The ABCs of Oregon Legal Services: Accessibility, Barriers, and Challenges

Thursday, June 14, 2018
9 a.m.–12:15 p.m.

3 Access to Justice* or General CLE credits

*This program meets the Introductory Access to Justice requirements for new admittees under MCLE Rule 3.3(b).
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SCHEDULE

8:30  Registration

9:00  Economic Status
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  ✦ Impact of poverty on legal needs
  ✦ Oregon State Bar values and commitment to civil legal aid
  ✦ Access to lawyers and the courts for low income populations
  ✦ Types of civil cases statewide
  Janice Morgan, Legal Aid Services of Oregon, Portland
  Maya Crawford Peacock, Campaign for Equal Justice, Portland
  Holly Puckett, Campaign for Equal Justice, Portland

10:15  National Origin and Barriers to Accessing Justice
  ✦ National origin types and immigration law
  ✦ The intersectionality of state and federal laws
  ✦ Victims’ rights and the disconnect between state and federal courts
  Chanpone Sinlapasai, Marandas & Sinlapasai PC, Lake Oswego

11:15  Break

11:30  Gender Identity and Sexual Orientation
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  ✦ Creating and maintaining a culturally competent and accessible practice environment
  ✦ Addressing anti-LGBT bias from an opposing party
  Jonathan Patterson, Compassion & Choices, Portland
  Percy Wise, Portland

12:15  Adjourn
FACULTY

Janice Morgan, Legal Aid Services of Oregon, Portland. Ms. Morgan is the Executive Director of Legal Aid Services of Oregon (LASO). LASO is a statewide nonprofit organization whose mission is to achieve justice for the low-income communities of Oregon by providing a full range of the highest quality civil legal services. Before becoming Executive Director in 2012, Ms. Morgan was the Director of the Farmworker Program at LASO, and prior to that she directed of LASO’s low-income taxpayer clinic. She has served on the Oregon State Bar Pro Bono Committee and its Advisory Committee on Diversity and Inclusion. She has also served on the boards of directors of several nonprofit organizations that provide services to low-income individuals and has been a member of several professional organizations, including Oregon Women Lawyers.

Jonathan Patterson, Compassion & Choices, Portland. Mr. Patterson is the staff attorney at Compassion & Choices, the nation’s oldest and largest nonprofit organization dedicated to improving care and expanding choice at the end of life. He provides consultation for a wide variety of legal matters, including the issues of unwanted medical treatment, medical aid in dying, and end-of-life decision-making. He is very active in the Oregon legal community. He is chair of the Advisory Committee on Diversity and Inclusion, immediate past chair of the Oregon State Bar Diversity Section, and past president of the National Bar Association Oregon Chapter, Oregon’s membership group for African-American attorneys, judges, law students, and supporters. He is a recipient of the Oregon New Lawyers Division Advancing Diversity Award.

Maya Crawford Peacock, Campaign for Equal Justice, Portland. Ms. Crawford Peacock is the Executive Director of the Campaign for Equal Justice. Prior to heading the CEJ, she was the Statewide Pro Bono Manager for Legal Aid Services of Oregon (LASO), where she coordinated pro bono initiatives for Oregon’s statewide legal services programs. She is a member of the Oregon Women Lawyers Board of Directors and the Multnomah Bar Association Diversity, Equity & Inclusion Committee.

Holly Puckett, Campaign for Equal Justice, Portland. Ms. Puckett is the Associate Director of the Campaign for Equal Justice. She previously worked in law firms in Alabama and Portland, focusing on family law, juvenile law, and complex civil litigation. Her background is in nonprofit work, primarily aimed at improving the living conditions for minorities and vulnerable populations. She is a member of the OSB House of Delegates, representing Region 5.

Chanpone Sinlapasai, Marandas & Sinlapasai PC, Lake Oswego.

Percy Wise, Portland. Mr. Wise is an Oregon lawyer, a mortgage loan officer, and a community organizer. Mr. Wise is a transgender man, a veteran of the HIV/AIDS and LGBT civil rights movements, and a recipient of the Oregon State Bar Diversity Champions Award.
Chapter 1
Access to Justice in Oregon

JANICE MORGAN
Legal Aid Services of Oregon
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MAYA CRAWFORD PEACOCK
Campaign for Equal Justice
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Chapter 1—Access to Justice in Oregon

Legal Aid Success Stories

Noelle’s daughter Poppy was born with Apert’s Syndrome, a rare and complex condition that caused her fingers to be fused together. For Poppy to have full use of her hands, she needed very specialized reconstructive surgery. Noelle connected with a surgeon in Boston who specializes in this type of surgery and who was confident that he could give Poppy ten working fingers. But Noelle’s health plan provider denied the request to use this specialist, citing the cost, and insisted that Noelle use a local surgeon. None of the experienced hand surgeons in Oregon felt confident that they could give Poppy ten fingers. The cycle of requests, denials, and appeals for Poppy’s essential surgery went on for three years, despite the Boston specialist waiving his fees to make the surgery less expensive. Noelle desperately wanted Poppy to have ten working fingers before she began kindergarten, and time was running out.

Luckily, Noelle found legal aid, and they began to work on the next appeal together. Having an attorney step in to ask questions, request documents, and review processes made all the difference. Just before the appeal hearing, the health plan changed course and gave full permission for the surgery on the East Coast.

Now Poppy is thriving with ten fully functional fingers, just in time to start school. To celebrate the one-year anniversary of the surgery, Noelle and Poppy threw a “birthday party” for Poppy’s hands and invited their legal aid lawyer to join the celebration.

Julie and Kevin are hardworking parents of four. Their youngest, twin boys, were both born with serious heart problems. Even with two working parents, the family lives on the edge of poverty because of medical costs. Fortunately, they receive help from the Oregon Health Plan (OHP). Things started to unravel when the hospital billed Julie, instead of OHP, for an expensive procedure. Julie contacted the hospital many times to explain that the bill should go to OHP, but the hospital ignored her, and then called a collection agency. Frustrated and unable to get results on her own, Julie finally turned to legal aid. Once legal aid got involved, the hospital called off the collection agency, protecting the family from extreme financial hardship.

Legal aid received a call from two community partners about the same problem: a housing complex where the tenants were suffering because the apartments were unsanitary and unsafe. Legal aid met the clients at their homes, and found that there were 8 units in this complex that all had similar problems suggesting that the landlord had not kept up on repairs: extensive mold around exterior walls of most rooms; water damage from leaking toilets; rusted heaters and ovens; leaking fridges; filthy old carpets; and extensive cockroach and spider infestation.

The families did not ask for help or complain to their landlord because they didn’t know that they had a right to live in a safe home with a basic standard of livable repair. They were all refugees – an ethnic minority that was persecuted in their own country that fled to the United States for safety. For most of these clients, their only experience with anything like a landlord-tenant relationship was being in a refugee camp. Some feared that they would be attacked or killed if they complained to the landlord, and none felt they could afford to live anywhere else.

Legal aid tried to work with the landlord. However, the landlord’s disregard for the tenants seemed deliberate – they did not step up and do the right thing, even when they were advised of their responsibilities. Legal aid then filed suit against the landlord and reached a settlement prior to court. The families immediately got some relief from these unacceptable conditions. There is still a long road ahead for them to acclimate and to feel safe, but positive steps have started – with legal aid’s help, their voices were heard and their rights respected.

Lynette is a 44-year-old busy single mom of a 17-year-old daughter. When she had difficulty breathing and started to have chest pains, she went to the hospital where she was admitted to the intensive care unit. She needed oxygen and breathing treatments and then was able to return home. Lynette was low-income and covered under the Oregon Health Plan and thought that would take care of the bill. She was surprised when she got a bill from the hospital and later a collections agency saying that some of the treatments weren’t covered. Lynette’s income covered her rent, utilities and groceries, with almost nothing left over and it would have been impossible to pay the hospital bill and stay current on other bills. She called legal aid, and the attorney worked things out with the hospital. Lynette said, “Legal aid was a godsend to me and I’m not sure what I would have done if they hadn’t been there to help.”
Chapter 1—Access to Justice in Oregon

ACCESS TO JUSTICE IN OREGON

I. Introduction

Legal aid provides free civil legal services to low-income and elderly Oregonians. Legal aid plays a critical role in providing access to justice and a level playing field for low income people statewide. Civil legal aid helps people protect livelihoods, health, and families: veterans denied rightfully earned benefits, women trapped in abusive relationships, and families facing wrongful evictions and foreclosures.

About 34% of the cases are family law cases, usually helping the victims of domestic violence to obtain and enforce restraining orders and create a stable home environment for their children. Recent studies have shown that access to legal services is essential in the process of ending domestic violence. Our legal system is complex, and courts can be like a maze for non-lawyers. Without lawyers, people cannot meaningfully access the legal system to present meritorious claims and defenses.

Civil legal aid makes it easier to access information - whether through easy-to-understand forms, including online forms; legal assistance or representation; and legal self-help centers - so people can know their rights. Civil legal aid also helps streamline the court system and cuts down on court costs. When we say the Pledge of Allegiance we close with “justice for all.” We need programs like civil legal aid to ensure that the very principle our founding fathers envisioned remains alive: justice for all, not just the few who can afford it.

Lawyers know first-hand the value and necessity of quality legal representation. Lawyers see victims of domestic violence, abused children and families losing their homes all too frequently because they cannot afford a lawyer. Lawyers have a professional responsibility to help others in our community gain access to the justice system to protect their rights, their freedom, their homes, their livelihood, and their families. Research in Oregon shows that we now have resources to address only 15% of the civil legal needs of the poor. This is a justice gap and it is too much of a crisis for lawyers not get involved. There are ways that lawyers and other civic minded Oregonians can make a difference in access to justice.

This handout addresses several questions:
- What are the civil legal needs of low-income Oregonians?
- Where is legal aid located?
- Who is eligible for legal aid?
- How does legal aid help?
- How is legal aid funded?
- How can we close the funding gap?

A Brief History of Legal Aid in Oregon: Legal aid in Oregon began in 1936 in Multnomah County. It was started by Oregon lawyers. In 1971, at the request of Governor Tom McCall, the Oregon State Bar conducted the first statewide legal needs study which led to the formation of a statewide legal aid program.

Oregon’s legal aid programs consist of two statewide programs, Legal Aid Services of Oregon (LASO) and the Oregon Law Center (OLC); and one countywide program, the Center for Non-Profit Legal Services (CNPLS) in Medford. Services are provided to low-income clients through community-based offices located in 17 communities throughout Oregon.
II. **What Are the Civil Legal Needs of Low-Income Oregonians?**

**Substantive Areas of Need**

- **General Low-Income Population Needs**
  - Family, housing, employment, public services (mostly police issues), and consumer problems were the most commonly reported legal problems.
  - Public benefits problems were also commonly reported.
  - Discrimination problems were common and overlap other categories.

- **Specific population needs – see client stories (attached)**
  - Homeless people had greater than average problems with
    - public services (mostly police issues), housing, employment, family law, torts/insurance, public benefits, and discrimination based on disability
  - Domestic violence survivors had greater than average problems with
    - family law, public services (mostly police issues), housing, consumer, and public benefits
  - African Americans had greater than average problems with
    - public services (mostly police issues), housing, consumer, and education
  - Native Americans had greater than average problems with
    - Native American-specific issues (e.g., problems with federal government agencies related to tribal issues), public services (mostly police issues), discrimination, employment, consumer, public benefits, health, torts, education, and institutional issues
  - Latinos had greater than average problems with
    - Discrimination, immigration
  - Physically disabled people had greater than average problems with
    - Health, public benefits, consumer, wills and estates, and disability discrimination
  - Elderly people had greater than average problems with
    - wills and estates, and elder abuse and neglect

*Sources: Legal aid’s 2016 Strategic Plan and the Campaign for Equal Justice’s 2014 Task Force on Legal Aid Funding took a comprehensive look at legal needs and resources for legal aid programs. These efforts build on the Legal Needs Study conducted in 2000 by the Oregon Judicial Department, the Oregon State Bar and the Office of Governor Kitzhaber.*

**Critical Findings and Updates**

- About 850,000 Oregonians meet the income requirements for legal aid.
- According to national standards, the minimally adequate level of staffing for legal aid is two legal aid lawyers for every 10,000 low-income Oregonians. Oregon is far from the targeted goal, with two legal aid lawyers for every 17,000 people who qualify for their help.
- There are currently about 100 legal aid lawyers in Oregon.
In Oregon, generally, there is one lawyer for every 340 people.

Legal aid lawyers make up less than 1% of Oregon State Bar.

About 70% of people who were denied help from legal aid had negative feelings about the legal system. Being represented by a legal aid lawyer made feelings about the system much more positive—69% of people who were represented by legal aid reported positive feelings about the legal system—regardless of the outcome of the case.

Oregon’s legal aid programs balance 80 different sources of funding, and funding from most sources declined during the recession.

It is estimated that Oregon’s legal aid programs have resources to meet 15% of the legal needs of the poor.

In 2018, legal aid attorneys will serve about 22,000 clients in Oregon. Legal aid stretches limited resources by providing self-help materials and through pro bono programs. OregonLawHelp.org, legal aid’s educational website, had more than 130,000 unique visitors and almost 145,000 legal education materials downloaded.

About 80% of legal aid’s clients are women—most with children to support.

**Frequency of civil legal problems for the poor**

Low-income people have more civil legal problems, a different distribution of legal needs, are less likely to seek legal help for legal problems and have a lesser ability to access the legal resources used by the general population. While legal aid is the only option for the more than 850,000 Oregonians in this situation, it has the capacity to meet than 15% of the existing need.

- Low-income people have legal problems more often than the general population
  - The average household has 1.9 legal problems per year, with 2.3 substantive issues.
  - But low-income people—specifically homeless people, domestic survivors, farm workers, Native Americans, and people living in institutions—have an average of 5 problems per year with 7 substantive issues.
    - DV survivors alone, who make up a very large percentage of legal aid’s clients, track that average almost exactly.
- **An example of how multiple legal problems may impact low-income people.** For example, Sarah is low-income and married to Ralph and they have two children. Ralph has a long history of domestic abuse. When Sarah fears for her life and the safety of her children, Sarah finds a shelter she can go to with the children, but because Ralph knows where she works, he will stalk here there as he has done in the past. So, she instead moves to the coast to stay with relatives while she looks for work there - hoping Ralph will not find her. Here are the legal problems she will be facing: obtaining a restraining order against Ralph (or appearing at a restraining order hearing if Ralph contests it). She will likely need to apply for unemployment while she is looking for work. If her unemployment is denied, she may need legal representation. She may eventually need help with a divorce and issues relating to visitation with children and child custody. Often domestic violence survivors need help with employment related issues and housing related issues.

**Reasons Why Poor Oregonians Do Not Seek Legal Help**

- The biggest reason why respondents in the survey did not seek legal help was the belief that nothing could be done about their legal problem (17%).
• Other reasons included the beliefs that:
  o The problem is not a legal one (i.e., no law/right has been violated);
  o There is nowhere to get help;
  o It is too hard to get help;
  o It will be too expensive (even though most of those surveyed were eligible for free help).
• All of those indicate a need for outreach and education about legal aid.

III. Where is Legal Aid Located?

Oregon’s legal aid programs

• Legal Aid Services of Oregon (LASO) (statewide)
• Oregon Law Center (OLC) (statewide)
• Center for Non-Profit Legal Services (Jackson County)

Location of Offices

There are legal aid offices in 17 communities in Oregon, including satellite offices (St. Helens and McMinnville), and these offices serve all 36 Oregon counties.

• Civil legal aid offices are located in areas based on population – many offices are along the I-5 corridor.
• Offices are placed so that low-income Oregonians have relatively equal access to justice throughout the state.
• A problem presented in this office planning/placement is that legal aid has staffing shortages and it is difficult for a small staff to cover the large geographic service areas that makes up much of the state. For example, the Ontario service area is the size Massachusetts and Connecticut combined. With current funding, only two attorneys staff the Ontario office to serve clients in this region.
IV. Who is Eligible for Legal Aid?

As a general rule, all clients must have gross income under 125% of the federal poverty level in order to receive services. In some cases, clients with a higher gross income may be served if they have unusually high expenses in certain areas, like medical bills.

2018 Federal Poverty Measures

<table>
<thead>
<tr>
<th>Number in Family</th>
<th>125% of Federal Poverty Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$15,175 per year $1,266 per month</td>
</tr>
<tr>
<td>2</td>
<td>$20,575 per year $1,715 per month</td>
</tr>
<tr>
<td>3</td>
<td>$25,975 per year $2,165 per month</td>
</tr>
<tr>
<td>4</td>
<td>$31,375 per year $2,615 per month</td>
</tr>
</tbody>
</table>

The federal government’s measure of poverty was developed in the 1960s and was tied directly to the costs of food. It is widely accepted that this measure is not accurate, and that 125% of poverty is the income limit for many federal programs. To see an alternate perspective on how much a family needs to survive, see the MIT Living Wage Calculator with details specific to each County and Metropolitan Statistical Area for the state of Oregon at [http://livingwage.mit.edu/states/41/locations](http://livingwage.mit.edu/states/41/locations).

Poverty Facts

- The poverty rate in Oregon dropped to 15.4 in 2015, Census data showed, a decline of 1.2 percentage points from the prior year. By comparison, the poverty rate in Oregon stood at 12.9 percent in 2007, before the start of the Great Recession. (Source: Oregon Center for Public Policy analysis of 2015 PSU Population Research Center and American Community Survey Data)

- Child poverty, however, remained stubbornly elevated. The poverty rate for children in 2015 was not statistically different from 2014. About 1 in every 5 Oregon children lived in poverty in 2015. (Id.)

- There are an estimated 850,000 Oregonians who meet legal aid income eligibility criteria. This number has remained steady since the Recession, even though there have been signs of economic recovery and improvements in other segments of the population. (2016 Statewide Legal Aid Strategic planning process findings)

- The growth rate for the population eligible for legal aid was higher in some and lower in other regions within Oregon over the past decade, too. There are counties with deep poverty (25% of the population of more) throughout Oregon: in the Willamette Valley, in central, southern and eastern Oregon and on the coast. There are counties with large numbers of income-eligible individuals (25,000 or more) along the I-5 corridor, from Multnomah County in the north to Jackson County in the south. Oregon now faces an affordable housing crisis statewide. (Id.)
• Poverty is higher for minority groups in Oregon: 22.1% for Native Americans; 22.6% for Latinos; 27% for African Americans. The poverty level for white Oregonians is 11.1%. (2016 share of Oregonians living in poverty by race or ethnicity. Source: Oregon Center for Public Policy analysis of American Community Survey.)

• It is difficult to estimate the low-income farmworker population but estimates in Oregon suggest there are 160,429 farmworkers and household members of farmworkers. (This figure was taken from the “Oregon Update Migrant and Seasonal Farmworker Enumeration Profiles Study,” May, 2013 by Alice C. Larson, PhD.)

• The number of Oregon families receiving food stamps increased by nearly 60% between July 2008 and November 2011.

• Unemployment creates a greater need for civil legal services, as more Oregon families confront domestic violence, foreclosure, lack of medical care, difficulty accessing benefits and other similar issues.

• A 2014 study showed that a person must work 72 hours per week, 52 weeks a year at minimum wage to afford the fair market rent of $846 per month in Oregon.

• From early in the economic recovery (2009-12) to more recently (2013-16), food insecurity in Oregon increased 18.4 percent. Over the same time period, food insecurity nationally decreased by 6.8% percent. Families affected by food insecurity found it hard to put food on the table, often not knowing where their next meal was going to come from. For some of these families, their food insecurity was so severe it qualified as “hunger.” These families skipped meals or ate too little because they were not able to afford ample food. In 2012-14, 6.3 percent of Oregon households experienced hunger. From 2010-2012, the increase in food insecurity in Oregon was the second highest increase among all states and the District of Columbia, exceeded only by Louisiana. From 2013-2015, the increase has been the highest in the nation. (Oregon’s Spike in Food Insecurity Worst Among All States. Source: Oregon Center for Public Policy, November, 2016)

V. How Does Legal Aid Help?

Priority Setting

The Oregon State Bar Legal Services Standards and Guidelines help ensure that Oregon has a statewide system of legal services centered the needs of the client community. Oregon’s legal aid programs seek input from judges, lawyers, community service providers and other non-profit organizations in determining the legal needs of low-income individuals in each particular community. Because legal aid is unable to provide services to all of those who seek services (or even a substantial majority), they must prioritize those areas of highest need.

Efforts to Meet Critical Civil Legal Needs

The Oregon State Bar Legal Services Program “works to ensure that the delivery of services is efficient and effective in providing a full spectrum of high quality legal services to low-income Oregonians.” Oregon Legal
Key elements of the OSB standards include:
- “An integrated, statewide system of legal services...that eliminates barriers...caused by maintaining legal and physical separation between providers”
- “Centered on the needs of the client community”
- “Efficient and effective” by deploying limited resources in a manner that maximizes the system’s ability to provide representation...”
- “Full spectrum of legal services...The broadest range of legal services required to serve the needs of clients.”
- “High quality legal services”

Services are typically focused on critical civil legal needs, like food, shelter, and physical safety.

2017 Case Types (see graph)

- Legal aid stretches limited resources in several ways:
  - Telephone advice hotlines
  - Special purpose clinics
  - Pro bono recruiting and coordination
  - Self-help booklets
  - Classes to help prevent legal problems and also to help some clients to act on their own behalf in areas like uncontested divorce.
  - Many materials published by legal aid are located at www.oregonlawhelp.org.
• Outreach to low-income clients, for example to Native Americans or the elderly, encourages people isolated by distance or circumstances to ask legal aid for help.

• Approximately 80% of cases are “advice, counsel, brief or limited service.” This includes advising clients about steps and options, drafting letters, making phone calls and taking other non-litigation services.

Statewide Strategic Planning
Legal aid completed a strategic plan in 2016. Representatives from a broad range of interested stakeholders worked on the Strategic Planning Committee reviewing client demographics, community based needs assessments from across Oregon, client needs, client priorities, client services, case opening and case closing statistics, client communities, current staffing, current distribution of revenue, current placement of offices, service delivery structures used in Oregon, and emerging service delivery structures being studied and tested in Oregon and across the United States. Legal aid managers provided information throughout the process. The Committee made findings about identifying client needs and how to best deploy scarce resources in a manner that maximizes the system’s ability to efficiently and effectively respond to the most important legal needs.

Other Types of Cases
Legal aid assists low income people with a full spectrum of high priority civil legal problems. See the client stories on the first page for a few success stories or go to www.cej-oregon.org/success.shtml. Here are a few examples of the ways in which legal aid staff work and impact the lives of low-income Oregonians:

• Work with client communities, judges, lawyers and social service organizations to set case acceptance priorities that include civil legal matters related to basic needs like food, shelter, medical care, income maintenance and physical safety.
• Prevent homelessness by providing advice and representation to tenants and low-income clients who are impacted by foreclosures.
  o Work with housing authorities and private landlords to provide trainings for housing authorities, landlords and tenants impacted by changes in the law regarding Section 8 vouchers in private apartment buildings.
  o Help resolve problems with administrative agencies and prevent a further slide into poverty.
  o Help disabled and seniors get and keep assisted housing.
  o Work with clients and government to protect government subsidized housing when private owners fail to comply with promises that they made to the state and federal government in exchange for tax subsidies used to buy or improve low-income rental units.
• Help low-income people get and keep jobs.
• Help remove barriers to work and housing through expungement assistance. An “expungement action” in Oregon can erase non-violent misdemeanor convictions from an individual’s criminal record, thus clearing the path to moving forward. Here’s an example: Eight years ago, Joe got a little rowdy in a Portland bar after watching a Timbers game that came down to the last seconds, with the Timbers winning. In his excited state, Joe left without paying his bar tab. The subsequent conviction has held him back from housing, and getting a good job, even though he has never committed any other offenses. Legal aid, often with the assistance of volunteer lawyers, works to help with the paperwork and court filings that will clean up a record in order to gain employment in this type of scenario. Sometimes this work involves helping
clients understand the law and fill out the forms necessary to help a judge determine whether Oregon’s laws permit expunging old criminal records that are barriers to getting a job or housing.

