

YOUTH SERVICES

POLICY DEVELOPMENT TOOL

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INTRODUCTION TO THE TOOL

The Policy Development Tool was created to help Youth Services grantees progress from the project planning phase to the implementation phase of the Youth Services grant. Before grant project teams (“project teams”) can begin to implement programs, all must review their organizational policies and develop new or update existing policies to ensure that policies are tailored to serve youth survivors of domestic violence, dating violence, sexual assault, and stalking.

This tool outlines the key elements in building comprehensive, coherent, and youth survivor-centered organizational policies, including which policies a project team should have, why those policies are important, and how to develop those policies effectively. Within each section of the tool are examples of policy language selected from current Youth Services grantees who have developed and implemented successful programs or sample language.

NOTE: This is a product of Break The Cycle’s Technical Assistance Center and is not intended to be seen as legal interpretation or legal advice. This tool is not official guidance from The Office on Violence Against Women (OVW).

Definitions for the Tool

Participant – A young person between 13-25 who is seeking services from a youth-serving organization.

Organization – Any agencies or organization involved in the provision of services under the Youth Services grant.

Minor – A young person under the age of 18.

NOTE: There are recommended definitions for terms that should be integrated into organizational policies in Appendix I – Sample Definitions (e.g., mature minor, emancipated minor, dating abuse)

CHAPTER 1 – POLICY FOUNDATIONS

When creating an organizational policy, there are certain foundational elements that should be included to ensure that all staff, program participants, or other readers have a shared understanding of the key terms in the policy, the application of the policy, and notification of the policy. Additionally, all organizations should include non-discrimination policies and statement's of the organization's commitment to protect staff, participants, and others from abusive behavior when providing or accessing services. The following Chapter will detail these foundational elements and provide examples of what language to include in each section.

Why Include a Definition Section in your Policies?

Definitions of key terms help all readers understand the meaning and scope of policies and can guide those responsible for creating procedures based on policies, or enforcing policies, to correctly follow the intent of the policy-makers.

What Should a Definitions Section Include?

The definitions section of an organization's policies should list and define all key terms used within the organization's policies. Youth Services grantees, specifically, should define words that discuss the youth-related aspect of their work. For example, if a policy describes what must be done for a participant who is a minor, explain what "minor" means. Defining terms related to abuse is also important. If terms have specific legal meanings or are defined by law, include the legal language (e.g., emancipated minor).

Additionally, organizations that require participants meet specific qualifications to participate in a program should clearly define those qualifications. For example, if services are only available for "adults," define the age range of an "adult." Similarly, if there are different services available for "youth," "teens," or "adolescents," define the age ranges that are encompassed by these terms. Explicitly note if there are exceptions to these age ranges (e.g., if a 16-year-old who is an emancipated minor can participate in "adult" programs).

The following is a brief list of terms that may need a definition:

Youth-related terms: minor, emancipated minor, mature minor, child, teen, young adult, youth, adolescent, adult, parent/guardian

Abuse-related terms: dating partner, dating abuse, physical abuse, emotional abuse, sexual abuse, survivor/victim, offender /perpetrator, predominant aggressor

See *Appendix I – Sample Definitions*.

What is a Non-Discrimination Policy?

A Non-Discrimination Policy notifies staff, participants, community members, and others that discriminatory behavior is not tolerated or practiced by the organization. Non-Discrimination Policies outline who the policy applies to (e.g., staff and participants) and what groups of people are protected from discrimination.

Why Write a Non-Discrimination Policy?

Non-Discrimination Policies help to create an equitable workplace and community by setting standards of behavior for staff and participants to follow. Importantly, non-discrimination policies create an environment where staff and participants do not need to fear mistreatment because of who they are. For this reason, Non-Discrimination Policies can create an organizational environment that is safe for staff and participants to disclose abuse and to seek help. For example, if an organization's non-discrimination policy includes non-discrimination on the basis

of sexual orientation and experience surviving abuse, a lesbian participant may feel more comfortable disclosing abuse and asking for assistance.

What Should a Non-Discrimination Policy Include?

- A clear list of who must follow the policy, potentially including staff, volunteers, participants, members, clients, or sub-contractors.
- Language that outlines what type of environment the policy seeks to create in the organization. For example, a Non-Discrimination Policy might be written to create an equal opportunity for employment or an equal opportunity for participation based on certain protected characteristics.
- A listing of protected characteristics, that may include: race, class, ethnicity, national origin, immigration status, religion, sex, sexual orientation, gender identity or expression, age, height, weight, disability status, veteran status, military obligations, parental status, and relationship status.
- A clause protecting staff or participants who disclose their status as a victim of violence or who request accommodations related to surviving violence.

What is an Applicability POLICY?

An Applicability Policy explains the circumstances in which a policy should be used, including which persons are covered by the policy and what types of behavior are covered by the policy. An Applicability Policy can also explain which policies apply to which types of person (e.g., a policy that applies only to staff versus a policy that applies to both staff and participants). Applicability may be a stand-alone clause at the beginning of a policy, or may be incorporated into each of a set of policies as appropriate.

Remember, simply stating that an organization does not discriminate “unlawfully” or works in accordance with federal and state laws is usually not enough to be fully protective.

Why Write an Applicability Policy?

Staff, participants, and others can look at an applicability policy to determine whether or not certain organizational policies apply to them. Notice of whether a policy applies will help individuals understand their rights and obligations.

What Should an Applicability Policy Include?

An Applicability Policy should include a clear explanation of who is covered by which of the organization’s policies and should detail which types of behaviors are covered. For example, an organization may choose to apply its policies to behaviors conducted while staff or participants are at the organization or at an organization-sponsored function. Another organization may choose to apply its policies to staff acting in their professional capacity or to cover certain behaviors of participants when off-site.

What is A Notice of Policy statement and Why Write it?

Organizational policies are most useful when all staff and participants know about, understand, and follow them. A Notice of Policies statement is a clause in a policy that states when, where, and how a policy will be distributed or made available to staff, participants, and other interested persons, such as community partners or parents. A Notice of Policy statement can also include a Notice of Review that states when reviews of the policies will occur and how staff, participants, and others will be involved in the review process and notified of any changes.

What Should a Notice of Policy Include?

