I. The Importance of Confidentiality

Confidentiality is a fundamental principle at the very core of victim services. When victims of violence are assured of confidentiality, they are more willing to access services and to disclose the true nature of the abuse or assault they have experienced. This allows for effective, individualized safety planning and advocacy response.

Victims often experience humiliation, shame, self-blame, guilt, fear, and depression as a result of the violence they have experienced. In addition, talking about the abuse or violence can be very traumatic. Those feelings and worries can be overcome when victims are able to disclose and seek help in a confidential setting.

Confidential services also enhance victim safety. Many victims rightfully fear that unintended disclosure will put them at further risk of violence or escalation of violence. Disclosure may reveal a victim’s safe location and jeopardize her safety plan.

When victims lose control over their information, other negative consequences may occur. Information may be used against them in divorce, custody, or child welfare cases or manipulated against them by perpetrators in criminal cases. If disclosed, information confided in an advocate can also negatively affect employment, education, or housing.

Victims’ trust in advocacy services and willingness to seek help will be reinforced when they are assured that their information is being protected. This practice also reinforces the principle that victims control their personal information and that they get to decide if, how, and when their information will be shared.

II. What All Advocates Have In Common

While advocates within different agencies may have different roles, all advocates have in common a commitment to confidentiality in their work with victims. They have a shared recognition that confidentiality is integral to victim safety. They view it as a core component of their shared ethical standards and practices to treat victims with respect. Almost all advocates work with agencies who receive funding that requires advocates to protect the confidentiality and privacy of the people they serve. These shared confidentiality requirements flow mainly from the Violence Against Women Act (VAWA) of 2013. The Oregon Department of Justice, Crime Victim Services Division, and the Oregon Department of Human Services administer many funding streams to advocacy programs and each include the VAWA standards in funding contracts. As a result, all advocates are required to follow the same basic rule with regard to confidentiality. It is important to recognize, however, that advocates at government-based programs also have obligations relating to holding offenders accountable in the criminal justice system. For more information, see the discussion immediately below.
III. Confidentiality Issues Unique to Victim Assistance Programs and other System-Based Advocates

Advocates employed by, or volunteering for, district attorney or law enforcement-based victim advocacy programs are generally working as agents for the agency in which they are placed. Victim assistance and law enforcement advocacy programs have dual purposes. They are dedicated to protecting victim safety and to promoting offender accountability. Their primary function is to assist victims who are working with law enforcement, involved in the criminal justice system, or obtaining protection orders in the civil justice system. Advocates working at law enforcement or district attorney-based agencies are not able to prevent disclosure of information within their own agencies to prosecutors or law enforcement officers and may be unable to prevent further disclosure of victim information in a court or other legal proceeding.

In Oregon, the victims’ assistance programs are operated by the district attorney’s office. Many law enforcement agencies have domestic and sexual violence advocates on staff. These advocates are generally employed and supervised by the agency in which they are placed. They may be required to make information they receive from victims available to the district attorney’s office or to law enforcement.

Also, law enforcement officials may be under an obligation to turn information over to the district attorney’s office. In turn, the district attorney’s office may be required by state or federal law to disclose certain information to the defense (and thus to the defendant.) The reason for this practice is that prosecutors have a duty to disclose exculpatory evidence. Prosecutors are subject to state and federal laws that require them to disclose certain exculpatory evidence about a case to the court and to the defense. ‘Exculpatory’ evidence is information that could be favorable to the defendant and that could make a difference to the outcome of the case.

An example of exculpatory evidence: A photograph of the place on the victim’s body showing no bruising where she was allegedly injured by the perpetrator. A prosecutor who has a copy of such a photograph would be obligated to provide it to the defense.

Another example of exculpatory evidence: A written portion of the victim’s diary in which she indicates that she was under the influence of drugs during the night the abuse or assault took place. If a victim assistance advocate had a copy of this diary excerpt, she would likely be required to provide this information to the prosecutor, and the prosecutor would likely be required to turn it over to the defense.

Prosecutors are also required by law to provide discovery to the defense. This means they must give to the defense copies of any documents, reports, pictures, or other evidence they possess that will be used in the prosecution of the case. Sometimes victim assistance advocates get information from victims that is considered discovery, and it must be turned over to prosecutors and then to the defense. One example of
this is a victim impact statement. Victims need to understand that if they provide a written statement to Victim Assistance it will be provided to the prosecutor and discovered to the defense.