- Help low-income people get healthcare. Legal aid can help low-income clients complete simple forms that help guardians get health care for a child or to register a child in school.
- Help clients write a professional letter or prepare for a productive meeting with a landlord or creditor to work out a payment plan or otherwise settle a potential legal dispute.
- Guard against unscrupulous tax preparers who prey on low-income clients.
- Legal aid has a client education website, [www.OregonLawHelp.org](http://www.OregonLawHelp.org) that provides extensive information about the most common legal problems faced by low-income families, including protections from abuse, housing law, family law, and legal issues affecting seniors and people with disabilities. The website provides information on how to find and apply for services at legal aid offices, and has links to court websites, forms, and other sources of information and assistance.
- Legal aid provides classes, booklets, and hotlines to help low-income individuals learn about their rights and responsibilities under contracts and law so they can avoid or quickly resolve potential legal disputes.
- Legal aid leverages additional civil legal services by operating many pro bono programs that support private attorneys donating professional services to help low-income clients on priority cases.

**Focus on One Subject Area: Domestic Violence**

- In 2017, about 34% of legal aid’s cases are family law cases, usually helping the victims of domestic violence to obtain and enforce restraining orders and create a stable home environment for their children.
- Studies have shown that having a legal aid office in a community is the single largest factor in reducing domestic violence.
- The Portland Regional Office operates the Domestic Violence Project which provides training and support to volunteer lawyers to handle restraining order hearings.
- **How does legal aid help?**
  - Representing victims who need help with family abuse prevention restraining orders, custody, child support, housing, or employment issues.
  - Providing advice and guidance through appointments, hotlines, training and websites.
  - Working with local, regional, and statewide community partners on issues of domestic violence.
  - Training local law enforcement representatives;
  - Advocating for increased funding to fight domestic violence and sexual assault;
  - Legal aid worked with the Judicial Department to develop interactive electronic forms that can be used to create pleadings to seek a restraining order against domestic violence.
  - Providing training to volunteer lawyers for help with restraining order hearings.
  - Legal aid lawyers in offices around the state serve on local domestic violence councils and task forces dedicated to domestic violence.
- Legal Aid takes a comprehensive approach to addressing domestic violence, including legislative advocacy, working with the courts, law enforcement, and community partners.

- **Domestic violence and children:**
  - Witnessing violence has a significant negative impact on development, behavior, education, health, mental health and increased risk taking as adolescents or adjusts.
  - In nearly 60% of domestic violence cases, minor children see or hear the violence in the home.
Legal Aid Pro Bono Opportunities

Volunteer lawyers contribute more than 9,500 hours. Some of the successful programs around the state include Senior Clinics, the Domestic Violence Project, Bankruptcy Clinic and the expungement Clinics.

Pro Bono opportunities at legal aid have been carefully designed to focus on high priority areas for clients that also work well for volunteers from the private bar. Programs are evaluated for the efficiency in serving clients. Legal aid staff generally participates in screening clients, placing clients, providing and maintaining training and mentors for pro bono lawyers, and regularly evaluating the program.

Oregon’s legal aid programs are working hard to create pro bono projects in more rural offices around the state.

The role of Legal Aid Programs and Lawyer Volunteers. Legal aid staff provides training, materials, advice to volunteer lawyers, and also triage clients to determine the best placement to resolve a particular legal issue. Legal aid staff lawyers and paralegals have experience in dealing with the legal problems of low-income and elderly Oregonians. While some legal problems faced by this community may be considered routine legal matters, others may require the specialized knowledge of staff lawyers—often times requiring familiarity with complex regulations or laws that are encountered primarily in poverty law settings. In some cases, volunteer lawyers may be new to practicing law and legal aid provides basic training; in other cases, experienced lawyers may not be familiar with a particular practice area. The triage function is best performed by legal aid staff because of their knowledge of community resources.

Expanding Statewide Pro Bono Opportunities. Legal aid has a statewide pro bono manager who is tasked with expanding statewide volunteer opportunities for Oregon lawyers. The pro bono manager helps regional officers develop pro bono programs; develops systems to maximize the use of Portland metro attorneys in representing clients through the state; and will increase services through the use of innovative programs.

Legal aid has already begun an innovative new project to utilize Portland-area attorneys in serving non-metro area clients. The Portland office of the law firm of Miller, Nash, Graham & Dunn LLP is partnering with legal aid in a Virtual Clinic with the Bend and Coos Bay legal aid offices. After potential clients are screened and placed by legal aid, Portland-based attorneys meet with Central Oregon clients (from Deschutes, Jefferson and Crook counties) and Coos Bay clients (from Coos and Curry counties) through videoconferencing.

Some of legal aid’s pro bono opportunities include the following:

- **Pro Bono Oregon Listserv.** Legal service offices around the state post cases to this listserv one time per week. An attorney who is interested in accepting a pro bono opportunity contacts the listing office for full case information. Listings include the area of law, type of case, assistance expected and a brief description of the issue. Conflict information is discussed with interested attorneys when they contact the listing office. This project allows pro bono attorneys to take a pro bono case when it fits best with their schedule. Sign up for the listserv on Legal Aid’s website, www.oregonadvocates.org.

- **Bankruptcy Clinic.** The Oregon State Bar Debtor-Creditor Section and legal aid sponsor this project that provides information and representation to clients who are considering bankruptcy or who are already in U.S. Bankruptcy Court as pro se litigants. Volunteer attorneys meet with clients, help them assess whether bankruptcy is appropriate, and if so, provide ongoing representation. The clinic operates in Portland, Bend, Salem, and Pendleton.

- **Statewide Tax Clinic.** The Statewide Low-Income Taxpayer Clinic provides advice and representation to low income clients who have a tax controversy with the IRS or the Department of Revenue.
• **Law Firm Clinics.** Several Oregon law firms partner with legal aid organizations to meet with low-income clients and provide advice and continuing legal representation to clients with meritorious cases. Common case types include consumer law, small claims advice, criminal record expungements, landlord/tenant damage claims, estate planning, and uncontested guardianships.

VI. **How is Legal Aid Funded?**

**Overview of Funding:** Oregon’s legal aid programs are a state, federal, and private partnership. The three programs receive funding from about 80 different sources, but the four primary sources are the following:

- **OSB Legal Services Program—State Statutory Allocation, pursuant to ORS 9.572, 40%;**
- **Federal Funding through the Legal Services Corporation (LSC), 29%;**
- **Interest on Lawyer Trust Accounts (IOLTA), 4% (distributed by the Oregon Law Foundation);** and
- **Campaign for Equal Justice’s Annual Fund drive, 5%.

The chart below reflects the breakdown of funding from 2016.

![Chart reflecting funding breakdown]

What follows here is a more detailed description of the major sources of funding. Total available revenue for Oregon’s legal aid programs is about $15.5 million annually.

**Recession: Office Closures and Funding Cuts**

Between 2011 and 2013, Legal Aid Services of Oregon and the Oregon Law Center each experienced an approximately 20% reduction in staff due to loss of revenue. Some staffing reductions occurred as a result of layoffs. Other positions were frozen when staff voluntarily resigned to take other positions. During the layoff process, the programs tried to maintain three-person, “critical mass” offices in rural areas to help provide relatively equal access to legal aid services statewide. As a result, the layoffs disproportionately affected offices that had 3 or more employees. When funding losses during the recession forced staffing cuts, some were eliminated entirely and some were cut from full-time to part-time. The part-time positions have presented retention and recruitment issues. Although staffing at Oregon’s legal aid programs has begun to recover since the recession forced office closures and the layoff of nearly 20% of staff statewide, it remains significantly below pre-recession levels. Many of the positions that have been added in the past years have been made possible by limited-time grants and other one-time funding.
The following offices were closed or cut as a result of funding shortages:

- In 2012 legal aid had to make difficult choices about cuts in services due to decreased funding. The Oregon City legal aid office was closed in the spring of 2012 because of federal funding cuts. The office had served the low-income community there for more than 40 years. These clients are now served out of the Portland office.
- One of two legal aid offices in Lane County was closed in 2012 because of federal funding cuts.
- The satellite office in Independence, Oregon was closed in June 2011 because of funding cuts.
- These offices were closed at a time when the need for services increased dramatically statewide (see poverty facts below for more information).

Details on Sources of Funding:

- **State Funding:**
  - **Filing Fee/Statutory Allocation:** Beginning in 1977, a portion of legal aid’s funding has come from state court filing fees. Oregon was the second state in the nation to provide funding for legal aid through state court fees, and 32 states have followed suit. In 1996, at the urging of then Senator Neil Bryant, the legislature adopted ORS 9.572, which created the Oregon State Bar Legal Services Program (OSB LSP) to ensure independent government standards, guidelines, evaluation, oversight, and enforcement for the nonprofit corporations providing legal aid. The legislation required the OSB to manage the funds, develop Standards and Guidelines for providers, and create a LSP Committee to provide ongoing oversight and evaluation to ensure compliance with the Standards and Guidelines and to further the program’s goals. In 2011, following the work of the Joint Justice Revenues Committee, the structure changed. Instead of receiving funding from a fee added to certain court filings, which were adjusted periodically with overall funding increasing as filings increased, legal aid now receives a statutory allocation of $11.9 million per biennium — or $5.95 million annually — from the general fund. The legislature intended to review the allocation amount every few years to determine how much it might need to be increased. The first review has yet to be done. The legislature retained the same oversight structure.
  - **General fund:** Legal aid received general fund appropriations in the 2007-2009 biennium and 2009-2011 biennium. Legal aid also received general fund appropriations in two recent legislative sessions, $600,000 in 2015, and $200,000 earmarked for housing in 2016. No additional funding was provided in the most recent 2017 legislative session.

- **Federal funding:** Funding for legal aid through the Legal Services Corporation (LSC), which provides federal funding for legal aid, has varied from year to year since it began in 1976. In 2011 and 2012, federal funding for legal aid in Oregon dropped by 18.6%, to $3.6 million, resulting in a funding loss of $800,000. The federal appropriation for 2014 for Oregon returned to $4.2 million, which is the same amount received in 2011. In addition, because Oregon had the 8th highest growth of poverty (at 125% of federal poverty guidelines), Oregon received a slightly larger percentage of the LSC appropriation in 2015, 4.3 million dollars.

The future of federal funding remains uncertain. The White House 2018 budget proposed to eliminate funding for the LSC, along with 18 other agencies. Congress is ultimately responsible for approving a federal budget. Thanks to strong bipartisan support, Congress allocated $410 million for LSC for FY 2018 the highest funding level since 2010. However, the White House has once again called for the
elimination of federal funding for legal aid for FY 2019. Fortunately, there is reason to be hopeful. Here in Oregon, legal aid has a long history of strong bipartisan support in the state legislature and among our federal representatives. In Oregon, we believe in justice for all, not just for those who can afford it.

- **IOLTA/Oregon Law Foundation (OLF):** In 1989, the Interest on Lawyer Trust Account (IOLTA) program in Oregon became mandatory. A lawyer must hold all client property, including client monies, in a trust account. In cases where the clients’ deposits are large enough and/or held for a significant period of time, the interest on the account is returned to the client. When the deposit(s) for an individual client are too small in amount or held for too short of a time to earn interest net of bank charges or fees, these funds are placed in a pooled interest-bearing trust account. The interest on pooled trust accounts is sent to the Oregon Law Foundation and distributed to law-related public interest programs, with legal aid as “tier A” recipient that receives about 75% of the available funding. When interest rates were at record lows during the recession, IOLTA revenues plummeted—from a high of $3.6 million to $750,000 in 2015. With interest rates now edging up, and with the support of Leadership Banks that pay higher-than-market rates on IOLTA accounts, the OLF was able to distribute $1.2 million in grants in 2018. The majority of IOLTA revenue goes to support legal aid programs; a smaller portion goes to support other law related non-profits. The Oregon Law Foundation works with the Campaign for Equal Justice (CEJ) to get the word out to lawyers about the importance of banking at a leadership bank. CEJ includes information about leadership banks in its events around the state, includes information in its Call to Action, and celebrates leadership banks at its Annual Awards Luncheon.

- **Campaign for Equal Justice (CEJ) Annual Fund:** Since 1991, the Campaign has helped raise more than $26 million in unrestricted funds for legal aid through an annual fundraising campaign focused on Oregon attorneys. Funding has increased over the years, and with the assistance of Meyer Memorial Trust both in 1991 and again in 2005, the Campaign has grown to over $1 million annually. In the past few years the annual fund drive has raised between $1.1 and $1.2 million each year. In 2017, the CEJ raised a record $1.7 million dollars and the endowment fund managed by CEJ surpassed one million dollars, which means that the Campaign is able to add one more source of stable funding for legal aid. CEJ holds events around the state, and also works on increasing state and federal funding for legal aid, and additional private support. CEJ assists legal aid with communications about civil legal services for the poor.

- **Foundation Support/State and Federal Grants:** Legal aid receives grants from the state and federal governments and has also received funding from the Meyer Memorial Trust, the Collins Foundation, the National Institutes of Health, United Way, Oregon Community Foundation, Kaiser Permanente, and others. The Public Welfare and Kresge Foundations have embarked on an initiative called “Natural Allies: Philanthropy and Civil Legal Aid” to raise support among foundations for legal aid. In 2015-2017, legal aid received several new grants to fund innovative legal assistance projects, some of which led to the addition of new attorney positions. Grant funding is typically short term, between one to three years, so additional funding will be needed to continue these positions and projects.
  - A few examples of funding received:
    - Funding from the Meyer Memorial Trust to help expand pro bono offerings and funding to create materials and curriculum for landlords, employees, tenants and other stakeholders to clarify changes to Oregon’s Section 8 housing law.
    - Grants from the US Department of Justice to expand services to victims of domestic violence and elder abuse in the mid-Willamette Valley and Eastern Oregon.
    - Funding to work with medical and other partners on reducing the health effects of exposure to pesticides on Indigenous Farmworkers. This project and related projects have been funded by the Robert Wood Johnson Foundation, Kaiser Permanente Community Foundation, United Way, Oregon Community Foundation, the National Institutes of Health, and National Institute of Occupational Safety and Health.
A City of Portland grant to provide an additional $60,000 per year to legal aid to help staff the Gateway Center for Domestic Violence. The Gateway Center is a one-stop family justice center where victims of domestic violence can receive a multitude of services from multiple service providers in a single location. This additional funding allowed legal aid to hire a new full-time attorney.

An innovative new program with the Department of Human Services called MAGOS (the Model Approaches Grant Outreach and Services) to reach out to non-English-speaking seniors. This population, especially in more rural areas, can be challenging to help due to their isolation and because traditional outreach methods don’t reach them. Creating strong systems to help the elderly in Oregon is a priority for legal aid and many of their community partners, especially as this population will be growing in the next decade.

The US Department of Housing and Urban Development provided funding for a project to expand fair housing awareness and enforcement in Linn, Benton, and Lincoln Counties. This was a partnership between legal aid, the Fair Housing Council of Oregon and the Community Services Consortium, a community action agency.

A City of Portland grant to fund a staff attorney and an outreach worker to assist Portlanders who are dealing with evictions, as a local response to the housing crisis that is ongoing all over the state.

A partnership with a hospital in Albany, OR to address some of the legal problems that low income people face that adversely impact their health. Beyond the medical issues that the doctors are able to assist with, there are often a range of legal problems that lead to a medical issue. For example, domestic violence can lead to an emergency room visit for an injury, or an unsafe housing situation can lead to breathing problems. Medical/legal partnerships have proven very effective in assisting people in a holistic way when they see a doctor for help with a medical issue, but there is also a legal issue that could be addressed to make the medical issue improve or even provide a long term improvement to the person’s condition.

Oregon’s three legal aid programs have also received additional funds to continue their statewide foreclosure legal assistance project. The funds come from the Oregon Law Foundation. The three legal aid programs provide legal assistance to low-income homeowners facing foreclosure and to tenants affected by foreclosure issues. They work in close collaboration with a statewide network of housing counseling agencies. As part of this project, legal aid has also recruited and trained a panel of pro bono attorneys to provide legal assistance to modest-means homeowners facing foreclosure issues.

- Other Funding
  - Abandoned Property — IOLTA funds. In 2009, the Oregon legislature directed abandoned client funds in lawyer trust accounts to the OSB LSP for distribution to legal aid programs. ORS 98.386(2). The statute went into effect in 2010. Previously the funds were directed to the Department of State Lands. As of May 6, 2016, $786,949 has been directed to legal aid, including $346,346 in distribution of unclaimed class action funds from the Strawn v. Farmers class action. The revision to the Uniform Disposition of Unclaimed Property Act was enacted by the 2009 legislature but went into effect in 2010, so the unclaimed funds in lawyer trust accounts were not directed to the LSP until 2010.
  - Pro Hac Vice Fees. Out-of-state lawyers who are not licensed to practice law in Oregon may appear in Oregon courts subject to certain rules. ORS 9.572. By statute, the fee for such appearances goes to the
OSB LSP to fund legal aid. Pursuant to UTCR 3.170(6), the fee is $500. The fees result in about $250,750 annually for legal aid.

- **Cy Pres.** In 2015 the Oregon legislature passed a cy pres bill, requiring that 50% of residual class action funds be used to support legal aid. “Cy Pres” means next best or nearest – when a member of the group in a class action cannot be found at the end of the settlement to receive their portion of the award, this amount that is unclaimed is given to a nonprofit or organization that helps people that are similar to those in the class, as near as the court can determine. Although this funding may help legal aid in the future, significant funding from this source is at least five to seven years away.

- **Campaign for Equal Justice Endowment Fund.** In 2002, the CEJ, the OSB, and the OLF launched the Oregon Access to Justice Endowment Fund to support the future of legal aid. The Oregon Access to Justice Endowment fund was merged with the Campaign for Equal Justice in 2007 in order to save on administrative costs and is now called the “Campaign for Equal Justice Endowment Fund.” As of February 2018, the Campaign had about $1,200,000 in its endowment, with an estimated $2.4 million in legacy pledges—most of which came in the form of pledges during 2013-14 as a part of the Endow Now! Initiative, which encourages long time CEJ supporters to endow their annual gift. Endowment funds are held by the Oregon Community Foundation. The Campaign for Equal Justice will begin to make annual distributions from the earnings on endowment funds in 2018 to fund legal aid, as the fund has surpassed $1 million.

**Bridging the Justice Gap: The Task Force on Legal Aid Funding**

In 2014, Task Force on Legal Aid funding brought together Oregon lawyers, the courts, bar associations, legislators and other elected officials, and foundations to address the legal aid funding crisis. In order to have a minimally adequately funded legal aid program, the Task Force on Legal Aid Funding found that funding needs to double, from $15 million to $30 million annually. The Task Force adopted its Final Report in June 2014, which includes a series of short term and long-term goals to increase funding. It is clear that funding must come from a number of different sources in order to reach even minimally adequate funding levels. The Task Force concluded:

Oregon must recommit itself to the reasonable and necessary goal of providing “minimum access” to justice. The amount of revenue must be significantly increased and the sources of revenue broadened in order to provide the minimum acceptable level of access to justice for low-income people. More revenue must come from sources that remain consistent during times of economic downturn when the largest number of clients will be the most desperate for service. There must be sufficient stable revenue to provide at least two legal aid lawyers per ten thousand low-income clients in order to achieve the goal of minimally adequate access to justice in Oregon.

**Bar Involvement in Legal Aid**

- HOD Resolution—attached
- A Call to Action—attached
Whereas, equal access to justice plays an important role in the perception of fairness of the justice system;

Whereas, programs providing civil legal services to low-income Oregonians is a fundamental component of the Bar’s effort to provide such access;

Whereas, since 1998, pursuant to ORS 9.575, the Oregon State Bar has operated the Legal Services Program to manage and provide oversight for the state statutory allocation for legal aid in accordance with the Bar’s Standards and Guidelines (which incorporate national standards for operating a statewide legal aid program);

Whereas, during the great recession the staffing for legal aid programs was reduced while the poverty population in Oregon increased dramatically, thus broadening “the justice gap” in Oregon;

Whereas, Oregon’s legal aid program currently has resources to meet about 15% of the civil legal needs of Oregon’s poor creating barriers to justice for low-income and vulnerable Oregonians in recent history;

Whereas, Oregon currently has 2 legal aid lawyers for every 17,000 low-income Oregonians, but the national standards for a minimally adequately funded legal aid program is 2 legal aid lawyers for every 10,000 low-income Oregonians;

Whereas, assistance from the Oregon State Bar and the legal community is critical to maintaining and developing resources that will provide low-income Oregonians meaningful access to the justice system.

Resolved, that the Oregon State Bar;
(1) Strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our state, through the development and maintenance of adequate support and funding for Oregon’s legal aid programs and through support for the Campaign for Equal Justice.

(2) Request that Congress and the President of the United States make a genuine commitment to equal justice by adequately funding the Legal Services Corporation, which provides federal support for legal aid.

(3) Work with Oregon’s legal aid programs and the Campaign for Equal Justice to preserve and increase state funding for legal aid and explore other sources of new funding.

(4) Actively participate in the efforts of the Campaign for Equal Justice to increase contributions by the Oregon legal community, by establishing goals of a 100% participation rate by members of the House of Delegates, 75% of Oregon State Bar Sections contributing $50,000, and a 50% contribution rate by all lawyers.

(5) Support the Oregon Law Foundation and its efforts to increase resources through the interest on Lawyers Trust Accounts (IOLTA) program and encourage Oregon lawyers to bank at OLF Leadership Banks that pay the highest IOLTA rates.

(6) Support the Campaign for Equal Justice in efforts to educate lawyers and the community about the legal needs of the poor, legal services delivery and access to justice for low-income and vulnerable Oregonians.

(7) Encourage Oregon lawyers to support civil legal services programs through enhanced pro bono work.

(8) Support the fundraising efforts of those nonprofit organizations that provide civil legal services to low-income Oregonians that do not receive funding from the Campaign for Equal Justice.

Presenters:

Kathleen Evans, OSB#822514
House of Delegates, Region 6

Ed Harnden, OSB#721129
House of Delegates, Region 5

Ross Williamson, OSB#014548
House of Delegates, Region 2

Background

“The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.” OSB Bylaw 1.2. One of the four main functions
of the bar is to be “a provider of assistance to the public. As such, the bar seeks to ensure the fair administration of justice for all.” *Id.*

The Board of Governors and the House of Delegates have adopted a series of resolutions supporting adequate funding for civil legal services in Oregon (Delegate Resolutions in 1996, 1997, 2002, 2005–2016). This resolution is similar to the resolution passed in 2016, but provides updates on the ratio of legal aid lawyers to Oregonians eligible for legal aid services.

The legal services organizations in Oregon were established by the state and local bar associations to increase access for low-income clients. The majority of the boards of the legal aid programs are appointed by state and local bar associations. The Oregon State Bar operates the Legal Services Program pursuant to ORS 9.572 to distributes the state statutory allocation for civil legal services and provide methods for evaluating the legal services programs. The Campaign for Equal Justice works collaboratively with the Oregon Law Foundation and the Oregon State Bar to support Oregon’s legal aid programs. The Bar and the Oregon Law Foundation each appoint a member to serve on the board of the Campaign for Equal Justice.