DISTRIBUTION PLAN

- Outline when the policy will be distributed and by whom.
- Explain how new staff or participants can obtain the policy and how others will receive it on a regular basis (e.g., annually or every 6 months) for review.
- Detail how an individual can obtain a copy of the policy after original distribution and between scheduled distribution dates. Consider posting the policy (or parts of it) on the organization's website to provide access for all parties.

Plan FOR POLICY REVIEW AND NOTIFICATION OF CHANGES

- Include how often the organization will review policies (e.g., every year)
- Detail the process by which the policy will be reviewed
- List who will be involved in the review process.
- Explain how staff, participants, and others will be notified of the review process, their ability to participate, and any changes made to the policies.

sample Notice of Policy

The policies of [this organization] will be distributed to all staff during new staff orientation and once a year during the staff member's annual review. If changes are made to the policies, all staff will be notified immediately. The policies that are applicable to participants will also be given in paper form to new participants during intake. Policies applicable to participants include: Confidentiality, Reporting, Screening, Eligibility, and all other policies that detail the rights or responsibilities of participants. If changes are made that are relevant to participants, staff will inform participants of these changes within two weeks of the change. All organizational policies will be available on [the organization's] internal internet so that all staff can access them at any time. Staff will tell participants that staff will provide them with additional copies of relevant policies upon request. Policies will be reviewed once every two years (or as needed). The Executive Director and at least one member of each Department will participate in the review process. Each department will decide who will be involved in the review process. All staff will be notified of the review process and will be given a chance to comment on any suggested changes before they are made to the policies. Once changes are made to the policies, all staff will be notified of the changes and trained on any new or substantially altered policies. Staff will also notify participants and others affected by the changes.

An Eligibility of Services Policy should note any specific requirements for minors who are participating in programs or accessing services, including sexual and health services. See Chapter 4 – Policy on Serving Minors for more information.

What is an Eligibility for Services Policy?

Most organizations have guidelines that detail who can participate in their programs or receive services. An Eligibility for Services Policy outlines these guidelines and provides staff and participants with clear instructions about who can, and who cannot, participate in an organization's programs. Organizations may have different eligibility for different programs. If there are different services with different eligibility guidelines, each of these levels of eligibility should be spelled out in an Eligibility Policy (or within the policies that outline those specific programs).

What Should an Eligibility for Services Policy Include?

- Detailed eligibility requirements for program participation including requirements related to: age, gender, experience of abuse, language fluency, whether the participant has minor children, income guidelines, legal conflicts

- Explanation of when, if at all, there are exceptions to eligibility requirements. For example, a program might have an eligibility requirement that participants are 18 or older, but may make an exception for an emancipated minor. Similarly, a program may require that participants are under a certain level of income, but may make exceptions for survivors of violence.

CHAPTER 2 – CONFIDENTIALITY

What is Confidentiality?

Confidentiality is the duty of an organization's employees not to disclose certain information that a participant has shared with them. Confidentiality is also the right of the participant to know what information can or will be shared with others and how this information will be shared. Confidentiality policies may be based on professional ethical rules or legal duties of an organization and its staff and volunteers; policies may also be based on an organization's values that go beyond the ethical or legal requirements. Confidentiality applies to information staff and volunteers gather from or observe while working with program participants.

General confidentiality policies also address how an organization will store participant information and the procedures for sharing information. Youth-specific confidentiality policies also address the ways that information about youth participants will be shared with the participants' parents or guardians and when a parent or guardian must be involved in releases of information.

Why Write a Policy about Confidentiality?

Because you can

A clear confidentiality policy will instruct all staff and volunteers about how they communicate information they have gathered, observed, or learned about the participants. Confidentiality policies should be shared with participants so participants know that their information will not be shared without their permission or without certain exceptions being met. Sharing confidentiality policies with participants will help build trust between staff and participants, because participants will know what they can tell staff in confidence.

Because you should

Federal programs that fund many organizations require fund recipients to follow specific rules related to information they gather from survivors of abuse. The laws governing those federal programs and recipients of funding from them are listed below. Professional codes and state laws may also provide guidance on confidentiality for youth-survivor serving agencies.

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VIOLENCE AGAINST WOMEN AND DEPARTMENT OF JUSTICE REAUTHORIZATION ACT (VAWA)¹²

Applies to:

- All recipients of VAWA funded grants through OVW, **including all Youth Services grantees.**

Requires organizations to:

- Maintain confidentiality of personally identifying information for anyone who requests or receives services from a victim services organization. Personally identifying information includes: first and last name, home or other physical address, contact information, social security number, and “any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with [the other listed information] would serve to identify any individual.”³

Exceptions to confidentiality requirement:

- If the organization receives informed, written, reasonably time-limited consent from recipient of services. **Note: if the recipient is an unemancipated minor, a non-abusive parent or guardian must co-sign the release.**
- If the organization is compelled to disclose the information by statute (e.g., mandatory reporting of child abuse) or a court mandate (e.g., a signed order from a judge, not simply a subpoena) that specifically addresses confidentiality. Disclosure is still limited to the least amount of information necessary to comply with the statute or court order.

FAMILY VIOLENCE PREVENTION SERVICES ACT (FVPSA)⁵

Applies to:

- All recipients of grants administered by the Family Violence Prevention Services Administration (usually shelters).

Requires organizations to:

Note, a reauthorization of VAWA is currently pending and may be passed in 2012. Implementation of changes made to VAWA may be immediate upon passage or may be scheduled to apply to recipients at a future date.

42 USC § 13925(b)(2)(2008)

42 USC § 13925 (a) (18)

According to the version of VAWA that is law in April 2012, grantees shall not: “reveal individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of persons with disabilities, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor. 42 U.S.C. § 13925 (b)(2)(B)(ii) (ii). **Note, changes to this provision are likely in the upcoming reauthorization of VAWA.**

FVPSA Confidentiality obligations at 42 USC § 10402 mirror those of VAWA at 42 USC § 13925

45 CFR § 164.501-164.534

FVPSA Confidentiality obligations at 42 USC § 10402 mirror those of VAWA at 42 USC § 13925

What is an “unemancipated minor”?

