



Confidentiality: FAQ

To lead, to advocate,
to educate, to collaborate,
to prevent and end sexual
and domestic violence
in Arizona.

Frequently Asked Questions Regarding Confidentiality addresses the most commonly asked questions regarding confidentiality owed to victims and survivors accessing services in the State of Arizona.

The information found in this document is not intended to give legal advice. Rather, its purpose is to point readers toward statutory clarification on their duties as well as what is considered best practice surrounding confidentiality for victims of sexual and domestic violence. While the information found here is up-to-date as of the date of publication, the law is constantly changing and the Arizona Coalition to End Sexual and Domestic Violence (ACESDV) strongly recommends that confirmation of any information takes place before relying on the information contained herein.

There are many scenarios that could arise in a program that are not addressed here. These questions and answers are general and should not be considered “the” answer for every scenario. These questions and answers are also not intended to substitute for seeking legal advice.

If you or program needs further assistance or clarification please contact the Arizona Coalition to End Sexual and Domestic Violence Legal Advocacy Hotline at 602-279-2900 or 800-782-6400. Please note ACESDV Legal Advocacy Hotline shall not substitute for legal advice.

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I. Confidentiality – Laying the Groundwork

Q: What is personally identifiable information?

A: According to the Violence Against Women Act (VAWA2013), personally identifiable information means “individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including (A) a first and last name; (B) a home or other physical address; (C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number); (D) a social security number, driver license number, passport number, or student identification number; and (E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any of the subparagraphs (A) through (D) would serve to identify any individual. 42 U.S.C. § 13925(a)(20) The information described above is owned by the survivor, not an agency assisting the survivor. Survivors should be kept informed of what information a program has about them and how that information will be used. At no time should any program release information about a survivor without an informed, written, time-limited release, unless legally required to do so. (Ex: if program provides age groups and race, and program reports served one woman from the Middle East, this information could be identifiable depending on community).

Q: Do shelters have confidentiality requirements attached to their grant funding?

A: Yes. To be eligible to receive Department of Economic Security (DES.) state funding under chapter 36, the Public Health and Safety chapter, a shelter shall require persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify persons served by the shelter. In addition, regardless of funding conditions, ARS 36-3009 states that information that may disclose the location or address of a shelter for victims of domestic violence is confidential and is not subject to public disclosure by a person or by a public or private agency that threatens the safety of the residents.

Federally, programs that receive money from the Family Violence Prevention Services Act (FVPSA), administered and distributed through Arizona’s Department of Health Services (ADHS), are required to keep client information confidential. Specifically, as outlined in the Federal Register: “FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of the adult victims and their children of domestic violence, sexual assault, and stalking. It is essential that the confidentiality of individuals receiving FVPSA services be protected. Consequently, when providing statistical data on program activities and program services, individual identifiers of client records will not be used (section 303(a)(2)(E)).

The confidentiality provisions described at 42 U.S.C., section 13925 apply to programs funded under VAWA, as amended, including certain awards made under FVPSA. These confidentiality requirements were strengthened and clarified with the passage of the Violence Against Women Reauthorization Act of 2005 and VAWA 2013. The revised confidentiality provisions impose conditions regarding the disclosure of personally identifying information, confidentiality, information sharing, and compulsory release of information.

II. Grant-Specific Confidentiality Provisions

Q: Are there confidentiality provisions attached to Violence Against Women Act (VAWA) grants?

A: Yes. VAWA requires as a grant condition that grantees and sub grantees of programs that serve victims of domestic violence, dating violence, sexual assault and stalking “*shall protect the confidentiality and privacy of persons receiving services*” (emphasis added). Programs may not disclose personally identifying information or individual information collected in connection with services requires, utilized, or denied or reveal individual client information without the informed, written, reasonably time-limited consent of the person. If a release of information is compelled by statutory or court mandate, the grantee or sub grantee must make reasonable attempts to notify the victims affected by the disclosure of the information and they must take steps to protect the privacy and safety of the persons affected by the release of the information. Grantees and sub grantees may share non-personally identifying data in the aggregate and non-personally identifying demographic information 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 registries for protection order enforcement purposes, and law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes. However, care should be taken that a program does not share a combination of aggregate information that, when taken as a whole, becomes personally identifiable. For instance, in a rural community with only one Asian-American family in the city or county, releasing her ethnic background in combination with her city or county – while aggregate information in a large city – becomes personally identifiable in a small one.

State grantees must also provide documentation in its application that procedures have been developed and implemented, including copies of the policies and procedures, to assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment of services by any program assisted under [this chapter] and provide assurances that the address or location of any shelter facility will, except with written authority of the person or persons responsible for the operation of such shelter, not be made public.

Finally, each recipient shall certify that it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under this part. In addition, they must certify that the address or location of any family violence shelter project assisted under this part will not, except with written authorization of the person or persons responsible for the operation of such shelter, be made public.

Q: Are there confidentiality requirements attached to Victim of Crime Act (VOCA) grants?

A: Yes. 42 U.S.C. § 10604 states that, except as otherwise provided by Federal law, no recipient of sums under [this chapter] shall use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this chapter. However, the Director of the Crime Victims Fund shall have access, for purpose of audit and examination, to any books, documents, papers, and records of the agency receiving VOCA funds and its relation to the expenditure of funds received under VOCA.

Q: What about the Department of Health Services (DHS)?

A: Rule R9-20-211 states that a licensee shall ensure that a single active client record is maintained, remains confidential and released only under certain statutorily required circumstances. A list of circumstances can be found at http://www.azsos.gov/public_services/Title_09/9-20.htm

In addition, regardless of funding conditions, ARS 36-3009 states that information that may disclose the location or address of a shelter for victims of domestic violence is confidential and is not subject to public disclosure by a person or by a public or private agency that threatens the safety of the residents.

Federally, programs that receive money from the Family Violence Prevention Services Act (FVPSA) are administered and distributed through Arizona's Department of Health Services (ADHS). The FVPSA confidentiality requirements are outlined in Section I above.

Q: What about the Department Economic Security (DES)?

A: R6-13-1201 requires that confidential information be safeguarded. No information concerning an applicant or recipient, whether contained in client case records, or in any other records of the Department, or known to employees of the Department, will be disclosed to any party except in specified circumstances. Examples of confidential information include names and addresses of clients or the amount of assistance provided; information related to the social and economic conditions or

circumstances of a client; medical data, including diagnosis and past history of disease or disability concerning a client.

In addition, regardless of funding conditions, ARS 36-3009 states that information that may disclose the location or address of a shelter for victims of domestic violence is confidential and is not subject to public disclosure by a person or by a public or private agency that threatens the safety of the residents.

Q: What if my program doesn't receive grant funding that requires confidentiality? Are there any provisions that apply?

A: Yes. ARS 36-3009 states: Information that may disclose the location or address of a shelter for victims of domestic violence is confidential and is not subject to public disclosure by a person or by a public or private agency that threatens the safety of the residents. The program administrator shall impose a civil penalty of not more than \$1,000 against a person or agency that knowingly and maliciously release such information.

The statute does not specify that the shelter for victims of domestic violence has to be funded by a government entity in order to apply – the statute applies to all shelters that would identify victims of domestic violence as their primary population. Additionally, the privileges and confidential communications provisions outlined in the section titled Privileges and Confidential Communication may also apply to your programs.

III. Subpoenas and Warrants

Q: What if my program is served with a subpoena?

A: *Don't ignore it, don't panic, and seek legal advice.* A subpoena is a document that orders a person to testify in court. A subpoena can also be used to compel a person to bring records or other documents with them to court (i.e. a subpoena *duces tecum*). The process for getting a subpoena is relatively simple: complete the subpoena form (available at self service centers at the Superior Courts as well as from law forms stores and bookstores); take it to the clerk to have it issued, where it is stamped by the court clerk; service it on the witness; then file the proof of service with the court. A subpoena can be served by any person who is not a party to the action and who is 18 years of age or older. If a witness fails to appear after being properly subpoenaed, the judge can issue a bench warrant to have the witness brought before the court.

When receiving a subpoena, first and foremost refer to your agency policy (if there is not currently a policy in place, it is highly advised that one be created and implemented). Best practices for policies regarding subpoenas should include: check subpoena validity, if possible, check in with the victim whose case the subpoena involves and determine her desire: does she wish to resist the subpoena or is it in her best interest

to provide the information? Otherwise, you can also consider contacting the attorney who issued the subpoena and ask that it be rescinded; challenge service; file a motion to have the subpoena quashed; or file other motions to protect the confidentiality of the information sought. If it is decided to respond to a subpoena, the program is not confirming nor denying that they provided any services to the person identified in the subpoena (refer back to Section II and Section IV of FAQ). Do not destroy any documents requested in a subpoena.¹ Legal consequences could result if subpoena is simply ignored.

Q: What if a law enforcement officer arrives with a warrant?

A: State and Federal Law mandates that a community-based advocate should never communicate with law enforcement about individual people or cases without the explicit informed, written, reasonably time-limited consent of the survivor. Agencies should neither confirm nor deny the presence of an individual seeking their services and should refer to their agency policy on warrants. (See Section II and IV of FAQ)

Q: What if I find out that a resident at the shelter has an active warrant out against her? Are we obligated to notify the police?²

A: No. There is no “arrest warrant” exemption in VAWA. There is no obligation or law that requires community-based advocates to pro-actively inform the police or to keep a survivor in a program. If a program becomes aware of a warrant, they can and should notify the victim and help him/her self-report to the police or get legal assistance if the victim wishes.

Q: What if law enforcement contacts our shelter/program threatening to issue an Amber Alert if we do not verify the person is there?

A: Shelter staff may not confirm or deny the presence of a victim of sexual or domestic violence or her children in their shelter. The U.S. Department of Justice issued the following guidelines for issuing an Amber Alert:

- “There is reasonable belief by law enforcement that an abduction has occurred.
- The law enforcement agency believes that the child is in imminent danger of serious bodily injury or death.
- There is enough descriptive information about the victim and the abduction for law enforcement to issue an AMBER Alert to assist in the recovery of the child.
- The abduction is of a child aged 17 years or younger.
- The child’s name and other critical data elements, including the Child Abduction flag, have been entered into the National Crime Information Center (NCIC) system.

¹ Adapted from Julie Field, J.D. Consultant

² Quoted from Julie Field, J.D. Consultant

“To allow activations in the absence of significant information that an abduction has occurred could lead to abuse of the system and ultimately weaken its effectiveness. At the same time, each case must be appraised on its own merits and a judgment call made quickly. Law enforcement must understand that a “best judgment” approach, based on the evidence, is appropriate and necessary.

“Plans require a child be at risk for serious bodily harm or death before an alert can be issued. ... The need for timely, accurate information based on strict and clearly understood criteria is critical, again keeping in mind the “best judgment” approach.”³

In Arizona:⁴

“The Arizona AMBER Alert Plan requires law enforcement to meet two criteria when evaluating a child abduction. Law Enforcement Agencies must have both items listed below before activation can occur. The guidelines are as follows:

1. The “Arizona AMBER Alert Plan” should be activated when a child 17 years of age or younger, is abducted and there is reason to believe the child is in imminent danger of serious bodily injury or death.

OR

A child medically diagnosed as suffering mental or physical disability is missing or abducted and there is reason to believe the child is in imminent danger of serious bodily injury or death.

AND

2. There is information available to disseminate to the general public, which could assist in the safe recovery of the child and/or the apprehension of a suspect.”

If law enforcement’s independent investigation cannot show that the child is in imminent danger of serious bodily injury or death, the Amber Alert system is not appropriate.

If law enforcement informs a shelter that a missing person’s report has or will be filed by the perpetrator, or that an Amber Alert has been issued, a survivor has the opportunity, should she choose; to contact law enforcement directly and notify them of her and her children’s safety. A program/shelter should not contact law enforcement independently, remember: at no time should any program release information about a survivor without an informed, written, time-limited release, unless legally required to do so.

³ For the full text of the guidelines, go to <http://www.amberalert.gov/guidelines.htm>

⁴ http://www.azdps.gov/Information/Amber_Alert/

IV. Victim Confidentiality Considerations

Q: If a person is receiving services from our agency and a medical or emergency situation arises, how do I go about not violating victim confidentiality?

A: A program should honor victim confidentiality to the greatest extent possible, even in an emergency situation. A call for emergency services does not mean the program can reveal personal identifying information about the victim. For example, the program can say “there is a middle-aged woman having chest pains”, or, “there is an abuser attempting to enter the shelter and putting someone in immediate risk of bodily harm”. The conscious survivor can choose what information s/he will or will not share with the medical or police responders when they arrive. The fact that the survivor has chosen not to share certain information with the responders is HER/HIS choice; it is not the program’s right or obligation to “fill in the blanks.” If the survivor is unconscious, this does not negate confidentiality between the program/agency and the survivor. Without an *informed, written, reasonably time-limited release of information*, program staff should report the facts that led them to request an emergency response without revealing personally identifying information about the client. (e.g., “She came into the room about 15 minutes ago; her skin color went gray, and she passed out.”) Remember that emergency medical personnel are experienced with handling non-responsive patients, without needing to know the detailed back story.⁵

Q: A victim/client has committed a crime against our program; does confidentiality still apply if our program files criminal charges?

A: The program should first assess the situation and determine if legal steps are appropriate. If the program determines legal action is necessary, the program is still obligated to limit the disclosure of information pertaining to the survivor to the minimum amount necessary. Also, anytime a survivor’s information is released, the program/agency is required to take steps to notify the survivor of the disclosure and do what it can to protect the victim’s privacy. Some evaluation and questions from the program management should be addressed, such as, “how significant was the incident? What is the cost of the damage? How will the harm to the program compare with the potential harm to the survivor if a public report is made?”⁶

⁵ NNEDV & The Confidentiality Institute, Julie Field, LLC (2010)

⁶ NNEDV & The Confidentiality Institute, Julie Field, LLC (2010)

V. Privileges and Confidential Communications

Q: Which professional communications with clients are privileged?

A: A licensed psychologist and client (A.R.S. 32-2085), clergyman or priest and penitent (A.R.S. 12-2233), attorney and client (A.R.S. 12-2234), doctor and patient (A.R.S. 12-2235), domestic violence victim advocate and client in civil proceedings (A.R.S. 12-2239), a crime victim advocate and victim (A.R.S. 13-4430 and 8-409), and a behavioral health professional and client (A.R.S. 32-3283).

Q: What are the limitations of the above privileged communications?

A: A psychologist-client privilege does not extend to cases in which the psychologist has a duty to report information as required by law and outlined in Section V below.

A clergyman or priest confidentiality extends to civil actions only.

The attorney-client privilege outlined in section 12-2234 extends only to civil actions.

The confidentiality afforded communications between doctors and patients applies to civil actions.

The domestic violence victim advocate privilege applies to civil actions and does not extend to cases in which the advocate has a duty to report nonaccidental injuries and physical neglect of minors as mandated in A.R.S. 13-3620. In order to qualify for the privilege, the advocate must have at least 30 hours of training in assisting victims of domestic violence, a portion of which must include an explanation of privileged communication and the duty to report requirements. The privilege also does not apply if the advocate knows or should have known that the victim will give or has given perjurious statements or statements that would tend to disprove the existence of domestic violence.

Communication between a crime victim advocate and a victim is not privileged if the advocate knows that the victim will give or has given perjured testimony, or if the communication contains exculpatory material. (The definition of exculpatory evidence is generally; evidence tending to establish a criminal defendant's innocence.)

The behavioral health professional-client privilege does not extend to cases in which the professional has a duty to inform victims and appropriate authorities that a client's condition indicates a clear and imminent danger to the client or others or report information as required by law.

Q: What about the mediation process in a civil action?

A: The mediation process in civil matters is confidential. (A.R.S. 12-2238) Communications made, materials created for or used and acts occurring during a mediation are confidential and may not be discovered or admitted into evidence unless all parties agree to the disclosure; the communication, material or act is relevant to a claim or defense made by a party to the mediation against the mediator or the mediation

program for breach of a legal obligation; the disclosure is required by statute; or the disclosure is necessary to enforce an agreement to mediate. Threatened or actual violence that occurs during mediation is not a privileged communication.

Q: Do spouses have privileged communications?

A: Yes. In a civil action, a spouse shall not be examined for or against his or her spouse without consent. (A.R.S. 12-2231) The exceptions (outlined in A.R.S. 12-2232) include: in an action for divorce or a civil action by one against the other; in a criminal action or proceeding, in an action brought by the husband or wife against another person for alienation of the affections of either; and in an action for damages against another person for adultery committed by either husband or wife.

VI. Reporting Requirements

Q: What are the reporting requirements for child abuse?

A: Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops a reasonable belief during a course of treatment that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect shall immediately report or cause reports to be made to a peace officer or to child protective services. Additionally, any peace officer, member of the clergy, priest or christian science practitioner, parent, stepparent or guardian, school personnel or domestic violence advocate who develop the reasonable belief of abuse during the course of their employment, or any other person who has responsibility for the care or treatment of the minor must make reports or cause those reports to be made. (A.R.S. 13-3620)

Reports shall be made immediately by telephone or in person and shall be followed by a written report within seventy-two hours. The reports shall contain the names and addresses of the minor and the minor's parents or the person or persons having custody of the minor, if known; the minor's age and the nature and extent of the minor's abuse, child abuse, physical injury or neglect, including any evidence of previous abuse, child abuse, physical injury or neglect; and any other information that the person believes might be helpful in establishing the cause of the abuse, child abuse, physical injury or neglect.

Q: Are there any duties to report adult abuse?

A: Yes, but only for those adults who are incapacitated or vulnerable. A physician, registered nurse practitioner, hospital intern or resident, surgeon, dentist, psychologist, social worker, peace officer or other person who has responsibility for the care of a vulnerable adult and who has a reasonable basis to believe that abuse or neglect of the

adult has occurred or that exploitation of the adult's property has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to a protective services worker. The guardian or conservator of a vulnerable adult shall immediately report or cause reports to be made of such reasonable basis to the superior court. All of the above reports shall be made immediately in person or by telephone and shall be followed by a written report mailed or delivered within forty-eight hours or on the next working day if the forty-eight hours expire on a weekend or holiday. An attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of a vulnerable adult or a person who has responsibility for any other action concerning the use or preservation of the vulnerable adult's property and who, in the course of fulfilling that responsibility, discovers a reasonable basis to believe that exploitation of the adult's property has occurred or that abuse or neglect of the adult has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer, to a protective services worker or to the public fiduciary of the county in which the vulnerable adult resides. If the public fiduciary is unable to investigate the contents of a report, the public fiduciary shall immediately forward the report to a protective services worker. If a public fiduciary investigates a report and determines that the matter is outside the scope of action of a public fiduciary, then the report shall be immediately forwarded to a protective services worker. All of the above reports shall be made immediately in person or by telephone and shall be followed by a written report mailed or delivered within forty-eight hours or on the next working day if the forty-eight hours expire on a weekend or holiday. (A.R.S. 46-454)

Q: What is a vulnerable adult?

A: A vulnerable adult means an individual who is eighteen years of age or older who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment. (A.R.S. 46-451) (The definition of a vulnerable adult encompasses adults over the age of 18, not just elderly adults or simply because one is elderly, as is sometimes a point of confusion.)

Q: As a sexual or domestic violence victim advocate do I have a duty to warn?

A: Maybe. In otherwise privileged communications with a behavioral health professional and client, there is no privilege where the behavioral health professional has a duty to inform victims and appropriate authorities that a client's condition indicates clear and imminent danger to the client or others. (A.R.S. 32-3283(C)(1)). If a patient has explicitly threatened to cause serious harm to a person or if a mental health provider reasonably concludes that a patient is likely to do so, and the mental health provider, for the purpose of reducing the risk of harm, discloses a confidential communication made by or relating to the patient, the mental health provider shall be immune from liability resulting from such disclosure. (A.R.S. 36-517.02). Additionally, there shall be no cause of action against a mental health provider for breaching a duty to prevent harm to a personal caused by a patient unless the patient communicated to the mental health provider an explicit threat of imminent serious physical harm or death to a clearly identified or identifiable victim or victims, and the patient has the apparent intent and

ability to carry out such threat *and* the mental health provider fails to take reasonable precautions.

As an advocate, if you do not qualify as a mental health provider yourself, but your work is supervised by someone who is, you would be required to warn under the above circumstances. If no one at your program qualifies as a mental health provider, it is recommended that your program establish a written policy on a duty to warn and to follow the procedures outlined in that policy.

Q: Who qualifies as a mental health provider?

A: ARS 36-501 (27) states: "Mental health provider" means any physician or provider of mental health or behavioral health services involved in evaluating, caring for, treating or rehabilitating a patient.

VII. Crime Victim's Rights

Q: When do a crime victim's rights begin?

A: Crime victims' rights arise on the arrest or formal charging of the person or persons alleged to be the perpetrator of a crime, and end upon the final disposition of the charges, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution. (A.R.S. 13-4402).

Q: What rights do crime victims have regarding confidentiality?

A: A victim has the right not to testify in any court proceeding regarding the victim's addresses, telephone numbers, places of employment or other locating information. A victim's contact and identifying information that is obtained, compiled or reported by a law enforcement agency shall be redacted by the originating agency in publicly accessible records relating to the criminal case involving the victim. (A.R.S. 13-4434)

Q: Can a crime victim advocate or their records be subpoenaed?

A: A crime victim advocate shall not disclose as a witness or otherwise any communication between himself and the victim unless the victim consents in writing to the disclosure. Without consent, a crime victim advocate shall not disclose records, notes, documents, correspondence, reports or memoranda that contain opinions, theories or other information made while advising, counseling or assisting the victim or that are based on the communication between the victim and advocate. An advocate may disclose information if the crime victim advocate knows that the victim will give or has given perjured testimony, or if the communication contains exculpatory evidence. (A.R.S. 13-4430)

Q: Who qualifies as a crime victim advocate?

A: A crime victim advocate means a person who is employed or authorized by a public or a private entity to provide counseling, treatment or other supportive assistance to crime victims. (A.R.S. 13-4401)

VIII. Technology

Q: Are there any restrictions on posting protection orders on websites?

A: Yes. 18 U.S.C. 2265 specifically prohibits internet postings: a State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, in either the issuing or enforcing State, tribe, or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, territory or tribe may share court- or law enforcement-generated information on secured registries.

Q: Our program maintains client data and information on computers at work. What is the best practice in maintaining confidentiality with this practice?

A: If a sexual or domestic violence program utilizes software based program to maintain client information there are a few things to keep in mind. First, the importance of maintaining confidentiality of survivors' information should be in the control of the program that enters the data. Second, the software program and the data should be encrypted to protect the data. Lastly, appropriate firewalls should be in place on the server and/or computer.

Q: Our grant funders require us to report aggregate data via online?

A: Under VAWA 2013 programs cannot share personally identifying data about survivors-including name, date of birth, or other information, which in combination, could identify a survivor. If the aggregate data is shared to grant funders either in hard copy or in an online format, the data itself cannot be identifiable, so aggregate data must be scrutinized before submitting, as sometimes the aggregate data can be identifiable. (Ex: if program provides age groups and race, and program reports served one woman from the Middle East, this information could be identifiable depending on community).

Q: What is the difference between personally identifying information and aggregate data?

A: VAWA 2013 defines personally identifying information as: *'information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including: name or address, contact information (postal or e-mail, internet protocol address, telephone, or facsimile), Social Security number, date of birth, racial,*

ethnic or religious identity or any other combined information that “*would serve to identify an individual*”. Aggregate data is “*non-personally identifying data in the aggregate regarding services to their clients and non-personally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements...*”

Q: Our program receives Housing and Urban Development (HUD) dollars and HUD requires our program to collect personally identifying information and maintain for 7 years. Are there any exceptions to sexual or domestic violence programs?

A: Yes. If your program receives ANY VAWA funding, your program cannot give any identifying information to a local CoC (Continuums of Care) or HMIS. In 2006, Congress passed federal legislation, enacting into U.S. law, prohibiting domestic violence shelters from releasing personally identifying data to the Homeless Management Information Systems (HMIS) databases and requires those shelters to only release aggregate totals such as “X number of women were served.” “Although victim service providers are only required to submit aggregate details in reports, they must, according with HUD, collect all of the same data elements as mainstream HMIS systems. When using a comparable database with these additional required elements, it’s critical to inform survivors that they have the right to refuse to answer any of the questions.”⁷

Q: Our program is very active online (Facebook, MySpace, Twitter, etc.) and survivors initiate contact through networking sites. What should our policy be on safe guarding their privacy?

A: Social networking sites are a great way to promote program’s services and provide education and awareness about sexual and domestic violence. Sexual and domestic violence survivors utilize the internet to access resources within their community. A survivor may ask to friend your program on social networking sites such as MySpace and Facebook, which is fine as they are the ones initiating contact first. A program should never actively search for clients as this would break confidentiality. For confidentiality reasons, programs/advocates should not be discussing client cases or details on social networks. It is generally not wise for programs to use social networks as platforms to conduct counseling or advocacy. However, it may be the case that clients, who are on Facebook, are very comfortable with using Facebook, are friends with a program/advocate, and may reach out to the program or advocate about a specific case or issue (“hey, have you talked to my landlord about my rent?”). Best practice is that you ask them to call you, after which you can inform the survivor that as a policy, and for confidentiality reasons, you don’t discuss case details online. You can also inform them of privacy risks.

⁷ From National Network to End Domestic Violence’s Public Policy Issues “VAWA Confidentiality”

Q: If a victim/survivor contacts us through email, how should we proceed for confidentiality?

A: If a victim/survivor contacts your program through email, reply back and ask if the person can contact you by phone or in person. Email is not a secure or confidential format and it may pose risks to victim's safety if the abuser has access to their email accounts and passwords.

Q: Our program's location is available on the internet. How do we get the information removed?

A: As mentioned previously, Arizona state statute and VAWA2013 prohibits the release of shelter location. If the domestic violence emergency shelter physical address and location is found on the web, there are a few steps the program can make. First, contact the website administrator and ask them to remove the listing from their website, stating state and federal statute. If that does not work, you can contact the Safety Net Team at NNEDV or AzCADV for further technical assistance about removal of address.

IX. Immigration

(Please note due to Arizona being a border state, this section is ever-changing as laws will change. Please contact the ACESDV Legal Advocacy Hotline for questions about change in laws pertaining to immigration.)

Q: Is the federal government restricted in its use of information from an immigrant victim of sexual or domestic violence?

A: Yes. VAWA protects the confidentiality of a variety of information provided to the federal government regarding immigrant victims of domestic violence. Information provided to the Department of Justice, Department of Homeland Security, or Department of State by an immigrant victim remains confidential in order to protect the victim from abusers, traffickers and other crime perpetrators.⁸ One exception to this lack of disclosure is that it does not prevent the disclosure of information in connection with judicial review of a determination.

Q: Does the judicial review exception include all judicial proceedings?

A: No. *Hawke v. Department of Homeland Security* specified that the exception to the VAWA confidentiality provisions applied only to immigration reviews and not to civil or criminal court proceedings. For example, in an order of protection case or a criminal prosecution for domestic violence, the VAWA confidentiality provisions would apply. Therefore, courts should deny discovery requests, cross-examination, and motions seeking release of information protected under VAWA confidentiality in civil and

⁸ From Legal Momentum's "Court decision interprets VAWA Confidentiality Provisions" memo.

criminal cases. However, the judicial review exception to the VAWA confidentiality provisions would apply in a judicial review of an actual immigration application. For a full fact sheet on this case, please see Legal Momentum's website at <http://www.legalmomentum.org/assets/pdfs/hawke.pdf>.

Q: Are victims of sexual and domestic violence protected when seeking services at shelters and other victim service agencies?

A: Yes. VAWA prohibits enforcement actions at domestic violence shelters, victim services programs, family justice centers, supervised visitation centers, in courthouses or in connection with courthouse appearances for protection order cases, child custody cases, or other civil or criminal cases related to domestic violence, sexual assault, trafficking or stalking. (See Memorandum for Field Office Directors and Special Agents in Charge, dated January 22, 2007 available at: <http://www.aila.org/content/default.aspx?bc=1016|6715|8412|24578|21720> – “in practical terms, when ICE officers encounter [undocumented victims] at these sensitive locations and ultimately issue a Notice to Appear, the officers must ensure that they have independently verified the inadmissibility or deportability of that alien and must not permit any unauthorized disclosure of information about the alien.” “ICE officers are discouraged from making arrests at these sensitive locations absent clear evidence that the [victim] is not entitled to victim-based benefits.”)

Q: What about Arizona SB 1070 and the section of the law that makes it a crime to transport and harbor illegal immigrants?

A: A sexual or domestic violence program who is receiving VAWA or FVSPA dollars should not be asking for any documentation regarding a person's legal status in this country in order for the survivor to access shelter or receive services.

The William E. Morris Institute for Justice has provided legal analysis of this section and their opinion is that it does not apply unless the person who is harboring or transporting someone is committing another criminal act. Based on this analysis, unless an advocate is committing another crime such as criminal speeding (driving 20 miles over the posted speed limit), committing a hit and run, or driving over 35 mph in a school zone as a couple of examples, the transporting misdemeanor would not apply. Furthermore, unless a shelter is engaging in some other criminal act the harboring misdemeanor would not apply.⁹ In addition, the American Civil Liberties Union has stated in that in order to be charged with unlawfully transporting an undocumented person, you have to be helping them further their illegal presence in the United States. This does not include humanitarian assistance.¹⁰

⁹ William E. Morrison Institute for Justice- www.morrisinstituteforjustice.org

¹⁰ ACLU Fact Sheet: Your Rights: What You Need to Know About SB 1070 (2010)

Q: What happens if the abuser reports that the survivor is undocumented to immigration officials?

A: Immigration enforcement agencies are prohibited from using information provided solely by an abuser, trafficker, or U visa crime perpetrator, a relative, or a member of their family to take an adverse action regarding admissibility or deportability against an immigrant victim, without regard to whether a victim has ever filed or qualifies to file for VAWA related immigration relief. (Legal Momentum memo). The information from the abuser may be used or considered (and in fact may trigger an investigation), but it must be independently verified or corroborated. For more information, please visit <http://www.legalmomentum.org/our-work/immigrant-women-program/issues-iwp.html>

Q: Are the undocumented immigrants that we serve given confidentiality protections?

A: Yes. 8 U.S.C. 1101(U)(iii) and 8 U.S.C. 1367(2) protects the confidentiality of information belonging to immigrant victims of sexual violence and domestic violence without regard to their documented status.

Q: What if an immigrant applies for VAWA benefits but, based on procedural problems was denied? Do the confidentiality provisions apply?

A: Yes. Hawke v. Department of Homeland Security specifically found that VAWA confidentiality protections apply to those who immigration applications were denied but where such denials were not based on the merits, but were withdrawn or denied based on procedural deficiencies.

X. Health and Medical Communications and Records

Q: When are communications confidential between a health care professional and survivor?

A: When they are between a client and a psychologist (A.R.S. 32-2085) or a client and a behavioral health worker or social worker (A.R.S. 32-3283).

Q: What are the licensing requirements for becoming eligible as a behavioral health or social worker?

A: They can be found as follows: social worker (A.R.S. 32-3291); masters level social worker (A.R.S. 32-3292); licensed clinical social worker (A.R.S. 32-3293); licensed professional counselor (A.R.S. 32-3301); licensed associate counselor (A.R.S. 32-3303); licensed marriage and family therapist (A.R.S. 32-3311) and licensed substance abuse technician (A.R.S. 32-3321).

Q: Are medical records kept confidential?

A: Yes. All medical records and payment records, and the information contained in those records, are privileged and confidential (A.R.S. 12-2292). A health care provider may only disclose that part or all of a patient's medical records or payment records as authorized by state or federal law, or by written authorization signed by the patient or the patient's health care decision maker. This does not include a patient or healthcare decision maker accessing the records; on the written request of either, the healthcare provider must provide access to or copies of the records, with certain restrictions relating to the health, safety, or confidentiality of the patient or others.

Q: What about emergency medical services or trauma system information?

A: That information is protected as confidential per A.R.S. 36-2220 and may not be released to the public without written authorization by the patient, the patient's guardian or the patient's agent.

ADMINISTRATIVE PROCEDURES

XI. Arizona Address Confidentiality Program

Q: Does Arizona have an Address Confidentiality Program?

A: Yes. Arizona's Address Confidentiality Program (ACP) was signed into law (A.R.S. 41-161 through A.R.S. 41-169) on April 19, 2011 and began accepting applications on June 4, 2012. The ACP provides survivors of domestic violence, sexual offences and stalking with a means to prevent abusers/perpetrators from locating them through public records. The ACP can be *part* of an overall safety plan.

