the U.S. is necessary for the case. Unlike the other options presented here, the individual does not apply for this visa; a law enforcement agency applies for it on behalf of the individual.

❖ To qualify for **asylum**, a person must have been subjected to or fears being subject to persecution based on race, religion, nationality, political opinion or membership in a particular social group in their country of origin. Note that the basis for the application is therefore not the sexual violence that has occurred here in the United States. Asylees receive legal permanent residence, work authorization and refugee benefits.

- ❖ The **VAWA Self-Petition** is available to battered immigrant spouses and children of U.S. citizens and lawful permanent residents. It steps in to provide the immigration status the petitioner would have received but for the spouse or parent's abuse and control over the immigration process. Petitioners are eligible to receive public benefits and work authorization and may apply for legal permanent residence.
- ❖ **Special Immigrant Juvenile Status** is available to anyone under 21 who has been declared eligible for long-term foster care and who cannot return to their country of origin. Successful applicants receive legal permanent residence and a host of public benefits and care.
- ❖ **Family-based immigration** may also be an option if the client is an immediate relative of a U.S. citizen, including spouse, child or parent, who is willing to file a Petition for Alien Relative.

Your immigrant farmworker clients may also have general questions about immigration law



and may want to know how reporting or taking action against the perpetrator may affect their immigration status. Generally, the answer will be that reporting or pursuing claims related to sexual assault will not negatively affect a victim's ability to remain in this country or to obtain improved immigration status. However, clients should be advised on a case-by-case basis regarding risks. (The American Immigration Lawyers Association provides an immigration lawyer search online at www.ailalawyer.com or by calling 1-800-954-0254. The National Network to End Violence Against Immigrant Women also provides referrals through <http://www.immigrantwomennetwork.org>. Additionally, check with your state and local bar associations.) Please be aware that only licensed U.S. attorneys or accredited representatives are trained and authorized to represent clients in immigration matters. Beware of immigration "consultants" or "notarios" who often simply complete immigration paperwork for a fee. They may not be licensed attorneys and they may not have knowledge of all of the deportation triggers or legal requirements of the application.

EXERCISE

- ❖ What more do I need to learn to handle a farmworker immigration petition?
- ❖ What basic immigration training is available to me?
- ❖ How are local law enforcement agencies handling U Visa and T Visa applications?
- ❖ Do I have trusted, affordable immigration attorney referrals in place?
- ❖ Do I have trusted, affordable accredited representative referrals in place?

WHAT ARE THE POTENTIAL EDUCATION-RELATED REMEDIES?²⁰

Some farmworkers may attend community colleges, seek a GED, or attend English as a Second Language (ESL) classes. In some instances, sexual violence may be perpetrated by a classmate, instructor or other school personnel, and victims may need legal assistance with the protections and/or remedies available to them through the school, courts and administrative agencies. In other instances, farmworkers may be victims of sexual violence outside the educational setting, but need legal assistance with modifying a class schedule, exam schedule, tuition payment, and other education-related accommodations while healing from the assault.

While the information below supports reporting an incident to an educational institution, it is important to understand that there are many barriers to reporting sexual assault in the educational setting. In some cases, victims' privacy concerns may keep them from wanting to tell anyone at school. In other cases, school policies may require victims to participate in the perpetrator's adjudication if it was a school-related assault. The institution and personnel involved may blame the victim without sufficiently emphasizing the perpetrator's responsibility for committing a crime or its

own responsibility in not preventing the assault from occurring. Influence the schools in your area to adopt written protocols and policies that give victims the choice of participating in adjudication, allow anonymous reporting and provide victim services and coordination with community resources.

Preventing and Responding to Sex Discrimination under Title IX: Schools should be immediately notified of sexual harassment or sexual violence as they have an obligation to intervene to prevent conduct that limits or denies a student's ability to participate in or benefits from the education program. Under Title IX, sexual assault is a form of sexual harassment which is in turn a form of sex discrimination.

❖ The U.S. Supreme Court has recognized a private right to action for monetary relief under Title IX of the Education Amendments of 1972. An action can be brought for harassment of a student by a teacher (*see, Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998)), and also for student on student harassment (*see, Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999)).

- ❖ Victims can also file a complaint with the U.S. Department of Education Office of Civil Rights (OCR). OCR can intervene in cases where there may not be a claim for money damages. See, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, Or Third Parties*, published by OCR in January 2001.

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The Clery Act, 20 U.S.C. § 1092(f)):

Colleges and universities must publish reports with the last three years of crime information on each campus. Schools are also required to notify students of crimes that present an ongoing risk.

- ❖ The Clery Act also requires that each campus have a sexual assault policy that outlines what actions the campus will take when a sexual assault is reported, procedures used and, among other things, the availability of mental health or other student services for victims of sexual assault.
- ❖ Failure to follow the Act does not create a private right of action but will cause an administrative review of the campus policies and possibly can result in sanctions against the campus for failure to follow the Act.

The Family Educational Rights and

Privacy Act (FERPA): FERPA protects a student's educational records. Protection under this law can include two types of information related to sexual violence on or around a school:

1. Information about the victim's complaint when the victim asks that the information be kept confidential; and
2. Information about the disciplinary action taken against the perpetrator.

