



Federal and State Confidentiality Requirements for Domestic Violence Programs

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- **Georgia Criminal Justice Coordinating Council**

This training is supported by Subgrant No. W14-8-025 awarded by the Criminal Justice Coordinating Council administering office for the STOP Formula Grant Program. The opinions, findings, conclusions, and recommendations expressed are those of the trainers and do not necessarily reflect the views of the Criminal Justice Coordinating Council or the U.S. Department of Justice, Office on Violence Against Women.

- **National Network to End Domestic Violence (NNEDV)**

Training content adapted from NNEDV materials



Poll Question



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Learning Objectives

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- Understand the guiding philosophy and ethics of survivor confidentiality requirements
- Outline federal and state laws regarding survivor confidentiality that impact Georgia's domestic violence programs
- Review the Georgia certified shelter standards relevant to confidentiality
- Clarify the protections and limitations provided by Georgia's Advocate Privilege law



Poll Question



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Ethics

VAWA

FVPSA

Standards

Advocate

Privilege



Where do confidentiality requirements come from?

The Nature of the Work

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- Survivors have always needed confidentiality in order to be safe
- The movement has borrowed from other fields
 - Health care
 - Social services
 - Counseling
- Laws had to catch up with the work



Ethics and Philosophy of Confidentiality

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- Is it the program's information/data/records or the survivor's information?
- First and foremost, remember the information belongs to the survivor!
- The survivor has the right to say what information is shared, when it is shared and with whom the information is shared.



A survivor's information is not shared outside the program unless she gives the staff permission to do so.

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This protection reflects and reinforces three vital goals of advocacy:

1. To preserve a survivor's safety and prevent retaliation from her abusive partner;
2. To provide the privacy needed to allow a survivor to talk freely with an advocate in order to effectively plan for safety; and
3. To place control of information in the survivor's hand, thus recognizing and reinforcing her autonomy.



Why Confidentiality is Important

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- It impacts safety and healing
- Unprotected information could get to the perpetrator, to the perpetrator's attorney or out in the community, etc.
- Without it, survivors won't use our services
- Federal funding contracts for victim services require confidentiality
 - ❖ Risk losing funding (VAWA, VOCA, FVPSA)
- Risk liability due to consequences of breaking confidentiality
- Common ethical standards across the "industry" (precedent)



What should be kept confidential?

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- Generally, keep anything that is “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 email, internet protocol address, telephone or fax number)
 - ✦ Social Security Number or date of birth
 - ✦ Racial, ethnic or religious identity
 - ✦ Written case notes and documented activities
 - ✦ Any other combined information that “*would serve to identify an individual*” (ex., number of children, type of car)

Who should keep confidentiality?

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- Advocates
- Administrative Staff
- Board
- Funders
- Volunteers
- Other Victims
- Vendors
- Anyone gaining contact due to our contact



Violence Against Women Act (VAWA)

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- 1994: VAWA was the first U.S. federal legislation to acknowledge domestic violence and sexual assault as crimes.
- Administered by the U.S. Dept of Justice's Office on Violence Against Women.
- Funds domestic violence programs, law enforcement, court systems, and victim witness assistance programs
- Reauthorized in 2013



Violence Against Women Act (VAWA)

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- Confidentiality protections:
 - Section 3, 42 USC §13925(b)(2)(2008)6 became effective in 2006, and has a universal grant condition that requires grantees and subgrantees to maintain the confidentiality of personally identifying victim information
 - Only pertains to DV/SA victim service programs, not law enforcement, court systems or victim witness assistance
 - Protects anyone requesting or receiving services
 - Failure to follow could result in loss of funding
 - VAWA & FVPSA put the decision *whether* to share any information in the hands of the survivor
 - Information can be shared only with informed, written consent from the survivor

Confidentiality for Courts, Prosecutors & Police

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For law enforcement, court systems or victim witness assistance programs:

- VAWA/FVPSA Privacy rule does not apply to
 - Information *generated* by court, prosecutor & law enforcement

AND

- Used for court, prosecutorial & law enforcement purposes within legal system

Violence Against Women Act (VAWA) Exceptions

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Grantees and subgrantees shall not disclose personally identifying or individual information except when:

- There is written consent from the individual;
- There is a requirement in a statute;

or

- There is a lawful requirement from a court.

