


Slide 1

Working with Minors Facing Forced Marriage Situations


Farrah Khan, Barbara Schlifer Clinic in Toronto, Canada
Heather Heiman, Tahirih Justice Center
Julia Ajanen, Global Justice Initiative



Webinar hosted by:

Heather Heiman
Senior Public Policy Attorney
Heather@tahirih.org

Jeanne Smoot
Director of Public Policy
jeanne@tahirih.org



Slide 2

Tahirih's Forced Marriage Initiative

In 2011, Tahirih launched the:

- **Forced Marriage Initiative**
- **National Network to Prevent Forced Marriage**

in response to the findings of Tahirih's Survey on Forced Marriage in Immigrant Communities in the United States.

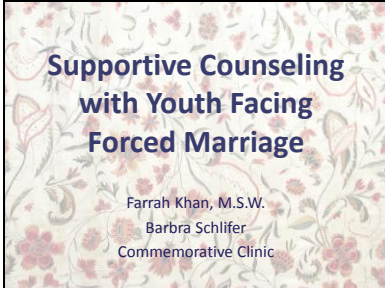
This webinar is part of a quarterly series.



Slide 3

Supportive Counseling with Youth Facing Forced Marriage

Farrah Khan, M.S.W.
Barbra Schlifer
Commemorative Clinic



Slide 4

Barbra Schlifer Clinic

- Barbra Schlifer Clinic offers free legal, professional counseling, interpreter services to women who have experienced violence
- Outburst! is a program of young Muslim women addressing violence in their lives.
 - Provide intake, safety planning, individual & group counseling with young women
 - Consultation and training for agencies working with forced marriage or “honour”/shame related violence
 - Arts based programming and events for young women

Slide 5

Forced Marriage Impact on Health

- Mental: depression, dissociation, suicidal ideation, avoidance of recall situations, hyper-alertness, hyper vigilance, hyper-arousal, nightmares, flashbacks, intrusive thoughts
- Physical: self harm (cutting, drug/alcohol abuse, risky behavior), disordered eating, isolation, female genital circumcision, virginity tests, concealed/unwanted pregnancy or abortion, ill health

Slide 6

Forced Marriage Impact on Health cont...

- Emotional: shame, anger/rage, confusion, guilt, low self esteem, anger, irritability, self blame, fear & anxiety, grief and loss,
- Sexual: rape, attempted rape, difficulty defining boundaries, decreased sexual activity or acting out sexually
- Relations: difficulties in setting and maintaining boundaries, inability to trust self or others, tendency to be over controlling or submissive,

Slide 10

Safety Planning

- Outcome: what is their hope for a plan?
- Risk: how high do they see the risk? How high do you see the risk? Do these match?
- People: Who is involved? Who needs to be involved? Police? Shelter? Legal services? Health?
- School: what needs to be in place in order for school to be safer? Do they have to switch or leave school? How does this affect them?
- Work: what safety plan needs to be put into effect in order to keep them safe?

Slide 11

Safety Planning Cont...

- Location: do the youth want/need to go to new area of the city or is the preference to leave the city?
- Disclosure: who needs to know about what is a happening? Who does not?
- Changes: explore what adjustments would they makes to keep safe?
- Responsibility: Who is responsible for what? Client, counselor, police, shelter, others?

Slide 12

Risk Assessment: Key Questions

- Are they being taken overseas?
- Who are the people involved?
 - Do they have a history of stalking?
 - Do they have a history of forcing other family members into marriage?
 - Do they have access to weapons or firearms?
 - Have they threatened to or attempted suicide?

Slide 13

Risk Assessment: Key Questions cont...

- Has anyone else in family experienced forced marriage?
- Has the nature of violence and threats escalated?
 - Is this common?
 - Has this escalated in nature to their family members?

Slide 14

Key Counseling Needs

- Establishing a holistic approach by looking at ways they can nurture their mind, body & spirit
- Boundary setting
- Separating culture & religion from violence and patriarchy
- Being a part of a collective family while ensuring own safety

Slide 15

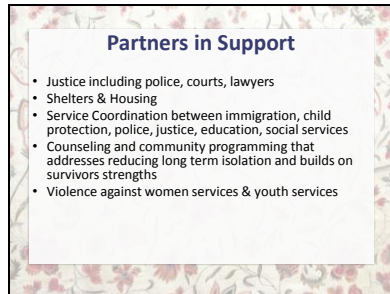
Notes for Service Providers

- Cases are usually very time consuming, complicated and difficult to find resources
- Recognize risk
- What are their holistic needs: mind, body, spirit?
- Ensure long term support
- Check the services you are referring the person to are they anti racist, queer positive, understand diverse religious communities? Do they address their holistic needs? Is there a opportunity to do some education work?

