PROVIDING LEGAL SERVICES TO SEXUAL ASSAULT SURVIVORS

Presenters:

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Laura Hair, Refuge House
Chris DelMarco, Legal Services of North Florida
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Screening Sexual Assault Victims

Mack Moore, Lakeview Center
# Legal Services Referral Form

**Date:** __________  
**Referring Advocate:** __________  
**Phone:** __________

## PERSONAL INFORMATION (Please Print)

<table>
<thead>
<tr>
<th>Last Name</th>
<th>First Name</th>
<th>Middle Initial</th>
</tr>
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<tbody>
<tr>
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</table>

<table>
<thead>
<tr>
<th>Address</th>
<th>City, State, &amp; Zip</th>
<th>County</th>
</tr>
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<tbody>
<tr>
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</table>

<table>
<thead>
<tr>
<th>Primary Phone Number:</th>
<th>Can we identify ourselves when we call?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes [ ]  No [ ]</td>
</tr>
<tr>
<td></td>
<td>If no, how should we identify ourselves</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Alternate Phone Number:</th>
<th>Can we leave a message when we call?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes [ ]  No [ ]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date of Birth:</th>
<th>Age:</th>
<th>Gender:</th>
<th>Race/Ethnicity:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Female [ ]  Male [ ]</td>
<td></td>
</tr>
</tbody>
</table>

| Marital Status: | Single [ ]  Married [ ]  Divorced [ ]  Separated [ ] |
|-----------------|-------------|-------------|-------------|
|                 |             |             |             |

<table>
<thead>
<tr>
<th>Please check any areas where the victim may have legal questions or concerns?</th>
</tr>
</thead>
</table>
| [ ] Protection Order  
| [ ] Custody/Visitation  
| [ ] Immigration/Asylum  
| [ ] Child/Spousal Support  
| [ ] Divorce  
| [ ] Consumer Finance  
| [ ] Other: __________ |

<table>
<thead>
<tr>
<th>Offender’s Name:</th>
<th>Relationship to Offender:</th>
</tr>
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<table>
<thead>
<tr>
<th>Is there currently an injunction for protection?</th>
<th>[ ] Temporary  [ ] Permanent  [ ] No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the victim interested in obtaining an injunction for protection?</td>
<td>[ ] Yes  [ ] No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Does this client have a disability?</th>
<th>[ ] No  [ ] Yes</th>
</tr>
</thead>
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<table>
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<tr>
<th>Limited English Proficiency?</th>
<th>[ ] No  [ ] Yes, primary language __________</th>
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</table>

**Brief Narrative of client's current situation**
Screening/Obtaining information

- **Barriers**
  - initial paperwork

- **Advantages**
  - having Legal Services paperwork on site so advocate can assist in completion.
Sexual Violence Legal Advocacy

Laura Hair, Refuge House Inc.
Prepping the Client: Expectations and Concerns

- Let client know that you are not an attorney and cannot give legal advice.

- Give the client a realistic view of what to expect
  - Statutes do not always cater to the victim.
Prepping the Client

- Strategize with client on how to overcome biases against her case.
  - Time lapse
  - Previously dropped injunction
  - Criminal record
  - Mental health issues

- Injunction vs. No Contact Order
Providing Evidence

- Encourage the client to BE SPECIFIC when writing the statement!
  - Use dates whenever possible (approximate date is better than no date)
Providing Evidence

- Avoid broad terms (like “he stalked me.”), give supporting evidence (like “I received 65 text messages in 1 evening.”)

- Encourage your client to document (take pictures of injuries, save text messages, voicemails and emails, etc)
Legal Advocacy

- Make sure the client is emotionally ready to handle the court proceeding.
  - The client should not be persuaded by family or law enforcement to file.
Legal Advocacy

- Get the whole story

  - Clients often minimize their story.
  
  - It is good to clarify to client what constitutes abuse.
  
  - Often what is emphasized by client is not the real problem.
Legal Advocacy – Over Time

- Form a good relationship with your judges, court clerks and bailiffs and other courthouse staff.
- Work with other advocates from different agencies in your area.
- Observe the judges and how they come to their conclusions.
- Study resources given to judges.
  - DV/SV bench book
Sexual Violence Injunctions

Chris DelMarco, Legal Services of North Florida
Overview of Sexual Violence Injunctions

What is SV?

- Sexual Battery - Fla. Stat. §794
  - "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.
Lewd/Lascivious - Fla. Stat. §800 (<16 y.o.)