Typically the rights of the student victim under Title IX and the due process rights of the perpetrator can be interpreted so as not to conflict. You need to be clear about whether your client desires disclosure of information and, if not, how you will protect the information from disclosure.

School Handbooks: School handbooks should contain the sexual harassment and sexual violence policies of the schools and are usually available online or they can be obtained pursuant to a Freedom of Information Request. Work with local education institutions to ensure the policies in the handbook provide clear guidelines and protocol, and have policies and adjudication procedures as well as perpetrator disciplinary provisions that would encourage victims to report the offenses.

Civil Protection Order: In some states, a protection order may be obtained by the victim that includes what is commonly known as a "stay away order." A stay away order can include the home and school of the victim. School personnel should be provided with a copy of the order so that they can assist in the enforcement of the order and call police as necessary.

EXERCISE

- ❖ Which local educational institutions might farmworkers in my area attend?
- ❖ What are their sexual harassment/violence policies and grievance procedures?
- ❖ How can I educate school personnel to be better equipped to work with farmworker victims of sexual assault?

WHAT ARE THE POTENTIAL PUBLIC BENEFITS CLAIMS?

Farmworker victims of sexual violence may be forced into greater poverty by the threat of future violence or by losing financial income or support that was previously available. In these situations, public benefits can be a bridge that allows victims to be safe from continued sexual violence, access needed medical care and gain additional resources and support. Public benefits may be a new concept to some farmworkers; they may require information about the application process and the possible negative immigration impact of accessing certain public benefits. Attorneys should have a working knowledge of the eligibility requirements of each type of public benefit available and be prepared to refer victims to an attorney who specializes in public benefits when necessary.

Please note that the information presented below does not address individuals who may have refugee, asylee and various other immigration statuses. Similarly, many of the benefits listed below have income eligibility that is not described here.

Benefits Available to All Regardless of Immigration Status

- ❖ **Women, Infants and Children (WIC):** Families must have a child less than six years of age to receive free food vouchers and referrals to doctors and clinics.
- ❖ **Minor Consent Services Programs:** Some states have programs that provide services to teenagers from age 12-21 including services related to sexual assault, pregnancy, family planning and sexually transmitted infections. Minor victims should be informed about mandatory reporting laws when seeking such services.
- ❖ **Medicaid:** Each state has slightly different Medicaid programs and eligibility. Many states allow Medicaid coverage for pregnant women regardless of immigration status.
- ❖ **Community Clinics:** Many different forms of health care may be available at low-cost community clinics that are funded locally. Healthcare clinics specific to migrant farmworkers also exist in some communities. Advocates should have knowledge of these facilities, including eligibility requirements, costs involved in obtaining medical care and hours of operation and be prepared to refer clients for services.
- ❖ In addition to the above benefits, many programs allow benefits to be obtained on behalf of qualified minor children, regardless of the parent's immigration status (e.g. cash-aid, general assistance, food stamps).

WARNING!

The receipt of some public benefits may deem the recipient a “public charge” and thereby affect the recipient’s immigration status. Below is general guidance; you should always obtain the advice of an immigration attorney.

- ❖ Typically, use of Medicaid programs or other health services by an applicant or her family members will **not** affect the public charge decision unless the government funds are used to pay for long-term care in a nursing facility.
- ❖ Food stamps, WIC and other non-cash programs will **not** affect the public charge decision.
- ❖ Benefits that provide cash income to the applicant or the applicant’s family **may** affect the public charge decision. Seek further advice from an immigration expert.

Additional Benefits Available to “Qualified” Immigrants and U.S. Citizens

- ❖ **Medicaid:** State Medicaid programs are available to provide coverage for nearly all health-related expenses for eligible applicants. It is important that applicants apply at the time they are receiving services if they do not already have the benefit.
- ❖ **General Assistance/General Relief:** This is a state program typically only available for a short time and to those applicants who have minimal income.
- ❖ **Supplemental Nutrition Assistance Program (food stamps):** Food stamps are used to purchase food items at most grocery stores; they are provided in the form of coupons or an Electronic Benefits Card.
- ❖ **Unemployment Insurance Benefits:** Farmworkers who lose their job due to no fault of their own, including victims who lose their job or are forced out of their work because of sexual violence may be eligible for unemployment insurance benefits.
- ❖ **Mental Health Services, Supplemental Security Income, Cash Assistance Program for Immigrants (CAPI), In Home Support Services:** Many additional services are available to applicants who may be disabled and need special assistance. That can include special services and income supplements.

EXERCISE

- ❖ What public benefits are offered by my state?
- ❖ What are the eligibility requirements?
- ❖ What impact can receiving benefits have on an individual’s immigration application?
- ❖ Are there any provisions related to victims of violence?
- ❖ Where would my clients go to make their applications for benefits? What are the hours of operation? Are interpreter services readily available?
- ❖ To whom in my community can I refer clients for public benefit legal assistance?

HOW CAN I ENSURE EFFECTIVE AND ACCURATE INTERPRETATION?

