

Legal Information vs. Legal Advice

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**VICTIM
RIGHTS
LAW CENTER**

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Today's Presenter



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Legal Empowerment Advocacy Project

Training and Technical Assistance for OVW-Funded Legal Advocates Serving Survivors of Sexual Assault, Dating and Domestic Violence, and Stalking

VRLC's TA Team is Here to Help!

Expert Advice

Case
Consultation

Training

Mentorship

Individual and
Programmatic
Support

Crafting
Policies

Document
Review

Legal
Research and
Resources

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Online: <https://victimrights.org/request-ta/>

Resource Library: <https://victimrights.org/resource-library/>

Housekeeping Items

- Accessibility & microphone use
- How to Use Menti
 - Anonymous!
 - Scan QR Code
 - Go to www.menti.com & type in code
 - Phone or tablet



You have reached the end of the presentation!



Menti

NGO Leap 2.



Choose a slide to present

How long have you been doing gender-based advocacy?

A horizontal progress bar with five segments. The first segment is blue and labeled "Just started". The second segment is pink and labeled "Less than 2 years". The third segment is red and labeled "2-4 years". The fourth segment is yellow and labeled "5-10 years". The fifth segment is green and labeled "11+".

What are some of the roles advocates play in your jurisdiction?

2 responses

How long have you been doing gender-based advocacy?

Learning Objectives

1

Identify the difference between “legal information” & “legal advice”

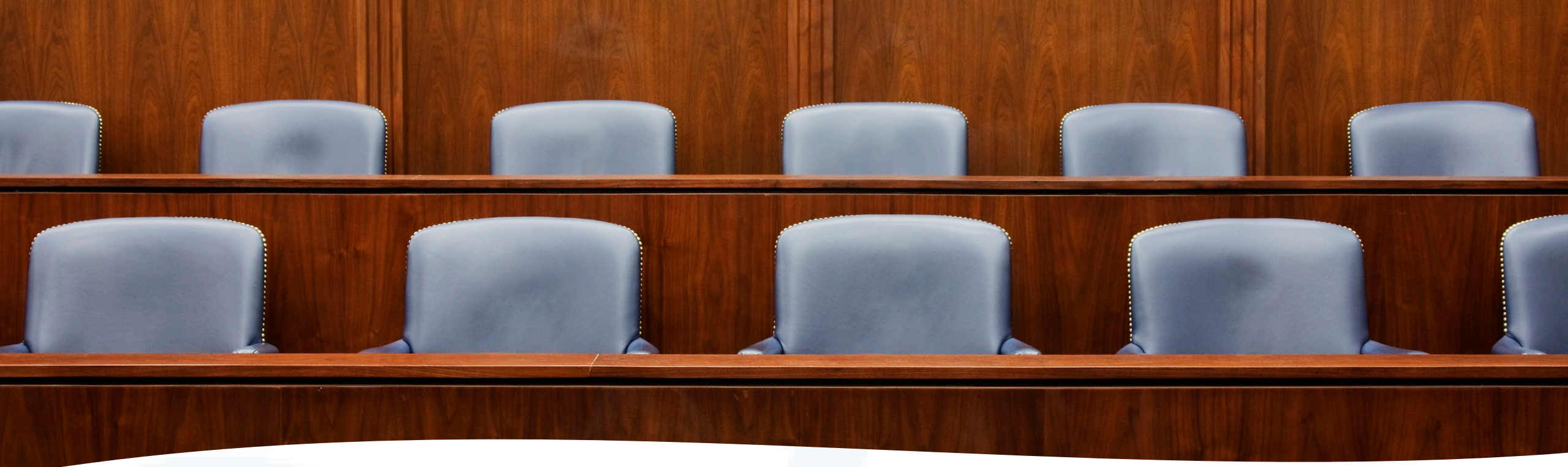
2

Provide meaningful assistance & information to survivors without engaging in “unauthorized practice of law” (UPL)

3

Implement changes in your organizations that will prevent concerns about UPL

What is the “Unauthorized Practice of Law?”