According to the Confidentiality Institute & the National Network to End Domestic Violence:

“Emancipation” is determined by state law, and teens can be “emancipated” for different purposes (e.g., a 14 year old may be able to consent to receive health care services but not to marry). There is no language in VAWA that identifies a specific age where a parent or guardian’s consent is no longer needed. If your state allows programs to provide services to a teenager without a parent or guardian’s consent, then the teenager may be allowed to sign her or his own release without a parent or guardian’s approval.

See: *FAQ on Survivor Confidentiality Releases*

What is a “non-abusive” parent/guardian?

“Non-abusive” is not defined by VAWA. In determining whether a minor participant has a non-abusive parent/guardian available to sign a release, use existing organizational policies and professional training and judgment.

- Maintain confidentiality of personally identifying information in the same way outlined above for VAWA grantees.

Exceptions to confidentiality requirement:

- If the organization receives informed, written, reasonably time-limited consent from recipient of services. **Note: if the recipient is an unemancipated minor, a non-abusive parent or guardian must co-sign the release.**
- If the organization is compelled to disclose the information by statute (e.g., mandatory reporting of child abuse) or a court mandate (e.g., a signed order from a judge, not simply a subpoena) that specifically addresses confidentiality. Disclosure is still limited to the least amount of information necessary to comply with the statute or court order.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)⁶

Applies to:

- Health plans, health care clearinghouses, and healthcare providers who bill for health care services.
- Most youth- or survivor-serving organizations do not have to comply with HIPAA requirements, but may if they have healthcare providers on staff. Organizations may also work in collaboration with community partners who are required to comply with HIPAA.

Requires covered entities to:

- Protect electronic and paper health information with limited exceptions for permitted or consented-to disclosure.⁷

JEANNE CLERY DISCLOSURE OF CAMPUS SECURITY POLICY AND CAMPUS CRIME STATISTICS (CLERY) ACT⁸

Applies to:

- Colleges and universities that participate in U.S. financial aid programs.
- Most youth- or survivor-serving organizations do not have to comply with Clery reporting requirements, but they may work with community partners who do.

Generally under HIPAA, the personal representative of a minor acts on behalf of the minor and thus will have access to (and ability to sign a waiver for) confidential health records, *unless* the child has been abused by the parent seeking the records or if giving access to the parent could endanger the child and giving the adult access is not in the best interest of the minor.⁶

Requires schools to:

- Report crime data, including information about domestic violence, dating violence, sexual assault, and stalking. Does not require that personally identifying information be reported and does not override protections in place under VAWA or FVPSA or protections of attorneys, counselors, physicians, victims' advocates, etc.
- Disclosure is required from campus security officials only, not faculty, counselors, or others.

45 CFR § 164.501-164.534
45 CFR § 164.502(g)(5)
20 USC § 1092 (f)

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)⁹

Applies to:

- Educational institutions that are recipients of Department of Education funding. Most youth- or survivor-serving organizations do not have to comply with FERPA, but they may work with community partners who do.

Requires schools to:

- Refrain from sharing student’s educational records with any person or institution (unless they obtain written permission or an exception applies).
- Allow parents/guardians to access and make decisions about their children’s records until the child becomes an “eligible student” by becoming 18 or enrolling in a post-secondary school.

Exceptions to disclosure requirement:

- School has obtained written permission from parent or eligible student.
- School is complying with a subpoena or court order or responding to requirements of state or federal law.
- School is disclosing to school officials with legitimate interests, other schools (if student is transferring), officials conducting an audit or evaluation or parties conducting certain studies for or on behalf of the school, to parties who require it to process financial aid for the student, accrediting organizations, or appropriate officials if there is a health or safety emergency.
- School is disclosing “directory” information and has given the parent or eligible student reasonable time to request that the information not be disclosed.

PROFESSIONAL CODES OF ETHICS

Survivor- and youth-serving organizations are often staffed by individuals who are attorneys, social workers, or other professions that have codes of ethics. Professional codes of ethics may require staff who are licensed as attorneys or social workers to comply with specific confidentiality requirements that are more strict than the general requirements of all staff.

STATE LAW

State law may also outline confidentiality requirements for victim/survivor advocates. These laws often define eligible advocates, require advocates to refrain from sharing information about survivors/victims with whom they work, and outline when advocates must disclose confidential information.

WHAT SHOULD A POLICY ABOUT CONFIDENTIALITY INCLUDE?

Youth services grantees should write a Confidentiality Policy that responds to the needs and rights of survivors of abuse, youth participants, and participants’ parents or guardians. Grantees should also create policies that are as protective as possible of participant information and that,

20 USC § 1232g; 34 CFR Part 99
34 CFR § 99.31

at a minimum, comply with VAWA requirements and any codes of ethics for staff with licenses or with designated confidentiality requirements based on state law.

INSTRUCTION ON WHAT INFORMATION WILL BE KEPT CONFIDENTIAL

- Cover any participant information that is potentially identifiable in a confidentiality policy. Potentially identifiable information includes clear identifiers, such as name and social security number, but can also include information about the participant that when aggregated could reasonably lead someone to identify the participant.
- Note differences in what information is confidential for minors and what information will be disclosed to parents/guardians. Explain what information about a minor participant will be shared with parents/guardians with the minor's consent and what information will be shared with parents/guardians even without consent. Create a policy that is as protective of a minor's information as possible while at the same time encouraging healthy and appropriate parental involvement.
- Explain that, unless a detailed exception applies, information will be kept confidential even after the participant is no longer receiving services and even after the staff who work with the participant leave the organization.

EXPLANATION OF WHAT KEEPING SOMETHING "CONFIDENTIAL" MEANS

- Include the types of information that can be shared within the organization. Limit information sharing even when permitted to assure that participant information is only shared when necessary.
- Encourage staff, volunteers, and others not to discuss confidential information in public spaces within the organization or anywhere outside of the organization.

LIST OF STAFF AND OTHERS COVERED BY POLICY

- List the staff positions that are covered under the confidentiality policy.
- Note if certain staff (e.g., counselors, attorneys, staff supervised by attorneys, etc.) have additional confidentiality requirements based on the professional ethics rules for the job they currently hold. Include a detailed explanation each level of confidentiality required for each type of staff member. Also clearly explain procedures that must be followed to segregate information if staff members have different confidentiality requirements so that participant information is protected and staff are complying with their professional rules.
- Include a note that working in partnership with individuals from other agencies does not waive confidentiality requirements.
- Though not required by law, include a requirement that participants also adhere to confidentiality policies regarding information they learn about other participants.