Establishing effective procedures to minimize language barriers will allow you to maximize your assistance to victims who do not speak English or Spanish well. In order to best serve victims, you must have a deep understanding of what their potential needs are when they seek your help.

Use professionally trained interpreters.

It is never appropriate to use children or other family members as interpreters. It is also unwise

to use other untrained community members as interpreters because of their possible relationship with the perpetrator, the shame and embarrassment involved for the victim, and the community member's potential lack of training on issues involving sexual violence and interpretation.

Locate interpretation resources.

Familiarize yourself with the languages spoken in the community, the agencies or businesses

Tips For Working With Interpreters

Identify a pool of interpreters with whom you:

- ❖ Meet with in advance to ensure that you discuss how the interpretation will be conducted and practice if necessary;
- ❖ Establish a signal that the interpreter might use to ask you to slow down;
- ❖ Decide whether the interpreter must ask first to provide a cultural context or explain afterwards; and
- ❖ Train on sexual violence generally, how to work with a victim and the terminology.

When working with a specific victim and the interpreter:

- ❖ Conduct a conflict check with the interpreter to ensure that the interpreter is not related to the perpetrator or any involved parties; and
- ❖ Arrange for the victim and interpreter to have an opportunity to meet and to speak briefly to ensure that they indeed understand one another.



providing interpretation locally in those languages and the national telephonic services available to provide services in those languages and determine what, if any, training the interpreters may have received on sexual violence.

Know the difference between translation and interpretation. Translation refers to communicating one language into another in a written format. Interpretation is oral communication from one language into another. There are three different types of interpretation: consecutive, simultaneous and relay. Consecutive interpretation occurs when a person speaks and pauses for the interpretation to occur. Simultaneous interpretation has no pause and is therefore occurring on a continual basis. Relay interpretation occurs when more than one interpreter is required such as English to Spanish then Spanish to Mixteco Alto (an indigenous language).

Look for indigenous language interpretation. There can be many different languages spoken within one country. In Mexico and Guatemala, for example, many people speak Spanish. However, there are also many people who speak pre-Columbian indigenous languages.

These languages are commonly referred to as dialects but individuals who speak these languages often feel that the word dialect is pejorative. They speak their own distinct language that is in no way related to Spanish. You need to understand what country they come from, what language they speak and, sometimes, what region of the country they come from to more accurately determine whether they speak a certain dialect. For example, some indigenous people in Mexico speak the language called Mixteco. Depending on where they are from in Mexico, they may speak Mixteco Alto, Mixteco Bajo or Mixteco de La Costa, all of which are dialects of Mixteco. Therefore, determine what language they speak and whether they speak a language other than the predominant language spoken in their country to ensure that the proper interpreter is identified.

Conduct a conflict check. Be sure that the interpreter is not known or associated with the victim or perpetrator in any way. This could compromise the victim's comfort, confidentiality and safety as well as the interpretation.



*“Inside of my chest there is a wound,
but when I am talking about it and getting my feelings out, it feels better.”*

-Olivia Tamayo

(The Green Motel by Rebecca Clarren, Ms. Magazine, Summer 2005)

Work with the interpreter. Talk to the interpreter about what will be discussed during the interview. If the interpreter feels embarrassed by the subject matter, cannot adequately interpret everything said or feels that it is disrespectful to say the words used by the perpetrator, you must find a new interpreter. Additionally, practice working with the interpreter before the session begins. Have victims meet and speak to the interpreter before the proceeding or interview to ensure that they understand each other. If they cannot understand each other, locate a new interpreter.

Allow your interpreter to educate you about cultural context. The interpreter working with you is a valuable resource to aid in your understanding of what the victim is telling you. Literal interpretation or literal translation sometimes leads to misunderstandings and may be insufficient without a cultural context to add the full meaning. If you reach a point in the interview where the victim is not understanding what you are asking or if the victim is not responding to the question you are asking, it may be because literal interpretation is not capturing what you intend to say. Ask the interpreter for any insight into what the issue may be and to help explain the cultural significance of certain statements. Discuss how you might do this in advance.



EXERCISE

- ❖ What are the languages spoken by farmworkers in my area?
- ❖ What agencies or businesses provide interpretation locally?
- ❖ What national telephonic services are available?
- ❖ What training on sexual violence can I offer to the interpreters with whom I work?
- ❖ What other resources are available to me regarding working with interpreters?

HOW DO I CREATE A SAFETY PLAN WITH FARMWORKER VICTIMS OF SEXUAL VIOLENCE?

Creating a plan that will enable victims to be safe from the perpetrator and from potential future harm is vital. Safety planning involves working with victims so that they will know how to react in the moment if confronted with violence. Creating a safety plan does not mean that the victim will not face violence again. Rather, the primary goal is to aid individuals in protecting themselves when and if they are in danger in the future. Some victims may feel constant fear and anxiety over a possible future assault by the perpetrator. Safety planning can reduce fears by providing victims with safeguards that will permit them to feel safe even when they are not directly confronted with a violent situation. Safety plans may also instill a greater sense of calm, and reduce victim reaction time when responding to future incidents of violence. A planned response may also help to prevent future incidents of violence and reduce the level of harm inflicted. Planning for safety may reduce overall fear and restore a sense of control in victims' lives; this can empower victims and aid their healing.