Oregon’s legal aid program consists of three separate non-profits that work together as part of an integrated service delivery system designed to provide high priority free civil legal services to low-income Oregonians in all 36 Oregon counties through offices in 17 communities. There are two statewide programs, Legal Aid Services of Oregon (LASO) and the Oregon Law Center (OLC); and one county wide program, the Center for Non-Profit Legal Services (Jackson County). Because the need is great and resources are limited, legal aid offices address high priority civil legal issues such as safety from domestic violence, housing, consumer law, income maintenance (social security, unemployment insurance, and other self-sufficiency benefits), health, employment and individual rights. About 34% of legal aid’s cases are family law cases, usually helping victims of domestic violence. All of these programs work to stretch limited resources through pro bono programs and self help materials. Legal aid’s website, oregonlawhelp.com receives about 230,000 unique visitors a year.

Providing access to justice and high quality legal representation to all Oregonians is a central and important mission of the Oregon State Bar. An Oregon study concluded that low-income Oregonians who have access to a legal aid lawyer have a much improved view of the legal system compared with those who do not have such access: 75% of individuals without access to a lawyer had negative feelings about the legal system, but of those who had access to a legal aid lawyer, 75% had a positive view of the legal system regardless of the outcome of their case. The 2014 Task Force on Legal Aid Funding, which included representatives of the Bar, the Law Foundation, the judiciary, the legislature and private practice concluded that legal aid funding should be doubled over the next 10 years. Because funding for legal aid is a state, federal and private partnership, with about 80 different sources of funding, increases in funding must be made across the board to address the justice gap.

Currently, around 20% of lawyers contribute to the Campaign for Equal Justice, but in some Oregon regions (Jackson County and Lane County, for example), participation is as high as 40%.
Give to the Campaign for Equal Justice. The best way to increase access is to create more legal aid staff attorney positions.

Review your IOLTA account for abandoned client funds. The funds are paid to the Oregon State Bar for appropriation to legal aid through the Oregon State Bar’s Legal Services Program.

Shop. Support legal aid when you shop at Fred Meyer by linking your rewards card to CEJ (ask at the customer service desk to set it up) and when you shop at Amazon through AmazonSmile. It costs you nothing, but supports legal aid.

Educate. Talk about the importance of access to justice. Let people know—civil legal aid is there for those who need help. Host a Campaign for Equal Justice CLE for one hour of Access to Justice credit for attorneys.

Volunteer through one of legal aid’s many volunteer lawyer projects and clinics, or help the Campaign for Equal Justice raise money for legal aid.

Speak Up. Let state, federal and private funders know that access to justice is important.

Learn how legal aid services are delivered in your community so that you can make appropriate referrals for low-income clients.

Move your IOLTA accounts to a “Leadership Bank.” If all lawyers took this step, funding for legal aid could increase by as much as $900,000—enough to fund two small rural legal aid offices. Contact the OLF at www.oregonlawfoundation.org.

Connect. Ask your bar group to take action to support statewide legal aid programs in Oregon. Contact the CEJ for ideas.

FOR MORE INFORMATION ON HOW YOU CAN BE INVOLVED CONTACT THE CAMPAIGN FOR EQUAL JUSTICE.

www.cej-oregon.org
Has your bar group signed on to the Call to Action?

EQUAL JUSTICE STARTS HERE.

We need the help from all lawyers, bar groups, and the community in providing access to justice for low-income Oregonians. Please join us!

Contact the CEJ at 503-295-8442 to sign on today.
Poverty and Justice: It’s Complicated

Author: Joan-Marie Michelsen, Regional Director of the Roseburg Office of Legal Aid Services of Oregon

I was in private practice for several years before joining legal aid in 2000. Generally, legal aid clients appear similar to my private practice clients. However, that appearance belies the deeper reality of people with a low socioeconomic status (LSES). Many survive month to month with no personal or familial assets to fall back on in emergencies. Most are trauma survivors of one sort or another. Research shows that LSES people have higher rates of trauma, health problems, and emotional stress than people higher up the socioeconomic ladder. All of these factors impact how successful LSES people will be when interacting with the legal system, and with us.

When new clients call, most lawyers listen and analyze the potential cause of action, statute of limitations, and defenses. My analysis includes those things and more. Do we have the resources for this case? Can the client afford any potential costs? Are there transportation issues? How will we get copies of documents? Is our client able to read a document? Will we need to use an interpreter? How will we consistently keep in contact? How will others interact with our client? Does our client have a disability or other barrier that will complicate their interaction with the justice system?

The day-to-day reality of LSES people significantly affects their ability to access justice and legal redress of harms. Sometimes the justice system can unwittingly contribute to those harms. Often with legal representation, these harms can be healed, benefiting the clients as well as the justice system. Each case is different, but some issues crop up repeatedly.

First Impressions

Many aspects of a case are influenced by a person’s LSES. Filing fees and witness fees are an obvious issue. But some financial issues present more subtly. For example, most of our clients have made efforts with their appearance when they arrive for an appointment. However, I remember a client who always showed up in grungy t-shirts and sweats. Before we went to court, I mindlessly gave them my normal “how to dress for court” speech. But their reality was that they couldn’t afford anything new—even from a thrift store. Think about how much your favorite outfits cost. Now think about living on $750 per month or supporting a family of four on minimum wage at about $1,500 per month. After paying basic living costs, there is nothing left at the end of the month.

Another time, an abuse survivor and her kids needed help escaping the abuser. We set her up for a normal morning appointment, and she arrived. With the children. Now, discussing personal legal problems is always emotional, but discussing domestic violence in front of children? That isn’t going to happen in our office. One could wonder if she hadn’t thought of that? Of course she did. But she had no choice. Her abuser had isolated her and moved the family around so they had absolutely no one to turn to for help. This is common. Abuse survivors are often financially and personally isolated. This can significantly impact their cases, especially if they are unrepresented.
Getting Places

Issues for LSES people can be as basic as arriving on time. Public transportation is often unavailable, especially in small towns and rural areas. Clients relying on used or borrowed vehicles can be expected to encounter car trouble, causing them to be late for court appearances and appointments. However, I have seen courts disbelieve people who have these issues simply because they hear them often. Having a lawyer present to advocate for the missing client can make the difference between success or failure, such as a client losing their home, or not.

Sometimes transportation issues lead to tragic results. I remember a non-driving, wheelchair-bound, elderly stroke victim who was defaulted in his FED case because his driver quit unexpectedly. He had lived in the unit 10+ years and his landlady originally said she had rescinded her 30-day notice, but she then filed the FED. With very little notice, he had to motor across town in his wheelchair to get to court. He did it. He made it, but lacking any help or a driver, he was a half hour late for the 8:00 a.m. appearance. The court issued and would not vacate the a default judgment. Because wheelchairs are slower than cars, and many curbs lack proper curb cuts, he was evicted and spent the next several days in the woods, sleeping in his wheelchair under a tarp, before finding legal aid. Fortunately, we were able to help him.

I have heard about lawyers representing LSES people getting upset if the client is a bit late, or has to reschedule. I wonder how many of those lawyers asked how the client was getting to the appointment. Some clients may have money for and access to busses, but many do not. Being sensitive to barriers caused by lack of finances, including transportation issues, helps. Being willing to schedule around the client’s needs, working by phone or video, and minimizing the number of times a client has to come into your office helps ameliorate some these issues. When it comes time for court, making sure that the client has a plan, and a backup, and meeting them early if they are coming from a distance works.

Moving on with a Case

Moving beyond the first appointment, do you ever have problems contacting a client or getting documents? This can be a problem for LSES clients at the end of the month, because their phones have run out of minutes. But they may still have access to texting or email, so having multiple contact options is helpful. Also, their phones often get turned back on, so even if a number is not in service I may retry it in a few days or early in a month.

Legal aid only has the ability to serve a fraction of the people who need assistance. Many others rely on statewide forms. Even when the right form exist, people often have problems printing them. They can’t afford .25 per page, even if they can get to a library. Before the recession, most of my clients had access to printers. However, the percentage of Oregonians living in poverty has increased and is now about 21%. Few of my clients have stand-alone computers or printers anymore. The mere act of printing a form can be a significant barrier to some LSES clients. Simply printing pro se forms for someone may make a significant difference in their ability to access justice.

Lack of printers also impacts people’s ability to get us documents. We work around that to some extent by having clients take photographs of documents and email or text them to us. Clients’ data plans are often inadequate to email large amounts of data, but they tell me McDonald’s Wi-Fi is a great help.
Another issue with continued representation is the client’s work schedule. Many of our clients have no personal days off. I have had clients drop their case, including protective orders, because they couldn’t get the time off work and couldn’t afford to lose their job. I know of clients who lost their jobs because they were in court. That is not justice. When appointments are scheduled or rescheduled without accounting for the client’s schedule or child care, when court dates are canceled, or when multiple short appearances are required, this will have a disproportionate impact on clients with a LSES. Valuing the client’s time matters. I have also written a number of letters to clients’ employers verifying that the client was in court or at an appointment with me. This is something clients do not often ask for, but if offered it can help a client maintain their employment.

Finally, Arriving in Court

Once the logistics of getting to and preparing for court are met, there is the fear of what happens next. Most of my clients have little to no familiarity with the actual court system. This leads to many incorrect perceptions and confusion. Taking a few minutes to explain the process in detail, including mundane things like who will sit where, helps reduce the trauma for the clients. Clients who are not freaking out make better witnesses. Providing advice without representation to LSES clients can be invaluable in preparing them to effectively represent themselves—benefiting the clients and the courts as well.

Working with LSES Clients

There are myriad ways that being pro se harms LSES people, including the fact that some opposing parties may try to take advantage. I have seen people threaten to drive a client to bankruptcy, make insultingly low offers, ignore the law because they don’t think the client “will be in any position to do anything about it,” and ignore the ORCP and evidence codes. Having a lawyer through legal aid, through individual pro bono or modest means representation, or through civil legal aid’s pro bono network can be the critical difference for a LSES person being able to successfully navigate the system.

Many LSES clients really are trying to change their lives. Becoming involved with the justice system can be a stepping stone for healing if the client obtains redress for harm or protection from abuse. Or it can be devastating, for example, if they are evicted unjustly, lose custody of their child to an abusive parent, or have a judgment entered against them for debts that they don’t owe. As we help clients navigate our system, we too can help by taking the reality of their lives into account. Even well-intentioned lawyers can make things worse if we are not addressing clients in a trauma-informed way.

There are many reasons to be a trauma-informed lawyer. Being trauma informed simply means putting the reality of the client’s experiences at the forefront of all interactions. It requires us to adjust our approach, from the time the client walks in the door, to how we present information. I will admit, at first I thought trauma-informed lawyering was a new fad. I was wrong. The adjustments I continue to make in my practice have resulted in improvements in the clients’ ability to work with us effectively, reduced my stress levels, and improved our success in court.¹ I started by thinking about the physical office. Can a child find some toys in my office? Will a trauma survivor feel safe? Will their experience in our office help heal this person and our community or make things worse?

¹ There are many excellent resources for trauma-informed lawyering and I am happy to send links. Here is one good place to start: https://www.americanbar.org/groups/child_law/what_we_do/projects/child-and-adolescent-health/polyvictimization/establishing-a-trauma-informed-lawyer-client-relationship.html
LSES clients can’t send a fruit basket to say thank you, and they may not tell you in words what a difference you make. But they need and value legal advice. For example, I had a client who left her house at around 5:00 a.m., on foot, with her kids in a stroller. She walked about two hours to the morning bus, then waited for her appointment. Afterwards, she had to reverse the process. It took her about 8 hours to attend a 45 minute appointment. She truly wanted and appreciated our help, but I only found out about her commitment to being there when we happened to ask about transportation for a later appointment.

I love being a legal aid lawyer and working with LSES clients. They keep teaching me new things and skills. They inspire me with their perseverance and willingness to keep trying and hope for a better life. At the end of the day, I can go home feeling like we helped to support justice and increase fairness within our community. What more could a lawyer wish for?

I am not alone in feeling this way. Whether it is by doing pro bono work, helping to financially support legal aid through the Campaign for Equal Justice, or banking with a Leadership Bank that gives the highest interest rate on IOLTA accounts to support legal aid, every Oregon lawyer has an important role to play in supporting access to justice for LSES clients. Ensuring that civil legal aid is adequately funded means that we are not turning our back on the most vulnerable. Instead, we are helping them gain access to the justice system. When people believe that they will have a fair chance in court, regardless of their income, respect for the justice system increases. Thus, the presence of legal aid lawyers and our pro bono partners in our communities strengthens the justice system and supports those big concepts that we value: justice, fairness, and professional responsibility.

Oregon’s legal community believes that justice for all is a right, not a privilege. Thank you for being a part of this effort.

To find pro bono opportunities go to: http://www.osbar.org/probono/; to contribute to the Campaign for Equal Justice go to: www.cej-oregon.org; to learn about IOLTA Leadership Banks go to: http://www.oregonlawfoundation.org/.
Parting Thoughts
Our Professional Obligation
By Hon. Thomas Balmer

Oregon Chief Justice Thomas Balmer was on the board of the Multnomah County Legal Aid Service, and also served as board chair, when he was in private practice in Portland. He was involved with the Campaign for Equal Justice when it was founded 25 years ago, is a member of the campaign’s advisory committee and speaks out in Oregon and nationally about the importance of equal access to justice. The Campaign for Equal Justice was started by Oregon lawyers to help support funding for Oregon’s legal aid programs. Since its inception in 1991, it has raised more than $24 million for legal aid and has advocated for increased funding for state, federal and foundation support. The following remarks were presented to the Campaign for Equal Justice’s Advisory and Leadership Meeting in September, the beginning of the campaign’s 25th year.

For 25 years we’ve made the case for legal aid funding. We’ve stressed the critical needs faced by the poor, the injustice that can occur if they don’t have legal help, and the heroic work done by legal aid lawyers — sometimes one small case at a time, other times through important test cases or impact litigation.

The Campaign for Equal Justice has urged you to contribute because lots of folks need help. That’s a critical message. But there are other messages that we need to be talking out about, and one of them is professionalism. We, as lawyers, have a professional obligation to help make the justice system work for all members of our society, regardless of their economic circumstances. Supporting legal assistance for the poor — through pro bono activities and through the Campaign for Equal Justice — is a key aspect of professionalism in the legal community.

Many of us have formally signed or committed to the Professionalism Statements of the Oregon State Bar and the Multnomah Bar Association. The bar’s statement includes this promise: “I will work to ensure access to justice for all segments of society.” Now, maybe you committed to that without reading it very carefully, but it sounds to me like you’ve already agreed to make a serious contribution to the Campaign for Equal Justice. The MBA’s Statement on Professionalism encourages you to “support the effectiveness of the legal system.” And, we all know that the system is not effective if people with legal problems don’t have access to a lawyer who can assist them.

Professionalism means a commitment not just to being good lawyers for your clients. It means supporting and taking an interest in the well being of the legal system as a whole. And that means promoting access to justice and contributing your time and resources to make our system of justice work for all members of society.

Some lawyers might express skepticism about signing up for things like “professionalism.” Well, you can’t really escape it. When you took the oath of office for admission to practice in Oregon, you became an officer of the court and swore that you would “support the Constitution and the laws of the United States and of the state of Oregon.”

The 14th Amendment provides that “no person shall be denied the equal protection of the laws”; and the Oregon Constitution states that “justice shall be administered openly and without purchase, completely and without delay” and that “every person shall have a remedy by due course of law for injury to their person, property, or reputation.”

When we became Oregon lawyers, we agreed to support those commitments that the state and federal constitutions make to all citizens. That was our oath. It is a professional obligation of each of us.

We should all contribute to legal aid and do pro bono work because the need is there. But it’s also the special obligation of lawyers — an obligation that doesn’t rest on other members of society — to demonstrate our commitment to an effective justice system and to access to justice for all by giving generously to legal aid and encouraging our colleagues to do so as well.

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Case Types

2018 Income Eligibility

<table>
<thead>
<tr>
<th>Number in Family</th>
<th>125% of Federal Poverty Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$15,175 per year</td>
</tr>
<tr>
<td></td>
<td>$1,266 per month</td>
</tr>
<tr>
<td>2</td>
<td>$20,575 per year</td>
</tr>
<tr>
<td></td>
<td>$1,715 per month</td>
</tr>
<tr>
<td>3</td>
<td>$25,975 per year</td>
</tr>
<tr>
<td></td>
<td>$2,165 per month</td>
</tr>
<tr>
<td>4</td>
<td>$31,375 per year</td>
</tr>
<tr>
<td></td>
<td>$2,615 per month</td>
</tr>
</tbody>
</table>
Oregon LSP Standards and Guidelines

- An integrated, statewide system of legal services
- Centered on the needs of the client community
- Efficient and effective
- Full spectrum of legal services
- High quality legal services

Funding Sources

- State Statutory (O58) 40%
- LSC (Federal) 29%
- Other Funding 16%
- Federal Funding (ppp) 7%
- GJF (AOI) 4%
- Other Funding 7%
Stand Up for Justice
Chapter 2
National Origin and Barriers to Accessing Justice

CHANPONE SINLAPASAI
Marandas & Sinlapasai PC
Lake Oswego, Oregon

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Chapter 2—National Origin and Barriers to Accessing Justice

NATIONAL ORIGIN AND BARRIERS TO ACCESSING JUSTICE

Presented by: Chanpone Sinlapasai
Marandas Sinlapasai, PC
Chanpone@mspc-law.com

ROAD MAP OF PRESENTATION

1. National origin types and Immigration law
2. The intersectionality of state and federal laws
3. Victims’ rights and the disconnect between state and federal courts
The ABCs of Oregon Legal Services: Accessibility, Barriers, and Challenges

Chapter 2—National Origin and Barriers to Accessing Justice

THE ALPHABET SOUP OF IMMIGRATION LAW

- Citizenship (Naturalized Citizenship)
- Legal Permanent Residence
- Non Immigrant Visa Holder
- Deferred Status – Humanitarian Protection
- Undocumented

Who's Who in Immigration

- Department of Homeland Security
- United States Citizenship and Immigration Services
- Immigration Court - EOIR
Chapter 2—National Origin and Barriers to Accessing Justice

Classifications of Countries under Department of State

Africa

Asia
- Afghanistan, Armenia, Azerbaijan, Bangladesh, Bhutan, Brunei, Burma, Cambodia, China, Cyprus, East Timor, Georgia, Hong Kong, India, Indonesia, Iran, Iraq, Israel, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Malaysia, Maldives, Mongolia, Nepal, North Korea, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Singapore, South Korea, Sri Lanka, Syria, Taiwan, Tajikistan, Thailand, Turkey, Turkmenistan, United Arab Emirates, Uzbekistan, Vietnam, and Yemen.

Caribbean
- Antigua, Anguilla, Barbados, Aruba, The Bahamas, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Cuba, Dominica, Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos Islands, and U.S. Virgin Islands.

Central America
- Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

Europe
- Albania, Andorra, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Holy See, Hungary, Iceland, Ireland, Italy, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovak Republic, Slovenia, Spain, Serbia, Switzerland, Ukraine, and the United Kingdom.

North America
- Canada, Greenland, Mexico, Saint Pierre and Miquelon, United States, and the countries within the regions of the Caribbean and Central America.

Oceania
- American Samoa, Australia, Christmas Island, cocos (Keeling) Islands, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn Islands, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, and Wallis and Futuna Islands.

South America
- Argentina, Bolivia, Brazil, Chile, Colombia, Falkland Islands, French Guiana, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

<table>
<thead>
<tr>
<th>Alien</th>
<th>Any person not a citizen or national of the United States. “Foreign national” is a synonym and used outside of statutes when referring to noncitizens of the U.S.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrival</td>
<td>A foreign national in the United States or at a port of entry who is unable or unwilling to return to his or her country of nationality, or to seek the protection of that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on religion, nationality, membership in a particular social group or political opinion.</td>
</tr>
<tr>
<td>Arrival, adjustment, and status (AAS)</td>
<td>Any person who is admitted to or resides in the United States is treated as an applicant for admission. Parole falls under INA section 212(d)(5)(A).</td>
</tr>
<tr>
<td>Arrived</td>
<td>Generally, an unaccompanied person under 21 years of age.</td>
</tr>
<tr>
<td>Country/Region/Region</td>
<td>Any foreign national granted permanent resident status on a conditional basis (for example, a spouse of a U.S. citizen or an immigrant investor) who must petition to remove the conditionality that status before the second anniversary of the approval date of their conditional status.</td>
</tr>
<tr>
<td>DACA</td>
<td>Deferred Action for Childhood Arrivals, a program launched in 2012.</td>
</tr>
<tr>
<td>Deferred action</td>
<td>A type of prosecutorial discretion that allows an individual to remain in the United States for a set period of time, unless the deferred action is terminated for some reason. Deferred action is determined on a case-by-case basis and only establishes lawful presence. It does not provide immigration status or benefits of any kind. DACA is one type of deferred action.</td>
</tr>
<tr>
<td>Determined</td>
<td>A foreign national admitted temporarily to the United States in J-1 status as a participant in a program approved by the secretary of state for the purpose of teaching, instructing, lecturing, studying, observing, conducting research, demonstrating special skills or receiving training.</td>
</tr>
<tr>
<td>Full-time student</td>
<td>A person who has been admitted to the United States as a full-time academic student at an accredited college, university, seminary, conservatory, academic high school, elementary school or other academic institution, or in a language training program. The student must be enrolled in a program or course of study that culminates in a degree, diploma or certificate, and the school must be authorized by the U.S. government to accept international students.</td>
</tr>
<tr>
<td>Full-time student</td>
<td>A foreign national admitted temporarily to the United States in J-1 status as a participant in a program approved by the secretary of state for the purpose of teaching, instructing, lecturing, studying, observing, conducting research, demonstrating special skills or receiving training.</td>
</tr>
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</tr>
<tr>
<td>International student</td>
<td>A person who is not a U.S. citizen or national who is living in the U.S. under legally recognized and lawfully recorded permanent residence as an immigrant. Also known as “nonimmigrant.”</td>
</tr>
<tr>
<td>National of the United States</td>
<td>A person who, though not a citizen of the United States, owes permanent allegiance to the United States [for example, persons born in American Samoa or Swains Island].</td>
</tr>
<tr>
<td>Nonimmigrant</td>
<td>A foreign national admitted to the United States for a specific temporary period of time. There are clear conditions on their stay. There are a large variety of nonimmigrant categories, and each visa is for a specific purpose and has specific terms and conditions. Nonimmigrant classifications.</td>
</tr>
<tr>
<td>Parole</td>
<td>Any person outside his or her country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution based on the person’s race, religion, nationality, membership in a particular social group, or political opinion. For a legal definition of refugee, see section 101(a)(42) of the Immigration and Nationality Act (INA).</td>
</tr>
<tr>
<td>Permanent resident alien</td>
<td>A resident alien permit holder, and “Green Card” holder.</td>
</tr>
<tr>
<td>Refugees</td>
<td>Any person outside his or her country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution based on the person’s race, religion, nationality, membership in a particular social group, or political opinion. For a legal definition of refugee, see section 101(a)(42) of the Immigration and Nationality Act (INA).</td>
</tr>
<tr>
<td>Residency</td>
<td>The discretionary decision that allows inadmissible foreign nationals to leave an inspection facility freely so that, although they are not admitted to the United States, they are permitted to leave the United States. Parole falls under INA section 212(d)(5)(A) as “admission.”</td>
</tr>
<tr>
<td>Self-requested parole</td>
<td>A general term used to describe a card USCIS issues on Form I-766, Employment Authorization Card, to foreign nationals who are authorized to work in the United States. The card contains a photograph of the individual and sometimes his or her fingerprint. A foreign national who has an EAD usually has open market employment authorization, but there are exceptions.</td>
</tr>
<tr>
<td>Student</td>
<td>A person who is admitted to the United States as a full-time academic student at an accredited college, university, seminary, conservatory, academic high school, elementary school or other academic institution, or in a language training program. The student must be enrolled in a program or course of study that culminates in a degree, diploma or certificate, and the school must be authorized by the U.S. government to accept international students.</td>
</tr>
<tr>
<td>Time</td>
<td>Theexpulsion of an alien from the United States. Thisexpulsion may be based on grounds of inadmissibility or deportability.</td>
</tr>
<tr>
<td>Temporary Protected Status (TPS)</td>
<td>The secretary of the Department of Homeland Security may designate a foreign country for TPS due to conditions in that temporarily prevent the country’s nationals from returning to their homes, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. We may grant TPS to eligible nationals of certain countries (or parts of countries), who are already in the United States. Eligible nationals without nationality who last lived in the designated country may also be granted TPS. The secretary may designate a country for TPS due to the following temporary conditions in the country: ongoing armed conflict (such as civil war); an environmental disaster (such as earthquake or hurricane); or other extraordinary and temporary conditions. Grants of TPS are initially made for periods of 6 to 18 months and may be extended.</td>
</tr>
<tr>
<td>Visa</td>
<td>A U.S. visa allows the bearer to apply for entry to the U.S. in a certain classification, such as student (F), visitor (B) or temporary worker (H). A visa does not grant the bearer the right to enter the United States. The Department of State is responsible for visa classification (i.e., student, tourist, etc.) and may be extended.</td>
</tr>
</tbody>
</table>

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Chapter 2—National Origin and Barriers to Accessing Justice

IMPORTANT TERMS TO UNDERSTAND

Sample Employment Authorization Verification

The ABCs of Oregon Legal Services: Accessibility, Barriers, and Challenges

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Chapter 2—National Origin and Barriers to Accessing Justice

GREEN CARD

[Image of a green card]

[Image of a certificate]

The ABCs of Oregon Legal Services: Accessibility, Barriers, and Challenges
Chapter 2—National Origin and Barriers to Accessing Justice

WHO IS A REFUGEE?