Information that could lead to identification could look different in a small rural town than it would in a large city. Seemingly disconnected pieces of information may lead to identification of a victim particularly if the victim is in a small community.

EXCEPTIONS WHEN INFORMATION CAN OR MUST BE DISCLOSED

- Detail when confidential information must be or can be disclosed. Include which staff must or can disclose what type of information, when, and to whom.
- Assure that Confidentiality Policies align with Mandated Reporting Policies (Chapter 3) and Minor Consent to Services Policies (Chapter 4) to make a coherent set of policies.

PLAN FOR DISSEMINATING THE POLICY TO PARTICIPANTS

- Include a detailed, developmentally-appropriate explanation of the Confidentiality Policy in intake material so that participants are aware of how and when, if at all, their information will be shared with parents/guardians or others.

RECORDKEEPING GUIDANCE

- Describe who has access to participant files and when they have access. Do clients? Do staff who do not work directly with participants? Do participants' parents/guardians? Remember, that some staff may have different professional ethics responsibilities and records may need to be segregated between staff members or departments.
- Include protocols regarding what information about a participant is written down and saved, either physically or electronically.
- Discuss timelines for how long files are saved, stored, and destroyed.
- Detail where participant files are kept when they are in active use. Include guidance about how files are secured while at the organization (locked file cabinets, password-protected accounts) and what precautions must be taken when files are removed from the office or when electronic files are accessed off site.
- Describe file storage and destruction practices, covering time-limits for storage, and deadlines and processes for destruction. Include information about how participants will be notified of these timelines.
- Note any differences in protocol for electronic or physical records.

Before obtaining a release from a participant, consider whether there is a way for the participant to get the help they need without the need for a staff person to share participant's information, thus needing a release. For example, when making a referral, consider whether the participant can make a call to an agency instead of program staff getting a release and making the call.

REQUIREMENT FOR INFORMED, WRITTEN, TIME-LIMITED, ACCESSIBLE, UNIFORM, AND DETAILED RELEASES

Informed

- Note in the release that a staff member has explained to the participant what the release is, what information will be shared, how, and when, and what the consequences of signing or not signing it could be.

Written

- Include what will be shared, how it will be shared, who it will be shared with, and when it will be shared in written format and give to the participant and staff member to both sign and keep.

Reasonably time-limited

- Err on the side of a short end date that also provides staff enough time to share the released information and sign additional, limited, releases if more information sharing is required. Releases are most protective of participant information if they have a short time period (e.g., one week).

Accessible

- Provide a release to a participant in the participant's primary language. If you do not have a written release available in a participant's primary language, or if they primarily communicate using American Sign Language or another visual language, have an interpreter orally or physically interpret your written release and include a certification of translation in the release.

- Create releases that are simple and easy to understand for all readers. When working with a participant who does not read, offer to read the release aloud and include a certification on the release stating that it has been read to and understood by the participant.

Uniform

- Create releases that are uniform and have free-text boxes and check boxes that allow staff and participants to select the specifics of the release (who, when, how, what).

Detailed

- Include information that is detailed and specific. For example, instead of writing: “All information pertaining to services” as the type of information an organization will release, write “Notes pertaining to office visits on 3/14/2011 and 3/21/2011 pertaining to *participant’s* efforts to secure permanent safe housing.”
- State the name of the person to whom the organization will be releasing the information, instead of writing that the release covers disclosures to all staff at another organization. Include the mechanism(s) for release, including in person, over-the-phone, postal mail, email, etc.

Appendix III includes two sample releases – one to use when you do not need a parent/guardian signature and one to use when you need a parent/guardian signature.

EXPLANATION OF WHO CAN AUTHORIZE A RELEASE

- Generally, adults and emancipated minors can authorize releases of their own information. VAWA requires that a non-abusive parent of an unemancipated minor must also sign the release. This requirement may change when the pending reauthorization of VAWA is implemented. See sidebox on page 9 for more on what “unemancipated” means in this context.
- Policies about releases should contemplate how staff should respond to the release needs of an unemancipated minor who has an abusive parent (s) or guardian(s).

EXAMPLES OF CONFIDENTIALITY POLICIES

EXAMPLES: BASIC CONFIDENTIALITY CLAUSE

As an organization, we will not disclose any personally identifying information or individual information collected in connection with services requested, or utilized through our programs or reveal any individual participant information without the informed, written, reasonably time-limited consent of the participant about whom information is sought. We will avoid any inadvertent release of personally identifying information or individual information about any program participant. The obligation to maintain confidentiality does not end when services to a participant have ended. Confidentiality extends to all current and former program participants.

-Example from Casa de Esperanza

As a direct services organization, Day One receives privileged information from its clients, whose personal safety often depends on their information being kept private. All employees, interns, volunteers and board members and/or anybody working with Day One in any capacity must sign Day One’s Confidentiality Agreement, which requires them to keep client information completely confidential during and after their time working with Day One.

-Example from Day One

EXAMPLE: YOUTH-SPECIFIC CONFIDENTIALITY PROVISIONS

- Teens should always be kept informed about what kind of information will and will not be shared and with whom.
- If the person working with a teen is a mandated reporter, then the youth should be given this information as soon as possible.
- Advocates working with adolescent mothers and teens will (1) explain the confidentiality process by reviewing the document with the participant; (2) answer any participant questions and (3) obtain written consent from the teen during the intake meeting, whether a teen is a participant through the support group, at the Refugio or in community.

-Example from Casa de Esperanza

EXAMPLE: REQUIREMENT FOR STAFF AND VOLUNTEERS TO SIGN STATEMENT

All service participants, staff, volunteers, counselors, advocates, consultants, board members, and student interns must sign a written agreement to maintain confidentiality. This agreement will be placed in the personnel files of the staff and in the individual files of service participants, volunteers, counselors, advocates, board members, and student interns.

