

# Confidentiality Provisions and Ethical Considerations for Victim Services Programs



UTAH  
DOMESTIC VIOLENCE  
COALITION



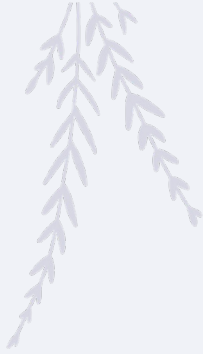
# What's UDVC?

- ***Utah Domestic Violence Coalition***: an independent, nationally recognized, not-for-profit coalition working to improve domestic violence intervention/prevention efforts in the state of Utah
- We represent ***victim service providers and shelters*** across the state who are delivering direct services to domestic violence survivors and dependents
- Currently, we've partnered with 16 domestic violence service providers throughout Utah



# Objectives

- Learn why confidentiality is important
- Understand the difference between confidentiality and privilege
- VAWA, VOCA, and FVPSA
- Explore VAWA confidentiality provisions
- Understand the release of information basics
- Navigating mandatory reporting and demands for information when working under VAWA confidentiality



# Why is Confidentiality so Important?



# The Importance of Confidentiality

- Confidentiality is the fundamental principle at the core of victim services
- When survivors are assured of confidentiality
  - Less afraid of being humiliated, blamed, or rejected
  - More willing to access services
  - More likely to disclose the true nature of abuse or assault
  - Trust in advocacy services are reinforced



# The Importance of Confidentiality

- Enhances Survivor Safety
  - Disclosing information about services can cause an escalation of violence
  - Revealing the safe location of a survivor and their children can compromise safety planning
- Preserves Dignity of and Empowers Survivors
  - Reinforces that survivors control their personal information
  - Survivors are allowed to decide if, how, and when their information will be shared



# What Happens When Survivors Lose Control of Their Information?

- Information may be used against a survivor
  - Divorce, custody, and child welfare cases
  - Manipulated by perpetrators in criminal cases
- May affect
  - Employment
  - Education
  - Housing
  - Health
  - Re-Traumatize
  - Damage Relationships (Family, Friends, and Community)



# Confidentiality, Privilege, and Privacy





# What is the Difference?

## Privacy

- Personal choice whether to disclose information

## Confidentiality

- A responsibility to protect someone else's choices about disclosure to any third parties

## Privilege

- A legal rule prohibiting the disclosure of private information against someone's will in court or other legal proceedings



# What is Statutory Privilege?

- Confidential communication
- Created and recognized by statute
- Disclosure is prohibited without permission
- Protected from disclosure in court or other proceedings
- Some exceptions apply:
  - Mandatory reporting of child/vulnerable adult abuse
  - May be "waived" by holder of the privilege



# Examples of Statutory Privilege

- Married Partner – Married Partner
- Attorney – Client
- Priest – Penitent
- Psychotherapist – Patient
- Doctor – Patient



# Advocate Privilege



# What is Advocate Privilege?

- A statutory privilege that protects communications between
  - Victims of domestic violence, sexual assault, or stalking
  - Advocates at a non-governmental domestic violence or sexual assault programs



# VAWA, FVPSA, & VOCA



# VAWA & FVPSA

- The Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA)
  - Contain strong confidentiality provisions that limit the sharing of personally identifying information
  - This confidentiality includes entering information into public records and databases
- These provisions:
  - Survivor focused
  - Legally codified the importance of victim confidentiality
  - Requires all grantees and subgrantees to protect the confidentiality and privacy of all persons receiving services



# VAWA & FVPSA & VOCA

- U.S. Congress legally codified the importance of victim confidentiality in two sections of VAWA and FVPSA
  - Universal Grant Conditions: Nondisclosure of Confidential or Private Information
  - VAWA amended the McKinney-Vento Homeless Assistance Act
- Department of Justice
  - Implemented supporting regulations on victim confidentiality for VAWA and VOCA (Victims of Crime Act) grantees





**VAWA/VOCA/FVPSA:  
Non-Disclosure &  
Release of Information**



# Non-Disclosure

- Grantees may **NOT disclose, reveal, or release personally identifying information or individual information** in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected.