Refugee - A person who, "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, Art. 1(A)(2), Convention relating to the Status of Refugees, Art. 1(A)(2), 1951 as modified by the 1967 Protocol.

In addition to the refugee definition in the 1951 Refugee Convention, Art. 1(2), 1969 Organization of African Unity (OAU) Convention defines a refugee as any person compelled to leave his or her country "owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country or origin or nationality."

Similarly, the 1984 Cartagena Declaration states that refugees also include persons who flee their country "because their lives, security or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order."

Since 1975 Refugees arrive in Oregon from many different countries. The majority come from Afghanistan, Burma/Myanmar, Cuba, Former Soviet Union, Haiti, Iraq, Somalia, The Democratic Republic of the Congo.

VICTIMS OF CRIME

VAWA, T VISA, U VISA, SIJS
Victims Rights for Victims of Crime

Victim Rights for Oregon Immigrants

- Victims of crime in Oregon have constitutionally protected victims’ rights regardless of their national origin. These rights include:
  - Access to emergency medical care
  - Access to police assistance
  - Having the perpetrators of crimes against them prosecuted
  - Obtaining community-based services necessary to protect their life and safety
  - The Department of Homeland Security may not make unfavorable immigration decisions based solely upon information provided by a spouse, parent or other family member who resides in the same household as the immigrant, who is abusive toward the immigrant or the immigrant’s child. 8 USCA § 1367(a)(1) »
U VISA

- The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women’s Protection Act) in October 2000.
- The legislation was two-fold:
  - intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes,
  - while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity.

Violence Against Women’s Act (VAWA)

Battered Spouse, Child or Parent

- As a battered spouse, child or parent, you may file an immigrant visa petition under the Immigration and Nationality Act (INA), as amended by the Violence Against Women Act (VAWA).
- The VAWA provisions in the INA allow certain spouses, children, and parents of U.S. citizens and certain spouses and children of permanent residents (Green Card holders) to file a petition for themselves, without the abuser’s knowledge. This allows victims to seek both safety and independence from their abuser, who is not notified about the filing.

The VAWA provisions, which apply equally to women and men, are permanent and do not require congressional reauthorization.
**T Visa**

T nonimmigrant status is a temporary immigration benefit that enables certain victims of a severe form of human trafficking to remain in the United States for up to 4 years if they have assisted law enforcement in an investigation or prosecution of human trafficking. T nonimmigrant status is also available for certain qualifying family members of trafficking victims. T nonimmigrants are eligible for employment authorization and certain federal and state benefits and services. T nonimmigrants who qualify may also be able to adjust their status and become lawful permanent residents (obtain a Green Card).

Congress created this status (commonly referred to as a T visa) in October 2000 as part of the Victims of Trafficking and Violence Protection Act. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery in which traffickers use force, fraud, or coercion to compel individuals to provide labor or services, including commercial sex. Traffickers often take advantage of vulnerable individuals, including those lacking lawful immigration status. T visas offer protection to victims and strengthen the ability of law enforcement agencies to investigate and prosecute human trafficking.

Under federal law, a “severe form of trafficking” is:

- **Sex trafficking:** When someone recruits, harbors, transports, provides, solicits, patronizes, or obtains a person for the purpose of a commercial sex act, where the commercial sex act is induced by force, fraud, or coercion, or the person being induced to perform such act is under 18 years of age; or

- **Labor trafficking:** When someone recruits, harbors, transports, provides, or obtains a person for labor or services through the use of force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.

---

**Special Immigrant Juvenile Status**

- To petition for SIJ you must have a state court order that contains certain findings, USCIS uses to determine your status. The state court may be called “juvenile court”, “family court”, “orphan’s court”, or some other name, depending on which state it is in. The court must have the authority under state law to decide on the custody and care of children.

**Actions State Court Must Take**

- A state court in the United States must decide:
  1. To declare that you are a dependent of the court or to legally place you with a state agency, a private agency, or a private person and
  2. It is not in your best interests to return to your home country (or the country you last lived in) and
  3. You cannot be reunited with a parent because of ANY of the following:
     - Abuse
     - Abandonment
     - Neglect
     - Similar reason under state law
The intersectionality of law for victims in the state and federal systems creates systematic barriers to access.

**BE HEARD, INFORMED, PRESENT for every victim.**
- Who’s rights are we fighting for?
- How do we treat them through the state and federal level?
- Barriers?
- Discretion and abuse – how do we fix it?
- Delays in the prosecution, protection, and victims’ rights.

**QUESTIONS?**
YOU CAN WORK FOR POSITIVE CHANGE

Progress in improving the treatment of crime victims is due largely to the efforts of thousands of individuals who have turned their victimization into a vehicle for positive change. Victims and survivors of crimes, including homicide, rape, child abuse, domestic violence, and other serious offenses, have transformed their experiences into a force for ensuring that victims of similar crimes receive justice, meaningful assistance, and compassion in the form of services and support. Successful victim advocacy requires the active participation of victims and survivors and their loved ones, who can help transform the criminal justice system into a vehicle for ensuring that crime victims are treated with dignity, respect, and compassion.

YOU HAVE RIGHTS

Most states have amended their constitutions to guarantee certain fundamental rights for crime victims. Typically, these include the following:

- The right to be notified of all court proceedings related to the offense.
- The right to be reasonably protected from the accused offender.
- The right to have input at sentencing (e.g., in the form of a victim impact statement).
- The right to information about the conviction, sentencing, imprisonment, and release of the offender.
- The right to an order of restitution from the convicted offender.
- The right to be notified of these rights.

If you are a victim of crime, these rights apply to you. You may obtain information about your rights through a local victim/witness assistance program (usually located in the prosecutor's office), the state Attorney General's Office, or the U.S. Attorney's Office.

FOR MORE INFORMATION

For more information about the Office for Victims of Crime, please contact:

Office for Victims of Crime Resource Center
Office for Victims of Crime
U.S. Department of Justice
810 Seventh Street NW., Eighth Floor
Washington, DC 20531
1-800-646-4273 (TDD)
1-800-638-0600 (voice)
www.ovc.gov

Office for Victims of Crime Training and Technical Assistance Center
9300 Lee Highway
Fairfax, VA 22031–6050
1–866–OVC–TTAC (1–866–682–8822)
1–703–225–2338 (TTY)
TTAC@ovcttac.org
www.ovcttac.gov

Office for Victims of Crime
U.S. Department of Justice
810 Seventh Street NW., Eighth Floor
Washington, DC 20531
202–307–5983
Fax: 202–514–6383
www.ovc.gov

Office for Victims of Crime
Office of Justice Programs
U.S. Department of Justice
810 Seventh Street NW., Eighth Floor
Washington, DC 20531
202–307–5983
Fax: 202–514–6383
www.ovc.gov

For information on training and technical assistance available from OVC, please contact:

Office for Victims of Crime Resource Center
P.O. Box 6000
Rockville, MD 20849–6000
1–800–851–3420 or 301–519–5500
Ask OVC: http://ovc.ncjrs.gov/askovc
www.ncjrs.gov

The ABCs of Oregon Legal Services: Accessibility, Barriers, and Challenges

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Being a victim of crime is frightening and unsettling for the millions of Americans who experience it each year. Because of funding authorized under the 1984 Victims of Crime Act (VOCA), as amended (42 U.S.C. § 10601 et seq.), and the dedicated efforts of advocates, lawmakers, and crime victims, an extensive range of services and resources is available to help victims heal and obtain justice. The Office for Victims of Crime (OVC), a federal agency within the Office of Justice Programs, U.S. Department of Justice, wants you to know that if you or someone you love is a victim of crime—

You have rights. You can get help. You can work for positive change.

YOU CAN GET HELP

Thousands of programs provide services and sanctuary to crime victims throughout the United States. They are part of state government agencies, and private nonprofit, faith-based, and charitable organizations. The programs provide two general types of services—compensation and assistance—for victims of crimes such as homicide, rape, drunk driving, domestic violence, human trafficking, and child abuse and neglect. Compensation programs reimburse victims, including victims of federal crimes, for expenses. Expenses covered are medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support. Crime victim assistance programs provide a range of services, including crisis intervention, counseling, emergency shelter, criminal justice advocacy, and emergency transportation. Although compensation and assistance are provided most often to individuals, in certain instances, entire communities may be eligible for assistance in cases of multiple victimizations. You can obtain information about compensation and assistance through your local prosecutor’s office. You also may receive it from your local law enforcement agency when you report an offense.

Another important tool that can help victims and service providers find a program in a specific jurisdiction is OVC’s online Directory of Crime Victim Services. The directory lists service providers who address various victim needs. Launched in 2003, the directory offers a centralized, searchable database of victim assistance programs nationwide. OVC scrutinizes new programs and continually updates the database with those it finds appropriate for the site. To view the directory, visit http://ovc.ncjrs.gov/findvictimservices.

The Crime Victims Fund

Financial support for many of these programs is provided through the Crime Victims Fund (the Fund), which is administered by OVC. Established by the Victims of Crime Act (VOCA), the Fund supports victim services and training for advocates and professionals throughout the country. Millions of dollars are deposited into the Fund each year from criminal fines, forfeited bail, penalties, and special assessments collected by U.S. Attorneys’ Offices, U.S. Federal Courts, and the Federal Bureau of Prisons. All Fund dollars have typically come from offenders convicted of federal crimes, not from taxpayers. However, the 2001 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) expanded the possible sources in 2003 by authorizing the deposit of gifts, bequests, or donations from private entities into the Fund. For purposes of the continued fluctuations in the Fund’s deposits, Congress has set caps on annual expenditures. The law created a “rainy-day” balance to draw on whenever deposits fall below the cap.

NATIONAL VICTIM ORGANIZATIONS STAND READY TO ASSIST YOU

If you are a crime victim and want information or referrals regarding victims’ rights and services and criminal justice resources, the following organizations may help you:

- Childhelp USA National Child Abuse Hotline
  1-800-4-A-CHILD
  www.childhelp.org

- Child Welfare Information Gateway
  1-800-347-7717
  www.childwelfare.gov

- Mothers Against Drunk Driving (MADD)
  1-877-3-MADD-3
  www.madd.org

- National Center for Missing & Exploited Children (NCMEC)
  1-800-843-5678
  www.missingkids.com

- National Center for Victims of Crime
  1-800-956-2322
  www.ncvc.org

- National Clearinghouse for Alcohol and Drug Information
  1-800-662-6273
  http://ncadac.samhsa.gov

- National Center for Victims of Crime (NCVC)
  1-800-294-4225
  www.ncvc.gov

- National Human Trafficking Resource Center (NHTRC)
  1-888-373-7888
  http://nhtrc.polarisproject.org

- National Organization for Victim Assistance (NOVA)
  1-800-537-3420
  www.trynova.org

- National Domestic Violence Hotline
  1-800-799-7233
  www.ndvh.org

- National Resource Center on Domestic Violence
  1-800-336-8376
  www.nrcdr.org

- National White Collar Crime Center (NW3C)
  1-866-684-5208
  www.nw3c.org

- Parents of Murdered Children (POMC)
  1-888-818-7662
  www.pomc.org

- Rape, Abuse & Incest National Network (RAINN)
  1-800-656-4673
  www.rainn.org

For a current list of state compensation and assistance programs in the United States and U.S. territories, please visit www.ovc.gov/help/interventions.htm.
Chapter 2—National Origin and Barriers to Accessing Justice

As of January 4, 2017
U Visa Law Enforcement Certification Resource Guide

for Federal, State, Local, Tribal and Territorial Law Enforcement
U Visa Resource Guide

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Introduction

The Department of Homeland Security (DHS) provides this guidance to federal, state, local, tribal and
territorial law enforcement officers. This public guidance primarily concerns law enforcement
certifications for U nonimmigrant status, also known as U visas. The U visa is an immigration benefit
that can be sought by victims of certain crimes who are currently assisting or have previously assisted
law enforcement in the investigation or prosecution of a crime, or who are likely to be helpful in the
investigation or prosecution of criminal activity. The law enforcement certification USCIS Form I-
918, Supplement B, U Nonimmigrant Status Certification (Form I-918B) is a required element for U
visa eligibility. Included in this resource is information about U visa requirements, the certification
process, best practices, frequently asked questions from law enforcement agencies, and contact
information for DHS personnel on U visa issues.

U Visa Basics

The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000¹, passed with bipartisan
support in Congress, encourages victims to report crimes and contribute to investigations and
prosecutions regardless of immigration status, and supports law enforcement efforts to investigate and
prosecute crimes committed against immigrant victims.

The U visa is an immigration benefit that can be sought by victims of certain crimes who are currently
assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or
who are likely to be helpful in the investigation or prosecution of criminal activity. The U visa provides eligible victims with nonimmigrant status in order to temporarily remain in the United States (U.S.) while assisting law enforcement. If certain conditions are met, an individual with U nonimmigrant status may adjust to lawful permanent resident status. Congress capped the number of available U visas to 10,000 per fiscal year.

Immigrants, especially women and children, can be particularly vulnerable to crimes like human trafficking, domestic violence, sexual assault, and other abuse due to a variety of factors. These include, but are not limited to, language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Congress recognized that victims who do not have legal status may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States. The VTVPA was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other crimes while offering protection to victims of such crimes without the immediate risk of being removed from the country. Congress also sought to encourage law enforcement officials to serve immigrant crime victims.2

If an individual believes he or she may qualify for a U visa, then that individual or his or her representative will complete the USCIS Form I-918, Petition for U Nonimmigrant Status (Form I-918), and submit it to U.S. Citizenship and Immigration Services (USCIS) with all relevant documentation, including Form I-918B, the U visa law enforcement certification. Given the complexity of U visa petitions, petitioners often work with a legal representative or victim advocate.

**What Is a U Visa Certification and Which Agencies Can Certify?**

**USCIS Form I-918, Supplement B** is the U visa certification document that a law enforcement agency can complete for a victim who is petitioning USCIS for a U visa. USCIS is the federal component of DHS with the responsibility to determine whether immigration benefits and immigration status should be granted or denied. Form I-918B is a required piece of evidence to confirm to USCIS that a qualifying crime has occurred and that the victim was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of criminal activity.

Form I-918B and its instructions are available on the USCIS website at [www.uscis.gov](http://www.uscis.gov) with the Form I-918 for the U visa. In order to be eligible for a U visa, the victim must submit a law enforcement certification completed by a certifying agency. Certifying agencies include all authorities responsible for the investigation, prosecution, conviction or sentencing of the qualifying criminal activity, including but not limited to:

- Federal, State and Local law enforcement agencies;
- Federal, State and Local prosecutors’ offices;

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The ABCs of Oregon Legal Services: Accessibility, Barriers, and Challenges

Chapter 2—National Origin and Barriers to Accessing Justice

| Federal, State and Local Judges; |
| Federal, State, and Local Family Protective Services; |
| Equal Employment Opportunity Commission; |
| Federal and State Departments of Labor; and |
| Other investigative agencies. |

The law enforcement certification, Form-918B, is a required piece of evidence to confirm that a qualifying crime has occurred and that the victim was helpful, is being helpful, or is likely to be helpful in the detection, investigation or prosecution of criminal activity. Although a law enforcement certification is a required part of a victim’s petition for a U visa, law enforcement officers cannot be compelled to complete a certification. Whether a certifying law enforcement agency signs a certification is at the discretion of that law enforcement agency and the policies and procedures it has established regarding U visa certifications. The law enforcement certification validates the role the victim had, has, or will have in being helpful to the investigation or prosecution of the case; therefore, it is important that the law enforcement agency complete certifications on a case-by-case basis.
Without a completed U visa certification, the victim will not be eligible for a U visa.

What Constitutes a Qualifying Crime?

| Abduction |
| Abusive Sexual Contact |
| Blackmail |
| Domestic Violence |
| Extortion |
| False Imprisonment |
| Felonious Assault |
| Female Genital Mutilation |
| Felonious Assault |
| Being Held Hostage |
| Incest |
| Involuntary Servitude |
| Kidnapping |
| Manslaughter |
| Murder |
| Obstruction of Justice |
| Peonage |
| Perjury |
| Prostitution |
| Rape |
| Sexual Assault |
| Sexual Exploitation |
| Slave Trade |
| Torture |
| Trafficking |
| Witness Tampering |
| Unlawful Criminal Restraint |
| Other Related Crimes*† |

*Includes any similar activity where the elements of the crime are substantially similar.
†Also includes attempt, conspiracy, or solicitation to commit any of the above, and other related, crimes.

What Does “Helpful” In the Investigation or Prosecution Mean?

Helpfulness means the victim was, is, or is likely to be assisting law enforcement in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. This includes being helpful and providing assistance when reasonably requested. This also includes an ongoing responsibility on the part of the victim to be helpful. Those who unreasonably refuse to assist after
reporting a crime will not be eligible for a U visa. The duty to remain helpful to law enforcement remains even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted may have the visa revoked by USCIS. Law enforcement agencies should contact and inform USCIS of the victim’s unreasonable refusal to provide assistance in the investigation or prosecution should this occur.

A current investigation, the filing of charges, a prosecution or conviction are not required to sign the law enforcement certification. Many instances may occur where the victim has reported a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances. Examples of this include, but are not limited to, when the perpetrator has fled or is otherwise no longer in the jurisdiction, the perpetrator cannot be identified, or the perpetrator has been deported by federal law enforcement officials. There is no statute of limitations on signing the law enforcement certification. A law enforcement certification can even be submitted for a victim in a closed case.

**USCIS Review of U Visa Law Enforcement Certifications**

USCIS is the federal component of DHS responsible for approving and denying immigration benefits and status, including the U visa. Federal, State and local law enforcement agencies do not grant or guarantee a U visa or any other immigration status by signing a U visa certification (Form I-918B). Only USCIS may grant or deny a U visa after a full review of the petition to determine whether all the eligibility requirements have been met and a thorough background investigation. An individual may be eligible for a U visa if:

- He/she is the victim of qualifying criminal activity.
- He/she has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
- He/she has information about the criminal activity. If under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may possess the information about the crime on the individual’s behalf.
- He/she was helpful, is being helpful, or is likely to be helpful to law enforcement in the investigation or prosecution of the crime. If under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may assist law enforcement on behalf of the individual.
- The crime occurred in the United States or violated U.S. laws
- He/she is admissible to the United States. If not admissible, an individual may apply for a waiver on a Form I-192, Application for Advance Permission to Enter as a Non-Immigrant.

By signing a law enforcement certification, the law enforcement agency is stating that a qualifying criminal activity occurred, that the victim had information concerning the criminal activity, and that the victim was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying crime. In addition, law enforcement may report information about any harm sustained by the victim that law enforcement has knowledge of or observed.
While a U visa petition will not be granted without the required law enforcement certification, the fact that a certification has been signed does not automatically grant the victim a U visa. The certification is only one of the required pieces of evidence needed to be eligible for a U visa.

For all U visa petitioners, USCIS conducts a thorough background investigation which includes a Federal Bureau of Investigation (FBI) fingerprint check and name check. USCIS will also review the petitioners’ immigration records to assess whether any inadmissibility issues exist, such as the petitioner’s criminal history, immigration violations, or security concerns. Any evidence that law enforcement and immigration authorities possess may be used when determining eligibility for a U visa. This evidence includes, but is not limited to, the person’s criminal history, immigration records, and other background information. USCIS may contact the certifying law enforcement agency if there are any issues or questions arise during the adjudication based on information provided in the law enforcement certification.

Benefits of the U Visa to the Recipient

If found eligible and a petition is approved, a U visa recipient receives nonimmigrant status to live and work in the United States for no longer than 4 years. Qualified recipients may apply to adjust status to become a lawful permanent resident (green card) after three years of continuous presence in the U.S. while having a U visa. The petitioner will have to meet other eligibility requirements for a green card as well, including the ongoing duty to cooperate with law enforcement and not unreasonably refuse to assist with the investigation or prosecution of the qualifying crime. Additionally, certain immediate family members of U visa recipients may also be eligible to live and work in the United States as derivative U visa recipients based on their relationship with the principal recipient. These family members include:

- Unmarried children under the age of 21 of principal U visa recipients;
- Spouses of principal U visa recipients;
- Parents of principal U visa recipients under age 21; and
- Unmarried siblings under 18 years old of principal U visa recipients under age 21.

U Visa Certification Form (Form I-918B)

Tips for Filling Out the Form I-918B

The U visa certification can be initiated by the law enforcement agency itself or by the crime victim. If initiated by the crime victim, this is usually done with the assistance of an advocate or an attorney. By signing a certification, the law enforcement agency attests that the information is true and correct to the best of the certifying official’s knowledge. The head of the agency has the authority to sign certifications or to delegate authority to other agency officials in a supervisory role to sign certifications. An agency’s decision to sign a certification is completely discretionary and under the authority of that agency. Neither DHS nor any other federal agency have the authority to request or demand that any law enforcement agency sign the certification. There is also no legal obligation to
complete and sign Form I-918B. However, without a certification signed by law enforcement, the individual will not be eligible to be granted a U visa.