Unauthorized Practice of Law (UPL):

Engaging in the “practice of law,” as defined in your jurisdiction, without the license mandated by the jurisdiction’s law

Holding yourself out as a lawyer (some jurisdictions)

“Practice of Law”

- Lawyers only (kind of)
- Varies by jurisdiction
- Determined by the statutes, rules, & opinions in your jurisdiction
- May include:
 - Interpreting laws & applying them to a legal issue
 - Representing/advocating for a person in court
 - Preparing legal documents



ABA Compendium of UPL
Rules, by Jurisdiction



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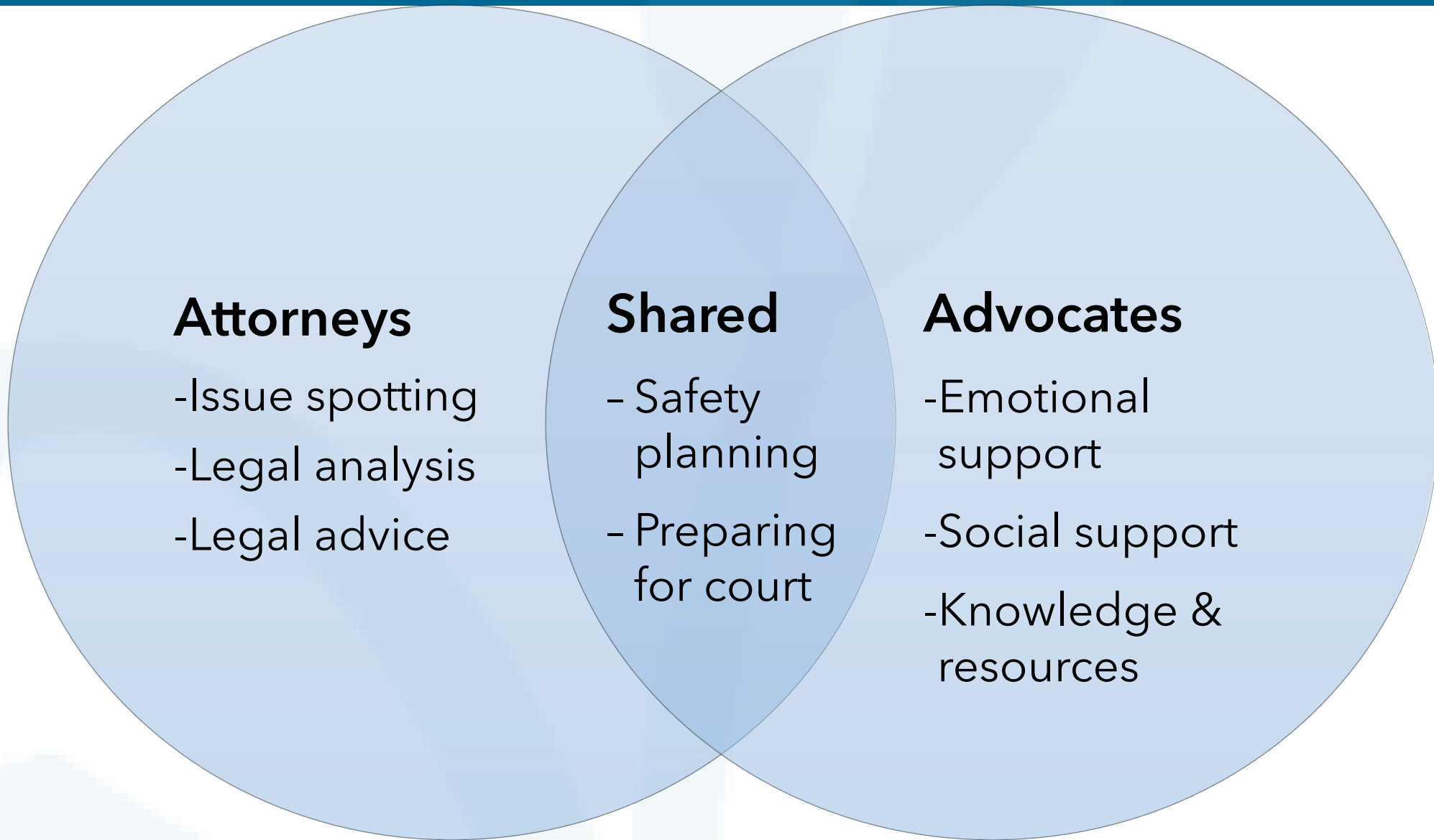


What is an “advocate”?