# When is Disclosure Allowed?

- Allows release of information in only three (3) circumstances
  - With the informed, written, reasonably time-limited consent of the person
    - There are special rules if the person is a minor or legally incapacitated with a guardian
  - Statutory mandate
  - Court mandate



# Releases of Information

- “Grantees **may not disclose, reveal, or release individual client information without the informed, written, reasonably time-limited consent of the person...**”

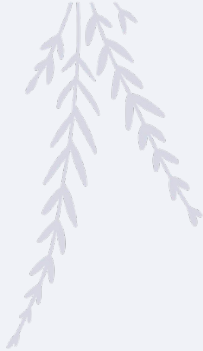


**VAWA/VOCA/FVPSA Confidentiality Circle:  
Who Can See Survivor's Victim Service Records?**

- **Victim Services Provider Staff**
- **Survivor**
- **Legal Guardian of Survivor**
- **People, Organizations, or Businesses chosen by:**
  - survivor
  - legal guardian of survivor
- **Those required by local law to have access**

**How Do Those Who Aren't in the Circle  
Get Inside the VAWA/VOCA/FVPSA  
Confidentiality Circle?**

- **Survivor and/or legal guardian of survivor gives written consent**
- **Local law requires access**



# Explaining Confidentiality to Survivors

- Survivors should be provided with clear, easy-to-understand information about program confidentiality policies and protocols **BEFORE** they are asked to make any disclosures.
- ***The explanation should include a discussion of any exceptions to confidentiality***



# Ethics and Ethical Dilemmas in Confidentiality



# What if There is a True Emergency?

- Get a release of information for emergency situations
  - There are **NO** exceptions in VAWA for emergency situations





# Court Orders and Subpoenas



# The Basics

- Usually, programs must not disclose these:
  - Personally identifiable information (PII) (VAWA, FVPSA, VOCA)
  - Individual information (VAWA & VOCA)
  - Information collected in program services



# The Basics

- Exceptions where programs can/must disclose:
  - Current ROI has been signed by client
  - Statutory or court mandate (example: child abuse mandatory reporting)
- Laws may vary depending on the location of the incident - follow the laws of the land



**Pro tip: Only disclose  
required information!**



# VAWA – When Release is Compelled

- If compelled by statutory or court mandate, grantees must:
  - Make reasonable attempts to notify the survivor
  - Take steps necessary to protect the privacy and safety of the persons affected by the release of information
  - Consider the extent of the information that must be shared



# VAWA – What Does Compelled by Court Mandate Mean?

- A judicial command, order or precept, written or oral, from a court
  - Are subpoenas court mandates?
    - It depends
  - Best Practice
    - Assume subpoenas are not court mandates
    - Obtain legal advice
    - Take legal steps to resist subpoena and/or obtain protective orders



# What is a Subpoena?

- A subpoena is an order that requires a person to appear and provide testimony
  - A demand to have a conversation



# What Does VAWA Require in Terms of Subpoena Response?

- Notice to a survivor and taking steps to protect privacy and safety of the survivor and others affected by the release is required
- Determine if survivor consents to disclosure
- Best Practice Response: Motion to Quash (dismiss)





# VAWA – What Information Can Be Shared?

- Grantees may share:
  - Non-personally identifying data in the aggregate regarding services to their clients
  - Non-personally identifying demographic information in order to comply with federal, state, tribal, or territorial reporting, evaluation, or data collection requirements
  - Court-generated information and law enforcement-generated information contained in secure, government registries for protection order enforcement purposes
  - Law enforcement and prosecution generated information necessary for law enforcement and prosecution purposes



# Working with Community Partners

- Know your community partners and their policies regarding the confidentiality
- Provide partners with information about your confidentiality policies and funding restrictions
- Understand respective roles, range of services, and strengths
- Respect and mutual understanding
  - Relational engagement is key!



Questions?



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