By signing a certification, the law enforcement agency attests that the information is true and correct to the best of the certifying official’s knowledge. The law enforcement certification essentially states to USCIS that:

- The petitioner was a victim of a qualifying crime;
- The petitioner has specific knowledge and details of crime; and
- The petitioner has been, is being, or is likely to be helpful to law enforcement in the detection, investigation, or prosecution of the qualifying crime.

If a law enforcement agency signs a Form I-918B, the certification must be returned to the victim (or the victim’s attorney, representative, etc.). The law enforcement agency does not need to send the signed certification separately to USCIS. The victim is required to send the original signed certification form along with his or her complete U visa petition to USCIS. If the law enforcement official is providing additional documents (e.g., a copy of the police report, additional statements, photos, etc.) along with the certification, law enforcement should indicate on Form I-918B a note of “see attachment” or “see addendum”. Question 5 of Part 4 on Form I-918B, the certifying official may document the helpfulness of the victim and if that victim refused to be helpful at any time throughout the investigation/prosecution at the point. The certification form must contain an original signature and should be signed in a color of ink other than black for verification purposes. Photocopies, faxes, or scans of the certification form cannot be accepted by USCIS as an official certification.
Best Practices in U Visa Certifications (Form I-918B)

Across the United States, law enforcement agencies have taken different procedural approaches to U visa certifications. DHS does not endorse or recommend any particular practice, as the certifying agency has the sole authority on the policies and procedures it will use in signing law enforcement certifications. Some examples of how various law enforcement agencies educate their officers about U visa certifications and how they designate a certifier or certifiers in their agencies include:

- Department policy or general order on the process and use of the U visa certification written and distributed;
- A Letter or Memorandum designating a process and authority to certify has been sent from the Chief to the Lieutenant(s) or supervisor(s) in charge of certifying U visas;
- Chief designates the head of the Victim-Witness Assistance Program as the certifier;
- Teletype message or similar written notification sent out from the Chief to the entire department explaining the purpose of the U visa, the certification process, and who is/are designated as the certifier(s); and
- The Investigations Bureau Chief, assigned as certifier, delegates an officer or supervisor to review requests made by both law enforcement officers and the community and makes a recommendation on the certification to the Bureau Chief.

Frequently Asked Questions

What do I do with a completed certification?
Once the law enforcement official completes and signs Form I-918B, the original should be given to the victim or the victim’s legal representative or victim advocate, so that he or she can add the certification to the original U visa petition packet before submission to USCIS.

Please also note that only a law enforcement official may complete and sign the Form I-918B. The victim, victim’s attorney, or advocate may not sign the Form I-918B.

If I certify a petition, does the victim automatically get a U visa or lawful immigration status?
No. There are many additional eligibility requirements that USCIS evaluates based on a victim’s U visa petition, including whether the victim suffered “substantial physical or mental abuse.” Moreover, upon receiving a U visa petition, including Form I-918B, USCIS will conduct a full review of the petition and a thorough background check of the petitioner before approving or denying the petition. The background check will include an FBI fingerprint check, name and date of birth (DOB) check, and a review of immigration inadmissibility issues, including security-based and criminal inadmissibility grounds. A victim may be found inadmissible if they do not meet required criteria in the Immigration and Nationality Act to gain admission or legal status in the U.S. Generally, USCIS does not initiate removal proceedings. However, if there are serious inadmissibility issues, such as security related concerns, multiple or violent criminal arrests, or multiple immigration violations, USCIS may find the victim to be inadmissible and may also initiate removal proceedings. If USCIS finds the victim
to be inadmissible after a removal proceeding was stayed or terminated to pursue the U visa application, the proceedings may be reinitiated or DHS may file a new Notice to Appear (NTA) for that individual.

If USCIS needs further information, evidence, or clarification of an issue, USCIS officers may request additional evidence from the petitioner. USCIS may also contact the certifying law enforcement agency for further information if necessary.

**Which law enforcement agencies are eligible to make certifications?**
A federal, state, local law enforcement agency, prosecutor, judge, or other authority that has the responsibility for the investigation or prosecution of a qualifying crime or criminal activity is eligible to sign Form I-918B. This includes agencies with criminal investigative jurisdiction in their respective areas of expertise, including but not limited to child and adult protective services, the Equal Employment Opportunity Commission, and Federal and State Departments of Labor.

**Who in the law enforcement agency can sign Form I-918B?**
A certifying official(s) can sign Form I-918B. The U visa regulation defines a certifying official as: “[t]he head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency.” 8 C.F.R. § 214.14(a)(3).

Although not required with each certification, it is helpful to include a letter showing the designation of the signing official(s). The letter would be signed by the agency head and would reflect that person with a particular rank or title within the agency is to be the signing official(s).

**If my law enforcement agency has a Memorandum of Understanding (MOU) with DHS under the 287(g) program, are we still able to sign U visa certifications?**
Yes, Form I-918B can be signed regardless of such an MOU with DHS. DHS encourages all jurisdictions to implement U visa certification practices and policies.

**What if the victim or witness in my case has been detained or ordered removed for an immigration violation?**
Individuals currently in removal proceedings or with final orders of removal may still apply for a U visa. Absent special circumstances or aggravating factors, it is against U.S. Immigration and Customs Enforcement (ICE) policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime. To avoid deterring individuals from reporting crimes, ICE has issued guidance to remind ICE officers, special agents, and attorneys to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention should be paid to victims of domestic violence, human trafficking, or other serious crimes, and witnesses involved in pending criminal investigations or prosecutions.
If a law enforcement official is aware of a victim or witness against whom a detainer has been lodged, who has been detained, who has been placed in removal proceedings for an immigration violation, or who has been ordered removed, the official should promptly contact their local ICE Enforcement and Removal Operations (ERO) contact or the local Office of the Chief Counsel to make ICE aware of the situation. Specifically with regard to a lodged detainer, the law enforcement official may notify the ICE Law Enforcement Support Center at (802) 872-6020, if the individual may be the victim of a crime, or if the officials want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness.

**Will a certifying law enforcement agency be liable for any future conduct of someone who is granted a U visa? What if I signed a certification for someone who later commits a crime?**

A certifying law enforcement agency/official cannot be held liable for the future actions of a victim for whom the agency signed a certification or to whom DHS granted a U visa. The U visa certification simply states that the person was a victim of a qualifying crime, possessed information relating to the crime, and was helpful in the investigation or prosecution of that crime. The certification does not guarantee the future conduct of the victim or grant a U visa. USCIS is the only agency that can grant a U visa.

If a victim is granted a U visa and is later arrested or commits immigration violations, federal immigration authorities will respond to those issues.

If a law enforcement agency later discovers information regarding the victim, crime, or certification that the agency believes USCIS should be aware of, or if the agency wishes to withdraw the certification, the law enforcement agency should contact USCIS.

**If an investigation or case is closed, can law enforcement still complete Form I-918B? Is there a statute of limitations?**

Yes, law enforcement can still complete Form I-918B for an investigation or case that is closed. There is no statute of limitations regarding the time frame in which the crime must have occurred. Federal legislation specifically provides that a victim may be eligible for a U visa based on having been helpful in the past to investigate or prosecute a crime. A crime victim could be eligible to receive U visa certification when, for example, the case is closed because the perpetrator could not be identified; a warrant was issued for the perpetrator but no arrest could be made due to the perpetrator fleeing the jurisdiction or fleeing the United States, or has been deported; before or after the case has been referred to prosecutors, as well as before or after trial whether or not the prosecution resulted in a conviction. The petitioner must still meet all the eligibility requirements for a U visa to be approved.

**Can I complete a U visa certification for a victim who is no longer in the United States?**

Yes. While the crime must have occurred in the United States, its territories, or possessions, or have violated U.S. law, victims do not need to be present in the U.S. in order to be eligible for a U visa and may apply from outside the United States.

**Who determines if the “substantial physical or mental abuse” requirement has been met?**
USCIS will make the determination as to whether the victim has met the “substantial physical or mental” standard on a case-by-case basis during its adjudication of the U visa petition. Certifying law enforcement agencies do not make this determination. Certifying agencies may, however, provide any information the agency deems relevant regarding injuries or abuse on Form I-918B. The U visa certification signed by law enforcement states that the person was a victim of a qualifying crime, possessed information relating to the crime, and was helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of that crime. Question 6 of Part 3 on Form I-918B asks that law enforcement provide information about any injuries the law enforcement agency knows about or has documented. While this provides some of the evidence USCIS will use to make the substantial physical or mental abuse determination, the U visa petitioner has the burden of proving the substantial physical or emotional abuse.

USCIS adjudication officers receive extensive training in statutory and regulatory requirements in determining whether a victim has suffered substantial physical or mental abuse. Factors that USCIS uses to make this determination are: the nature of the injury inflicted; the severity of the perpetrator’s conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim.

The existence of one or more of the factors does not automatically signify that the abuse suffered was substantial. The victim will have to provide evidence to USCIS showing that the victim meets the standard of substantial physical or mental abuse.

Can I still certify if the perpetrator is no longer in the jurisdiction or prosecution is unlikely for some reason?
Yes. There is no statutory or regulatory requirement that an arrest, prosecution, or conviction occur for someone to be eligible to apply for a U visa. Instances may occur where the perpetrator has fled the jurisdiction, left the United States, or been arrested for unrelated offenses by another agency in another jurisdiction. An arrest, prosecution, or conviction may not be possible in these situations. The petitioner will still have to meet the helpfulness requirement by reasonably assisting the certifying law enforcement agency, and will also have to meet all other eligibility requirements in order to qualify for a U visa.

Does the victim have to testify to be eligible for certification?
As mentioned above, there is no requirement that an arrest, prosecution, or conviction occur for someone to be eligible for a U visa. While there is no requirement for the victim to testify at a trial to be eligible for a U visa, if the victim is requested to testify, he or she cannot unreasonably refuse to cooperate with law enforcement. If the victim unreasonably refuses to testify, the law enforcement agency should notify USCIS and may withdraw the previously signed Form I-918B.

Can a victim’s petition still be approved if the defendant is acquitted or accepted a plea to a lesser charge, or if the case was dismissed?
Yes. As mentioned above, a conviction is not required for someone to be eligible for a U visa. Plea agreements and dismissals do not negatively impact the victim’s eligibility. As long as the victim has been helpful in the investigation or prosecution of the qualifying criminal activity and meets all other eligibility requirements, the victim may petition for a U visa.

If the victim unreasonably refuses to assist the investigation or prosecution and harms the criminal case, that will negatively impact the victim’s ability to receive an approval. The certifying law enforcement agency should notify USCIS if the victim has unreasonably refused to cooperate in the investigation or prosecution of the crime.

**What constitutes “helpfulness” or “enough cooperation”?**

USCIS regulation requires that the victim has been, is being, or is likely to be helpful in the investigation or prosecution of the criminal activity. This means that since the initiation of cooperation, the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

USCIS will not provide a U visa to those petitioners who, after initially cooperating with law enforcement, refuse to provide continuing assistance when reasonably requested. USCIS also will not approve the petitions of those who are culpable for the qualifying criminal activity.

**What if the victim stops cooperating after I sign his/her certification?**

At its discretion, a certifying agency may withdraw or disavow a Form I-918B at any time if a victim stops cooperating. To do so, the certifying agency must notify the USCIS Vermont Service Center in writing (see below).

Written notification regarding withdrawal or disavowal should include:

- The agency’s name and contact information (if not included in the letterhead);
- The name and date of birth of the individual certified;
- The name of the individual who signed the certification and the date it was signed;
- The reason the agency is withdrawing/disavowing the certification including information describing how the victim’s refusal to cooperate in the case is unreasonable;
- The signature and title of the official who is withdrawing/disavowing the certification; and
- A copy of the certification the agency signed (if a copy was retained by the agency).

The letter should be either scanned and emailed to the Vermont Service Center at LawEnforcement_UTVAWA.vsc@uscis.dhs.gov, or mailed to:

USCIS—Vermont Service Center
ATTN: Division 6
75 Lower Welden Street
St. Albans, VT  05479
If one crime is initially investigated but a different crime is eventually prosecuted, does that have an impact on the certification?

A law enforcement certification is valid regardless of whether the initial crime being investigated is different from the crime that is eventually prosecuted. As long as the person is a victim of a qualifying criminal activity, that person may be eligible for a U visa. Examples include:

- An initial investigation of rape eventually leads to a charge and prosecution of sexual assault. Both rape and sexual assault are qualifying crimes.

- An initial investigation of embezzlement leads to a charge and prosecution of extortion. While embezzlement is not a qualifying crime, the investigation eventually led to a charge of extortion, which is a qualifying crime. If the person assisting in the investigation or prosecution is a victim of extortion, that person may qualify for a U visa.

- In the process of investigating drug trafficking allegations, police determine that the drug trafficker’s wife is a victim of domestic violence. The victim reported the domestic abuse. The state brings a prosecution against the husband for drug offenses but not domestic violence crimes. The wife is cooperating in the drug prosecution. Law enforcement may complete a Form I-918B certification for reporting the domestic abuse case that is not being prosecuted.

Form I-918B certifications may also be submitted for crimes similar to the list of qualifying criminal offenses. An investigation or prosecution into a charge of video voyeurism may fall under the qualifying crime of sexual exploitation. This may be determined by state or local criminal law and the facts and evidence in that specific case. Please note that while video voyeurism is not specifically listed as a qualifying crime, it may be considered a type of sexual exploitation, which is a qualifying crime. The victim would need to show how these crimes are related and present this evidence to USCIS, along with Form I-918B certification form signed by a certifying law enforcement agency.

If the victim is a child, why would a non-citizen parent ask for a certification stating that the parent was the victim?

In many cases where a child is the victim of a crime, the child may not be able to provide law enforcement with adequate assistance. This may be due to the child’s age or trauma suffered, among various other reasons. Parents of a child victim play a crucial role in detecting and reporting crimes, providing information and assisting law enforcement in the investigation or prosecution of the crime committed against the child. Recognizing this, an alien parent can apply to be recognized as an “indirect victim” if the principal victim is a child under 21 years of age and is incompetent or incapacitated to provide assistance to law enforcement in the investigation or prosecution of the crime committed against the child or if the child is deceased due to murder or manslaughter. The immigration status of the child victim is not relevant to this determination; Form I-918B can be submitted for an alien parent whether or not the child is a U.S. citizen or a non-citizen.

The parent(s), in order to qualify as an “indirect victim”, must meet the remaining eligibility requirements for a U visa to receive an approval. Therefore, the “indirect victim” parents must have information about the crime, and must be helpful to law enforcement in the investigation or
prosecution of the crime and the crime must have occurred in the United States or violated U.S. law. The parents will also be subject to the standard background checks (FBI fingerprint and name/DOB check) and immigration records review as well.

**What constitutes “possesses information”?**
To be eligible for a U visa, the victim of the crime must possess credible and reliable information establishing that the victim has knowledge of the details of the criminal activity or events leading up to the criminal activity, including specific facts about the crime/victimization leading law enforcement to determine that the victim has assisted, is assisting, or is likely to provide assistance in the investigation or prosecution of the crime.

If the victim was under 16 years of age or incompetent or incapacitated at the time the qualifying crime occurred, a parent, guardian, or next friend may possess the information. A “next friend” is defined as a person who appears in a lawsuit to act for the benefit of an alien who is under 16 or incompetent or incapacitated. The next friend is someone dedicated to the best interests of the individual who cannot appear on his or her own behalf because of inaccessibility, mental incompetence, or other disability. A next friend cannot be a party to a legal proceeding involving the victim and cannot be a court-appointed guardian. A next friend also does not qualify for a U visa or any immigration benefit simply by acting as a next friend for the victim, but he or she may possess information about the criminal activity and may provide the required assistance.

**Will USCIS approve a victim with a criminal history?**
USCIS may deny a U visa petition for a variety of reasons including if the victim’s criminal history warrants such a decision. Denials may occur in cases where a victim has multiple arrests, convictions, or has a serious or violent criminal arrest record. USCIS will also deny a petition if the victim was complicit or culpable in the qualifying criminal activity of which he or she claims the victimization occurred. USCIS conducts background and security checks (FBI fingerprint check, name/DOB check, check of immigration records) on U visa petitioners and reviews all available information concerning arrests, immigration violations, and security issues before making a final decision.

The fact that a victim has a criminal history does not automatically preclude approval of U status. USCIS has broad authority to waive most inadmissibility issues, including criminal issues. Each U visa petition is evaluated on a case-by-case basis.

If law enforcement believes USCIS should know something particular about a victim’s criminal history, that information can be cited on the certification or with an attached report or statement detailing the victim’s criminal history with that law enforcement agency or his or her involvement in the crime.

**What are the safeguards for protecting the U visa program against fraud?**
Congress and USCIS recognize that law enforcement agencies that investigate and prosecute the qualifying criminal activities are in the best position to determine if a qualifying crime has taken place. If, in the normal course of duties, a law enforcement agency has determined that a qualifying crime
has taken place, the victim possessed information related to the crime, and the victim has been helpful, law enforcement may sign the U visa certification. Whether a law enforcement agency signs the certification is under the authority of the agency conducting the investigation or prosecution. The law enforcement certification also acts as a check against fraud and abuse, as the certification is required in order to be eligible for a U visa.

USCIS takes fraud and abuse of the U visa program seriously. If USCIS suspects fraud in a U visa petition, USCIS may request further evidence from the petitioner and may also reach out to the law enforcement agency for further information. USCIS also has a dedicated unit whose sole purpose is to target and identify fraudulent immigration applications. The Fraud Detection and National Security (FDNS) unit of USCIS conducts investigations of cases that appear fraudulent and works with other Federal, State, and local law enforcement agencies when fraud or abuse is discovered.

As an additional check against fraud, a U visa recipient cannot obtain a green card unless the victim proves that he or she cooperated, when requested, with law enforcement or prosecutors. In order to obtain a green card, if the U visa victim did not cooperate, he or she must prove to DHS’ satisfaction that his or her refusal to cooperate was not unreasonable.

**Where can my agency get additional training on U visa certifications?**

Law enforcement agencies may request additional training and information by emailing USCIS at: T-U-VAWATraining@dhs.gov.

**Other Forms of Relief for Victims**

Federal law provides additional options to assist law enforcement with providing immigration status to victims and witnesses of crime that may or may not be eligible for the U visa. The following are some of these resources:

**T Visa**

The T nonimmigrant status (or T visa) provides immigration protection to victims of severe forms of trafficking in persons who comply with reasonable requests for assistance from law enforcement in the investigation or prosecution of human trafficking cases. The T nonimmigrant visa allows victims to remain in the United States to assist in the investigation or prosecution of human traffickers. Unlike the U visa, the T visa does not require a law enforcement certification. Once T nonimmigrant status is granted, a victim can apply for permanent residence after three years. A petitioner for a T visa must send a completed petition (Form I-914) to USCIS. A signed I-914 Supplement B may be submitted with the petition to verify that he or she has complied with any reasonable request by law enforcement in the investigation or prosecution of the trafficking crime, but is not required. The certification is one of the pieces of evidence that USCIS will consider to grant or deny a T visa.

**VAWA**

Recognizing that immigrant victims of domestic violence may remain in an abusive relationship because his or her immigration status is often tied to the abuser, the Violence Against Women Act
(VAWA) in 1994 created a self-petitioning process that removes control from the abuser and allows the victim to submit his or her own petition for permanent residence without the abuser’s knowledge or consent. Those eligible for VAWA relief include the abused spouse or former spouse of a U.S. citizen or Lawful Permanent Resident, the abused child of a U.S. citizen or Lawful Permanent Resident, or the abused parent of a U.S. citizen. VAWA immigration relief applies equally to women and men. To file for VAWA immigration relief the self-petitioner must send a completed Form I-360 along with corroborating evidence to USCIS. A law enforcement certification is not needed in these cases.

**Continued Presence**

Continued Presence (CP) is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking who are potential witnesses in an investigation or prosecution. Federal law enforcement officials are authorized to submit a CP application, which should be initiated upon identification of a victim of human trafficking. CP allows victims of human trafficking to remain in the United States during an ongoing investigation into human trafficking-related crimes committed against them. CP is initially granted for one year and may be renewed in one-year increments. Recipients of CP also receive work authorization. CP is authorized by ICE Homeland Security Investigations (HSI) Law Enforcement Parole Unit and can only be sponsored by a federal law enforcement agent.

State, local, tribal and territorial law enforcement officials who would like to request CP for human trafficking victims are encouraged to work with the local HSI office in their area. In addition, Victim Assistance Coordinators can assist law enforcement officials in obtaining referrals to non-governmental victim services providers who can offer a variety of services to assist crime victims, such as immigration legal assistance, crisis intervention, counseling, medical care, housing, job skills training, and case management.

CP is an important tool for federal, state, and local law enforcement in their investigation of human trafficking-related crimes. Victims of human trafficking often play a central role in building a case against a trafficker. CP affords victims a legal means to temporarily live and work in the United States, providing them a sense of stability and protection. These conditions improve victim cooperation with law enforcement, which leads to more successful prosecutions and the potential to identify and rescue more victims. Although cooperation with law enforcement is not an eligibility criterion for CP, victims who are cooperating do receive eligibility for social service benefits through the Department of Health and Human Services Office of Refugee Resettlement. Victims may qualify for other forms of immigration benefits depending on their unique circumstances.

**Significant Public Benefit Parole**

Significant Public Benefit Parole (SPBP) may be utilized to bring an individual to serve as a witness, defendant, or cooperating source, and if necessary in extremely limited cases, the individual’s immediate family members, into the United States for up to one year. It must be emphasized that SPBP will only be granted for the minimum period of time required to accomplish the requested purpose, e.g., if a trial is 3 months long, parole will be granted for 3 months. SPBP is a temporary measure used to allow an individual who is otherwise inadmissible to be present in the United States. SPBP does not
Deferred Action

Deferred Action (DA) is a discretionary decision-making authority that allows DHS to determine which cases merit the commitment of limited resources. It is exercised on a case-by-case basis that focus on the priorities of DHS, by targeting serious criminals and those who are a threat to public safety, and potentially deferring action on cases with a lower priority. There is no statutory definition of DA, but federal regulations provide a description: “[D]eferred action [is] ‘an act of administrative convenience to the government which gives some cases lower priority…” See 8 C.F.R. § 274a.12(c)(14). DHS officers, special agents, and attorneys consider every DA request individually to decide whether; based on the totality of the circumstances, a favorable grant of deferred action is appropriate. DA requests may, among other things, be based on humanitarian facts and a low-enforcement priority or may be based on an individual’s status as an important witness in an investigation or prosecution. It does not provide a pathway to permanent residency.

DHS Contact Information

For more information about the U visa program and law enforcement certifications, please see:

U.S. Citizenship and Immigration Services
www.uscis.gov
www.uscis.gov/humantrafficking

To ask a question about a specific case or to rescind a signed certification:
LawEnforcement_UVTAVA_WSC@uscis.dhs.gov. Please note that this e-mail address is for law enforcement personnel only. Any e-mail sent by any person or entity that is not law enforcement to this specific e-mail address will not be answered.

To request U visa training for your agency:
T-U-VAWATraining@dhs.gov

To ask specific policy questions about T and U visa certifications, call USCIS at (202) 272-1470.

Petitioners and their representatives may submit an inquiry regarding a specific case by emailing:
hotlinefollowupI9181914.vsc@dhs.gov

Citizenship and Immigration Services Ombudsman
To refer U visa petitioners who are experiencing problems that have not been able to be resolved through DHS customer assistance avenues:
Immigration and Customs Enforcement
If a law enforcement official is aware of a victim or witness against whom a detainer has been lodged, who has been detained, who has been placed in removal proceedings for an immigration violation, or who has been ordered removed, the official should promptly contact their local ICE Enforcement and Removal Operations (ERO) contact or the local Office of the Principal Legal Advisor (OPLA) to make ICE aware of the situation.