Another confidentiality issue that is unique to system-based advocates involves mandatory reporting of abuse of children, elders and disabled persons. District attorneys and employees of law enforcement agencies are mandatory reporters. As employees, and thus agents of, District Attorney’s offices or law enforcement agencies, these obligations are imputed to the advocates. Mandatory reporting is discussed in detail later in this chapter.

In some circumstances, a private non-profit victim services agency may have advocates stationed at district attorney or law enforcement-based programs. Where such arrangements exist, it is essential that advocates at both organizations understand the differences in their respective confidentiality responsibilities. A written policy documenting how the collaboration will handle these differences is vital. These differences also must be communicated to victims before they disclose information. Victim autonomy and safety is enhanced when victims are able to make informed decisions about what and to whom they disclose.

**IV. Community Collaboration**

When working with community partners it is important to discuss and appreciate one another’s roles, including similarities and differences, range of services provided, and the strengths each bring to the table. Also, each partner’s confidentiality policy should be shared. This allows the group to have a clear understanding of each other’s responsibilities, limitations, and abilities. When working in multi-disciplinary teams, these discussions will lay the foundation for common understanding and respect from the outset and will help pave the road to developing structures for communication and problem-solving.

Often these teams have an expectation that all partners will share information about specific cases. It is best practice to clarify from the start that such a role is inconsistent with confidentiality responsibilities and advocate-victim privilege and may create safety concerns for victims. Advocates should strive to carve out a role that does not require information sharing. Typically, other partners, who are not bound by confidentiality, have sufficient information to further the collaboration and respond to victim needs.

Many multidisciplinary teams have some form of confidentiality agreement for the group. These types of agreements only prevent information from leaving the group and do not authorize an advocate to provide personally identifying victim information. In other words, they are not a substitute for an informed, written and reasonably time-limited release of information (ROI) from the victim.
In very rare circumstances when clearly beneficial to a client and with informed consent, it may be appropriate for an advocate to disclose information after obtaining a ROI. The informed consent conversation must include a specific discussion that identifies each of the partners who will receive the information and explain how it will be used. For example, victims should know that if a prosecutor participating in the multidisciplinary team determines that information is exculpatory, it will be shared with the attorney representing the abuser.

Even when an advocate is unable to share victim information about a particular victim in the context of a multidisciplinary team, advocates can meaningfully participate in these teams in many ways. Advocates can provide general information about the dynamics of sexual assault or domestic violence; they can identify gaps in services; they can offer support and safety planning information; they can give perspective on a victim’s experience; and they can suggest ways that agency partners can increase victim safety. All of these things can lead to improved collaboration that will serve to improve the overall response victims receive.

V. Confidentiality

Confidentiality Policies and Procedures:
All programs providing advocacy to victims should have written and clearly defined policies and procedures in place that protect victim confidentiality and safety to the greatest extent possible. Such policies should include information about any exceptions or limitations regarding confidentiality. All volunteers and staff, as well as the victims they serve, need to have the same information and understanding. Written confidentiality policies protect the safety of victims and help avoid inadvertent disclosures.

Responding to Informal Requests for Information:
Programs should include in confidentiality policies a written policy regarding informal requests for information that outlines appropriate responses. It is helpful to include a description of a standard response advocates who receive requests for information about a victim can use. For example, if a caller telephones the shelter looking for a victim, a standard response could be “We are covered by state and federal confidentiality laws. I cannot confirm or deny whether that person has had contact with this program. I can take a message, though, and I will post it.” Programs should always notify a victim immediately of any requests for information.

Explaining Confidentiality:
When victims first access services, they should be made aware of the boundaries of confidentiality protection available to them, including any exceptions to confidentiality. Before being asked to disclose sensitive information, they should be provided with the agency’s written confidentiality policies and have an opportunity to discuss confidentiality with an advocate in private. Because of the safety and autonomy
interests at stake, advocates are responsible for ensuring that victims do not have a greater expectation of confidentiality than a program is able to provide.

For example, if a victim assistance advocate is expected to help gather evidence in connection with the prosecutor’s office, victims must be informed of this relationship before they are asked to provide any information.

Some of the questions that should be answered for victims:
- Do I have the right to confidentiality?
- What will the agency do to protect the confidentiality of my information?
- Are there circumstances in which the agency will disclose information without my consent?
- Do I have a right to see my file?
- Who else has a right to see my file?