Safety planning with farmworkers is a unique process. Existing safety plans for non-farmworker victims may not be appropriate for farmworkers. Farmworker-specific plans should address the life and work circumstances distinctive to farmworkers and take into account the limited resources available to them. Safety planning with farmworkers may require lengthier discussions, additional questions and more detailed explanations about resources, institutions, legal remedies and processes than safety planning with non-farmworker victims of sexual assault. For example, a non-farmworker client may need to know the location of the nearest bus stop when seeking the best route to safety. A farmworker client, however, may also need to know how to ride the bus, including understanding the routes, the cost and transportation time. In most cases, the communities that farmworkers work in do not have public transportation systems. Therefore, it is necessary to consider additional methods of transportation and discuss how, where and when to access this transportation. You may need to not only determine what transportation assistance is

*“They’re told, “They crew is full today.
But if you come around by my house tonight,
maybe there’ll be work for you tomorrow.”*

-Randy Cecil, Recruiter of the UFW
(Tales from the Green Motel by Margo Harakas)

available but also what assistance the farmworker victim will need in order to learn the process of using public transportation or finding other transportation.

Safety planning means assisting victims in thinking through their response if confronted by the perpetrator in various settings, such as at home, work, in transit or in public. Additionally, it involves helping victims to think through their options related to responding to the violence, including reporting to law enforcement, seeking healthcare, seeking legal assistance, changing employers or moving to a new location. Most safety plans are oral or written, though they can take any format which is most helpful to the victim.

Address safety as soon as possible. It is critical to discuss safety planning as soon as possible. For some organizations, this could be during the intake process while for others it is at the first meeting. Take the time to address safety planning at the first possible moment. The first time you meet with a farmworker victim of sexual violence, including sexual harassment or assault, may be the only opportunity you have to create a safety plan as victims may not return for services or there may be another incident or an escalation of violence between your meetings. Safety planning at the outset may help to interrupt ongoing violence and give victims new tools to help protect themselves and their families. An important first step will be to ask victims if it is safe for them to have evidence of their meeting with you, such as your business



card or the safety plan itself. Ask if there is a safe place away from the perpetrator to keep this information. Giving victims physical materials may place them in greater danger.

Discuss safety. To help explain safety and safety planning to a farmworker victim, consider using the Spanish-language fotonovela created by and for farmworkers that is available in Spanish at www.crla.org/svi. Through photos, the fotonovela tells the story of a young farmworker woman experiencing sexual violence at work and how she reaches out for help to address the violence and feel safe. Use the fotonovela as a discussion piece to begin the conversation and to build trust with victims. Also, convey that every individual has the right to be free from violence and to be safe in their housing, at work, at school and in the community at large.

Customize the safety plan. Aim to customize a safety plan based on the farmworker's unique circumstances and available resources. Each person will present distinctive safety needs and require an individualized safety response. The more knowledgeable you are about farmworkers lives and the barriers they face in accessing resources, the more success you may have at building trust and presenting appropriate safety options. Be aware of the

types of employment, housing and transportation available to farmworkers. Similarly, the more knowledgeable you are about the resources available that are appropriate for farmworkers in your area, the more successful the safety plan is likely to be. For example, know where the nearest sexual violence shelter is located, and if it has language, cultural and transportation capacity to assist farmworkers. Where capacity is lacking or minimal, it is important to work with local shelters to build capacity.

Safety plan with farmworkers who voice concerns about sexual harassment and sexual assault of others so that they have a plan if confronted by the perpetrator.

Be a guide. Remember that you are only a guide in the safety planning process. Present farmworkers with options to address safety concerns and then help them think through the options and make choices that are best for them. As individuals know their own circumstances best, they are in the best position to make decisions for their lives. Be cognizant of any of your own expectations that may arise about how victims "should" respond and focus instead on ways to empower your clients to make their own choices.



Conduct a safety assessment. After explaining safety generally, assess the risk the perpetrator poses to the victim. The level of danger and likelihood of additional harm will influence your response and the safety plan itself. Evaluate the nature and severity of risk by asking questions about the:

- ❖ Threats to victim's physical safety
- ❖ Other threats, such as threats to report a victim to immigration or the police
- ❖ Threats to harm others, such as family members, friends or pets
- ❖ Violence that has already occurred
- ❖ Frequency of incidents
- ❖ Last occurrence
- ❖ Perpetrator's use of weapons
- ❖ Perpetrator's mental health history
- ❖ Perpetrator's use of drugs and alcohol

Use sample questions to guide your discussion.

Below you will find questions designed to help guide your discussion with a farmworker victim to create a safety plan. They help illustrate some of the appropriate topics, questions and options for your discussion on safety with a farmworker under the broad categories of housing, workplace, community, transportation, communication and emergencies. Every question may not be relevant or necessary, nor are the questions exhaustive of all the possibilities. Additional questions may be required to address your client's situation; however, these questions serve as examples and a starting point for your work.