(Definitions vary from state to state, but generally):

- Support the survivor through the legal process
- Provide info to the survivor about the legal process
- Provide referrals to the survivor about other entities that may be able to help
- May attend court with them (the level of involvement varies by state)
- What else?

The Goal: Mutuality



Risks of Unauthorized Practice of Law

- Incorrect information is provided to the survivor
- Causes harm to legal strategy
- Undermines trust/relationship with their legal representative
- Client confusion
- Civil liability
- Safety

The Gray Area

Illinois advocates may:

- Sit at counsel table, confer with victim, & address court at judge's discretion
- Similar activities allowed in criminal cases
- Help prepare petitions

(ILCS: 750 ILCS 60/205 (from Ch. 40, par. 2312-5))



California advocates may:

- Sit at counsel table *only if the survivor is self-represented*
- May accompany the survivor to a proceeding re: restraining order
- May accompany during mediation, but cannot participate/act as an advocate during it

(Cal. Fam. Code § 6303(a)-(e))

What actions can I take to support survivors without engaging in UPL?

Low Risk
(Probably okay)

Medium Risk
(Use caution)

High Risk
(Seek guidance)

Low Risk (Probably Okay)

Low Risk

- Resources & Referrals
 - Providing resources & information about services in the community
 - Providing a referral to a source of assistance for completing court forms or other legal documents
- Legal Information
 - Providing information about the jurisdiction's laws
 - E.g., "the protection order code in our state allows the court to order the abuser to pay child support in some circumstances"

Low Risk, cont'd.

- Court Forms/Docs
 - Identifying where one can obtain court forms
- Court
 - Sharing general information about court processes, rules, and procedures
 - E.g., “here is how the courtroom is setup...” or “here is the general process...”
 - Notifying client of hearings, case status, & release information pertaining to their abuser



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What are some of the roles advocates play in your jurisdiction?

Responses

Annie comes to your agency seeking assistance. They have heard about a "protection order". They want information. Which option is 'probably okay'?

Which option is 'probably okay'?





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You have reached the end of the presentation!



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NGO Leap 2



Choose a slide to present



Medium Risk (Use Caution)

Medium Risk

- Legal Information
 - Providing information about possible legal protections for survivors
- Court Forms/Docs
 - Reading the questions on court forms aloud
 - Explaining where on a form the person is to provide certain information
 - Filling in the blanks in a court form (on paper or on a computer screen) as directed by the person
 - Exact words vs. summarizing or choosing certain information

Medium Risk, cont'd.

- Court/Mediation
 - Collecting evidence
 - Gathering facts for the purposes of trial/litigation
 - Providing support to a survivor during a court hearing
 - Conferring with a survivor before and during legal proceedings
 - Addressing the court on behalf of a survivor (vs. holding oneself out as their representative)



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NGO Leap 2





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High Risk
(Stop & Get Guidance)

High Risk

- Legal Advice
 - Interpreting the law
 - Explaining how the law applies to an individual's situation
 - Suggesting the best legal course
 - Advising of consequences of legal decisions
- Court Forms/Docs
 - Drafting legal documents and pleadings (rather than merely writing down the client's words)
 - Advising the client the legal implications of writing certain information

High Risk, cont'd.

- Court/Mediation
 - Engaging in legal negotiations on behalf of an individual
 - Examining witnesses before or during trial
 - Receiving compensation for providing any of the above
 - Speaking in court (or quasi-judicial/administrative setting) on behalf of an individual in a representative capacity



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Choose a slide to present

How long have you been doing gender-based advocacy?

0 0 0 0 0

Just started 0 months to 2 years 3-5 years 6-10 years 11+

What are some of the roles advocates play in your jurisdiction?

Open-ended

Annie comes to your agency seeking assistance. They have heard about a "protection order". They want information. Which option is *probably okay*?

You have reached the end of the presentation!



You have reached the end of the presentation!