- Applies to a person who:

  - (a) Engages in sexual activity with a person 12 years of age or older but less than 16 years of age; or
  
  - (b) Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity commits lewd or lascivious battery, a felony of the second degree
Sexual Performance By Child - Fla. Stat. §827

- "Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

- "Sexual performance" means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.
(1) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree.

(2) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree.
(3) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree.
Luring/Enticing Child - Fla. Stat. §787

- (4) It is unlawful for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession of each such photograph, motion picture, exhibition, show, representation, or presentation is a separate offense. Whoever violates this subsection is guilty of a felony of the third degree.

- (a) A person 18 years of age or older who intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a misdemeanor of the first degree.
Luring/Enticing Child

- (b) A person 18 years of age or older who, having been previously convicted of a violation of paragraph (a), intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree.

- (c) A person 18 years of age or older who, having been previously convicted of a violation of chapter 794, s. 800.04, or s. 847.0135(5), or a violation of a similar law of another jurisdiction, intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree.
Any forcible felony wherein sexual act is committed/attempted…

Standing

- Reporting to law enforcement and cooperation in criminal case irrespective of whether charges are filed or not.
- Perpetrator about to get out of prison for crime of SV against victim. Victim can file after term of imprisonment expired or within 90 days of the expiration of prison term.
Preparing Client for Court

- Practice reviewing the facts
- Use descriptive words
- Practice responsiveness v. unresponsiveness
- Desensitizing the individual to the courtroom
- Order of case
- Prepare for cross-examination
- Gather all documentation, reports, photographs, voicemails, e-mails, etc.
Enforcement of SV Injunction

- Indirect Criminal Contempt
- Civil Contempt
- Criminal Prosecution

Statutes of Interest

- F.S. 784.0485 – Stalking Injunction.
- F.S. 794.052Sexual Battery; Notification of Victim’s Rights and Services
FEDERAL STATUTES

IMMIGRATION ISSUES:

- Self-petitioning under the Violence Against Women Act
- U-Visa
- T-Visa
Subpoenas: How to Protect Confidential Information

Ebony Tucker, Florida Council Against Sexual Violence
Sexual Assault Counselor – Victim Privilege

Fla. Stat. 90.5035

- The victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a sexual assault counselor or trained volunteer or any record made in the course of advising, counseling, or assisting the victim. Such confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege includes any advice given by the sexual assault counselor or trained volunteer in the course of that relationship.
Sexual Assault Counselor – Victim Privilege

Fla. Stat. 90.5035-

The privilege may be claimed by:

- (a) The victim or the victim’s attorney on his or her behalf.
- (b) A guardian or conservator of the victim.
- (c) The personal representative of a deceased victim.
- (d) The sexual assault counselor or trained volunteer, but only on behalf of the victim. The authority of a sexual assault counselor or trained volunteer to claim the privilege is presumed in the absence of evidence to the contrary.
Why are subpoenas a problem if our information is privileged?

- The victim-advocate privilege is strong but courts can request confidential information in certain situations.
- Case law in Florida has kept the victim-advocate privilege from being absolute.
Types of Subpoenas

- Subpoena vs. Subpoena duces tecum

  - Subpoena – may be for testimony only

  - Subpoena duces tecum – may be for records and information as well as testimony
    - Often requires the advocate to appear at a certain time/place along with records
Source of Subpoena

- **Court vs. Defense Attorney**
  - If From Court:
    - A hearing has probably already happened to determine if records should be given to court
  - If from Defense Attorney:
    - Probably no hearing yet
    - Advocate or RCC employee may have been added to witness list
Subpoena Process

- After you’re served, SAO or a third party (me 😊) can file a protective order or motion to quash the subpoena.

- Then there will be a hearing where the court will determine the purpose for the subpoena and whether any information sought would not be confidential.
Subpoena Process

- If the court determines the information is not confidential:
  - the motion to quash or motion for protective order will be denied
- If the court determines the information is confidential:
  - The motion to quash/protective order may be granted
Subpoena Process

- When will it not be granted?

- *State v. Pinder*, 678 So. 2d 410 (Fla. 4th DCA 1996).
  - If the defendant can establish that the privileged matters probably contain important information necessary to his/her defense.
Subpoena Process

- If the court determines the privileged material may be necessary information, the judge may order a review in chambers.

- The Judge will review the information privately and determine its relevance.
What to do when you receive a subpoena

- Call FCASV or contact your SAO
- Do not hold subpoenas. Ask for legal advice upon receipt.
- If subpoenas are served on SAO first, notify your SAO that you want to be notified immediately when a subpoena is received.
QUESTIONS??