VI. The Basic Rule and Other VAWA Confidentiality Requirements

The Violence Against Women Act of 2013 (VAWA) sets out confidentiality requirements that are a condition of the receipt of funding. As mentioned above, all Oregon advocacy programs that receive state funds are bound by these requirements. The basic rule and other provisions of VAWA are set out and described below.

The basic rule is that advocates must protect the confidentiality and privacy of persons receiving services and may not disclose personally identifying information or individual client information without the informed, written, reasonably time-limited consent of the person. The primary exception to this rule is when release of information is compelled by:

- a statutory mandate (law) or
- court mandate (order).

If release of a victim’s personally identifying information is compelled by statute or court orders, advocates must make reasonable attempts to notify the victim(s) that their information is being disclosed. The advocate must also take whatever steps are necessary to protect the privacy and safety of the persons who are affected by the release of information.

VAWA does permit the sharing of certain types of information:

- nonpersonally identifying data in the aggregate for reporting purposes,
- court and law enforcement-generated information stored in secure protective order registries, and
- law enforcement and prosecution-generated information necessary for law enforcement and prosecution purposes.
**Personally Identifying or Individual Information:**
Personally identifying or individual information includes information that is likely to identify the individual or disclose the location of the individual. Such information includes:

- a first and last name,
- home or physical address,
- contact information (e.g. postal or e-mail address of telephone number)
- social security number, driver license number, passport number or student identification number, and
- any other information such as date of birth, racial or ethnic background, or religious affiliation that in combination with any of the above information would serve to identify the individual. In making the determination about whether such information will identify a person, it is important to look at the facts and circumstances of each individual’s case.

As described in the basic rule, a release of information must be informed, written, and reasonably-time limited.

**Informed Consent:**
Informed consent means that a victim understands the potential consequences of disclosure. Advocates are responsible for insuring that victims grasp how their information will be used and shared, including potential misuses, before they give consent. Advocates must ensure that victims comprehend the conversation about informed consent in a meaningful way and that any issues with regard to language or other barriers to understanding are effectively addressed. Victims must be given the chance to ask questions and must be allowed time to think about the pros and cons of release before making their decision. The victim must also be given the opportunity to refuse to consent to the release of information.

A number of points relating to the impact of permitting the release of information are recommended as part of a robust conversation that will ensure that victim’s consent is informed:

- The information cannot be taken back.
- Both the advocate and the victim will lose control over how the information is handled. For example, agencies to which information is disclosed may be governed by rules or laws that require further disclosure.
- Information may be re-disclosed, either inadvertently or on purpose.
- If the information is disclosed to an attorney or a court, it may become a part of the public court record and be accessible in later court proceedings, by an abuser or by the general public.
Some risk exists that the offender could get access to the information through other avenues.

In addition, advocates should explain that once a victim has consented to the release of some information related to the substance of confidential or privileged communications, the door may be open for all information to be released. A program or advocate may be unable to limit the amount or type of information released once confidentiality protections have been waived. See the discussion of waiver in the advocate-victim privilege section below.

**Note:** VAWA explicitly states that a provider may not make consent to release of information a condition of eligibility for services.

**Written Consent or Release of Information (ROI):**
Advocates must have written permission from victims in order to release their personally identifying information. This is most easily accomplished with a Release of Information form. The National Network to End Domestic Violence provides a template release of information form that can be adapted for use in any advocacy agency. A template can be found at: [nnedv.org](http://nnedv.org).

An effective release of information form should contain:
- the exact information the victim is authorizing to be released,
- the name of the agency designated to receive the information,
- the purpose of the release,
- the duration of the release (must be reasonably time limited),
- the date the release is signed,
- a statement acknowledging that the victim has read the form and understands the consequences of authorizing the release of information and
- a statement on the form that victim may revoke their consent for release.

VAWA requires written releases. In rare emergency circumstances where written consent cannot be obtained in a timely way, oral permission may be unavoidable. In this situation, the advocate should verify the victim’s identity and get the victim’s signed release as soon as possible.

**Reasonably Time-Limited:**
In determining the appropriate time frame for a release of information, it is important to consider what will be the most protective of the victim and at the same time allow the advocate to accomplish the victim’s goals. The reasonableness of the time frame should be dictated by the victim’s particular circumstances. Victims’ lives are often fluid and ever-changing. As victim situations evolve, information previously authorized to be released in a ROI may no longer be safe to disclose. National technical assistance providers for the Office of Violence Against Women generally recommend no more than 30 days and prefer shorter time-frames. The policy behind time-limited releases is that
they better protect victim safety. A shorter time frame means advocates will need to check in with a victim to ensure that release of information is still safe and appropriate. Preventing the release of information that may jeopardize a victim’s safety justifies the time involved in obtaining an up-to-date release of information.

**Revocation of a Release of Information:**
A victim may revoke a ROI at any time. A written revocation of consent is not required; a victim may revoke orally. As soon as a victim has done so, the agency must cease sharing information. Revocation of consent only prevents the release of information from the date of revocation forward. In other words, victims cannot reclaim the information that has already been released.

**VII. Oregon Law Regarding Confidentiality and Advocate-Victim Privilege**

In 2015 the Oregon Legislature passed HB 3476 which mandates advocate confidentiality and creates an advocate-victim privilege that applies to certified advocates in qualified victim services programs. The confidentiality requirement is codified at ORS 147.600. Advocate-victim privilege is codified at ORS 40.264. The substance of this law went into effect October 1, 2015. In essence, advocate-victim privilege is available to advocates within non-governmental, nonprofit, community-based programs or campus-based or affiliated programs. Advocate privilege does not apply to system-based advocates.

This new law was designed to work seamlessly with the confidentiality conditions set out in VAWA. Thus, nonprofit programs who continue to operate under and comply with VAWA rules will be acting consistently with HB 3476. Little, if anything, should change as a result of HB 3476 in the day-to-day operation of programs in regard to matters of confidentiality and privacy.

**Key Definitions Relating to Confidentiality Requirement and Advocate-Victim Privilege:**
Who is a **certified advocate**?
A certified advocate is a person who has completed 40 hours of training in advocacy for victims of domestic violence, sexual assault, or stalking. The training must be approved by the Attorney General. This advocate must also be employed by a qualified victim services program. Advocate-victim privilege is only available to an advocate who meets both requirements. It is not enough that an advocate is simply employed by a qualifying program.

What is a **qualified victim services program**?

A **qualified victim services program** is:
(1) a nongovernmental, nonprofit, community-based program that offers safety planning, counseling, support, or advocacy services to victims of domestic violence, sexual assault or stalking; or
(2) a campus based or affiliated program, specifically a sexual assault center, student affairs center, or other program providing safety planning, counseling, support, or services to victims. The program must be on the campus of or affiliated with a two or four year post-secondary institution that enrolls one or more students who receive an Oregon Opportunity grant.

Who is a qualified victim?
A **qualified victim** for purposes of application of advocate-victim privilege is a person who is seeking safety planning, counseling, support or advocacy services related to domestic violence, sexual assault, or stalking at a qualified victim services program. The definition is quite broad and could be applied to individuals seeking assistance for family members or friends who are victims of and affected by domestic violence, sexual assault, and stalking.

What is a confidential communication?
A **confidential communication** is a written or oral communication that is not intended for further disclosure, except to:
- a person present when the communication is made and who is there to further the interest of the victim in the course of seeking services (e.g. a trusted family member, a counselor, a case manager at a culturally specific program that does not provide domestic violence services),
- persons reasonably necessary for the transmission of the communication (interpreters), or
- other persons, in the context of group counseling.

**Confidentiality Mandate (Requirement):**
HB 3476 states that a certified advocate or a qualified victim services program may not disclose confidential communications between a victim and a certified advocate or qualified victim services program made in the course of providing services or records created or maintained in the course of providing services. Similar to VAWA, a certified advocate or qualified victim services program may disclose with the written, informed, reasonably time-limited consent of a victim. Two exceptions to the confidentiality requirement are set out in the new law. Disclosure is allowed:
- if necessary for defense when an advocate or qualified victim service program is sued in any civil, criminal or administrative action or
- when otherwise required by law, such as when an advocate is a mandatory child abuse reporter due to a professional license or additional employment outside the qualified victim services program. An example is an advocate who is a regulated social worker. Mandatory abuse reporting will be discussed in detail later in this chapter.
Background Regarding Statutory Privilege:
A statutory privilege is one that is created by the legislature and codified in the statutes. In Oregon, many types of communications have statutory privileges which protect against disclosure in court. For example, the lawyer-client statutory privilege protects communications between lawyers and their clients. A lawyer may not be forced to disclose a client’s confidential communications in court or in other legal proceedings, unless the client consents to disclosure or unless certain exceptions have been met. Oregon’s statutory privileges are found at ORS 40.225 through 40.295. Some other examples of Oregon’s statutory privileges are the physician-patient privilege, the psychotherapist-patient privilege, the clergy-penitent privilege, and the husband-wife privilege to name a few. The concept of privilege is based upon the idea that there are certain relationships and communications that should be protected in order for a person to receive the help they are seeking without fear that the information they share will be used against them.

Advocate-Victim Privilege Explained:
The key concept is that in a civil, criminal, and administrative proceeding and in institutional disciplinary proceedings, a victim has a privilege to refuse to disclose and to prevent any other person from disclosing: (1) confidential communications made by the victim to a certified advocate in the course of advocacy services and (2) records created or maintained in the course of providing services.

The victim is the one who holds the privilege and who can waive (give up) the privilege. A victim can consent to disclosure of confidential communications that are otherwise protected by the privilege. In other words, a victim can sign a ROI authorizing an advocate to testify in a civil, criminal or administrative action or in an institutional disciplinary proceeding. Making sure such consent is informed is critical. See section above regarding informed consent.

Another way a victim may waive the privilege is by disclosing the substance of a confidential communication with an advocate to a third party. The victim can share the underlying facts of their abuse or assault without waiving the privilege. It is the confidential communications between the advocate and the victim that must be protected to maintain the victim’s right to assert the privilege. Thus, a victim may report the facts of the assault to law enforcement without waiving the privileged nature of their relationship with their advocate, so long as they do not disclose or describe their conversations with an advocate.

The new law has one important exception to waiver of the privilege. The privilege is not waived by disclosure of the communication of confidential communication by a certified advocate to another person if the disclosure is reasonably necessary to accomplish the purpose for which the certified advocate is consulted. One example might be a ROI authorizing an advocate to disclose information relevant to a victim’s application for TA-DVS or request for leave from work. Even in these
situations, the less information disclosed the better. An even safer alternative is to have needed information come from a source other than an advocate when possible.

Also, a victim does not waive the privilege if the disclosure is itself a privileged communication. For example, if a victim discloses the substance of privileged communications to a psychotherapist or an attorney, the disclosure itself is a privileged communication and is, therefore, not a waiver.

Once waived, a victim may not claim the privilege in a legal proceeding, and if subpoenaed an advocate likely will be required to testify. However, advocates are still required to maintain the confidentiality of communications under the general confidentiality mandate in HB 3476 and various funding requirements. The release of information in a legal setting does not relieve advocates and programs of their responsibilities regarding confidentiality.

Oregon law relating to waiver is complicated and has not been applied yet in the context of advocate-victim privilege. Therefore, it is not always clear when disclosure will result in a partial or complete waiver of privilege. During initial conversations with victims about confidentiality, advocates should discuss waiver and in general should strongly caution victims against disclosing their confidential communications with advocates to third parties.

VIII. Mandatory Abuse Reporting

As a professional group, advocates in Oregon are not mandatory reporters of abuse of children, elders, or disabled adults. In fact, VAWA 2013 and HB 3476 prohibit an advocate who is not required by law to report abuse from making a report unless the victim signs a release of information. Individuals who are mandatory reporters due to some other aspect of their professional lives, however, may be employed as advocates. For example, if a victim services program employs staff or volunteers who are mandatory reporters because of their licensure or employment elsewhere, those individuals are still mandatory reporters when working or volunteering for that agency.

Importantly, advocates based within a district attorney’s office are considered mandatory reporters. The district attorney and all the prosecutors in the district attorney’s office are mandatory reporters under Oregon’s child abuse and elderly and disabled persons abuse reporting statutes. Because advocates are employees of the district attorney and are considered agents of the district attorney, and the prosecutors are deemed to know what the advocates know, this responsibility is imputed to advocates.
Advocates who are mandatory abuse reporters as defined by Oregon law must understand how their reporting obligations intersect with confidentiality requirements set out in VAWA and HB 3476. Both laws allow mandatory reporters to carry out their legal responsibilities and report abuse without a release of information. Both also make clear that only that which is required by law (statutorily mandated) can be reported. To disclose more information than required would violate confidentiality mandates. VAWA also clearly states that if release of a victim’s information is compelled by statute or court mandate, advocates must make reasonable attempts to notify the victim that their information is being disclosed. The advocate must also take whatever steps are necessary to protect the privacy and safety of the persons who are affected by the release of information.

An advocate who is a mandatory abuse reporter must disclose their obligation to report to victims and ensure they understand what that means and how it might affect them. This information will allow victims to make informed decisions about what to share and what not to share. The conversation should take place when establishing a relationship with a victim and before disclosures are made. The advocate should offer the services of someone who is not a mandatory reporter, either someone within the agency if that is an option, or someone at another agency who can support the victim with the issues the victim wants addressed. If the victim later seems to be on the verge of disclosing information that must be reported, the mandatory reporter should interrupt and explain his or her role as a mandatory reporter again.

How to talk to victims about safety regarding mandatory reporting:
- Inform the victim at the beginning of your conversation and before disclosures are made that you are a mandatory reporter.
- Inform the victim when a report must be made. Provide the victim with an opportunity to self-report or report with the support of an advocate.
- Protect your relationship with the victim. A victim may feel betrayed or angry that the report must be made. Discuss this emotional response immediately and assure the victim that you will continue to do what you can as their advocate. Offer the option to work with a different advocate if the victim no longer wants to work with you.
- A victim’s relationship with an advocate may become even more important once abuse is reported to the system. Define how you will maintain a relationship with the victim.
- Safety plan with the victim. Explore and address risks the victim may face because of the mandatory report.

Agencies should have clear policies describing how situations that require a mandated report will be handled and ensure that all volunteers and staff know and understand the policies. Note that Oregon law, not program policy or practice, determines whether or not a domestic or sexual violence advocates is a mandatory reporter.
To summarize, the essential rule regarding mandatory report is that only advocates legally designated and required to report are allowed to do so under VAWA and HB 3476. Otherwise, VAWA and HB 3476 absolutely prohibit advocates from reporting abuse.

**IX. Record Keeping Policies and Documentation**

The proper creation and handling of records and information obtained from a victim is a crucial aspect of any advocacy program, regardless of whether the program is a law enforcement agency, a district attorney-based agency, or a non-profit victim advocacy organization. Keeping records serves an important dual purpose. Records help ensure the continuity of service for a victim from one visit to the next. Records also help protect the agency from liability in the event that a program is sued.

Record keeping policies should be in writing, and all staff and volunteers should understand the policy. A copy of the policy should be made available and explained to the victim, so that they may know what to expect.

Government agency and non-government agency victim programs seek somewhat different types of information and have different purposes for which information is maintained. However, both types of programs have the same goal of preserving victim safety to the greatest extent possible. Record keeping policies for both types of programs should balance the need to record information against the potential risk of disclosure.

In order to best protect victims, advocates should take care to seek only information that is essential to the provision of services. Advocates should not ask questions about non-critical matters, and should avoid asking about and documenting information that might endanger the victim if released. Only information that is essential should be recorded. Information that is irrelevant or non-essential to the provision of services should not be included in the record.

**Content of the Record:**
The record should include sufficient information to ensure continuity of service.

**Record May Include:**
- Identification of victim
- Relevant information necessary for service
- Intake forms
- Documentation of requests to see file
- Documentation of informed consent to release of file and withdrawal of consent

**Record Should NOT Include:**
- Casual comments
- Conclusions
- Personal opinions or criticisms
- Information from other sources
- Personal observations
- Speculations
* Referrals made/Services provided
* Progress
* Discharge/termination status

* Statements written by the victim
* Diagnostic determinations
* Verbatim comments
* “Treatment” Plan
* Photos of injuries

**X. Subpoena Response**

**Definitions:**

- A **subpoena** is a document that requires a person to give testimony as a witness in a court proceeding.

- A **subpoena deuces tecum** is a document that requires a person to appear in court with specific documents or records.

**Consequences for Violation of a Subpoena:**

A person who does not respond to a subpoena may be charged with contempt of court if they do not either respond to the subpoena or file appropriate objections within the correct timeframe. If a person does not comply with a subpoena and no response has been filed, either punitive or remedial sanctions may be imposed. Sanctions could include:

- Confinement in jail until compliance with the subpoena,
- Confinement in jail despite compliance with subpoena,
- A fine for a set amount for contempt that has already happened, or
- A fine that accumulates until compliance.