Safe Housing

- ❖ What kind of housing do you live in (labor camp, apartment, house, trailer, motel, outdoors)?
- ❖ With whom do you share your housing? Do you know the people with whom you share your housing? How do you know the people with whom you share housing?
- ❖ How close are you to the nearest town/city?

- ❖ What state is your housing located in? What city is your housing located in? What street is your housing on? At what number? What directions would you give to someone to find your home? Are there any landmarks to help someone find your housing?
- ❖ Is the perpetrator your landlord? The property manager? A roommate? A work supervisor who lives with you or has access to your housing? A co-worker who lives with or near you?
- ❖ Are you safe inside your housing? Do you have windows and doors? Do your windows and doors lock? Do you have lights at your home? Are the lights outside and inside your home? How could you make your housing safer? Can you move something in front of the doors and windows to keep the perpetrator out of your housing in an emergency? Can you speak to the landlord, farmer, or housing owner about helping you to make the housing safer by installing locks and lights?
- ❖ Who are your neighbors? Do you feel comfortable talking with your neighbors? Which of your neighbors would you feel comfortable asking for help?
- ❖ How could you get out if the perpetrator shows up at your house? Is there a back door? Are there windows you could escape through?
- ❖ What transportation is available if you need to leave your housing immediately?
- ❖ Who could you stay with if you need to leave home? Do you have friends or family nearby? Who else in the community do you know and trust? How would you contact them?
- ❖ Where is the nearest shelter for women and children in your area? How would you contact the shelter? Can they come to your house to pick you up in an emergency?
- ❖ If you had to leave your home quickly, what would be important to take with you? What would be hard to replace if you left it there e.g. birth certificate, driver's license, consular



identification (matrícula o cedula), voter registration card, passport, money, children's records, work records?

- ❖ What would your children do in case of an emergency/if they need help? Do they know how to use the telephone and call for help?
- ❖ Do you feel that you could contact the police? How would you contact the police? What could they do to help?
- ❖ Would it be safer to move to new housing? Is this possible? Do you need help finding a new place to stay?

Safe Workplace:

- ❖ Where do you work? In what state? In what city? What's the name of the company? What is the name of your crewleader, contractor or supervisor? Do you have a pay statement or check stub with you that includes the company name and address? Do you have any other papers that the company or your boss has given you that includes the company or contractor's name and address on them?
- ❖ Does the perpetrator work with you?
- ❖ Do you still work there? Does the perpetrator still work there? Do you want to continue working there? What options for alternative work do you have?
- ❖ Does the perpetrator have authority over you (owner or supervisor)?
- ❖ Who else at work knows that you are being sexually harassed/assaulted? How do they know?
- ❖ Did you tell your employer (boss, supervisor, someone in the office)? If not, how would making a report to the employer make you safer or less safe? If yes, what did they say? Did anything change? Do you feel safer or less safe?
- ❖ How often do you see the perpetrator at work? Where do you see the perpetrator?
- ❖ Can you avoid being alone at work? How? Do work with any family members? Who could you work alongside? Is there anyone who can

accompany you to the car or bus, bathroom, lunch break, tool sheds, supply closet? Who can you tell if you are being assigned to work in a remote area so that they can know to look for you if you do not return within a reasonable amount of time? Who can you check in with at a certain time each day?

Safe Community

- ❖ Do you see the perpetrator when you are in the community? Where (at the grocery store, church or school)?
- ❖ Can you avoid seeing the perpetrator in the community? How? How could you change your routine so that you avoid seeing the perpetrator? Could you use different laundromats or grocery stores?
- ❖ Who can go with you when you are out in the community?
- ❖ How else can you keep yourself safe when you are out in the community?
- ❖ How can you ask for help if you are in the community? What language would you use? What words would you use to call out for help?
- ❖ Where could you go to be safe?

Safe Transportation:

- ❖ How do you get from one place to another? How do you get home? How do you get to work? How do you get from one job site to another? How do you get to the store, religious services and laundromat in the community?
- ❖ Is the perpetrator involved in any way in your transportation to work, from work, or at work?
- ❖ Can you drive? Do you have a driver's license? Do you have a vehicle? Do you always have access to your vehicle?
- ❖ Who can drive you in case of an emergency?
- ❖ Who is a safe person who could drive you to work? to the store? to the laundromat?



- ❖ Is there any public transportation where you live, like a bus or a train? Where is the nearest bus/train? Do you know bus/train routes and how to ride the bus/train? Do you know how much it will cost to take the bus or the fare? Do you have a bus/train pass? Do you know how to get a bus/train pass? Do you know the bus/train schedule? Do you know how to call for help at the bus/train stop?
- ❖ What is the number for a taxi or car service in case of emergency?
- ❖ Do you have money set aside to pay for a taxi/bus/driver in an emergency?
- ❖ Have you considered going to your work, housing and the community by taking different routes?

Safe Communication:

- ❖ Do you have a cell phone? (Can you get one by donation?) Do you know how to use it?

Do you know how to retrieve messages from your phone? Can you be sure to keep your battery charged? Could you carry a phone to use for emergency purposes only?