-Example from Casa de Esperanza

RESOURCES ON CONFIDENTIALITY

Julie Field, Esq. of The Confidentiality Institute in partnership with the Safety Net Project of the National Network to End Domestic Violence:

- *Survivor Confidentiality and Privacy: Releases and Waivers At-A-Glance*
http://www.nnedv.org/docs/SafetyNet/OVW/NNEDV_Releases_AtAGlance.pdf
- *Frequently Asked Questions about U.S. Federal Laws & Confidentiality for Survivors*
http://www.nnedv.org/docs/SafetyNet/OVW/NNEDV_ConfidentialityReleasesFAQ_2011.pdf
- *FAQ's on Survivor Confidentiality Releases*
http://nnedv.org/docs/SafetyNet/OVW/NNEDV_ConfidentialityReleasesFAQ_2011.pdf

The Confidentiality Institute:

- *Summary of U.S. State Laws Related to Advocate Confidentiality*
http://www.confidentialityinstitute.org/goopages/pages_downloadgallery/download.php?filename=13392.pdf&orig_name=field_confidentialitychart_oct2010.pdf&cdpath=/field_confidentialitychart_oct2010.pdf
- *Confidentiality Flowchart/Brochure*
http://www.confidentialityinstitute.org/goopages/pages_downloadgallery/download.php?filename=14139.pdf&orig_name=trifold_inside-2.pdf&cdpath=/trifold_inside-2.pdf

CHAPTER 3 – MANDATORY REPORTING

What is Mandatory Reporting?

The Federal Child Abuse Prevention and Treatment Act (CAPTA) requires each jurisdiction to set its own standards regarding mandatory reporting, including defining child abuse and indentifying mandated reporters. All jurisdictions require certain persons to report child abuse and neglect under specific circumstances. Who must report, how they report, and what triggers the requirement to report differs across the country, based on state, district, and tribal law.¹³ Most jurisdictions condition the requirement of reporting on a person's professional role, such as their role as a social worker or teacher. Some jurisdictions only require professionals to report when they are acting in their "professional capacity" (e.g., working at a school, providing therapy) and others require any person who suspects child abuse at any time to report it. Some jurisdictions allow certain professionals, like attorneys or clergy, to refrain from reporting if information about the abuse can be considered privileged communication based on a professional code of conduct.

The type of conduct that triggers a mandatory report varies across jurisdictions, but most require reporting after physical abuse, neglect, sexual abuse, or emotional abuse of a minor. In some jurisdictions, the definition of child abuse is broad enough to include peer on peer teen dating abuse. Some jurisdictions require reporting of domestic violence in a young person's home. Many jurisdictions require reporting of sexual contact with a minor, otherwise known as "statutory rape," even if the sexual contact was consensual.¹⁴ Statutory rape laws vary by jurisdiction and are usually categorized by a minimum age of consent (e.g., it is illegal for anyone to have sex with someone under the age of 18) or by age differentials between the minor and her/his sexual partner (e.g., it is illegal for someone more than four years older than a minor to have sex with that minor), or a combination of both.

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Why Write a Policy about Mandatory Reporting?

Youth-serving social service organizations often employ staff who are mandatory reporters. Developing a policy on mandatory reporting will help staff understand their requirements as mandatory reporters and will assure that the agency is complying with laws around reporting. An effective policy will also support staff in meeting their reporting obligations in a way that is respectful of their young participants' needs.

¹³ 42 U.S.C. § 5101 *et. seq.* (2009).

¹⁴ The Indian Child Protection and Family Violence Prevention Act (25 U.S.C. § 34) and federal law 18 U.S.C. §1169 govern mandatory reporting for suspected abuse of Indian children within Indian Tribes, organizations, tribal consortia, and on tribal lands. The Indian Child Protection and Family Violence Prevention Act defines what qualifies as child abuse, outlines the information that must be included in the report, and explains the required process for reporting to local protective services or law enforcement agencies. Federal law 18 U.S.C. §1169 lists the professions that are designated as mandatory reporters and describes the penalties for not reporting.

For more information and state-specific information, see: Child Welfare Information Gateway, "Mandatory Reporters of Child Abuse and Neglect: Summary of State Laws," April 2010, *available at* www.childwelfare.gov/systemwide/laws_policies/statutes/manda.cfm

For more information and state-specific information, see: The Lewin Group, "Statutory Rape: A Guide to State Laws and Reporting Requirements," (Prepared for: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services), December 2004, *available at* http://www.lewin.com/Lewin_Publications/Human_Services/StateLawsReport.htm

Policies about mandatory reporting should also be shared with program participants so that they do not unintentionally disclose information to staff members who would then be required to report. Even though alerting youth to mandatory reporting requirements may result in some youth not disclosing information about their experiences to staff, allowing the youth participant to make this decision will help in building trust with the participant and avoid the often unintended consequences of submitting an abuse report.

What Should a Mandatory Reporting policy Include?

A Mandatory Reporting Policy should clearly instruct staff about their reporting duties and procedure for reporting and should explain a process through which youth participants would be alerted about the policy. A Mandatory Reporting Policy should include:

list Of ALL staff roles and reporting requirements

- Cover which staff members are mandated reporters when acting in their professional capacity or at any time. Define what “professional capacity” means.
- Describe any differences among staff types (e.g., different reporting requirements for attorneys or social workers) based on any jurisdiction- or licensure-based mandatory reporting requirements for that particular type of professional.
- Clearly explain the process to be followed when people who have different reporting requirements (e.g., an attorney and a social worker) work together with the same participant.

Guidance regarding what behavior must be reported

- Fully explain what behavior is defined as abuse or neglect. Include your jurisdiction’s definition of covered behaviors, specifically including what types of abuse are covered (e.g., physical and sexual abuse) and what types of abusers are covered (e.g., only parents/caregivers, only adults, or also other minor dating partners). Note whether “statutory rape” is a covered behavior and define what types of sexual activity would be defined as “statutory rape.”
- Detail the standard for circumstances that will trigger a report. Some typical standards include:
 - If a staff person suspects or has reason to believe child abuse or neglect has occurred, or
 - If a staff person has knowledge of or has observed a child being subjected to abuse or neglect.

Plan for disseminating policy to staff and participants

- Train all current staff on their mandatory reporting requirements and include mandatory reporting in new staff training. Immediately notify staff if any changes are made to the policy.
- Outline who must obtain mandatory reporter training and how they will obtain the training. Staff members may be required by your organization or jurisdiction to obtain outside training.
- Include a detailed and developmentally-appropriate explanation of the mandated reporting policy in intake material so that participants are aware of what will happen if they disclose information that leads to a mandated report.
- If some staff members (e.g., attorneys) are exempt from mandated reporting requirements, inform participants that they may ask those staff questions about whether their circumstances may yield a report.

All mandatory reporting policies should clearly explain any legal requirements, professional responsibility rules, and other organizational policies that impact mandated reporting procedures.

Detail A plan of how a report would be made.

- Explain the internal process for making a report. Remind staff that the duty for reporting remains with the person who suspects or witnesses abuse, but detail any internal processes that must be followed (e.g., staff speaking with supervisor or participant's case manager) before a report is made. Include information about which staff will be informed of the report after a report is made.
- As safety allows, incorporate notification to and involvement of the participant in the reporting process. Include instructions for staff to notify the participant that a report will be made and provide the participant with detailed information about what potential outcomes of a report.
- Attempt to obtain informed consent from participant before making the report, but let the participant know that the report must be made even if they do not consent. If at all possible, support the participant in making the report themselves or, alternatively, allow for their presence when a staff member makes the report.

Explanation OF STAFF members' roles following a report

- Explain what the staff members' role will be when interacting with the agency to whom they report (such as CPS) and the extent of the staff member's involvement in the investigation process, if any.
- Detail how staff members will inform clients of the potential outcomes and next-steps for a participant following a report.
- Explain the staff member's role in providing support to the participant after the report.

Examples of Mandatory Reporting Policies

Example: Explanation of underlying law and organizational policies

The Maltreatment of Minors Act states that certain professionals must report child abuse and neglect, such as, health care and mental health professionals, social workers, Guardian ad Litem, childcare providers, educators, police and clergy (except in certain circumstances). The Resource Guide for Mandated Reporters, published by the Minnesota Department of Human Services, states that "If you work with children or families, you are legally required to report suspected child abuse or neglect." Although the law does not specifically include battered women's advocates, Casa de Esperanza has taken the position that the law applies to advocates and staff.

- *Example from Casa de Esperanza*

Example: Description of who must report

Within the Youth Advocacy Project the following individuals are responsible for reporting abuse and neglect perpetrated against the adolescent mother and/or child to the proper authorities (local law enforcement or county child welfare agencies):

- Youth and Family Advocates
- Relief Advocates
- Lead Advocate
- On-going volunteers (working directly with families)
- Program Coordinator and Program Manager

- *Example from Casa de Esperanza*

Example: Reporting procedure

If any [eligible staff] directly witness, or are indirectly made aware of, an adolescent mother or child being abused or neglected the advocate or volunteer must notify their supervisor

immediately. If the Supervisor determines that a child protection report is reasonable, the adolescent mother will be notified of the intention to report the situation to child protection because of the mandatory reporter status. We will encourage the adolescent mother to make the report to child protection services. The advocate will support the adolescent mother in reporting the abuse or neglect by helping her recall the details of the incident and assisting her to place the phone call to the appropriate authorities. Regardless of whether an adolescent mother self-reports, the employee or volunteer of Casa de Esperanza who directly witnessed or indirectly knows of the abuse or neglect must also report the information to the appropriate authorities.

- *Example from Casa de Esperanza*

Example: Reporting procedure for social workers supervised by attorneys

In the event that a social worker believes there is an obligation to make a report to the child protective services agency despite the privilege of the lawyer's standard of confidentiality, the worker should first consult with the client in order to assess and plan for safety. The social worker should then attempt to support the client in reporting the information on her/his own or, when that is impossible, attempt to obtain the client's consent to disclose the information. If client consent is not given, the social worker or intern is required to first confer with an immediate supervisor. If the immediate supervisor is unavailable, the worker or intern is to immediately contact the Program Director or Executive Director. In the event that the worker and supervisor consulted are NOT in agreement regarding the reporting obligation in the matter, they will contact the Executive Director to review the situation and strategize regarding next steps. If the case can be resolved absent a report, the worker will document events and steps to be taken. If the worker and supervisor find that there is a professional obligation to report, the client's social worker will again attempt to include the client in placing the call to the child protective services agency. The call may also be deferred for up to 24 hours upon agreement by the social worker and supervisor in order to allow the attorney to provide the client with information about legal rights and resources.

- *Example Day One*

Examples: working with clients to make report

There may be times when an Advocate, with the Manager's supervision, will need to make a mandated report if there is knowledge of suspected abuse or neglect to either the adolescent mother or her child by someone in a care giving role. When at all possible, this report will be made along with the mother after informed consent has been obtained. An informed consent can be said to have been given based upon a clear understanding of the facts, implications, and future consequences of filing a report.

- *Example from Casa de Esperanza*

Child abuse and/or neglect or suspected abuse or neglect will be reported to the proper authorities (law enforcement or child protective services) upon the decision of the advocate, her immediate supervisor and the Executive Director. The client is given the opportunity to make the report herself in order to facilitate a cooperative relationship with protective authorities. If the client is unwilling to make the report, the advocate will contact Child Protective Services and report the alleged abuse.

- *Example from Northwest Network of Bi, Trans, Lesbian and Gay Survivors of Abuse*

Example: Staff role after a report

It is the advocate's responsibility to provide support and resources to all participants while their case is open. It is particularly important to maintain a strong relationship with the family during and after the Child Protection Services involvement. During this particularly stressful time for the family it will help if as an advocate you offer consistent listening support, establish good communication with the Child Protection Worker and Guardian Ad Litem, keep updated files and

progress notes, work with the family to make sure they are accessing the services offered by Child Protection, find other resources available that may be beneficial, and develop safety plan with/for the entire family.

- Example from Casa de Esperanza

Resources on Mandatory Reporting

Child Welfare Information Gateway, *Mandatory Reporters of Child Abuse and Neglect: Summary of State Laws*, April 2010:

www.childwelfare.gov/systemwide/laws_policies/statutes/manda.cfm

The Lewin Group, *Statutory Rape: A Guide to State Laws and Reporting Requirements*, (Prepared for: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services), December 2004:

http://www.lewin.com/Lewin_Publications/Human_Services/StateLawsReport.htm

Tribal Law and Policy Institute

- *Domestic Violence Laws - Guide for Drafting or Revising Victim-Centered Tribal Laws Against Domestic Violence.* http://www.tribal-institute.org/download/Amended%20Domestic_Violence_Code_Resource_2012.pdf
- *Sexual Assault and Stalking Laws- Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault and Stalking* http://www.tribal-institute.org/download/Tribal_Lega_%20Code_Resource_Sexual_Assault_Stalking_Laws.pdf

CHAPTER 4 – POLICY ON SERVING MINORS

What is a policy on serving minors?