To contact your local ICE ERO office, please see the list of contact information here:
http://www.ice.gov/contact/ero/

To contact your local ICE OPLA office, please see the list of contact information here:
http://www.ice.gov/contact/opla/

Specifically with regard to a lodged detainer, the law enforcement official should notify the ICE Law Enforcement Support Center:

www.ice.gov/contact/lesc/
Phone: (802) 872-6050
Email: ice.osltc@dhs.gov

LESC Computer Services Division
188 Harvest Lane
Williston, Vermont 05495

Office of Civil Rights and Civil Liberties
To refer individuals who would like to file a complaint concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security:

By mail or phone:
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Building 410, Mail Stop #0190
Washington, D.C. 20528

Phone: (202) 401-1474
Toll Free: (866) 644-8360
TTY: (202) 401-0470
Toll Free TTY: (866) 644-8361
Fax: (202) 401-4708
Office for State and Local Law Enforcement
For information about DHS coordination with federal, state, local, territorial, and tribal law enforcement, please contact the DHS Headquarters Office for State and Local Law Enforcement.

Phone: (202) 282-9545

Email: oslle@hq.dhs.gov

More Federal Government Resources Available:
DHS Blue Campaign, which includes links to help locate local service providers with experience with immigrant victims of crime.
USCIS Victims of Criminal Activity: U Nonimmigrant Status
USCIS Questions and Answers: Victims of Criminal Activity, U Nonimmigrant Status
DHS Ombudsman Teleconference Recap: U Visas
October 2009 FBI Law Enforcement Bulletin: The U Visa
Immigration and Customs Enforcement Toolkit for Prosecutors
Chapter 3

Gender Identity and Sexual Orientation

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Compassion & Choices
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ORPC 8.4, Misconduct

(a) It is professional misconduct for a lawyer to:

(1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law;

(4) engage in conduct that is prejudicial to the administration of justice; or

(5) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law, or

(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(7) in the course of representing a client, knowingly intimidate or harass a person because of that person’s race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.

(b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), it shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct. "Covert activity," as used in this rule, means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. "Covert activity" may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein.

Adopted 01/01/05

Amended 12/01/06: Paragraph (a)(5) added.

Amended 02/XX/15: Paragraphs (a)(7) and (c) added.
Defined Terms (see Rule 1.0):

“Believes”
“Fraud”
“Knowingly”
“Reasonable”

Comparison to Oregon Code

This rule is essentially the same as DR 1-102(A).

Paragraph (b) retains DR 1-102(D).

Comparison to ABA Model Rule

Paragraphs (a)(1) through (6) are the same as Model Rule 8.4(a) through (f), except that MR 8.4(a) also prohibits attempts to violate the rules. Paragraph (a)(7) reflects language in Comment [3] of the Model Rule.

Paragraphs (b) and (d) have no counterpart in the Model Rule.
AS THEY AGE BY THE MILLIONS, LGBT SENIORS FACE A HOST OF CHALLENGES.

BY MIKE ALBO

IN NOVEMBER, RESIDENTS OF THE FOUNTAINGROVE LODGE IN SANTA ROSA, CALIFORNIA, the nation's first LGBT retirement community, returned to their homes after the devastating October wildfires there. Part of Oakmont Senior Living, a luxury retirement complex, Fountaingrove's lodge and apartments were spared by the inferno—only the rainbow flags at the entrance were singed—but even before the fires, the 95 residents knew how lucky they were. They had a welcoming place to grow old. For most LGBT seniors, the landscape outside of Fountaingrove is threatening enough.

The massive wave of Baby Boomers who are heading into retirement has been coined the “Silver Tsunami.” Rarely addressed is that this tsunami contains a very lavender wave. According to a 2014 study by SAGE, the advocacy group for LGBT seniors, there are at least 3 million LGBT people over 55 in the United States, a number they say will double in 20 years. “This country isn’t ready for how fast it’s aging,” says Michael Adams, CEO of SAGE. “And the services and programs and housing that exist are not ready for LGBT people.”

HOME ALONE

There is a myth that all LGBT people are comfortably in the uppermiddle class, with well-appointed second homes. In fact, older LGBT people are more likely to be poor than their straight, cisgender counterparts. Nearly one-third of LGBT older adults ages 65 and older live at or below the federal poverty level, compared to a quarter of straight seniors. In SAGE’s study, 51 percent of older LGBT people reported being “very or extremely concerned about their financial futures.” Affording a luxury retirement community isn’t always an option. And LGBT older adults face a layered and complex series of obstacles—discrimination, health challenges, isolation.
Traditional caregiving is also less common. While more than 75 percent of caregiving is done by spouses or blood relatives, according to a 2011 study by UnitedHealthCare, older LGBT people are much less likely to have spousal support or adult children. Apart from the psychological impact of that isolation, there are practical issues: often we simply don't have someone who can drive us to medical appointments or help decode complex health insurance documents.

Chicago resident Don Bell moved into that city's LGBT-friendly living center, Town Hall, three years ago. “If I had not been able to live here, I literally would be homeless,” he says.

For activists and social workers in the field, the isolation of older LGBT people is obvious. “Particularly as they’re aging, their social network starts diminishing,” says Jose Collazo, site manager for SAGE's Bronx satellite. “Many of them go back into the closet. Their fate is the hands of their doctors, home aids, family and friends.”

FINDING A HOUSE THAT'S A HOME

Their relative social isolation means that LGBT people are more likely to rely on professional care like assisted living and nursing homes. But LGBT seniors can face daunting levels of prejudice. In a 2014 study, the Equal Rights Center found that 48 percent of same-sex couples who applied for senior housing experienced “adverse or differential treatment,” ranging from being quoted higher rent prices to outright denial of availability.

Even if LGBT elders can access appropriate housing, personnel there are all too often poorly equipped to work with them. “It has never dawned on far too many staff of senior living communities that they have LGBT residents,” says Karen Loewy, counsel and strategist on seniors’ issues at Lambda Legal.

Marsha Wetzel, a lesbian senior who used to live at the Glen St. Andrew Living Community in Niles, Illinois, suffered harassment, discrimination and violence caused by other residents, she says. She reported enduring a relentless pattern of homophobic and sexist slurs, being spit on, and getting hit over the head from behind after hearing the word “homo.” After complaining to the staff to no avail, she called Lambda Legal's Help Desk. Lambda Legal filed suit against Glen St. Andrew Living Community last year.

“When we take on a case we know full well it represents one case among hundreds of instances,” says Loewy. “Between the lack of cultural competency and generational or religious anti-LGBT bias among both staff and residents, there is a lot of work to be done to ensure LGBT seniors can live safely and equally in these settings.”

Some exciting new LGBT-friendly senior living facilities have opened in the last few years, including the John C. Anderson apartments in Philadelphia, The Openhouse's Bob Ross LGBT Senior Center in San Francisco and Town Hall in Chicago. The Anita May Rosenstein Campus, a part of the Los Angeles LGBT center, is set to open in 2019 as an example of building community by bringing generations together. The new campus will include both affordable housing for seniors and beds for homeless youth, with a kitchen to feed both.

“The need is immense,” says Karyn Skultery, executive director of San Francisco's Openhouse. “When the Openhouse community facility opened last year, there was just a seven-day window for applications. 1,800 people applied, and 50 were placed in 40 units. Fifty people are thrilled, and we have built a strong LGBT community, but hundreds are heartbroken and fearful of where they will go next.”

While these spaces are welcome, they only begin to address the problem. “We’re happy to see the momentum, but we’d never be able to build enough units,” says Kelly Kent, SAGE's National
Housing Initiative Director. “We need to focus on mainstream providers that already exist, so their staff can provide culturally competent care in traditional settings.”

THE OLDER BODY

For LGBT people, access to health care is crucial. LGBT people are more likely than others to have health problems like HIV, depression, substance abuse, and struggles with obesity. “Minorities manifest stress,” says Jeff Huyett, who has worked as a nurse, nurse practitioner and activist since 1983. “Statistically we are at higher risk, dealing with consequences of living with stigma, the violence of being LGBT in this culture. It impacts your eating, your drinking habits, your blood pressure, to name a few.”

Many long-term survivors of HIV are dealing with new health challenges they did not anticipate living long enough to face. Trans seniors can also face obstacles with coverage. Lambda Legal recently filed a complaint with the Equal Employment Opportunity Commission on behalf of Marc Lawrence, a transgender retiree of the Federal Bureau of Prisons. In addition, Lambda Legal has sued on behalf of Sean Simonson, a retired transgender employee of Oswego County, New York. Both were denied coverage because their policies contained a blanket exclusion of all transition-related care.

If you have HIV or are transgender, Lambda Legal’s online resource Know Your Rights (lambdalegal.org/kyr) offers information about your rights in health care settings. If you are mistreated in a health care setting, contact Lambda Legal’s Help Desk at lambdalegal.org/help.

DISCRIMINATION AFTER DEATH

The mistreatment of LGBT people does not necessarily stop when they die. Marriage equality should protect surviving spouses of LGBT people when it comes to inheritance and property, but those with chosen families still face challenges. In the absence of a will, for example, the law looks to the next of kin for inheritance rights. So there are instances where an unmarried same-sex partner or a queer chosen family member is disinherited. “We do lots of intakes about greedy, distant nieces and nephews,” says Loewy at Lambda Legal. (For more steps you can take to protect yourself and loved ones after life, see “Life and Financial Planning” at lambdalegal.org/kyr.)

There is also plain, old-fashioned discrimination. Lambda Legal recently filed a lawsuit against a funeral home in Picayune, Mississippi that refused to take the deceased body of Robert Huskey despite a contract. Just hours after his death, his husband Jack Zawadski had to scramble to find another funeral home with an on-site crematorium 90 miles away.

THE EMOTIONAL TOLL

Aging alone, whatever your sexuality or gender identity is tough. Older people need companionship, support and community.

“The in many ways we are defining what it is like to grow old [as LGBT],” says Don Bell, who moved into an

Theo Hutchinson, 63, a professor in Southern Ohio, came out as trans and began transitioning four years ago. Although he does connect with other older trans men through Facebook groups, living in rural Ohio can be isolating. “For most cis people you have 20 years to develop your gender,” he says. “I am trying to squash that into two years. I am going through puberty alone, without a peer group.”
LGBT-friendly living center in Chicago three years ago.

The isolation of aging LGBT people is baked into our society. In a recent paper titled “Queering Aging Futures,” scholars Linn J. Sandberg and Barbara L. Marshall question the very notion of “successful aging” for LGBT people, because it’s so often seen through a heteronormative lens, with grandkids to dote on and beloved family home to welcome them. The stereotype of the lonely, sad, old “bitter queen,” makes that heteronormative future look even more desirable.

“Aging has really bad branding,” says World Famous *BOB*. As an activist, volunteer and employee at SAGE, she created several performance events, connecting SAGE clients and New York’s downtown performance scene. *BOB* volunteered and then worked for SAGE as their “Creator of Fun”, producing shows that mixed older and younger people. “We got the theater donated,” she says. “We sold out. Everyone in the burlesque world told me how much it changed their lives. There’s just not a real structure that bridges the young and old. The puzzle is: How do the planners make it happen?”

Part of accomplishing that is for younger people to be able to learn their history, and celebrate the path our seniors laid, and the price they paid, for our community's progress and growth. “One of my missions is to represent the first ‘out’ generation,” says Bell, who lives in Chicago's Town Hall. “In many ways we are defining what it is like to grow old [as LGBT].”

Last June, Hutchinson, the Ohio professor, won an essay contest organized by SAGE and Airbnb. The prize was a free trip to New York City Pride. “The SAGE bus pulled onto Fifth Avenue,” Hutchison says. “The younger people were marching with us and surrounding the bus. To have that honor and love exchange with the crowd was the best feeling.”

Being seen, being there for each other, appreciating each other for who we are—it strengthens what we already know. The LGBT community works best when it’s just that: a community.

Go to the National Resource Center on LGBT Aging to find local resources for caregiving and information on a variety of LGBT aging topics: lgbtagingcenter.org/resources.

If you or someone you care for is discriminated against at a senior living facility, contact Lambda Legal's Help Desk at lambdalegal.org/help.

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GUIDELINES FOR LGBT CLIENT INTAKE INTERVIEWS, CASE HANDLING, AND MANAGING CLIENT INFORMATION

Background

Many legal aid organizations do not currently inquire about the gender identity or sexual orientation of their clients. This, however, can make it difficult to effectively serve LGBT clients. The best practice is to incorporate questions about gender identity and sexual orientation into your standard intake form and allow clients to self-identify. For some organizations it may not be possible to change their standard intake form. The next best practice is to include these questions in the intake interview for all prospective clients. This section explains best practices for gathering relevant information during the intake process, along with the rationale for asking clients about their gender identity and sexual orientation, and some tips for managing information on sexual orientation and gender identity.

Practice Tips

1. **Ask about clients’ sexual orientation or gender identity just as you would any other questions about their lives or identity.**
   When collecting information from a client, it is important to include questions about their sexual orientation and gender identity, along with questions about other background characteristics. Do not create a stigma when asking these questions by stating that the questions are “personal questions” or may be “sensitive.” Telling a client that the section of LGBT questions is going to be sensitive or too personal sends the message that there is something wrong with being LGBT or that you are uncomfortable with LGBT clients. In reality, your entire intake sheet may involve personal or sensitive questions. Questions about a client’s race, income, citizenship, experience with domestic violence, and other questions are all personal and sensitive in nature. But saying they are so does not help a client share this information with you.

   Instead, at the very beginning of the intake process, let the client know that the client’s information will be kept confidential, and is to be used for purposes of providing needed services, and make sure that that you keep the information confidential according to your organization’s protocol.

2. **Be prepared to talk about issues of sexual orientation and gender identity in a professional, non-judgmental way.**
   Whatever your intake method, be sure that you and your colleagues are prepared to talk about issues of sexual orientation and gender identity in a professional, non-judgmental way that will respect all clients at all stages of the process. Clients may not initially be comfortable telling intake staff about their gender identity or sexual orientation, or may not realize that these are relevant to their legal case. Some LGBT clients may disclose aspects of their sexual orientation or gender identity after the initial interview, or may have legal issues that require staff to ask further questions about their identity, family life, or medical history and needs. Being prepared to ask about and receive this information, without making assumptions about a client’s sexual
orientation or gender identity at the outset, and being able to talk with a client about their options without judgment, are important ways to maintain a respectful and professional environment for LGBT clients.\(^1\)

3. **Be prepared to give a clear explanation if a client asks why you are asking about sexual orientation and gender identity.**

   If the client does ask why you are asking about a person’s gender identity and sexual orientation, you can explain that you serve a diverse community and want to do a better job at serving the community. You can also explain that you are looking for ways to improve your outreach and services to the LGBT community, and that a person’s gender identity or sexual orientation might have some legal relevance to certain claims. You can explain that providing this information to an attorney can help them decide on strategies and legal theories, and avoid having attorneys make decisions or recommendations based on assumptions about their clients.

4. **Follow up at the in-person meeting to get information about a client’s sexual orientation or gender identity if they decline to tell you over the phone or on a form.**

   If the client expresses that he or she wishes not to answer these questions on the phone, or does not want to complete the questions on a form, you can move on, but the advocate reviewing the form or information collected during the interview should note that these sections were not completed, and may want to follow-up for additional information in person. However, please respect the client’s privacy if, after your follow-up inquiry, they continue to indicate that they do not wish to answer the questions.

5. **Develop systems to ask about, make note of, and use clients’ preferred names.**

   Consult all clients about preferred names, especially transgender clients. If clients have a legal name on a birth certificate that they do not use in their daily lives, you may want to enter that preferred name in your case management system with a case alert that the client has another name and what that name is. As a best practice, use the client’s preferred name on files, intake forms, and case management systems so that when the client calls or comes in, the front desk and the advocate are in the habit of calling the client by his or her preferred name.

6. **Ensure that staff have access to client information as necessary.**

   Have a process in place for ensuring that everyone who interacts with a client knows their preferred name/gender if it differs from their legal name/gender. Also, have processes in place to share relevant information about a client’s sexual orientation and/or gender identity to those who are working on the case—so the client does not need to keep repeating it.

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Chapter 3—Gender Identity and Sexual Orientation

7. **Develop systems of record-keeping that are respectful of LGBT clients.**
All files should allow for recording:
- Legal and preferred name/gender pronouns
- Relationship or marital status: to be inclusive of LGBT clients, records should be able to track if a person is married, in a registered domestic partnership or civil union, and should provide an option for gender neutral language such as “partner” or “spouse” in addition to “husband/wife.”
- Sexual orientation and gender identity: can be included in case files when shared by client and/or relevant to case

In addition, record-keeping systems should allow for case files to be labeled using a client’s preferred name, when that differs from their legal name.

8. **Model respect for the client and their identity in interactions with the court.**
Be sure to show respect for LGBT clients and their identity in all interactions with the court. This includes using a client’s preferred name and gender pronouns to the greatest extent possible (checking with the client beforehand that this is appropriate). You can use a client’s preferred name and pronoun in court pleadings by including a brief note that you plan to do so the first time you use their name.

9. **Respect client confidentiality around sexual orientation/gender identity.**
Sometimes, clients may not want information they give you about their sexual orientation or gender identity to be shared outside of your organization. Put processes in place for maintaining confidentiality related to sexual orientation and gender identity if clients wish to keep this information private. For example, forms should have a space to clearly mark that a client does not wish to have their legal name shared with others outside the organization (as this might out them as transgender). In general, staff should check with clients before sharing information about their sexual orientation or gender identity outside of the organization.

**Rationale for Asking Clients to Self-Identify LGBT Identities**

*Questions about a client’s sexual orientation*

It is important for a client to be able to talk about his or her sexual orientation with you. Asking about sexual orientation sends an affirming and welcoming message to LGBT clients. Another important reason why we ask our clients to self-identify their sexual orientation is directly related to legal counseling. We need the information to help us better understand our clients’ circumstances, anticipate what their legal needs might be, and openly ask questions to help develop the legal theory of client cases. Having the ability to self-identify on an intake form or in the intake interview allows those clients that want us to know about their identity to provide it to us in a direct, matter-of-fact way. The advocate can then ask questions and explore whether the client’s identity is tied in any way to the legal issues the client presents. While our clients may not always come to us with a legal problem that at first glance is tied to an LGBT issue, it is still important to know about the client’s identity and to explore this further because often our clients do not realize they have legal protections as LGBT people.

For example, a client comes to your office with what appears to be an unemployment insurance denial. The client explains that he was asked to voluntarily resign from work because he was truant. The employer challenges his application for benefits because it argues that the client quit work voluntarily and without good cause. After several client interviews, the client discloses that he is gay. The advocate then explores whether the client suffered harassment at work. Indeed...
he had, but he was not aware that harassment based on sexual orientation is illegal in California. He was aware that the harassment caused him depression and in turn caused him to be late to work, but did not know that the harassment was relevant to his case. The harassment he suffered and the employer’s failure to take corrective action was good cause to quit the job. His seemingly voluntary termination of employment was a constructive discharge. Had the client been asked about his sexual orientation up front, the advocate could have explored whether the client was discriminated against at work and developed a legal theory at a much earlier phase of the case. Getting this information early in the case not only helps to develop a more coherent legal theory of the case, but can matter in cases where a deadline to file is quickly approaching.

Moreover, questions about sexual orientation may also inform the type of investigation that might be needed for the case. Take the above example. Say that the employer denied having knowledge about the client’s sexual orientation. The advocate could ask the client whether he had ever disclosed his sexual orientation in obtaining employee benefits for a partner or same-sex spouse. If the client had listed a domestic partner or same-sex spouse on any employee benefits forms, that could have given the employer actual knowledge about the client’s sexual orientation. Having information about the client’s sexual orientation, and information about a same-sex spouse or partner on the intake form or up front in the intake interview, could help the advocate investigate and collect important evidence for the case quickly.

For some cases, the need to gather information and rule out LGBT discrimination can be extremely urgent. Take, for example, unlawful detainer cases. If a client gets a 3 day notice to pay rent or quit, advocates need to be able to investigate quickly whether the eviction was based on discrimination. If the client discloses an LGBT identity, an advocate can explore whether LGBT discrimination played a role in the eviction case.

Questions about a client’s gender identity

Similarly, inquiring about a client’s gender identity is important both for learning about the client and exploring whether illegal discrimination is part of the case. It is also important in that it opens up a discussion with clients about other strategies for preventing future discrimination.

For transgender clients, it may be important to explore whether the client has identity documents that align with the client’s gender identity and chosen name. This may lead to additional legal counseling around options for the client and the strategy for presenting the client’s identity before administrative agencies and courts.

The client’s gender identity may also lead the advocate to advise the client to obtain a court-ordered legal name and gender change. Many transgender clients are not aware of the legal and medical requirements for obtaining a name and gender change. Instead many clients suffer through harassment and “outings’ in their daily transactions with the world because their identity documents do not contain their preferred gender marker and name. Counseling on this topic is an important part of an overall advocacy strategy for transgender clients.

How and Where Should These Questions Be Asked?

In order to get information about sexual orientation and gender identity, we must be able to preserve the client’s right to confidentiality. The context in which our clients give us this information must also be kept private. Intake forms and interviews should be completed in private by the client or by phone with staff in such a way that the information is not shared with...
third parties. Considerations of privacy should already inform an organization’s procedures, because clients often disclose confidential information in forms and interviews.

Advocates need information to openly and effectively communicate with clients in a way that respects who they are. Questions that allow for clients to self-identify their gender identity help us avoid assuming the wrong gender, using the wrong pronouns, and alienating the client. By allowing clients to identify their gender, our advocates can then use appropriate pronouns, titles, and chosen names to address and advocate for our clients appropriately and respectfully.

One approach to asking questions about gender identity and sexual orientation could involve asking these questions in the section inquiring about other demographic data. Under a section inquiring about a client’s age, race, and so on, you could ask a client to self-identify their gender identity and sexual orientation in the following manner:

Gender (check all and any that apply):

I consider myself:

Male__ Female__ Transgender Male ___ Transgender Female___ Other___

[Transgender means a person whose gender identity is different from the gender assigned at birth]

Sexual Orientation:

I consider myself:

Straight/Heterosexual___ Bisexual___ Gay_____ Lesbian____ Other___

By giving clients the opportunity to self-identify their sexual orientation and gender identity, we open up an attorney-client relationship that allows for a more effective investigation, thorough counseling, and impactful advocacy strategy. By asking clients to self-identify their sexual orientation and gender identity, we can better serve them.
TIPS FOR LEGAL ADVOCATES WORKING WITH LESBIAN, GAY, BISEXUAL, AND TRANSGENDER CLIENTS

1. **Become comfortable with the issues and terminology.** Historically, society has been intolerant of lesbian, gay, bisexual, and transgender (LGBT) people, and these negative attitudes may affect how we think about LGBT people. It is important for advocates to understand LGBT people and the issues they face. Ideally, all staff would participate in an LGBT cultural competency training, so that everyone can be prepared to provide respectful services to LGBT clients. Other steps that can be taken include building relationships with local LGBT organizations and activists, visiting educational websites, and reading articles and books or watching movies with positive portrayals of LGBT people.