- ❖ Who has a cell phone that you can use near home? At work? In the community?
- ❖ Do you have credits/minutes for your cell phone? Do you have a pre-paid phone card?
- ❖ Do you know what a public telephone looks like? Where is the nearest public telephone to your home, work, or job site? Do you know how to use it?
- ❖ Can you keep a cell phone with you and on at all times, even at work?
- ❖ Do you have cell phone reception at home? At work? In the community?
- ❖ Do you have a list of all the important phone numbers you need (police, shelter, attorney, advocate, taxi, friend)?
- ❖ Are you aware that 911 will call the police? How do you think the police could help you? Would you feel comfortable calling the police?

Emergencies:

- ❖ Who would you call?
- ❖ Where would you go?
- ❖ How would you get there?
- ❖ If you need medical attention where would you go? How would you get there?

Modify the plan frequently. Conduct safety planning with farmworkers on a regular basis—even every time you meet—to evaluate any changes in circumstances that may endanger the victim. Modify the existing safety plan to accommodate changes in work, home, transportation, family and other circumstances as they arise. Victims' safety concerns may change, for example, if they take steps to distance themselves from the perpetrator, pursue civil or criminal legal remedies or disclose to employers, landlords, friends or family.

When safety planning, discuss with victims whether or not it is safe for them to have a copy of the safety plan in their possession.

Assist with implementing the plan.

Farmworker victims may need assistance in implementing their safety plans. Take time to ensure that your client understands the plan and that the information is captured in a way that makes the most sense to the victim. Victims who do not read or write may need an alternative to a written safety plan, such as an oral recording of the information.

The following are ways in which you might further support victims' safety:

- ❖ Offer transportation assistance;
- ❖ Accompany them on public transportation to learn the process and routes;
- ❖ Provide a list of resources, *e.g.* sexual violence shelters, taxi/car services, legal services organizations, farmworker organizations, healthcare providers, law enforcement, public benefits, etc.;
- ❖ Find an advocate/service provider who can help secure related services; food, crisis intervention, and victim witness assistance;
- ❖ Help them to obtain a cell phone or pre-paid phone cards for emergency purposes;
- ❖ Help them learn how to use the cell phone and retrieve messages.
- ❖ Give them a folder in which to store important documents (*e.g.* birth certificate, driver's license, passport, matrícula, cedula, money, children's records, and work records) in a place that is safe from the perpetrator;
- ❖ Explain the purpose and process for obtaining a protection orders and help determine if one is available or advisable under the individual's circumstances (or refer to an appropriate attorney);
- ❖ Refer them to an attorney who can help them protect their employment, housing, education, immigration, public benefits and privacy rights;
- ❖ Advocate with landlords for increased safety measures in housing;
- ❖ Advocate with employers for increased safety measures at work; and
- ❖ Educate social service, legal service and healthcare providers on overcoming barriers to providing services to farmworkers.



EXERCISE

- ❖ How might safety planning be different with farmworker victims of sexual violence than with non-farmworker victims?
- ❖ What training is available or steps are necessary to ensure that everyone within your organization is able to safety plan with farmworker victims?
- ❖ What referrals do you need to have in place to help farmworkers implement their safety plans?

RESOURCES

SEXUAL ASSAULT:

Arte Sana www.arte-sana.com

AEquitas: The Prosecutors' Resource on Violence Against Women www.aequitasresource.org

American Bar Association Commission on Domestic Violence, *Comprehensive Issue Spotting: A Tool for Civil Attorneys Representing Victims of Domestic and Dating Violence, Sexual Assault and Stalking* (2008) available at http://www.abanet.org/domviol/pdfs/Issue_Spotting_FINAL.pdf.

American Bar Association Commission on Domestic Violence, *Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases* (2007) available at <http://www.abanet.org/domviol/docs/StandardsCommentary.pdf>.

Connecticut Sexual Assault Crisis Services, *An OVC Online Guide: Strengthening Sexual Assault Victims' Right to Privacy* (April 2009) available at <http://www.ojp.usdoj.gov/ovc/publications/infores/VictimsRightToPrivacy/welcome.html>.

D. Beloof, J. Mindlin, and L. Reeves, *A Criminal Justice Guide: Legal Remedies for Adult Victims of Sexual Violence* (2005) available at <http://legacy.lclark.edu/org/ncvli/signin.html> (Sign in and then access the library).

Jessica E. Mindlin, Esq. & Liani Jean Heh Reeves, Esq., *Confidentiality and Sexual Violence Survivors: A Toolkit for State Coalitions* (2005) available at www.lclark.edu/org/ncvli/objects/L&C77576confidentialitybook.pdf

Jessica E. Mindlin, Esq. & Liani Jean Heh Reeves, Esq., *Rights and Remedies: Meeting the Civil Legal Needs of Sexual Assault Survivors* (2005) available at <http://legacy.lclark.edu/org/ncvli/signin.html> (Sign in and then access the library).

National Sexual Violence Resource Center www.nsvrc.org

Southern Poverty Law Center, *Representing Farmworker Women Who Have Been Sexually Harassed—A Best Practices Manual* (2008). Call 1-800-591-3656 to order.