A policy on serving minors explains an organization’s commitment to working with minor participants and clearly outlines which of the organization’s services are open and accessible to minors (including services for teens, adolescents, and/or young adults that might include minors). Organizations that work with youth may also need to create policies that explicitly outline what types of services a minor can consent to without a parent/guardian and how, if at all, parents/guardians will be involved or notified when minors access services. A policy on minor consent to services may also include a section on minors who are “emancipated” and are able to act as adults and not involve a parent/guardian in medical, health, or legal decision-making. The scope of consent to services for minors who are parents should also be included in this section.

A policy on serving minors may not need to be a stand-alone section amongst other organizational policies, as long as it is clear to any reader the scope of minor’s ability to consent to certain services.

State laws on minor consent to services vary widely.¹⁵ In all but four states, once a person is 18, that person can make medical, legal, and financial decisions for themselves. Before someone reaches the age of majority, parents or guardians are usually required to participate in those decisions, often by providing their consent. Most states allow some exceptions to the general parent/guardian consent for minors and many states allow a minor to consent to mental health or related services without their parent/guardian. Some states require that a minor be deemed sufficiently “mature” and reach a specific age¹⁶ before they consent, while others simply allow minors to consent once they reach a specific age.¹⁷ Additional states require a parent/guardian to be notified if a minor is receiving services and some require actual parental involvement in the treatment.¹⁸ All states allow some minors to become legally emancipated before they reach the age of majority (relieving them of the need to obtain parental consent for services). Processes for becoming emancipated vary from state-to-state.

Remember, this tool is a product of the Technical Assistance Center and is not intended to be legal interpretation or legal advice. This tool is not official guidance from OVW.

Why Write a Policy on Serving Minors?

Parent/guardian involvement in a minor’s receipt of services is desirable and the law has long recognized the rights of parents/guardians in making decisions on the behalf of minors. Yet, the law also allows for exceptions to parent/guardian consent. There are also times when unemancipated minors may not be able to or want to obtain parental consent before receiving services. For example, a young lesbian with homophobic parents may fear parental abuse or homelessness if her parents find out that she is seeking services from a domestic violence agency for problems she is having in a relationship with a woman.

Minor consent questions can be complicated and confusing. Clearly spelling out your state’s laws (or in the absence of clear laws, your organization’s policy) around who can consent and when a parent/guardian might need to be involved will provide guidance in case any questions arise about minors seeking your services. Also, a minor consent policy developed alongside a

In 2000, 20 states and the District of Columbia had explicit laws allowing minors to consent to outpatient mental health services. For this and for more information about other forms of minor consent (to health care, contraceptive services, prenatal care, etc), see Boonstra, Heather, and Elizabeth Nash, “Minors and the Right to Consent to Health Care,” Guttmacher Report on Public Policy, August 2000, available at <http://www.guttmacher.org/pubs/tgr/03/4/gr030404.pdf>.

California requires that a minor be “mature enough to participate intelligently in the mental health treatment or counseling services” and reach the age of 12 before giving consent (Calif. Health & Saf. Code § 124260). Health & Saf. Code § 124260.

Washington requires that a minor reach the age of 13 before consenting to services while Oregon requires that a minor is 14 (Oregon Revised Statutes 109.675).

Oregon providers are expected to involve parents unless the parent refuses, there are contrary clinical indications, the minor has been sexually abused, or the minor is emancipated (Oregon Revised Statutes 109.675).

confidentiality policy can give staff a roadmap to follow when working with minors around notifying or sharing information with the minors' parents/guardians.

What Should a Policy on Serving Minors Include?

When reviewing or creating a policy on serving minors, an organization must determine which of its services are open to minor participants. Once this has been determined and these services have been listed in the policy, the policy should address the following:

Instruction about if minors can consent to services

Answer the following questions about who can consent, and to what:

- Can a minor consent to services? What age must they be to consent? Are there exceptions (e.g., minors who are married, minors who are pregnant)?
- Do minors need to be found to be “mature” by a provider before giving consent?
- Do state statutes or case law offer guidance on consent to minors?
- If there is no state law or court case that spells out whether minors can consent to your type of services, are there similar laws (e.g., laws about minors consenting to medical treatment)?
- If there is no legal guidance available, what is the practice of other youth-serving organizations in your area?
- If a minor participant is also a parent, what capacity do they have to consent to services for their minor child?

Guidance about parent/guardian consent or involvement

Answer the following questions about how, and if, a parent/guardian must consent to or be involved with services being provided to a minor:

- If the minor cannot consent to services on his/her own, must their parent or guardian consent? What type of consent is required (written, oral, etc.)?
- Will parents/guardians be notified if a minor is receiving services? How (e.g., phone, letter)?
- Are there any exceptions for parents/guardians who are abusive or if notification is not in the best interest of the minor?
- Will the minor be informed before their parent/guardian is notified?
- Will a parent/guardian be involved in the service provision (e.g., planning for therapeutic process, meeting with attorneys)?

EXAMPLE Policy on Serving Minors

POLICY:

It is LifeWorks' policy to make every effort to obtain written consent from a legal guardian for services to a minor. Although every effort is made to secure parental consent, on occasion exceptions will be made when it is in the best interest of the client or when regulations or laws dictate.

PRACTICES:

The following programs may make exceptions to the requirement for written consent for services to a minor:

- Counseling Services. Legal guardians must give permission for youth to participate in counseling services, except in the case of: sexual abuse, physical abuse, suicide prevention, chemical addiction/dependency and/or abandonment. (Please reference current Texas Family Code.)
- Emergency Shelter. Serves minors without parental consent for 24 hours while an attempt is made to locate the managing conservators. If none can be found, Department of Protective & Regulatory Services (DPRS) is notified and case is reported as “abandonment”. These cases are

usually investigated within 24 hours and, when necessary, the youth is taken into DPRS custody.

- Street Outreach. Provides services to homeless, street dependent, runaway and at-risk youth and young adults. Each of these populations is unique and requires flexibility in service provision. As a result, on occasion, exceptions to parental consent are made.
- Education/Prevention Services: In some, but not all cases, students who receive classroom-based prevention education instruction do not need parental consent to participate, as the decision to approve and adopt curricula for implementation in a school is made by the school administrator.

- Example from LifeWorks

Resources on Serving Minors

Information on Minors' and the Right to Consent to Health Care (including Mental Health Services):

- Heather Boonstra and Elizabeth Nash, "Minors and the Right to Consent to Health Care," Guttmacher Report on Public Policy, August 2000, available at <http://www.guttmacher.org/pubs/tgr/03/4/gr030404.pdf>

Updated Listing of Minors and the Right to Consent to Health Care, not including Mental Health Services:

- Guttmacher Institute, An Overview of Minors' Consent Laws (updated regularly) available at: http://www.guttmacher.org/statecenter/spibs/spib_OMCL.pdf

APPENDIX I – SAMPLE DEFINITIONS

YOUTH RELATED TERMS

Minor: A person who is under the age of 18.

Emancipated Minor: A person under the age of 18 who has completed the emancipation process and has been declared legally adult.

Mature Minor: Person under the age of 18 who is not emancipated but who is determined by [organization's] staff to be capable of making decisions without the involvement of their parent/guardian.

Child: A person between the ages of 0-11.

Teen: A person between the ages of 12-19.

Young Adult: A person between the ages of 18-24.

Youth: A person between the ages of 12-24.

Adolescent: A person between 12-24.

Adult: A person over the age of 18.

Parent/Guardian: Person who is either the legal parent of or legal guardian of a minor [as defined by jurisdictional law]. Also applies to someone who has otherwise been given legal custody of a minor but who is not technically that minor's parent or legal guardian.

ABUSE RELATED TERMS

Dating partner: any person, regardless of sex or gender identity, involved in a relationship with another person, where the relationship is primarily characterized by social contact of a sexual or romantic nature, whether casual, serious, short-term, or long-term.

Dating abuse: the use of abusive behaviors by a person to harm, threaten, intimidate, or control a current or former dating partner. Dating abuse includes but is not limited to:

Physical abuse: any intentional unwanted contact with the victim's body by either the perpetrator or an object within the perpetrator's control, regardless of whether such contact causes pain or injury to the victim.

Emotional abuse: the intentional infliction of mental or emotional distress by threat, coercion, stalking, humiliation, or unwanted other verbal or nonverbal conduct, in person or through digital communication.

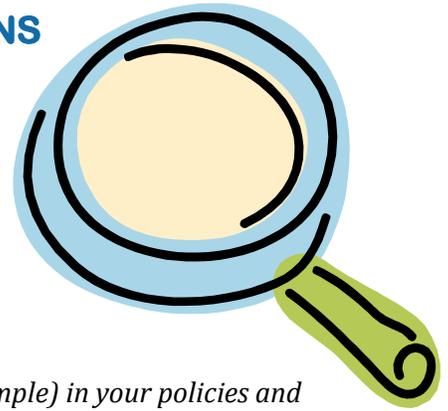
Sexual abuse: any sexual behavior or contact by the perpetrator that is unwanted by the victim and/or interferes with the victim's ability to consent to or control the circumstances of sexual behavior.

Survivor/Victim: person who is or who has experienced dating abuse or sexual abuse.

Offender/Perpetrator: person who has committed any act or threat of dating or sexual abuse.

Predominant Aggressor: the person determined to be the most significant, rather than the first, aggressor taking into consideration the circumstances of both the immediate incident and the course of conduct by the partners during the entirety of the relationship.

APPENDIX II – POLICIES THROUGH A YOUTH LENS



Writing about “youth” in all policies

- Are terms such as children, youth, teens, adolescents, or young people used in your policies? Do you differentiate between children of clients and youth who are clients?
- Are these terms used consistently throughout your organization’s policies and practices?
- Is the word “minor” used? If so, do you use your state’s legal definition of minor? Do you include your state’s exceptions (e.g., if a young person is married, they are no longer legally a minor)?
 - **Tip:** Use Ctrl+F to locate all uses of the word “youth” (for example) in your policies and make sure the term is defined somewhere and that it is used consistently.

Sharing information about minor participants

- Does your release policy state what to do if a minor wants you to share their information with outside entities?
- Do you include a policy about notifying parents/guardians to obtain consent for the release (when required)? Is there space on your release form for a parent or guardian’s co-signature?
 - **Possible policies:** Confidentiality, Release of Information, Referral
- Does your organization share information with minors’ parents/guardians? If yes, how do you notify the minor that their information may be shared? If no, are there ever exceptions?
- Are minors asked to consent before their information is disclosed? Are they notified after a disclosure has been made?
 - **Possible policies:** Confidentiality, Release of Information, Mandatory Reporting

Mandatory reporting beyond “typical” child abuse

- Does your state’s definition of child abuse include abuse done to a minor by a peer (including dating violence and sexual assault)?
- Does your policy state what to do if a minor participant discloses that they are sexually active? Does that need to be reported as “statutory rape” based on your state’s law?
- Do you alert participants about your organization’s mandatory reporting requirements before they disclose information about their situation?
 - **Possible policies:** Mandatory Reporting, Confidentiality

Minor participants’ interaction with your organization

- Which of your organization’s services can a minor access?
- Can a minor consent to your organization’s services without parent/guardian permission?
- Do you have to notify or involve a parent/guardian? Do you notify minors before the parent/guardian or restrict the content of the notification?
- Do your confidentiality requirements prohibit you from notifying a parent/guardian? Are there any exceptions to these requirements?
 - **Possible policies:** Confidentiality, Eligibility for Services

APPENDIX III.A – SAMPLE RELEASE: GENERAL

The following release was created by the Confidentiality Institute and is a model for a release that is written, time-limited, accessible, uniform, and detailed. Note, this sample release is to be used when minor participants' can seek services independently, and therefore can consent to the release of information without a parent/guardian's consent. See Appendix III.B for a sample release to use when parent/guardian signature is required.