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Practices to Prevent Unauthorized Practice of Law

Preventing UPL

1. Define the advocate role with client
2. Provide attorney oversight
3. Develop relationships with your legal community
4. Create policies to prevent UPL
5. Train staff & advocates on UPL

Define Advocate/Attorney Roles

- Right Away
 - Advocate Role - including what you can & can't do
 - An Attorney's Role - how are they different?
- Reiterate Often
- Information Overload?
 - Write it down or create a visual



Unique Role of a Legal Advocate

Distinguishing a Legal Advocate from a Lawyer

Lawyer
Lawyers, or attorneys, are engaged in the "practice of law." The practice of law involves the application of legal principles and judgment to specific circumstances. Certain tasks are presumed to be the practice of law, including giving legal advice, drafting legal documents, representing individuals before an adjudicative body (e.g., a court), or negotiating legal rights.

The important distinction is that lawyers may give legal advice. This means that an attorney may advise someone on how to apply a law, regulation, or legal principle to their particular circumstances. Engaging in the practice of law without a law license is unauthorized practice of law and is illegal in every U.S. jurisdiction.

Legal Advocate
Legal advocates are non-attorneys who support survivors through a legal process. Advocates can provide legal information, give survivors an overview of existing law, point them to relevant resources, and attend court alongside them. Advocates may not represent a survivor in court or give advice on how to apply the law to the survivor's circumstances. Instead, advocates create space for the survivor, allowing space for the survivor's needs, for processing time, for clarifying questions, and for other support. Advocates may have greater flexibility in working with clients than an attorney and often are able to spend more time with the client. A survivor can benefit when their attorney and advocate work as a team.

Walking the Line
Walking the line between sharing legal information and providing legal advice can be difficult. In fact, courts have repeatedly stated that it is difficult to define what is and is not the practice of law. There are a few practices that can help legal advocates avoid unauthorized practice of law.

- Outline your role to the survivor from the outset, defining your boundaries as an advocate. Be sure to clarify that you can provide resources and support but cannot provide legal advice. Explain that this means you cannot apply the law to their circumstances.
- Avoid getting into specific scenarios. Listen to what the survivor wants help with and provide resources on the relevant law without discussing the facts mentioned by the survivor.
- The survivor should select and fill out forms, and draft court filings, on their own. When it comes to making decisions as to which forms to file or whether there is a proper time frame, simply provide the survivor with the information without recommendation. For example, "Form A asks the court for a Protective Order. To be eligible for this type of order, someone must have an intimate relationship with the perpetrator. Form B asks the court for a Sexual Assault Restraining Order, which is available to those who experienced sexual assault from a non-intimate partner. You can use the form that you think fits your circumstances best."

Attorney Support to Prevent UPL

- Legal + Advocacy Organizations
 - If you have an attorney in your org, they may have an ethical obligation to make sure non-attorneys are NOT engaging in UPL

Attorney Support to Prevent UPL, cont'd.

- Strong relationships w/your local attorneys
 - Can reduce the legal representation gap for survivors (reducing the pressure on advocates to fill the gap)
 - Provide mentorship or answer questions on issues of UPL
 - Provide training on UPL (VRLC too!)

Policies to Prevent UPL

- Onboarding
- Regular training topics
- Mentorship for new advocates
- Oversight/supervision

In Partners/Groups of 3

- What is one thing your organization is already doing to make sure unauthorized practice of law doesn't happen?
- What is one thing learned about that you'd like to start doing at your organization?

Questions?



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Explore VRLC's Resource Library!

The screenshot displays the VRLC Resource Library website. At the top left is the VICTIM RIGHTS LAW CENTER logo. The navigation menu includes HOME, ABOUT US, LEGAL HELP, TRAINING AND RESOURCES, MAKE AN IMPACT, and CONTACT. A DONATE button and a search icon are in the top right. The main heading is "Resource Library". Below it, a breadcrumb trail shows "Home · Resource Library".

Search by Keyword
A search input field with a "Go" button.

Filter by Category
Select a Jurisdiction: [dropdown]
Select a Topic: [dropdown]
Select a Population: [dropdown]
Select a Language: [dropdown]
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Sort by Filter [button]
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Featured Resources

-  [Initial Meeting Checklist for Minor Survivor/Clients and their Caregivers/Guardians](#)
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Your Search Returned 353 Resources

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- Do you feel like we had the right amount, too much or too little audience engagement?
- Was “Menti” helpful to staying engaged and applying the information?
- Other comment:

