



# Confidentiality and Mandated Reporting Example Template Policy

## INTRODUCTION AND PURPOSE

Making a child, elder, or dependent adult abuse report to Child Welfare Services or Adult Protective Services can have serious implications for survivors of intimate partner violence and sexual assault.

By federal law, VAWA/FVPSA/VOCA (see below) grantees are required to protect confidentiality and privacy of persons receiving or seeking services.

That said, Domestic Violence (DV) and Sexual Assault (SA) Advocates *who are mandated reporters also* have a duty to report child, elder, and dependent adult abuse.

## WHAT IS CONFIDENTIALITY?

Confidentiality is defined as the assurance that the access to information regarding a client utilizing shelter/program advocacy shall be strictly controlled and that any violation is not only a breach of faith, but has the potential to threaten the safety and life of the client and their children.

## WHAT IS INFORMED CONSENT?

Informed consent means providing all relevant information about the nature and consequences of signing a release of information. This includes advising the client to consider how the information may be used once released from the shelter/program to enhance client's safety and the possibility of the abuser obtaining the information.

## FEDERAL LEGAL CONSIDERATIONS

Federal Laws requiring that grantees protect confidentiality and privacy include:

- 1) Federal Violence Against Women Act (VAWA)
- 2) Federal Family Violence Prevention and Services Act (FVPSA)
- 3) Federal Victims of Crime Act (VOCA)

**Please refer to the hyperlinks for the most recent laws:**

**VAWA:** [34 USC § 12291\(b\)\(2\)](#)

**FVPSA:** [42 USC § 10401 et seq.](#)

**VOCA regulations:** [28 CFR § 94.115](#)

## POLICIES AND PROCEDURES

1. Shelter/program confidentiality policies apply to all advocates, other department staff, including administration, volunteers, safe house-providers, student interns. This policy shall apply to any information provided by a client who is sexually assaulted and/or battered to any employee of [This Organization, Inc.]. Any employee of [This Organization] shall be considered the guardian of this information. As such, employees shall make every effort to safeguard the information and function within the guidelines of this policy
2. Methods of determining eligibility, statistical or other information that do not identify an individual is not considered confidential.
3. At the request of a client, the client's personal documentation, such as birth certificates, social security numbers, copies of divorce decree, etc., shall be maintained in a separate and locked file. These documents are not program property and shall be returned or shall be returned to the individual upon request.
4. Documentation/records shall contain minimal information and the documentation must be directly related to the violence perpetrated against the client, including description of injuries, statements regarding the assault, past history of violence, threats, etc. Advocates shall show the client any written information after the form has been completed. At no time shall information be recorded that contains any subjective progress or observation notes.
5. Documentation or records shall be locked and accessed on a need to know basis. NO person, regardless of relationship, employment, educational, political or social status shall have access to this information without a signed release of authorization; this includes relatives and systems personnel such as Law enforcement, social services, court, etc. Any information released shall be used only for the purpose intended by the woman authorizing the release of information with her informed consent. Blanket releases are prohibited.
6. If an attempt is made to serve a court order, summons, subpoena and/or warrant regarding a client in shelter or receiving advocacy services, the advocate will inform the person attempting to make service of [This Organization, Inc.] confidentiality policy (see #7) and refuse service - "We don't give out information. I can take a message but that doesn't confirm or deny that the client is here or receiving services. I cannot accept service of any individual client's legal paperwork."

The advocate shall immediately inform a supervisor and/or member of the Management Team. If the client in question is in shelter or receiving advocacy services, the client shall be informed of the attempted service. Referrals for legal services will be made, per the request of the client.

7. Callers inquiring about an individual client and/or their children shall be told: "We cannot give out information. I can take a message but that doesn't confirm or deny that client is here or receiving services."
8. Any client seeking outreach advocacy, including legal, medical, social, housing or any other face-to-face advocacy and any client participating in support groups or any other educational, informational or supportive services type offerings of the organization shall be advised of the purpose and substance of this confidentiality policy, not only as it

pertains to that individual client but in relationship to any other client they may encounter in the course of obtaining personal safety.

9. All clients entering shelter shall be required to sign an agreement to maintain the confidentiality of other clients in shelter, including names, possible residence, site of relocation, and situation.
10. Mandated Reporters must report suspected child abuse or neglect. If you are a mandated reporter you must inform clients what that means before you speak with them. In the event that a client is seeking advocacy is suspected of child abuse and/or child sexual abuse, the mandated reporter shall inform the client prior to reporting and advise them of the option to self-report. The mandated reporter shall offer advocacy. Non-mandated reporters must not share suspected child abuse or neglect with mandated reporters, as this would cause the mandated reporter to have to make a report, and would be a violation of the client's confidentiality.

#### California's Mandated Reporting Laws include:

- 1) California's Child Abuse and Neglect Reporting Act (CANRA), which applies to abuse and neglect of children (Penal Code Sections 11164-11174.3).
- 2) The Elder Abuse and Dependent Adult Civil Protection Act, which applies to abuse and neglect (including financial abuse) of senior citizens or dependent adults.

#### **Child Abuse Definitions**

California law defines child abuse as any of the following:

- A child is physically injured by other than accidental means.
- A child is subjected to willful cruelty or unjustifiable punishment.
- A child is abused or exploited sexually.
- A child is neglected by a parent or caretaker who fails to provide adequate food, clothing, shelter, medical care or supervision.

#### **Child Abuse Reporting Policy** <sup>1</sup>

Under CANRA, per Penal Code section 11165.7(a)(8), Mandated Reporters include administrators, board members, or employees of a public or private organization *whose duties require direct contact **AND** supervision of children.*

Mandated reporters who are employed by DV and SA Agencies fall into two categories (with one exception\*).

- 1) Category 1: Independently licensed employees. Examples include:
  - a) Social Workers
  - b) Therapists, associates and trainees who are supervised by a licensed therapist
  - c) Day Care Providers of a licensed day care facility

- 2) Category 2: Employees who are not licensed and whose job duties require direct contact *and* supervision of children. Examples include:
- a) Children's case workers who meet with children
  - b) Shelter workers who have direct contact with *and* supervise children
  - c) Directors, employees, and volunteers of camps, day camps, youth centers, and recreation centers

\*Computer Technicians are mandated to report if they have knowledge of or observe, within the scope of their professional capacity or employment, any representation of information, data, or an image, including, but not limited to, any computer hardware, that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium, depicting a child under age 16 engaged in an act of sexual conduct.<sup>2</sup>

Those employees who are not mandated reporters include:

Employees who are not licensed and whose duties do *not* require direct contact *and* supervision of children. Examples include:

- a) Front office administrative staff
- b) Janitorial staff
- c) Shelter workers at an adults-only shelter
- d) DV advocates or counselors who work only with adults without children
- e) DV advocates or counselors who work only with parents when children are elsewhere (in school, at camp, etc.)
- f) Volunteers
- g) Attorneys and Agents of Attorneys

DV Agency professionals who are not mandated reporters *are prohibited from making a report* (absent client consent) if their agency is covered by VAWA/VOCA's mandate for privacy and confidentiality. Therefore, DV victim services agency employees who are not mandatory reporters are violating federal law if they use confidential information to make a child abuse report.

<sup>1</sup>Adapted from Family Violence Appellate Project's webinar, "Confidentiality, Privilege, and Mandated Reporting: A Training for California Domestic Violence Advocates (2018)," by Anya Emerson, Shuray Ghorishi, Erin Smith, Nancy Lemon, and Jennafer Wagner  
<sup>2</sup> From Child Welfare Information Gateways, "Mandatory Reporters of Child Abuse and Neglect." [www.childwelfare.gov](http://www.childwelfare.gov)

**My Supervisor has reviewed the Confidentiality Policy with me and I understand this signed acknowledgement will be placed in my personnel file.**

**I also have been advised that the policies and procedures include provisions for immediate dismissal of any employee violating confidentiality.**

Employee Signature\_\_\_\_\_ Date\_\_\_\_\_

Supervisor Signature\_\_\_\_\_ Date\_\_\_\_\_