Q: What does the ACP Provide?

A: The ACP offers two important services:
1) Provides a legal substitute address for ACP participants to use as their residential, work, or school address, and that all local and state government agencies are required to accept when a participant requests services.
2) Receives the participant's first class, certified, and registered mail and forwards to the participant's actual confidential address at no cost to the ACP participant.

Q: Is participation in the ACP confidential?

A: Participation in the ACP is not confidential, only the participant's real address is confidential.

Q: What are the eligibility requirements to enroll?

A: Survivors of domestic violence, sexual offense and stalking, and who are in fear of their safety, minors or incapacitated adults who are survivors, their parent or guardian may apply on their behalf. Applicants must have recently relocated to an undisclosed address within 90 days of applying to the ACP or are planning on relocating in the near future to an undisclosed location.

Q: How can I enroll in the ACP?

A: All potential applicants must meet with a registered ACP Application Assistant. The Applicant Assistant will determine a person's eligibility and provide program education. If all eligibility criteria are met, together the survivor and the Application Assistant will determine if ACP will benefit their overall safety plan. If it does, then the Applicant Assistant will guide the survivor through the ACP application process. For a list of Application Assistants call (602) 542-1653 or go to: http://www.azsos.gov/Info/acp/application_assistants.pdf.

Q: What is an Application Assistant?

A: The registered ACP Application Assistant is a person who provides counseling, referral or other services to victim/survivor of domestic violence, sexual offense, or stalking. Application Assistants are typically victim advocates or counselors that work in a program dedicated to assisting survivors of these crimes. All Application Assistants receive required ACP training and go through a registration process. The Application Assistant provides information to the applicant, assists in determining program eligibility, and recommends survivors to the ACP program.

Q: What happens once the application is complete?

A: When the Application Assistant has signed the ACP application and recommends the person to become a participant, the ACP will review the application, and if complete, the ACP will certify the application and enroll the applicant as an ACP participant. Once accepted in to the ACP, participants will receive an ACP welcome packet. This will include the ACP New Participant's Handbook and ACP Authorization Card.

Q: How long can I participate in the ACP?

A: Upon acceptance into the ACP, participants are certified for four (4) years. At the end of the four (4) years they may reapply if they feel they are still at risk of being found by their abuser/stalker.

Q: Can I be cancelled or withdrawal from the ACP?

A: Yes. Participants may withdraw from the program at their own will. Staff will assist in completing the necessary steps to be withdrawn from the program. ACP may also cancel certification if participant's mail is returned as "non-deliverable", are not notified of change of address, phone or name within allowable time frame, or if a participant knowingly provided false information on the application.

XII. Postal Service Confidentiality Requirements

Q: Can I keep my address confidential through the United States Postal Service?

A: Yes. In general, postal service records are available for inspection or copying at the request of any person. 39 C.F.R. 265.6(a)(1). However, 39 C.F.R. 265(d) specifies that disclosure of names and addresses of certain customers is restricted. Under 39 C.F.R. 265(d)(1), the postal service reserves the right not to disclose the change of address of an individual for the protection of the individual's personal safety. Information from the application for a post office box or caller services will not be made available when a copy of a protective order has been filed with the postmaster (39 C.F.R. 265(d)(4)(i-iii)), except that it will be released to a federal, state, or local government agency upon prior written certification that the information is required for the performance of its duties; in compliance with a court order subpoena, or to a law enforcement agency but only after the Inspection Service has confirmed that the information is needed in the course of a criminal investigation. 39 C.F.R. 265(d)(5)(i, iii, iv). The regulations specifically note that the address of an individual who files with the postmaster a copy of a protective court order will not be disclosed except as provided specifically above and not for general litigation matters. Finally, information from an application for delivery of mail through agent will not be disclosed concerning an individual who has filed a protective order with the postmaster except pursuant to a court order. 39 C.F.R. 265(d)(9)(iii).

XIII. Department of Transportation (Motor Vehicles Division)

Q: What federal laws keep my motor vehicle registration information confidential?

A: There are a variety of measures that keep motor vehicle information confidential from a federal perspective. The Violence Against Women Act, § 827, provides that the Secretary of Homeland Security, in consultation with the Administrator of Social Security, shall, when keeping addresses confidential for victim of battery, extreme cruelty, domestic violence, dating violence, sexual assault, stalking or trafficking, who are entitled to enroll in state address confidentiality programs, include driver's licenses when developing regulations or guidance regarding identification documents.

Additionally, 18 U.S.C. § 2721 provides that a State department of motor vehicles, and any officer, employee or contractor, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained in connection with a motor vehicle record without express consent of the person to whom the information applies. It is unlawful for any person knowingly to obtain or disclose personal information from a motor vehicle record for any use not specifically permitted. 18 U.S.C. 2722. It is also unlawful for any person to make false representation to obtain any personal information from an individual's motor vehicle record.

Q: What if a person or MVD violates this section?

A: Anyone who violates this provision shall be fined, and any state department of motor vehicles that has a policy or practice of substantial noncompliance with this provision shall be subject to a civil penalty of not more than \$5,000 a day for each day of substantial noncompliance. 18 U.S.C. 2723. Additionally, a person who knowingly obtains, discloses or uses personal information from a motor vehicle record for a purpose not otherwise permitted shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court, and may receive actual damages, punitive damages upon proof of willful or reckless disregard of the law, reasonable attorney fees and other costs reasonably incurred, and "such other preliminary and equitable relief as the court determines to be appropriate." 18 U.S.C. § 2724

Q: What state laws apply to the confidentiality of motor vehicle department records?