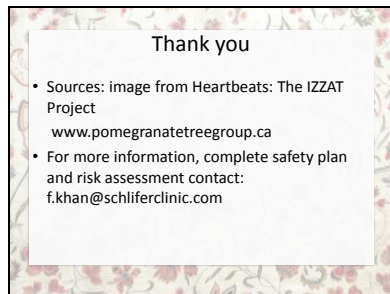
Slide 16



Slide 17



Slide 18



Slide 19

Part II: Legal Remedies for Minors in Forced Marriage Situations

Heather Heiman – Senior Public Policy Attorney,
Tahirih Justice Center

Julia Alanen – Director and Co-Founder,
Global Justice Initiative



Slide 20

Roadblocks to Help for Minors Facing Forced Marriage

A minor being threatened with a forced marriage by her parents is in a most vulnerable position and her access to relief is severely limited.

- Why?
 - Under the U.S. Constitution, parents have the right to the care, custody and control of their children.
 - This means they have the absolute right to make decisions for their children, unless and until those decisions are deemed to be harmful to the child.



Slide 21

State Marriage Laws

- Vary from state to state
- Minimum age to lawfully marry is 18; however, most states have exceptions for minors based on:
 - Parental Consent
 - Judicial Consent
 - Pregnancy

In most states there are no mechanisms to assess minor's consent to marriage!



Slide 22

Criminal Laws Addressing Forced Marriage in the United States

No federal law on "forced marriage"— generally, laws touching "marriage" reserved to the states

Nine states/territories have laws – California, DC, Maryland, Minnesota, Mississippi, Nevada, Oklahoma, Virginia, Virgin Islands



- Main purpose is preventing against abduction, prostitution, pandering, trafficking, and/or "defilement"
- May not cover "intent," have gender/age specific language



Slide 23

Protective Orders



- Also known as restraining order, civil protection order, or order of protection
- A civil order, signed by a judge, to prevent one person from committing certain acts (domestic violence/abuse) against another
- Protective Orders can include additional provisions as necessary to protect the victim



Slide 24

Restraining/Protective Order



- Typically requires Respondent to stay 100+ yards away from Plaintiff's person, home, school, vehicle, workplace, etc.
- Typically prohibits all contact, including direct contact, phone, Email, text messages, contact via third parties, etc.
- Can contain forced-marriage prevention provisions



Slide 25

What does a Protection Order do?

- Prohibits any acts of threat or violence against the victim and family members
- Prohibits offender from possessing, buying or transporting firearms
- Can prohibit any contact between the victim and offender
- Can give victim exclusive use of a home or vehicle
- Can include any other relief necessary to protect the victim



Slide 26

How can a Protection Order help Minors Facing Forced Marriage?


- Can provide the security and safe environment needed to resist/leave a marriage
- Can help prevent the victim from being taken abroad for a marriage:
 - The Court can hold the victim's passport
 - The Court can restrict minor's travel or require prior court authorization
- Can protect victim from threatened harm/honor violence
- Can protect against family members learning victim's new location



Slide 27

Challenges with Protection Orders in Forced Marriage Situations

- State's statutory definition of domestic violence or abuse may not cover situations where there are only threats (no past history of violence) or if violence/threats target a third party
- For Family/Domestic Abuse protective orders, victim likely has qualifying relationship to perpetrator, but order may not extend/apply to all perpetrators
- No extraterritoriality; no coverage of siblings



Slide 28

Accessing Protection Orders for Minors

- Technically minors may seek the same remedies as adults – including protective orders.
- Minors may also seek assistance through the juvenile court system, including:
 - Filing Petitions alleging Abuse and Neglect by their parents
 - Filing Petitions for Child in Need of Services or Supervision
 - Filing Petitions for Emancipation



Slide 29

Legal Challenges For Minors

- Lack of capacity to enter into a lawyer/client relationship or standing to bring suit:
 - The minor may not be able to bring herself – may need a guardian or next friend
- Lack of knowledge of rights/protections
- Law enforcement defers to rights of parents
- Failure of the state laws to provide the necessary protection:
 - Narrow definitions of abuse, neglect, CHINS
- Lack of evidence of threat of force or marriage





Slide 30

Case Example

"Jada" a 16-year-old American girl faced a forced marriage to her second cousin overseas. The marriage was arranged by her parents and despite her repeatedly telling them she did not want to marry her cousin, her parents insisted that the marriage would proceed.

For two years Jada reached out to people at her high school, who were unsure what they could do to help. Eventually Jada's family started taking concrete steps towards planning the wedding.



Slide 31

What Happened?