**The Importance of Subpoena Response:**

A subpoena puts the confidentiality and safety interests of the victim at stake and also puts advocates and programs at risk (of punishment, fines, and potential loss of funding). It is crucial that programs have specific and well thought out written policies and procedures in place for responding to subpoenas.

**Subpoena Response in System-based Programs:**

While information held by system-based programs is generally less protected, every effort should be made to prevent the release of personally identifying information without an informed, written and reasonably time-limited consent. Because of limited protections, it is especially important that system-based programs have a strong policy and practice in place to respond to subpoenas. When served with a subpoena, the program manager should contact the appropriate prosecutor so they can respond on behalf of the program. In many offices this would be the prosecutor on the related case. For identification of specific issues and considerations regarding subpoena
response, please refer to the National Crime Victim Law Institute (NCVLI) “Checklist For An Oregon Victim Assistance Program (VAP) Responding to/Quashing A Defense Subpoena Ducea Tecum That Seeks Records Concerning A Crime Victim” included at the end of this chapter.

Subpoena Response in Light of Advocate-Victim Privilege:
Despite advocate-victim privilege, programs will still be served with subpoenas, and they cannot be ignored. With time, it is hoped that attorneys will be more aware of the new privilege, and subpoenas will be served less frequently. When served with a subpoena, a program must respond in a timely fashion. **It is strongly recommended that the program contact an attorney immediately on receipt of a subpoena.**
The following information should be considered in conjunction with legal advice and direction from an attorney. Programs should contact the victim as soon as possible. Depending on the circumstances, the victim may want the program to produce records or testify. In that case, an informed, written and reasonably time-limited consent is required. Otherwise, it may be possible in light of advocate-victim privilege to make arguments that will convince the issuer of the subpoena to withdraw it. If the subpoena is not withdrawn, the advocate or qualified victim service program must take action to quash the subpoena based on advocate-victim privilege or appear on the date, and at the time and place designated in the subpoena and assert the privilege. Based on advocate-victim privilege, the judge likely will not require testimony or production of records although preliminary issues about the applicability of the privilege may need to be addressed.

Organizational Preparation for Responding to Subpoenas:
1. Designate a “Custodian of Records.” The custodian of records is a person designated to be officially responsible for the program’s records, and is the only person who is authorized to accept a subpoena for records. Usually, the custodian of records should be the program’s executive director or program supervisor.
2. Review and revise the program’s recordkeeping policies and procedures.
3. Develop a relationship with an attorney NOW (rather than in time of crisis.)
4. Develop written policies re: subpoena response, and ensure that all staff are familiar with the policies.

Uniform Response to Subpoenas:
- Never disclose anything to the person serving (delivering) the subpoena.
- Inform the Executive Director/Program Manager and the ‘custodian of records’ about the subpoena immediately.
- Note how the subpoena was served, by whom, and to whom. (If the subpoena is improperly served, then it is invalid and may be more easily contested.)
• Read the subpoena carefully and note who signed it.
• Note whether the subpoena is for records or for testimony.
• Note whether the subpoena is for a criminal proceeding, a civil proceeding, or a dependency proceeding. (If it is for a criminal or dependency proceeding, one of the parties will be the State of Oregon.)
• Find out whether the victim has given informed consent to the release of information.
• Call an attorney for immediate assistance.

XI. Closing - Respect for Different Roles

The quality of community advocacy for victims of domestic and sexual violence will be enhanced by cooperative relationships between nonprofit victim services programs and district attorney and law enforcement-based programs. Each type of program provides vital support to victims but at the same time has somewhat different roles and offers somewhat different services. In addition, each has slightly different obligations with respect to confidentiality and privacy. These differences should be acknowledged and valued and can be the basis for discussion on how each type of program can best collaborate to effectively and efficiently serve victims in local communities.

These relationships can be fostered at many levels. Participation in local coordinating councils and multi-disciplinary teams, assistance in crafting local coordinated community response to domestic violence and sexual assault, attendance at joint meetings with staff, supervisors, or boards of directors – all of these activities can promote positive and productive working relationships. In many counties, these relationships already exist, as advocates from both types of agencies have long been an essential source of community support for victims of domestic violence and sexual assault. In communities where such collaborations do not exist, programs should look for opportunities to establish and develop them, either informally or formally.

Resources on Documentation and Confidentiality:

National Crime Victim Law Institute (NCVLI)
www.lclark.edu/org/ncvli/

Oregon Coalition Against Domestic and Sexual Violence (OCADSV)
www.ocadsv.com