Victim Rights Law Center, *Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims* (2008) available at <http://www.victimrights.org/pdf-manual/beyondthecriminaljusticesystem.pdf>.

EDUCATION:

Handbook for Campus Crime Reporting, published by the Dept. of Education (2005).

Victim Rights Law Center, "The Education Rights of Adult Sexual Assault Survivors," Chapter 9 of *Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims* (2008) available at <http://www.victimrights.org/pdf-manual/beyondthecriminaljusticesystem.pdf>.

EMPLOYMENT:

Legal Momentum, *State Law Guide: Employment Rights for Victims of Domestic or Sexual Violence* (April 2009 and updated online) available at <http://www.legalmomentum.org/assets/pdfs/employment-rights.pdf>.

National Employment Law Project www.nelp.org

U.S. Equal Employment Opportunity Commission www.eeoc.gov

U.S. Department of Labor www.dol.gov

RESOURCES

Victim Rights Law Center, “Sexual Assault Victims’ Employment Rights,” Chapter 10 of *Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims* (2008) available at <http://www.victimrights.org/pdf-manual/beyondthecriminaljusticesystem.pdf>.

FARMWORKERS:

Association of Farmworker Opportunity Programs www.afop.org

Catholic Migrant Farmworker Network www.cmfn.org

Dolores Huerta Foundation www.doloreshuerta.org

Farm Labor Organizing Committee www.floc.com

Farmworker Justice www.fwjustice.org

Frente Indígena Oaxaqueño Binacional www.fiob.org

Líderes Campesinas www.liderescampesinas.org

National Farmworker Ministry www.nfwm.org

Rural Migration News <http://migration.ucdavis.edu/rmn>

United Farm Workers at www.ufw.org

U.S. Department of Labor, *National Agricultural Workers Survey* (1989-2006) available at www.doleta.gov/agworker/naws.cfm.

HEALTH:

California Rural Legal Assistance’s Agricultural Worker Health Project at www.agworkerhealth.org

Health Outreach Partners at www.outreachpartners.org

Migrant Clinicians Network at <http://migrantclinician.org> with a directory of migrant health centers at www.migrantclinician.org/healthcenters/healthcenterdirectory.php

Migrant Health Promotion at www.migranthealth.org

National Center for Farmworker Health www.ncfh.org

Occupational Safety and Health Administration www.osha.gov

International Association of Chiefs of Police, *The Crime of Human Trafficking: A Guide to Identification and Investigation* at <http://www.theiacp.org/PublicationsGuides/ResearchCenter/Publications/tabid/299/Default.aspx?id=1001&v=1>

HOUSING:

Legal Momentum, *State Law Guide: Housing Protections for Victims of Domestic or Sexual Violence* (May 2009 and updated online) available at <http://www.legalmomentum.org/assets/pdfs/housing-1.pdf>.

Victim Rights Law Center, “Housing Rights of Sexual Assault Victims,” Chapter 11 of *Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims* (2008) available at <http://www.victimrights.org/pdf-manual/beyondthecriminaljusticesystem.pdf>.

RESOURCES

IMMIGRATION:

See the following websites for manuals, webinars, conferences and technical assistance on the immigration relief presented in this guidebook. Note that ASISTA is an OVW-funded technical assistance provider:

ASISTA www.asistahelp.org

American Immigration Lawyer's Association www.aila.org

Catholic Legal Immigration Network www.cliniclegal.org

Immigrant Legal Resource Center www.ilrc.org

Legal Momentum's Immigrant Women Program
www.legalmomentum.org/our-work/immigrant-women-program

National Network to End Violence Against Immigrant Women www.immigrantwomennetwork.org

Victim Rights Law Center, "Serving Non-Citizen Victims of Sexual Assault," Chapter 8 of *Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims (A Practical Guide for Attorneys and Advocates)* at www.victimrights.org.

Victim Rights Law Center, "Understanding Victims' Medical Needs: The Medical and Forensic Examinations" and "Victims' Mental Health Issues: What They Are and Why They Matter to Providing Effective Victim Advocacy and Legal Representation," Chapters 5 and 6 of *Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims* (2008) available at <http://www.victimrights.org/pdf-manual/beyondthecriminaljusticesystem.pdf>.

LANGUAGE ACCESS:

The Interpretation Technical Assistance Resource Center at the Asian & Pacific Islander Institute on Domestic Violence is an OVW-funded technical assistance provider.

www.apiahf.org/index.php/programs/domestic-violence/interpretation—language-access.html

PRIVACY:

Connecticut Sexual Assault Crisis Services, *An OVC Online Guide: Strengthening Sexual Assault Victims' Right to Privacy* (April 2009) available at <http://www.ojp.usdoj.gov/ovc/publications>

Victim Rights Law Center, "Privacy: A Pre-eminent Concern for Sexual Assault Victims," Chapter 3 of *Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims (A Practical Guide for Attorneys and Advocates)* at www.victimrights.org.