- What did we do?
 - Met with the girl – securing a private space where she could speak freely about the threat of the marriage and harms/risks she was facing
 - Explored housing options and discussed pros/cons, along with all legal and non-legal options available, and the risks associated with each choice



Slide 32

Legal Actions



- After learning that CPS was unable to open an investigation, we filed a Petition on behalf Jada, through a next friend, alleging Abuse and Neglect by Jada's parents
- At the same time, we filed a Motion for a Preliminary Protective Order within our Petition alleging Abuse and Neglect



Slide 33

What Happened?

- Initially, we obtained the Preliminary Protective Order for Jada and she was put into the custody of her next friend and a *guardian ad litem* (GAL) was appointed for her.
- Ultimately, the court entered an order finding Jada to be a Child in Need of Services and continued the Protective Order (which included travel restrictions, and continued monitoring by the court, amongst other protections) until her 18th birthday.



Slide 34

What Can a Court Do to Protect a Minor Facing a Forced Marriage?

The child *may* be placed in foster care; or

If the child is returned home, the court can issue an order requiring:



- Individual and family counseling
- Confiscation of the passport(s) of the child
- Prior court approval for travel or if moving
- Regular check-ins with GAL or court staff
- The child remain enrolled in school



Slide 35

Shelter Policies & Mandatory Reporting Laws



- Many shelters will not accept unaccompanied minors
- Must immediately report any suspicion or allegation of abuse/neglect of a minor to Child Protective Services
- Most do not accept male victims
- Some require victim to obtain a restraining order
- Victim must apply for long-term housing



Slide 36

Legal basis for CPS removal of a minor from parent(s) / home



- Exigent circumstances: Child's health or welfare is harmed or threatened with imminent harm when his/her parent:
 - Inflicts or allows to be inflicted upon child physical or emotional injury;
 - Creates or allows to be created a risk of physical or emotional injury to the child;
 - Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
 - Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; or
 - Abandons or exploits the child.



Slide 37

CPS Involvement – Encouraging Positive Intervention



- Frame forced marriage as human rights abuse – fundamental right to choose whether/when/whom to marry.
- Explain how minor will face rape and forced pregnancy.
- Prepare and use affidavits from advocates, medical professionals, etc., as well as traditional DV case evidence.
- If appropriate – use state forced marriage laws and trafficking statutes.
- Educate local CPS about risks in FM/HV cases.



Slide 38

Emancipation


- Does the State where s/he lives allow emancipation of a minor?
- Does s/he meet the legal requirements for emancipation in her State?
- Is s/he capable of supporting herself/himself and living independently?



Slide 39

Guardianship



- Identify a trusted adult
- Court may require proof that the natural parent(s) are unfit to parent, deceased or have abandoned their child
- Guardianship order (letter) can include:
 - Legal and/or physical custody
 - Protective measures similar to a Restraining Order (for Guardian, too)
 - Forced marriage prevention terms



Slide 40

International Parental Kidnapping Crime Act (IPKCA)



- Provides for federal criminal liability (a fine and/or up to 3 years imprisonment) for any parent who:
 - "...removes a child from the U.S., or attempts to do so, or retains a child (who has been in the U.S.) outside the U.S. with intent to obstruct the lawful exercise of parental rights..."
 - IPKCA may apply once minor is assigned a legal guardian by the family, probate or dependency court



Slide 41

Possible Abduction/Forced-Marriage Prevention Provisions



- Ne exeat orders (restricting minor's travel)
- Yield child's passport to court trustee or guardian
- Require parents to post a bond
- Require court intervention before minor can marry
- Require minor to continue enrolment in school (can specify which school)
- Require regular check-ins between minor and a social worker or court-assigned guardian ad litem
- Other?



Slide 42

Immigration Consequences of Child Abduction/Custodial Interference

- May constitute grounds for inadmissibility / removal (deportation) of alien (non-U.S.-Citizen) perpetrators. But ONLY:
 - If the minor is a U.S. Citizen (by birth, naturalization, or other method)
 - After entry of an order by a U.S. court granting custody/guardianship to a person who does not authorize the minor's taking
 - If the perpetrator retains or detains the child, or withholds custody of the child, outside the United States from the minor's lawful custodian/guardian
 - Until the perpetrator surrenders the minor to the person granted custody by that order
- Aliens supporting abductors and relatives of abductors who intentionally assist in the conduct described, intentionally provide material support or haven may also be excluded/removed from the U.S.



Slide 43

Terminating a Forced Marriage

- Divorce
- Annulment
- Legal Separation



Slide 44

For information on upcoming webinars, and newsletters about forced marriage in the United States, please join the:

National Network to Prevent Forced Marriage
•
Forced Marriage Listserve

To learn more and sign up, please visit Tahirih's website:
www.tahirih.org/advocacy/policy-areas/forced-marriage-initiative/
Or contact: FMI@tahirih.org