2. **Make your office space friendly to LGBT people.** Often, LGBT people will assume that a lawyer’s office is unfriendly to LGBT people until he or she receives a clear indication otherwise. Use visual cues to indicate that your office is a safe and welcoming space for LGBT people. Put up posters or stickers that have positive messages about LGBT people and make sure your resource display includes materials specifically for LGBT people. When possible, hire LGBT people as staff members in your organization.

3. **With all clients, use language that does not implicitly assume the client’s sexual orientation or gender.** Using inclusive language that does not assume the gender of your client or your client’s significant other sends a message that it is safe for your client to talk to you about his or her sexual orientation or gender identity. It is important to use this inclusive language with all clients, not just the ones who you think may be LGBT. For example, ask “are you in a relationship?” instead of “do you have a boyfriend?”

4. **Be respectful of how your client identifies his or her sexual orientation or gender identity.** It is very important to be respectful of how your client identifies his or her sexual orientation or gender identity. Although lesbian, gay, bisexual, and transgender are commonly used terms, your client may not identify with these words. How a person identifies is an important a core part of who they are, and respecting their choice to do so can help build a respectful relationship.

5. **Be aware of assumptions you may have based on a client’s sexual orientation or gender identity.** We all make assumptions about others based on our own background and experience. The important thing is to be aware so that you do not unconsciously make decisions based on your assumptions about people who are LGBT rather than on your client’s unique situation. For example, a gay male client does not necessarily appreciate sexual advances from other male coworkers, and he may have a sexual harassment claim. You may also assume that you can tell whether someone is lesbian, gay, bisexual, or transgender based on their gender presentation, but many LGBT people are gender conforming, and many gender non-conforming people do not identify as LGBT.

6. **Use the name and pronoun that conforms to the client’s gender identity consistently in all your interactions with the client, as well as in all correspondence and court documents.** We all make assumptions about a person’s gender based on sex stereotypes – but sometimes a person’s gender may be different from what we first expect. It is important to be respectful of your client’s gender identity by using the name and pronoun that he or she prefers and by asking co-workers, opposing counsel, judges, and court staff to do so.
you are unsure what name or pronoun to use, ask. Court documents may need a footnote explaining that you will use the client’s current name and gender.

7. **An LGBT client’s legal problems may not be directly related to his or her sexual orientation or gender identity.** LGBT clients face the same types of legal problems that non-LGBT clients face. An LGBT client’s legal problems will not inevitably involve sexual orientation or gender identity discrimination. For example, an LGBT client may come to the legal aid office because his or her landlord has failed to fix an unsafe condition, and that failure may be unrelated to the client’s sexual orientation or gender identity.

8. **Be prepared to address hostile attitudes and irrelevant arguments from courts and opposing parties and counsel.** An LGBT client may face hostility from the legal system, even if the case does not relate directly to his or her sexual orientation or gender identity. For example, in a custody case between different-sex parents where one parent is LGBT, the other parent may argue that the LGBT parent shouldn’t have custody because of his or her sexual orientation or gender identity.

9. **Reach out to LGBT organizations and attorneys who have experience working with LGBT legal issues.** The laws affecting LGBT people are complicated and constantly changing. Organizations and attorneys experienced with LGBT legal issues can help you identify the most effective strategies and may be able to provide legal research and information on these issues.

*These tips were taken in part from “Top 5 Tips for Working with Transgender Clients and Co-Workers” by the Transgender Law Center, www.TransgenderLawCenter.org*

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USTS Executive Summary

The 2015 U.S. Transgender Survey (USTS) is the largest survey examining the experiences of transgender people in the United States, with 27,715 respondents from all fifty states, the District of Columbia, American Samoa, Guam, Puerto Rico, and U.S. military bases overseas. Conducted in the summer of 2015 by the National Center for Transgender Equality, the USTS was an anonymous, online survey for transgender adults (18 and older) in the United States, available in English and Spanish. The USTS serves as a follow-up to the groundbreaking 2008–09 National Transgender Discrimination Survey (NTDS), which helped to shift how the public and policymakers view the lives of transgender people and the challenges they face. The report of the 2015 USTS provides a detailed look at the experiences of transgender people across a wide range of categories, such as education, employment, family life, health, housing, and interactions with the criminal justice system.

The findings reveal disturbing patterns of mistreatment and discrimination and startling disparities between transgender people in the survey and the U.S. population when it comes to the most basic elements of life, such as finding a job, having a place to live, accessing medical care, and enjoying the support of family and community. Survey respondents also experienced harassment and violence at alarmingly high rates. Several themes emerge from the thousands of data points presented in the full survey report.

Pervasive Mistreatment and Violence

Respondents reported high levels of mistreatment, harassment, and violence in every aspect of life. One in ten (10%) of those who were out to their immediate family reported that a family member was violent towards them because they were transgender, and 8% were kicked out of the house because they were transgender.

The majority of respondents who were out or perceived as transgender while in school (K–12) experienced some form of mistreatment, including being verbally harassed (54%), physically attacked (24%), and sexually assaulted (13%) because they were transgender. Further, 17% experienced such severe mistreatment that they left a school as a result.

In the year prior to completing the survey, 30% of respondents who had a job reported being fired, denied a promotion, or experiencing some other form of mistreatment in the workplace due to their gender identity or expression, such as being verbally harassed or physically or sexually assaulted at work.
In the year prior to completing the survey, 46% of respondents were verbally harassed and 9% were physically attacked because of being transgender. During that same time period, 10% of respondents were sexually assaulted, and nearly half (47%) were sexually assaulted at some point in their lifetime.

**Severe Economic Hardship and Instability**

The findings show large economic disparities between transgender people in the survey and the U.S. population. Nearly one-third (29%) of respondents were living in poverty, compared to 12% in the U.S. population. A major contributor to the high rate of poverty is likely respondents’ 15% unemployment rate—three times higher than the unemployment rate in the U.S. population at the time of the survey (5%).

Respondents were also far less likely to own a home, with only 16% of respondents reporting homeownership, compared to 63% of the U.S. population. Even more concerning, nearly one-third (30%) of respondents have experienced homelessness at some point in their lifetime, and 12% reported experiencing homelessness in the year prior to completing the survey because they were transgender.

**Harmful Effects on Physical and Mental Health**

The findings paint a troubling picture of the impact of stigma and discrimination on the health of many transgender people. A staggering 39% of respondents experienced serious psychological distress in the month prior to completing the survey, compared with only 5% of the U.S. population. Among the starkest findings is that 40% of respondents have attempted suicide in their lifetime—nearly nine times the attempted suicide rate in the U.S. population (4.6%).

Respondents also encountered high levels of mistreatment when seeking health care. In the year prior to completing the survey, one-third (33%) of those who saw a health care provider had at least one negative experience related to being transgender, such as being verbally harassed or refused treatment because of their gender identity. Additionally, nearly one-quarter (23%) of respondents reported that they did not seek the health care they needed in the year prior to completing the survey due to fear of being mistreated as a transgender person, and 33% did not go to a health care provider when needed because they could not afford it.
The Compounding Impact of Other Forms of Discrimination

When respondents’ experiences are examined by race and ethnicity, a clear and disturbing pattern is revealed: transgender people of color experience deeper and broader patterns of discrimination than white respondents and the U.S. population. While respondents in the USTS sample overall were more than twice as likely as the U.S. population to be living in poverty, people of color, including Latino/a (43%), American Indian (41%), multiracial (40%), and Black (38%) respondents, were more than three times as likely as the U.S. population (12%) to be living in poverty. The unemployment rate among transgender people of color (20%) was four times higher than the U.S. unemployment rate (5%). People of color also experienced greater health disparities. While 1.4% of all respondents were living with HIV—nearly five times the rate in the U.S. population (0.3%)—the rate among Black respondents (6.7%) was substantially higher, and the rate for Black transgender women was a staggering 19%.

Undocumented respondents were also more likely to face severe economic hardship and violence than other respondents. In the year prior to completing the survey, nearly one-quarter (24%) of undocumented respondents were physically attacked. Additionally, one-half (50%) of undocumented respondents have experienced homelessness in their lifetime, and 68% have faced intimate partner violence.

Respondents with disabilities also faced higher rates of economic instability and mistreatment. Nearly one-quarter (24%) were unemployed, and 45% were living in poverty. Transgender people with disabilities were more likely to be currently experiencing serious psychological distress (59%) and more likely to have attempted suicide in their lifetime (54%). They also reported higher rates of mistreatment by health care providers (42%).

Increased Visibility and Growing Acceptance

Despite the undeniable hardships faced by transgender people, respondents’ experiences also show some of the positive impacts of growing visibility and acceptance of transgender people in the United States.

One such indication is that an unprecedented number of transgender people—nearly 28,000—completed the survey, more than four times the number of respondents in the 2008–09 NTDS. This number of transgender people who elevated their voices reflects the historic growth in visibility that the transgender community has seen in recent years. Additionally, this growing visibility has lifted up not only the voices of transgender men and women, but also people who are non-binary, which is a term that is often used to describe...
people whose gender identity is not exclusively male or female, including those who identify as having no gender, a gender other than male or female, or more than one gender. With non-binary people making up over one-third of the sample, the need for advocacy that is inclusive of all identities in the transgender community is clearer than ever.

Respondents’ experiences also suggest growing acceptance by family members, colleagues, classmates, and other people in their lives. More than half (60%) of respondents who were out to their immediate family reported that their family was supportive of them as a transgender person. More than two-thirds (68%) of those who were out to their coworkers reported that their coworkers were supportive. Of students who were out to their classmates, more than half (56%) reported that their classmates supported them as a transgender person.

Overall, the report provides evidence of hardships and barriers faced by transgender people on a day-to-day basis. It portrays the challenges that transgender people must overcome and the complex systems that they are often forced to navigate in multiple areas of their lives in order to survive and thrive. Given this evidence, governmental and private institutions throughout the United States should address these disparities and ensure that transgender people are able to live fulfilling lives in an inclusive society. This includes eliminating barriers to quality, affordable health care, putting an end to discrimination in schools, the workplace, and other areas of public life, and creating systems of support at the municipal, state, and federal levels that meet the needs of transgender people and reduce the hardships they face. As the national conversation about transgender people continues to evolve, public education efforts to improve understanding and acceptance of transgender people are crucial. The rates of suicide attempts, poverty, unemployment, and violence must serve as an immediate call to action, and their reduction must be a priority. Despite policy improvements over the last several years, it is clear that there is still much work ahead to ensure that transgender people can live without fear of discrimination and violence.
Overview of Key Findings

Family Life and Faith Communities

- A majority of respondents (60%) who were out to the immediate family they grew up with said that their family was generally supportive of their transgender identity, while 18% said that their family was unsupportive, and 22% said that their family was neither supportive nor unsupportive.

- Those who said that their immediate families were supportive were less likely to report a variety of negative experiences related to economic stability and health, such as experiencing homelessness, attempting suicide, or experiencing serious psychological distress.

<table>
<thead>
<tr>
<th>Negative experiences among those with supportive and unsupportive families</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experienced homelessness</td>
</tr>
<tr>
<td>Attempted suicide</td>
</tr>
<tr>
<td>Currently experiencing serious psychological distress</td>
</tr>
</tbody>
</table>

- One in ten (10%) respondents who were out to their immediate family reported that a family member was violent towards them because they were transgender.

- One in twelve (8%) respondents who were out to their immediate family were kicked out of the house, and one in ten (10%) ran away from home.

- Nineteen percent (19%) of respondents who had ever been part of a spiritual or religious community left due to rejection. Forty-two percent (42%) of those who left later found a welcoming spiritual or religious community.
Identity Documents

- Only 11% of respondents reported that all of their IDs had the name and gender they preferred, while more than two-thirds (68%) reported that none of their IDs had the name and gender they preferred.

<table>
<thead>
<tr>
<th>Identity Document</th>
<th>Updated name</th>
<th>Updated gender</th>
</tr>
</thead>
<tbody>
<tr>
<td>Driver's license/state-issued ID</td>
<td>9%</td>
<td>29%</td>
</tr>
<tr>
<td>Social Security records</td>
<td>18%</td>
<td>31%</td>
</tr>
<tr>
<td>Student records (current or last school attended)</td>
<td>18%</td>
<td>23%</td>
</tr>
<tr>
<td>Passport</td>
<td>18%</td>
<td>28%</td>
</tr>
<tr>
<td>Birth certificate</td>
<td>18%</td>
<td>43%</td>
</tr>
</tbody>
</table>

- The cost of changing ID documents was one of the main barriers respondents faced, with 35% of those who have not changed their legal name and 32% of those who have not updated the gender on their IDs reporting that it was because they could not afford it.

- Nearly one-third (32%) of respondents who have shown an ID with a name or gender that did not match their gender presentation were verbally harassed, denied benefits or service, asked to leave, or assaulted.
Health Insurance and Health Care

- One in four (25%) respondents experienced a problem in the past year with their insurance related to being transgender, such as being denied coverage for care related to gender transition or being denied coverage for routine care because they were transgender.
- More than half (55%) of those who sought coverage for transition-related surgery in the past year were denied, and 25% of those who sought coverage for hormones in the past year were denied.
- One-third (33%) of those who saw a health care provider in the past year reported having at least one negative experience related to being transgender, with higher rates for people of color and people with disabilities. This included being refused treatment, verbally harassed, or physically or sexually assaulted, or having to teach the provider about transgender people in order to get appropriate care.
- In the past year, 23% of respondents did not see a doctor when they needed to because of fear of being mistreated as a transgender person, and 33% did not see a doctor when needed because they could not afford it.

Psychological Distress and Attempted Suicide

- Thirty-nine percent (39%) of respondents experienced serious psychological distress in the month before completing the survey (based on the Kessler 6 Psychological Distress Scale), compared with only 5% of the U.S. population.
- Forty percent (40%) have attempted suicide in their lifetime, nearly nine times the rate in the U.S. population (4.6%).
- Seven percent (7%) attempted suicide in the past year—nearly twelve times the rate in the U.S. population (0.6%).

HIV

- Respondents were living with HIV (1.4%) at nearly five times the rate in the U.S. population (0.3%).
- HIV rates were higher among transgender women (3.4%), especially transgender women of color. Nearly one in five (19%) Black transgender women were living with HIV, and American Indian (4.6%) and Latina (4.4%) women also reported higher rates.
Experiences in Schools

- More than three-quarters (77%) of those who were out or perceived as transgender at some point between Kindergarten and Grade 12 (K–12) experienced some form of mistreatment, such as being verbally harassed, prohibited from dressing according to their gender identity, disciplined more harshly, or physically or sexually assaulted because people thought they were transgender.

- Fifty-four percent (54%) of those who were out or perceived as transgender in K–12 were verbally harassed, nearly one-quarter (24%) were physically attacked, and 13% were sexually assaulted in K–12 because of being transgender.

- Seventeen percent (17%) faced such severe mistreatment as a transgender person that they left a K–12 school.

- Nearly one-quarter (24%) of people who were out or perceived as transgender in college or vocational school were verbally, physically, or sexually harassed.

<table>
<thead>
<tr>
<th>EXPERIENCES</th>
<th>% OF THOSE WHO WERE OUT OR PERCEIVED AS TRANSGENDER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbally harassed because people thought they were transgender</td>
<td>54%</td>
</tr>
<tr>
<td>Not allowed to dress in a way that fit their gender identity or expression</td>
<td>52%</td>
</tr>
<tr>
<td>Disciplined for fighting back against bullies</td>
<td>36%</td>
</tr>
<tr>
<td>Physically attacked because people thought they were transgender</td>
<td>24%</td>
</tr>
<tr>
<td>Believe they were disciplined more harshly because teachers or staff thought they were transgender</td>
<td>20%</td>
</tr>
<tr>
<td>Left a school because the mistreatment was so bad</td>
<td>17%</td>
</tr>
<tr>
<td>Sexually assaulted because people thought they were transgender</td>
<td>13%</td>
</tr>
<tr>
<td>Expelled from school</td>
<td>6%</td>
</tr>
<tr>
<td>One or more experiences listed</td>
<td>77%</td>
</tr>
</tbody>
</table>
• The unemployment rate among respondents (15%) was three times higher than the unemployment rate in the U.S. population (5%), with Middle Eastern, American Indian, multiracial, Latino/a, and Black respondents experiencing higher rates of unemployment.

![Unemployment rate chart]

* U.S. population data for Middle Eastern people alone is unavailable in the CPS.

• Nearly one-third (29%) were living in poverty, more than twice the rate in the U.S. population (12%).

**Employment and the Workplace**

• One in six (16%) respondents who have ever been employed—or 13% of all respondents in the sample—reported losing a job because of their gender identity or expression in their lifetime.

• In the past year, 27% of those who held or applied for a job during that year—19% of all respondents—reported being fired, denied a promotion, or not being hired for a job they applied for because of their gender identity or expression.

• Fifteen percent (15%) of respondents who had a job in the past year were verbally harassed, physically attacked, and/or sexually assaulted at work because of their gender identity or expression.

• Nearly one-quarter (23%) of those who had a job in the past year reported other forms of mistreatment based on their gender identity or expression during that year.
such as being forced to use a restroom that did not match their gender identity, being
told to present in the wrong gender in order to keep their job, or having a boss or
coworker share private information about their transgender status without their
permission.

- Overall, 30% of respondents who had a job in the past year reported being fired,
denied a promotion, or experiencing some other form of mistreatment related to their
gender identity or expression.

- More than three-quarters (77%) of respondents who had a job in the past year took
steps to avoid mistreatment in the workplace, such as hiding or delaying their gender
transition or quitting their job.

### Housing, Homelessness, and Shelter Access

- Nearly one-quarter (23%) of respondents experienced some form of housing
discrimination in the past year, such as being evicted from their home or denied a
home or apartment because of being transgender.

- Nearly one-third (30%) of respondents have experienced homelessness at some point
in their lives.

- In the past year, one in eight (12%) respondents experienced homelessness because
of being transgender.

- More than one-quarter (26%) of those who experienced homelessness in the
past year avoided staying in a shelter because they feared being mistreated
as a transgender person. Those who did stay in a shelter reported high levels of
mistreatment: seven out of ten (70%) respondents who stayed in a shelter in the
past year reported some form of mistreatment, including being harassed, sexually or
physically assaulted, or kicked out because of being transgender.

- Respondents were nearly four times less likely to own a home (16%) compared to the
U.S. population (63%).
Sex Work and Other Underground Economy Work

- Respondents reported high rates of experience in the underground economy, including sex work, drug sales, and other work that is currently criminalized. **One in five (20%) have participated in the underground economy** for income at some point in their lives—including 12% who have done sex work in exchange for income—and 9% did so in the past year, with higher rates among women of color.

- Respondents who interacted with the police either while doing sex work or while the police mistakenly thought they were doing sex work reported high rates of police harassment, abuse, or mistreatment, with **nearly nine out of ten (86%) reporting being harassed, attacked, sexually assaulted, or mistreated in some other way by police.**

- **Those who have done income-based sex work were also more likely to have experienced violence.** More than three-quarters (77%) have experienced intimate partner violence and 72% have been sexually assaulted, a substantially higher rate than the overall sample. Out of those who were working in the underground economy at the time they took the survey, nearly half (41%) were physically attacked in the past year and over one-third (36%) were sexually assaulted during that year.

Police Interactions and Prisons

- **Respondents experienced high levels of mistreatment and harassment by police.** In the past year, of respondents who interacted with police or law enforcement officers who thought or knew they were transgender, **more than half (58%) experienced some form of mistreatment.** This included being verbally harassed, repeatedly referred to as the wrong gender, physically assaulted, or sexually assaulted, including being forced by officers to engage in sexual activity to avoid arrest.

- **Police frequently assumed that respondents—particularly transgender women of color—were sex workers.** In the past year, of those who interacted with law enforcement officers who thought or knew they were transgender, one-third (33%) of Black transgender women and 30% of multiracial women said that an officer assumed they were sex workers.

- **More than half (57%)** of respondents said they would feel **uncomfortable asking the police for help** if they needed it.

- Of those who were arrested in the past year (2%), **nearly one-quarter (22%) believed they were arrested because they were transgender.**
Respondents who were held in jail, prison, or juvenile detention in the past year faced high rates of physical and sexual assault by facility staff and other inmates. In the past year, nearly one-quarter (23%) were physically assaulted by staff or other inmates, and one in five (20%) were sexually assaulted. Respondents were over five times more likely to be sexually assaulted by facility staff than the U.S. population in jails and prisons, and over nine times more likely to be sexually assaulted by other inmates.

**Harassment and Violence**

- Nearly half (46%) of respondents were verbally harassed in the past year because of being transgender.
- Nearly one in ten (9%) respondents were physically attacked in the past year because of being transgender.
- Nearly half (47%) of respondents were sexually assaulted at some point in their lifetime and one in ten (10%) were sexually assaulted in the past year. Respondents who have done sex work (72%), those who have experienced homelessness (65%), and people with disabilities (61%) were more likely to have been sexually assaulted in their lifetime.
- More than half (54%) experienced some form of intimate partner violence, including acts involving coercive control and physical harm.
- Nearly one-quarter (24%) have experienced severe physical violence by an intimate partner, compared to 18% in the U.S. population.
Places of Public Accommodation

- Respondents reported being denied equal treatment or service, verbally harassed, or physically attacked at many places of public accommodation—places that provide services to the public, like retail stores, hotels, and government offices. Out of respondents who visited a place of public accommodation where staff or employees thought or knew they were transgender, nearly one-third (31%) experienced at least one type of mistreatment in the past year in a place of public accommodation. This included 14% who were denied equal treatment or service, 24% who were verbally harassed, and 2% who were physically attacked because of being transgender.

- One in five (20%) respondents did not use at least one type of public accommodation in the past year because they feared they would be mistreated as a transgender person.

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<thead>
<tr>
<th>LOCATION VISITED</th>
<th>% OF THOSE WHO SAID STAFF KNEW OR THOUGHT THEY WERE TRANSGENDER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public transportation</td>
<td>34%</td>
</tr>
<tr>
<td>Retail store, restaurant, hotel, or theater</td>
<td>31%</td>
</tr>
<tr>
<td>Drug or alcohol treatment program</td>
<td>22%</td>
</tr>
<tr>
<td>Domestic violence shelter or program or rape crisis center</td>
<td>22%</td>
</tr>
<tr>
<td>Gym or health club</td>
<td>18%</td>
</tr>
<tr>
<td>Public assistance or government benefit office</td>
<td>17%</td>
</tr>
<tr>
<td>Department of Motor Vehicles (DMV)</td>
<td>14%</td>
</tr>
<tr>
<td>Nursing home or extended care facility</td>
<td>14%</td>
</tr>
<tr>
<td>Court or courthouse</td>
<td>13%</td>
</tr>
<tr>
<td>Social Security office</td>
<td>11%</td>
</tr>
<tr>
<td>Legal services from an attorney, clinic, or legal professional</td>
<td>6%</td>
</tr>
</tbody>
</table>

Experiences in Restrooms

The survey data was collected before transgender people’s restroom use became the subject of increasingly intense and often harmful public scrutiny in the national media and legislatures around the country in 2016. Yet respondents reported facing frequent harassment and barriers when using restrooms at school, work, or in public places.

- Nearly one in ten (9%) respondents reported that someone denied them access to a restroom in the past year.

- In the past year, respondents reported being verbally harassed (12%), physically attacked (1%), or sexually assaulted (1%) when accessing a restroom.
• More than half (59%) of respondents avoided using a public restroom in the past year because they were afraid of confrontations or other problems they might experience.

• Nearly one-third (32%) of respondents limited the amount that they ate and drank to avoid using the restroom in the past year.

• Eight percent (8%) reported having a urinary tract infection, kidney infection, or another kidney-related problem in the past year as a result of avoiding restrooms.