Violence Against Women Act (VAWA) Exceptions

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- Exceptions

- Statutory mandates, such as reports of:

- ✦ Child Abuse/Neglect
- ✦ Elder Abuse (Adults 65 years or older)
- ✦ Abuse of “disabled adult” who is “mentally or physically incapacitated”
- ✦ *Only disclose information necessary to satisfy the statute*

- Court orders to disclose/share information, such as:

- ✦ Subpoena for records
- ✦ Subpoenas to testify
- ✦ *Filing motion to quash can be successful in fighting or limiting the information you must disclose*

Duty to Warn

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- Georgia does not have a statute that legally requires a “duty to warn”
 - Threats to harm self
 - Threats to harm another
- Licensed professionals such as social workers, professional counselors, and health care providers may have a code of ethics that specifies a duty to warn
- Because Georgia does not have a statute, there is no exception under VAWA in this situation



Family Violence Prevention and Services Act (FVPSA)

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- 1984: FVPSA is the only U.S. federal funding source dedicated to domestic violence shelters and services.
- Administered by the U.S. Dept of Health and Human services
- Reauthorized through fiscal year 2015



Family Violence Prevention and Services Act (FVPSA)

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- Confidentiality Protections:
 - Specifically parallel those of VAWA
 - Prohibits grantees from disclosing, revealing or releasing any victim's confidential information without the victim's informed, written and reasonably-timed consent



Standards for GA Certified Family Violence Shelters

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- Standard 6: The program holds confidential all communications, observations, and information made by, between, or about victims receiving services
- Standard 7: Employees and volunteers are prohibited from disclosing victim information to outside sources except in very limited circumstances
- Standard 11: Employees and volunteers maintain victim confidentiality during attempted enforcement of involuntary commitment orders.
- Standard 12: The organization has a process for handling the confidentiality of records and belongings after the victim is deceased.



Poll Question

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What about HIPAA?



Most domestic violence shelters do not fall under the requirements of HIPAA

HIPAA vs. VAWA

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- HIPAA applies to medical records maintained by healthcare providers, health plans, and health clearinghouses
- VAWA generally seen as more protective, and has fewer exceptions
 - HIPAA
 - ✦ medical information exchanged between health care providers
 - VAWA
 - ✦ Information belongs to survivor; exchanged only with permission



Questions...

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Advocate Privilege

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PROTECTIONS AND LIMITATIONS

Poll Question

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Advocate Privilege

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- HB 711 signed into law and went into effect on January 1, 2013
- No current or former employee or volunteer of a domestic violence or sexual assault program can be forced to give court testimony or provide to a court records pertaining to any victim they have served, except in very narrow circumstances as outlined in the law.



Qualifications for Privilege

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The staff/volunteer must meet **ALL of the following criteria:**

- Be a current or former employee or volunteer at a program that has as its primary purpose to either a) provide services to family violence victims and their families or b) provide services to sexual assault victims and their families
- Must have completed a minimum of 20 hours of training in family violence or sexual assault intervention and prevention at a Criminal Justice Coordinating Council (CJCC) certified victim assistance program. (i.e. the training org must be 5% certified)
- The family violence or sexual assault program for which the person worked or volunteered cannot be one that is under the direct supervision of a law enforcement agency, prosecuting attorney's office, or a government agency.

Exceptions & Limitations to Advocate Privilege

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- Georgia's statute is not absolute—provides qualified privilege, with certain limitations and exceptions
- Exceptions:
 - Mandated reporting of child abuse and neglect, elder abuse, abuse of disabled adult
 - A victim can waive the privilege
 - Victims must give informed consent when waiving this privilege
- Limitations:
 - Certain limitations apply in criminal and civil legal proceedings
 - Advocates and volunteers may be compelled to testify or offer up victim records, if very specific set of factors are met.
 - Court must find that factors are met by a preponderance of the evidence at pretrial hearing/hearing outside presence of the jury

Questions...

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Releases and Waivers

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When are Releases Necessary?

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- Anytime a program is speaking with another agency about a client of their program, a signed release must be obtained.
- Releases should be:
 - ✦ Voluntary
 - ✦ Informed
 - ✦ Written
 - ✦ Reasonably Time-Limited

Individual Releases

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- Blanket waivers (multiple agencies listed) should not be used by programs. Releases should be individual for each agency/outside contact.
- Asking for routine waivers fails to acknowledge the individual consequences that such information-sharing might have for each survivor.
- You **cannot** rely on a signed release from another agency.

Written Releases

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- Releases should include...
 - notice that the release of information is completely voluntary and not required to receive services,
 - notice that consent given to release information can be revoked at any time,
 - exactly what information will be shared,
 - exactly what agency will receive the information,
 - information on the communication methods that will be used in relaying the information,
 - the timeframe that the release will be valid.



Time Limited

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- The length of time a release is valid should be reasonable based on the individual survivor and the program
- Best practice is to keep the timeframe as minimal as possible (ideally 15-30 days)
- The time limitations help ensure that services are guided through any changes in the survivor's situation



Compelled Release of Information



- If a release of survivor information is forced by a court order or statutory mandate, adequate safety protections must be taken:
 - Make reasonable attempts to notify victim of disclosure
 - Provide minimum amount of information necessary to comply with the mandate or court order
 - Take steps to protect the privacy and safety of those who may be affected by the release (children, extended family)

Questions...

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Emergencies, Court Orders and other Special Circumstances

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Suggested protocol for handling subpoenas

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- Staff immediately informs the Executive Director or Program Director of the subpoena
- Staff inform the victim in question of the subpoena, if it is safe to contact her/him
- **Program's attorney responds ASAP with a motion to quash**
- Have a written protocol on how to handle subpoenas and other requests/inquiries for information



Mandates to Report Abuse

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- Domestic violence programs are mandated to report suspicion of/disclosures of abuse or neglect of:
 - Children
 - Adults 65 years or older
 - “Disabled Adult” who is “mentally or physically incapacitated”
 - ✦ **Note: most individuals with a disability are NOT mentally or physically incapacitated**
- Mandated reports of abuse are allowed under VAWA
 - Be certain the situation meets the standard for a mandated report
 - Information shared must be limited to what is required by law, e.g. the facts related to the suspicion/disclosure of abuse

Medical Emergencies

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- Even in a medical emergency, confidentiality should be honored
 - ✦ Request emergency services but do not allow unnecessary responders into the building
 - ✦ Provide operator with just enough instead of name, age, etc.
 - ✦ Conscious survivor can choose what information is or is not shared
 - ✦ If survivor is unconscious, confidentiality rules still apply – give basic facts only
 - ✦ Remember: emergency responders are experienced in responding to situations where patient/victim information is unknown

Crime or Other Claim Against Program

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- Lawsuit against agency – contact your attorney to determine confidentiality laws
- Crime against the program
 - ✦ Did the incident rise to level of law enforcement response?
 - ✦ Other things to evaluate:
 - How significant was the incident? Was it minor?
 - Can you change practice so it's technically no longer a crime?
 - What was the intention and context? Was it an accident?
 - ✦ If report must be made, the program is still obligated to limit the disclosure of information to the minimum amount necessary AND take steps to notify the victim of the disclosure

Crime or Other Claim By One Survivor Against Another

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- Before involving police, try to resolve internally
- Survivor who claims to have been wronged may choose to contact law enforcement. If she makes that choice, there are confidentiality implications:
 - ✦ Program may not share any personally identifying information about either the complaining survivor or the alleged wrong-doing survivor without signed release
 - ✦ Law enforcement should NOT come to program – advise survivor to go to law enforcement to make report
 - ✦ If release is signed by complaining survivor but not other survivor, program must be very careful to avoid revealing information about other survivor

Conclusions

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- A survivor's information belongs to the survivor, not to the domestic violence program.
- Confidentiality is a cornerstone of safe and effective service provision.
- The domestic violence program is responsible for protecting the survivor's confidentiality:
 - Proper use of releases of information
 - Policies and procedures
 - Invoking of advocate privilege
 - Adherence to VAWA and FVPSA confidentiality requirements

Additional Resources

- *Confidentiality: An Advocate's Guide*, 2007
www.bwjp.org
- National Network to End Domestic Violence (NNEDV) Safety Net Project—Confidentiality and Privacy for Agencies Working with Survivors
<http://nnedv.org/resources/safetynetdocs>
- Confidentiality Institute—National TA Provider/Training
www.confidentialityinstitute.org

Questions...

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Thank You!

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