A: A.R.S. 28-447 specifies that motor vehicle department records are public. Arizona law also requires that a person notify the department of any change in address within 10 days of making the change. A.R.S. 28-448. However, A.R.S. 28-454 provides for procedures in which eligible persons may request that persons be prohibited from accessing the person's residential address and telephone number. Eligible persons include persons who are protected under an order of protection or injunction against harassment or someone who is a participant in the address confidentiality program.

Q: What is the process for requesting confidentiality of my motor vehicle records?

A: A.R.S. 28-454 The eligible person must file an affidavit that states the person's full legal name and residential address, a copy of the order of protection or injunction against harassment, or an eligible person who is a participant in the address confidentiality program shall attach a copy of the participant's current and valid address confidentiality program authorization card and a statement of certification provided by the secretary of state's office, and the reasons the person reasonably believes that the person's life or safety of that of another person is in danger and that redacting the residential address and telephone number from the department's public records will serve to reduce the danger. The affidavit is filed with the presiding judge of the superior court

in the county in which the affiant resides, and the judge will then make a determination. If the judge grants the request, the department shall redact the information no more than 150 days after the date the department receives the order. If the court denies the request, the affiant may request a court hearing.

XIV. Voter Registration Confidentiality Requirements

Q: Can voter information be kept confidential in Arizona?

A: Yes. A.R.S. 16-153 specifies that eligible persons, and any other registered voter who resides at the same residence address as the eligible person, may request that the general public be prohibited from accessing the residential address, telephone number and voting precinct number contained in their voter registration record. Eligible persons include persons who are protected under an order of protection or injunction against harassment or someone who is a participant in the address confidentiality program.

Q: What is the process for requesting confidentiality of my voter records?

A: The eligible person must file a affidavit that states the person's full legal name, residential address and date of birth, a copy of the order of protection or injunction against harassment, or an eligible person who is a participant in the address confidentiality program shall attach a copy of the participant's current and valid address confidentiality program authorization card and a statement of certification provided by the secretary of state's office, and the reasons the person reasonably believes that the person's life or safety of that of another person is in danger and that sealing the residential address, telephone number, and voter precinct number of the person's voting record will serve to reduce the danger. The affidavit is filed with the presiding judge of the superior court in the county in which the affiant resides, and the judge will then make a determination. Upon granting the request, the presiding judge shall order the sealing for five years of the information contained in the voter record of the affiant and, on request, any other registered voter who resides at the same residence address. The record shall be sealed no later than 120 days from the date of receipt of the court order. If the judge denies the request, the affiant may request a court hearing.

XV. County Recorder Confidentiality Requirements

Q: Can records maintained by the county recorder be kept confidential?

A: Yes. A.R.S. 11-483 specifies that eligible persons may request that the general public be prohibited from accessing the unique identifier and the recording date contained in indexes of recorded instruments maintained by the county recorder and may request the county recorder to prohibit access to that person's residential address and telephone

number contained in instruments or writings recorded by the county recorder. Eligible persons include persons who are protected under an order of protection or injunction against harassment or someone who is a participant in the address confidentiality program.

Q: What is the process of requesting confidentiality of my recorded instruments?

A: The eligible person must file a affidavit that states the person's full legal name and residential address, the full legal description and parcel number of the person's property, a copy of the order of protection or injunction against harassment, or an eligible person who is a participant in the address confidentiality program shall attach a copy of the participant's current and valid address confidentiality program authorization card and a statement of certification provided by the secretary of state's office, and the reasons the person reasonably believes that the person's life or safety of that of another person is in danger and that restricting access to this information will serve to reduce the danger, the document locator number and recording date of each instrument for which the person requests access restriction, and a copy of pages from each instrument that includes the document locator number and the person's full legal name and residential address or full legal name and telephone number. The eligible person may combine the request with the request pursuant to A.R.S. 11-484 (outlined below). The affidavit is filed with the presiding judge of the superior court in the county in which the affiant resides, and the judge will then make a determination. Upon granting the request, the presiding judge shall order the county recorder prohibit access for five years to the person's address and telephone number, including in information available on the internet. If the presiding judge concludes the person is in actual danger of physical harm from a person or persons with whom the affiant has had official dealings and that restricting access will reduce a danger to the life or safety of the eligible or other person, the judge shall order that the general public be prohibited for five years from access the unique identifier and the recording date contained in indexes of recorded instruments maintained by the county recorder. No more than ten days after the date on which the county recorder receives the court order, the county recorder shall restrict access to the information. If the judge denies the request, the affiant may request a court hearing.

XVI. County Assessor and Treasurer Confidentiality Requirements

Q: Can records maintained by the county assessor and treasurer be kept confidential?

A: A.R.S. 11-484 explains the similar process for restricting access to records maintained by the county assessor and county treasurer as those contained in A.R.S. 11-483 outlined above. The eligible person must provide the person's full legal name and residential address, the full legal description and parcel number of the person's property,

a copy of the order of protection or injunction against harassment, or an eligible person who is a participant in the address confidentiality program shall attach a copy of the participant's current and valid address confidentiality program authorization card and a statement of certification provided by the secretary of state's office and the reasons the person reasonably believes that the person's life or safety or that of another person is in danger and that redacting the residential address and telephone number will serve to reduce the danger. The same procedures outlined above apply, and if the judge grants the request, the judge shall order the redaction of the affiant's residential address and telephone number for five years. This affidavit may be combined with the request to the county recorder's office.

The forms for sections XI through XIV are available at:

<http://www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx#PersonalInfo>