Civic Participation and Party Affiliation

• More than three-quarters (76%) of U.S. citizens of voting age in the sample reported that they were registered to vote in the November 2014 midterm election, compared to 65% in the U.S. population.

• More than half (54%) of U.S. citizens of voting age reported that they had voted in the midterm election, compared to 42% in the U.S. population.

• Half (50%) of respondents identified as Democrats, 48% identified as Independents, and 2% identified as Republicans, compared to 27%, 43%, and 27% in the U.S. population, respectively.

<table>
<thead>
<tr>
<th>POLITICAL PARTY</th>
<th>% IN USTS</th>
<th>% IN U.S. POPULATION (GALLUP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democrat</td>
<td>50%</td>
<td>27%</td>
</tr>
<tr>
<td>Independent</td>
<td>48%</td>
<td>43%</td>
</tr>
<tr>
<td>Republican</td>
<td>2%</td>
<td>27%</td>
</tr>
</tbody>
</table>
Chapter 3—Gender Identity and Sexual Orientation

About the National Center for Transgender Equality

The National Center for Transgender Equality (NCTE) is the nation’s leading social justice policy advocacy organization devoted to ending discrimination and violence against transgender people. NCTE was founded in 2003 by transgender activists who recognized the urgent need for policy change to advance transgender equality. NCTE now has an extensive record winning life-saving changes for transgender people. NCTE works by educating the public and by influencing local, state, and federal policymakers to change policies and laws to improve the lives of transgender people. By empowering transgender people and our allies, NCTE creates a strong and clear voice for transgender equality in our nation’s capital and around the country.

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The Report of the
2015 U.S. Transgender Survey: Executive Summary
by:
Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet, and Ma’ayan Anafi
December 2016

RECOMMENDED CITATION


Updated December 2017

The ABCs of Oregon Legal Services: Accessibility, Barriers, and Challenges
The 2015 U.S. Transgender Survey (USTS) is the largest survey examining the experiences of transgender people in the United States, with 27,715 respondents nationwide. The USTS was conducted by the National Center for Transgender Equality in the summer of 2015. Of respondents in the USTS, 1,152 were Oregon residents. This report discusses the experiences of respondents living in Oregon.

### Income and Employment Status

- 12% of respondents in Oregon were unemployed.
- 30% were living in poverty.

### Employment and the Workplace

- 19% of respondents who have ever been employed reported losing a job in their lifetime because of their gender identity or expression.
- In the past year, 29% of those who held or applied for a job during that year reported being fired, being denied a promotion, or not being hired for a job they applied for because of their gender identity or expression.
- Respondents who had a job in the past year reported being verbally harassed (15%) and sexually assaulted (1%) at work because of their gender identity or expression.
- 17% of those who had a job in the past year reported other forms of mistreatment based on their gender identity or expression during that year, such as being forced to use a restroom that did not match their gender identity, being told to present in the wrong gender in order to keep their job, or having a boss or coworker share private information about their transgender status with others without their permission.

### Education

- 83% of those who were out or perceived as transgender at some point between Kindergarten and Grade 12 (K–12) experienced some form of mistreatment, such as being verbally harassed, prohibited from dressing according to their gender identity, disciplined more harshly, or physically or sexually assaulted because people thought they were transgender.
  - 63% of those who were out or perceived as transgender in K–12 were verbally harassed, 25% were physically attacked, and 15% were sexually assaulted in K–12 because of being transgender.
  - 23% faced such severe mistreatment as a transgender person that they left a K–12 school.
- 31% of respondents who were out or perceived as transgender in college or vocational school were verbally, physically, or sexually harassed because of being transgender.
Housing, Homelessness, and Shelter Access

- 24% of respondents experienced some form of housing discrimination in the past year, such as being evicted from their home or denied a home or apartment because of being transgender.
- 37% have experienced homelessness at some point in their lives.
- 12% experienced homelessness in the past year because of being transgender.
- 32% of respondents who experienced homelessness in the past year avoided staying in a shelter because they feared being mistreated as a transgender person.

Public Accommodations

- Respondents reported being denied equal treatment or service, verbally harassed, or physically attacked at many places of public accommodation—places that provide services to the public, like retail stores, hotels, and government offices.
- Of respondents who visited a place of public accommodation where staff or employees thought or knew they were transgender, 33% experienced at least one type of mistreatment in the past year. This included 17% who were denied equal treatment or service, 25% who were verbally harassed, and 2% who were physically attacked because of being transgender.

Restrooms

- 8% of respondents reported that someone denied them access to a restroom in the past year.
- In the past year, respondents reported being verbally harassed (13%) and physically attacked (1%) when accessing a restroom.
- 62% of respondents avoided using a public restroom in the past year because they were afraid of confrontations or other problems they might experience.
- 37% of respondents limited the amount that they ate or drank to avoid using the restroom in the past year.

Police Interactions

- Respondents experienced high levels of mistreatment and harassment by police. In the past year, of respondents who interacted with police or other law enforcement officers who thought or knew they were transgender, 61% experienced some form of mistreatment. This included being verbally harassed, repeatedly referred to as the wrong gender, physically assaulted, or sexually assaulted, including being forced by officers to engage in sexual activity to avoid arrest.
- 58% of respondents said they would feel uncomfortable asking the police for help if they needed it.
Health

- 33% of respondents experienced a problem in the past year with their insurance related to being transgender, such as being denied coverage for care related to gender transition or being denied coverage for routine care because they were transgender.

- 36% of those who saw a health care provider in the past year reported having at least one negative experience related to being transgender. This included being refused treatment, verbally harassed, or physically or sexually assaulted, or having to teach the provider about transgender people in order to get appropriate care.

- In the past year, 22% of respondents did not see a doctor when they needed to because of fear of being mistreated as a transgender person, and 35% did not see a doctor when needed because they could not afford it.

- 40% of respondents experienced serious psychological distress in the month before completing the survey (based on the Kessler 6 Psychological Distress Scale).

- 15% of respondents reported that a professional, such as a psychologist, counselor, or religious advisor, tried to stop them from being transgender.

Identity Documents

- Only 13% of respondents reported that all of their IDs had the name and gender they preferred, while 60% reported that none of their IDs had the name and gender they preferred.

- The cost of changing IDs was one of the main barriers respondents faced, with 36% of those who have not changed their legal name and 37% of those who have not updated the gender on their IDs reporting that it was because they could not afford it.

- 36% of respondents who have shown an ID with a name or gender that did not match their gender presentation were verbally harassed, denied benefits or service, asked to leave, or assaulted.

ENDNOTES | OREGON STATE REPORT

1. The number of respondents in Oregon (n=1,152) is an unweighted value. All reported percentages are weighted. For more information on the weighting procedures used to report 2015 U.S. Transgender Survey data, see the full survey report, available at www.USTransSurvey.org.

2. For reference, the U.S. unemployment rate was 5% at the time of the survey, as reported by the Bureau of Labor Statistics. See the full report for more information about this calculation.

3. For reference, the U.S. poverty rate was 12% at the time of the survey. The research team calculated the USTS poverty measure using the official poverty measure, as defined by the U.S. Census Bureau. USTS respondents were designated as living in poverty if their total family income fell under 125% of the official U.S. poverty line. See the full report for more information about this calculation.

4. For reference, 5% of the U.S. population reported experiencing serious psychological distress during the prior month as reported in the 2015 National Survey on Drug Use and Health. See the full report for more information about this calculation.
2015 U.S. Transgender Survey
Oregon State Report

October 2017


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USTransSurvey.org | TransEquality.org
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I. Firm Participation Within the LGBT Community

Implement concrete initiatives which demonstrate firm promotion and support of attorney and staff involvement in LGBT organizations.

A. Bar/Legal association activities
   - Sponsor local diversity bar association membership and events, as well as community outreach efforts.
   - Pay or reimburse membership fees/dues in LGBT bar associations and committees.
   - Participation and/or hourly commitment to LGBT bar/legal associations should be tracked and rewarded.
   - Leadership in LGBT bar/legal associations should be recognized and publicized.

B. LGBT groups in area law schools
   - Sponsor events at area law school which address the LGBT community.
   - Implement networking opportunities with LGBT students and faculty.

C. LGBT community organizations
   - Seek opportunities to provide financial and/or legal support to national, state and local LGBT community organizations.
   - Sponsor events with local LGBT community organizations, either financially, or by providing speakers, volunteers, and/or training.
   - Co-sponsor local minority networking series with other area firms.

II. LGBT Related Marketing and Press

Implement a marketing initiative which identifies and celebrates LGBT activities and efforts within the firm.

A. Develop a firm web page focused solely on diversity.

B. Keep and tout firm LGBT diversity/statistics.
C. Tout accomplishments of individual LGBT attorneys.

D. Ensure that social invitations are inclusive by using wording that invites partners, not just spouses.

E. Include diversity goals and achievements in the firm’s annual report.

F. Encourage firms to request third party statistic gatherers like AmLaw to include firm LGBT statistics in their diversity scorecards.

III. Client-directed activities

A. Offer/tout LGBT friendly legal services.

B. Develop/tout expertise in LGBT issues (e.g., domestic partnerships, discrimination).

C. Voluntarily report LGBT statistics when responding to RFP’s or diversity questionnaires, even if not specifically requested.

D. Work with clients to expand their diversity and inclusion.

E. Encourage clients to add “gender identity/expression” to non-discrimination policies and adopt workplace practices that support transgender employees’ hiring, development, and advancement.

F. Encourage clients to add LGBT statistics to their outside counsel questionnaires.

G. Encourage clients to add LGBT support as a criterion for selecting diverse firms.

H. Partner with clients on in-house LGBT activities
   • Provide speakers for client affinity group events

I. Advise/train clients on LGBT legal compliance

J. Develop goals to identify and utilize minority and women-owned businesses as firm vendors.

IV. Legal Advocacy

A. Provide pro bono representation to LGBT organizations and persons
B. Coordinate with legal organizations on legal strategy for cutting edge issues
C. Work on amicus briefs on cutting edge LGBT issues
D. Participate/serve as faculty in LGBT-related CLE programs

**ABA SOGI - INTERNAL BEST PRACTICES FOR PROMOTING LGBT DIVERSITY**

I. Leadership

A. Commitment from Leadership
   - Identify LGBT diversity as one of the firm’s key strategic initiatives or core values.
   - Define leadership and management roles and incorporate LGBT diversity into the firm’s plan and/or business model.
   - Involvement of leadership in day-to-day diversity work
     - Managing Partner and/or Executive Committee members on the firm’s Diversity Committee
     - Definition of diversity for purposes of committee should include LGBT diversity
   - Representation of LGBT lawyers at all leadership levels
   - Accountability
     - Ensure that LGBT attorneys fill major client service roles and meaningfully participate on client service teams.
     - Monitor progress made on LGBT diversity goals by utilizing metrics, soliciting feedback from the firm’s internal affinity groups, and maintaining LGBT diversity attrition statistics.
     - Include LGBT diversity goals in evaluations of employees and managers.
     - Include LGBT-related contributions in the tally of “firm commitment” or “firm administration” hours for statistical review purposes.
– Hold practice group leaders accountable for setting diversity goals and engaging in
diversity enhancement efforts.

– Incorporate diversity hours and individual diversity enhancement efforts into evalu-
ation and compensation determinations for firm leaders, including management and
office/practice group leaders.

– Possible partners self-evaluation process to determine initiative to actively diversify
their departments. This process is reviewed by the Management Committee and the
results affect each partner’s compensation.

B. Communication

• Communicate the importance the firm places on LGBT diversity internally and exter-
  nally, including the firm’s goals, programs, and progress.

• Encourage participation at national LGBT conferences, both within the legal industry
  and in multi-industry contexts.

• Utilize firm-wide e-mails to discuss the firm’s diversity priorities and plan; distribute
  the firm’s diversity strategic statement and plan.

• Include LGBT diversity on the agenda for meaningful discussion at firm retreats.

• Provide information about the firm’s commitment to LGBT diversity on the firm’s
  website, in its recruiting materials, and in client communications.

• Schedule periodic face-to-face meetings with firm leaders and LGBT lawyers and staff
  to discuss diversity and inclusion issues, concerns, and successes.

• Workforce meetings, announcements, communications

• Refer to spouses and partners instead of just husbands and wives, and partners’ parents
  instead of just “in laws.”

• Use appropriate pronouns and other gendered language when referring to transgender
  employees.

• Recognize LGBT civil rights milestones just as other groups’ milestones are recognized.

• Senior management should refer positively to LGBT issues, concerns.

• Foster employee connections to LGBT bar and multi-disciplinary professional associa-
tions and charitable activities just as connections to other bar associations and activities.
Chapter 3—Gender Identity and Sexual Orientation

C. Resources

• Provide Leadership Training/Diversity Management Training for firm leaders to enable development of strategic management plan for diversity.

• Provide diversity training, including training focusing specifically on LGBT diversity, to strengthen diversity awareness and communication skills.

• Offer executive coaching services on management, mentoring, and supervision skills.

• Hire a full-time diversity professional to serve on the Diversity Committee, facilitate the implementation of the firm’s diversity initiatives, serve as a development resource for diverse lawyers, and assess whether LGBT associates have access to opportunities and are working on matters for clients with the most sought-after work.

• Encourage firm leaders and associates to participate in LGBT bar associations and other community organizations that foster and enhance diversity.

• Visibly and vocally support firm mentor programs and lead by example.

II. Culture, Inclusion and Support

A. Create a diversity vision statement embodying the firm’s commitment to LGBT diversity and disseminate both internally and externally.

B. Develop and implement a firm-wide diversity plan.

C. Non-discrimination policies

• Include in list of definitional terms in company policies the terms sexual orientation, gender identity and expression, and transgender.

• Include sexual orientation and gender identity and expression in non-harassment policy.

• Include sexual orientation and gender identity and expression in non-discrimination policies in hiring, promotions, benefits, job assignments, transfers, discipline, and non-retaliation.

• Mention LGBT policies in recruitment materials.

• Avoid gender-specific dress codes; allow dress appropriate to one’s gender identity.

D. Develop a Diversity Committee composed of a staff diversity director, attorneys, and staff across all offices, with access to/participation from the Management Committee.
and key decision makers, to identify key internal issues and to propose solutions, diversity events, and diversity training.

- Include LGBT attorneys and staff on committee.
- Committee mission statement and goals should specifically reference LGBT diversity.
- Communicate to workforce the existence and activities of Diversity Committee.
- Grant Diversity Committee access to key decision-makers.
- Seek input from Diversity Committee on content of all policies.

E. Support transgender employees

- Provide employee access to any sex-segregated facility based on the employee’s stated gender identity.
- Use appropriate pronouns and other gendered language that is respectful of an employee’s stated gender identity.
- Update personnel records and other documents to reflect current name and stated gender identity as well as ensure confidentiality of any existing documentation of an employee’s pre-transition name or gender marker.
- Incorporate information about transgender employees, including the possibility of transition on-the-job, in human resource materials and anti-harassment trainings whether or not there are out transgender employees at the workplace.
- Respond decisively to any anti-transgender incidents or comments (e.g., invasive questioning, rude comments, harassment, etc.)

F. Adopt a “no tolerance” culture toward discrimination, harassment, prejudice and bias

- Strictly prohibit derogatory comments or jokes about LGBT persons, and anti-LGBT slurs.
- Do not tolerate such comments from clients, vendors or other outsiders.
- Promptly investigate complaints of anti-LGBT behavior.
- Impose prompt and firm discipline on persons who engage in anti-LGBT behavior, even if the behavior does not rise to the level of unlawful discrimination or harassment, and even if nobody complains.
• “Check in” with employees who have experienced bias or problems in the past

G. Treat LGBT employees in a warm, inclusive manner. Show them that you value them for who they are.

• Encourage LGBT employees to converse openly about their personal lives, just as any other employee would (e.g., same-sex partners, LGBT-related volunteer activities).

• Socialize with LGBT employees in the same manner and to the same extent as other employees. Let them know they do not need to hide who they are.

• Make positive comments that demonstrate that you are friendly to the LGBT community.

• Use respectful language, e.g., lesbian, gay, LGBT. Do not use disrespectful language or terms (e.g., lifestyle, you people, etc.)

• If you suspect someone may be gay or transgender, don’t ask, and don’t gossip. Do, however, make it clear that you are comfortable with LGBT issues and persons.

• Ask your LGBT employees how they are doing, and what you can do to create a more inclusive, friendly work environment for them.

• Do not presume an employee is or is not transgender.

III. Training and Development

A. Professional Development

• If volunteer or continuing education hours are required or recognized, have recognition of LGBT courses and activities.

• Have a mentor program. Elements of a successful mentor program include:

• Mentors must be trained in appropriate techniques and rewarded for success, including appropriate training in LGBT issues.

• Pair minority lawyers with other minority lawyers where preferred or advisable for professional development; avoid such parings when not preferred or inadvisable for professional development.

• Mentors and mentees must set mutual expectations and be provided specific and regular opportunities to meet.
• Pair each associate with both an associate and a partner to allow a variety of resources to address individual needs and goals.

• Establish a supplemental mentoring program during the third or fourth year to assist associates during this crucial period of career development.

• Pair members of the senior management team with diverse lawyers to allow information to flow between these two important groups.

B. Diversity Training

• Provide annual diversity training for all lawyers and staff, and management training for supervisors, including hiring attorneys, management, and practice area leaders. Tailor content and materials to the firm and its culture. Include training on LGBT issues.

• Assess the diversity, history and culture of the firm using interviews, focus groups, questionnaires, and policy and complaint reviews; structure training content according to results of assessment as to the needs and culture of the firm.

• Offer reimbursement of employee time and fees for employees who attend diversity awareness training, including training specifically related to LGBT diversity.

• Participation from each and every member of the firm community — from senior partners to mail clerks, should ensure 100% participation.

• Provide periodic training of employees, including HR, managers and supervisors on diversity, anti-discrimination, and harassment, and include sexual orientation and gender identity and expression as subject matter; include content that increases awareness of LGBT employees, nomenclature (e.g., sexual orientation, not sexual preference) and LGBT employee concerns.

• Include state and local laws in training.

• Prepare workforce in advance for a transgender employee's transition on the job whether or not there are out transgender persons in the workforce.

• At a minimum, trainers must:

  • Have experience with and knowledge of legal issues to avoid potential legal problems that can result from diversity training;

  • Understand the particular problems that can arise from LGBT diversity issues in a law firm; and
• Have strong and engaging communication skills and be able to communicate effectively on LGBT issues.

IV. Recruitment and Retention

A. Recruitment

• Law School Involvement:
  • Foster good working relationships with law school career services professionals.
  • Participate in minority clerkship or fellowship programs.
  • Meet with and support LGBT law student leaders and groups.
  • Host events sponsored by LGBT student groups.
  • Participate in mentor programs for minority law students.
  • Take part in career panel presentations.
  • Include LGBT students in any hosted receptions for law students.
  • Communicate the firm’s diversity goals to deans, professors, and career services professionals; ask for assistance in identifying and referring promising LGBT students.

• Internal Recruiting Efforts:
  • Law students hired to work part-time during the academic year should include review of qualified LGBT students.
  • Bolster the firm’s marketing materials to specifically tout LGBT diversity and inclusion
  • Create a minority recruitment brochure to emphasize the firm’s commitment to diversity, and inclusion of LGBT candidates.
  • Set diversity recruitment goals consistent with management’s priorities.
  • Sponsor a summer associate reception by the firm’s Diversity Committee.

• External Recruiting Efforts:
  • Have LGBT attorneys involved in recruitment
• Contribute to scholarships for students attending area law schools that focus on LGBT youth.

• Advertise in LGBT and minority professional publications and on LGBT and minority professional association websites.

• Post lawyer positions online on diversity organizations’ websites such as the Minority Corporate Counsel Association and the National LGBT Bar Association.

B. Retention

• Analyze existing policies and firm history to evaluate for unintended and/or historic bias, including any deficiencies or retention problems for LGBT lawyers. This should include review of:

  • Compensation Equity.

  • Assignment Equity.

  • Comparison of development between equivalent attorneys from different groups (i.e. no false equivalencies to make it look even between LGBT lawyers and non-LGBT Lawyers).

  • Mandate equal access for diverse attorneys to quality work assignments, marketing efforts, formal and informal events, and clients.

  • Create programs where attorneys from underrepresented groups receive access to high-profile client assignments.

  • Implement rotational assignment programs that allow attorneys from underrepresented groups to work directly with the client for development of substantive relationship building, rainmaking, and other skills.

  • Make firm leaders accountable for meeting diversity goals, including achievement of diversity goals as a factor in the compensation process.

  • Encourage all firm members to participate in women and minority bar associations and minority counsel programs

  • Sponsor memberships in these bar associations and fund participation at these events.

  • Support lawyers in leadership roles in professional organizations.
• Count diversity-related activities toward “firm commitment” hours.

• Promote work/life balance.

• Have training and programs around LGBT issues.

• Talk about LGBT issues in marketing materials to clients.

• Do LGBT related pro bono.

• Diversify client relationship leadership.

ABA-SOGI COMPENSATION AND BENEFITS BEST PRACTICES FOR PROMOTING LGBT DIVERSITY

I. Compensation and Benefits Literature

A. The firm policy and manual should clearly stipulate that “Sexual Orientation” and “Gender Identity and Expression” are within the purview of protected classes included within the firm’s non-discrimination policies. A clear non-discrimination policy should be implemented to include, hiring, promotions, termination, and compensation and benefit.

B. Compensation and benefits literature should reflect inclusion, including gender neutral language to include spouse/same-sex domestic partner.

C. Appropriate terminology should be used, such as “gender identity,” “gender expression,” and “sexual orientation.”

D. Personnel forms should include an option for employees to “self identify” so that inclusive compensation and benefits may be offered.

II. Offered benefits should be inclusive of LGBT employees and their families

A. Same-sex domestic partners should be offered the same benefits as married individuals and/or opposite-sex partners, including health insurance and COBRA coverage extensions, and retiree medical coverage.

B. Proof of same-sex married/domestic partnership should not be more complicated than what is required for opposite-sex or married couples. If some proof of domestic partnership is required, accept valid city or state registries of domestic partnership.
C. Health insurance coverage benefits should be inclusive of transgender employees, including all transition-related medical care.

  • Firms may also consider offering health insurance policies that include benefits covering gender reassignment surgery and related medical treatment, including hormone replacement therapy, mental health / psychological therapy, and, other transition related medical procedures.

D. All benefits should be gender neutral. These include:

  • Health insurance
  • Life insurance
  • Disability insurance
  • Supplemental life insurance
  • Survivor pension benefits
  • Retirement plan beneficiary
  • Retirement rollover options

E. Gross salary may be adjusted for domestic partners to offset the tax burden.

F. Benefits related to children should account for diverse families.

G. Family leave policies should be gender neutral and inclusive of diverse families

  • Parental leave should be gender neutral (as opposed to maternal and paternal leave disparity)

  • Should cover adoptions

  • Should cover care for same-sex domestic partners

  • Should cover care for child of same-sex domestic partner

  • Should provide family leave benefits to employees standing “in loco parentis”

H. Bereavement leave policies

  • Should be gender neutral
• Should allow time off for the death of a domestic partners and family members of domestic partners

I. Relocation assistance should be gender neutral.

J. Consider reimbursement policies for time and fees to employees who attend diversity awareness training.

K. Firms should also consider offering financial benefits to help defray the cost of non-traditional family planning, such as adoption fees, in vitro procedures.
THE WILLIAMS INSTITUTE OREGON CENSUS SNAPSHOT: 2010