Jessica E. Mindlin, Esq. & Liani Jean Heh Reeves, Esq., *Confidentiality and Sexual Violence Survivors: A Toolkit for State Coalitions* (2005) available at www.lclark.edu/org/ncvli/objects/L&C77576confidentialitybook.pdf

ENDNOTES

¹Maria M. Dominguez, *Sex Discrimination & Sexual Harassment in Agricultural Labor*, 6 Am. U. J. Gender & Law 231, 255 (1997); see also Richard Kamm, *Extending the Progress of the Feminist Movement to Encompass the Rights of Migrant Farmworker Women*, 75 Chi.-Kent L. Rev. 765, 774-75 (2000).

²William R. Tamayo (2000), *The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, 33 U.C. DAVIS L. REV. 1075, 1080 (2000).

³D.G. Kilpatrick, C.N. Edmunds, & A.K. Seymour, *Rape in America: A Report to the Nation* (1992).

⁴Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1802 (2008).

⁵U.S. Department of Labor, Office of the Assistant Secretary for Policy, Office of Programmatic Policy, *Findings from the National Agricultural Workers Survey (NAWS) 2001–2002: A Demographic and Employment Profile of United States Farm Workers*, Research Report No. 9. (Mar.2005).

⁶World Health Organization, *World Report on Violence and Health* 157 (2002) available at http://www.who.int/violence_injury_prevention/violence/world_report/en/.

⁷Rape, Abuse & Incest National Network Statistics at www.rainn.org/statistics.

⁸The Williams Institute, *Census Snapshot: United States* (Dec. 2007) available at <http://www.law.ucla.edu/williamsinstitute/publications/USCensusSnapshot.pdf>.

⁹Villarejo, D., Baroln, S.L. *The Occupational Health Status of Hired Farmworkers*, OCCUPATIONAL MEDICINE: STATE OF THE ART REVIEWS, 14, 613-635 (1999).

¹⁰Judith Herman, M.D., *Trauma & Recovery: The Aftermath of Violence-From Domestic Abuse to Political Terror* (Basic Books: 1997).

¹¹The Victim Rights Law Center (VRLC) provides OVW grantees and sub-grantees free technical assistance and training on issues related to victim privacy. VRLC is the only non-profit organization in the United States dedicated exclusively to representing victims of non-intimate partner sexual assault. For more information, please contact the VRLC directly at TA@victimrights.org or by calling the VRLC Portland office at 503-274-5477 or the VRLC Boston office at 617-399-6720.

¹²As of January 5, 2009, under VAWA (Violence Against Women Act) and STOP (Services, Training, Officers and Prosecutors) grants, sexual assault victims can undergo a SAFE examination and have the cost of the exam paid for by the governmental entity whether or not the victim chooses to cooperate with law enforcement or the criminal justice system.

¹³This information is adapted from materials prepared and distributed by VRLC and is used here with VRLC's permission. Additional resources or information may be accessed on the Victim Rights Law Center website at www.victimrights.org.

¹⁴Contact the National Network to End Domestic Violence at 202-543-5566 and <http://www.nnedv.org> for sample VAWA compliant forms.

¹⁵This information is adapted from materials prepared and distributed by VRLC and is used here with VRLC's permission. Additional resources or information may be accessed on the Victim Rights Law Center website at www.victimrights.org.

ENDNOTES

¹⁶INA §287(g). For a list of jurisdictions that have signed these agreements, see http://www.ice.gov/pi/news/factsheets/section287_g.htm.

¹⁷Violence Against Women: *The Response to Rape: Detours on the Road to Equal Justice*, Report Majority Staff of the U.S. Senate Judiciary Committee, 103 Congress, May 1993. Although these statistics are from 1993, there has been no updated study that suggests that criminal justice system outcomes have improved.

¹⁸Timelines for conducting and completing these exams vary by case and jurisdiction. Please visit the International Association for Forensic Examiners at <http://www.iafn.org> for protocols governing the exams.

¹⁹U.S. Equal Employment Opportunity Commission, Charge Statistics from FY 1997 through FY 2008, available at <http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>.

²⁰Depending on the circumstances, in the school context, victims may have enforceable rights/remedies under Individuals with Disabilities Education Act, Section 504, (20 USC 794), and the No Child Left Behind Act of 2001, 20 USCA § 6301, § 9532 (2002).

FARMWORKER SEXUAL VIOLENCE TECHNICAL ASSISTANCE PROJECT PARTNERS

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Salinas, CA 93905
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Fax: 831-757-6212
Toll-free number: 1-800-677-5221
www.crla.org

VICTIM RIGHTS LAW CENTER, PORTLAND OFFICE

520 SW Yamhill, Suite 200
Portland, OR 97204
Phone: 503-274-5477
Toll-free number: 1-877-758-8132
www.victimrights.org

ESPERANZA: THE IMMIGRANT WOMEN'S LEGAL INITIATIVE OF THE SOUTHERN POVERTY LAW CENTER

233 Peachtree Street, Suite 2150
Atlanta, GA 30303
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<http://www.splcenter.org>

LIDERES CAMPESINAS

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HELP IS AVAILABLE.

See our website at crla.org/svi for more resources and information on how we can support your work to assist farmworker victims of sexual violence.