

NATIONAL NETWORK  
TO END DOMESTIC  
VIOLENCE

## Confidentiality for LAV Grantees


---

Alicia Aiken, Confidentiality Institute Director

© 2024 NNEDV & Danu Center for Strategic Advocacy, LLC

1

This project was supported by Grant No. #15JOVW-23-GK-05144-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.



2

2

## Alicia Aiken

[www.confidentialityinstitute.org](http://www.confidentialityinstitute.org)

- Attorney with 15+ years representing survivors of violence & people in poverty
- National TA provider on privacy best practices
- Strategic consultant to mission-based organizations



© 2024 Danu Center for Strategic Advocacy, LLC



3

3




© 2022 NNEEDV



4

4

# Goals for This Session




<b>Ground</b>	Ground ourselves in VAWA rules of survivor-driven information sharing & releases
<b>Compare</b>	Compare differences between Rules of Professional Conduct & VAWA approaches to confidentiality
<b>Discuss</b>	Discuss practical strategies for implementing VAWA confidentiality in legal representation




5

# Understanding VAWA Confidentiality Requirements



© 2022 NNEEDV



6

## Privacy = Making Choices SURVIVOR DECIDES



© 2024 Danu Center for Strategic Advocacy, LLC



7

## Confidentiality = A Promise



- Promise to respect privacy choices
- Permission to take time choosing
- Promise not to volunteer information
- Honesty about exceptions are part of the promise

© 2024 Danu Center for Strategic Advocacy, LLC



8

## VAWA on Confidentiality



- Grantees shall protect confidentiality & privacy of persons receiving services
- Grantees shall not disclose, reveal, or release any personally identifying information
  - VAWA also protects “individual” information from disclosure
- Survivors can authorize disclosure through written, time-limited releases
- *As of VAWA 2022, this rule applies to LAV legal services*

© 2024 Danu Center for Strategic Advocacy, LLC



9

9

## Grantee programs can share...



### Non-Identifying Aggregate Information

- Because it doesn't reveal anything about individuals

### When REQUIRED by Statutory Mandate

- Has to be “required,” not optional

### When REQUIRED by lawful Court Mandate

- Unlawful court orders should be challenged

© 2024 Danu Center for Strategic Advocacy, LLC



10

10

## VAWA-Funded Provider W.A.I.T.S. for Survivor Instructions



<b>W</b>	<b>Written</b> – no exception for oral release
<b>A</b>	<b>Approved</b> by survivor <ul style="list-style-type: none"> <li>• Through signature or formal mark</li> </ul>
<b>I</b>	<b>Informed</b> because <i>understands</i> pros/cons <ul style="list-style-type: none"> <li>• Release ≠ condition of service</li> </ul>
<b>T</b>	<b>Time-Limited</b> <ul style="list-style-type: none"> <li>• Tailored to this survivor, not standardized</li> </ul>
<b>S</b>	<b>Specific &amp; Survivor-Centered</b> <ul style="list-style-type: none"> <li>• Clear identifiable items subject to release</li> </ul>

© 2022 Danu Center for Strategic Advocacy, LLC



11

## “Reasonably Time-Limited”



- Time needed to meet the goal of survivor in asking for release
  - Shortest time necessary to meet survivor’s goal
  - Survivors are allowed to ask for longer time periods
- Not for the convenience of agency/attorney

12

## Model Rule of Prof'al Conduct 1.6



- A lawyer shall not reveal information relating to the representation of a client unless
  - the client gives informed consent
  - The disclosure is impliedly authorized in order to carry out the representation, or
  - The disclosure is permitted by paragraph (b) [exceptions in the rule]

3

13

## VAWA vs. Attorney Confidentiality



- How are these two rubrics for confidentiality different?

***Think about it for a minute on your own & list as many as you can think of.***

© 2024 Danu Center for Strategic Advocacy, LLC



14

14

# Survivor-Centered Lawyering

Ensuring Clients understand legal process

Centering Client life goals

Sharing power with Clients

© 2024 Danu Center for Strategic Advocacy, LLC

NNEVDV

15

# When is VAWA Confidentiality Hard?

When Does It Feel Wrong?

© 2024 Danu Center for Strategic Advocacy, LLC

NNEVDV

16



## Yes or No (& Discuss): Survivor-Centered Release Process?



- Every 30 days, client is required to sign a set of releases giving the lawyer permission to disclose information necessary to carry out the representation.

© 2024 Danu Center for Strategic Advocacy, LLC



17

17

## Yes or No (& Discuss): Survivor-Centered Release Process?



- Client services agreement includes a paragraph giving lawyer permission to disclose information as necessary to carry out the representation.

© 2024 Danu Center for Strategic Advocacy, LLC



18

18

## Yes or No (& Discuss): Survivor-Centered Release Process?



- Lawyer works out a plan with client before sharing information in legal papers or in negotiations & client affirms agreement with disclosure plan in writing.

© 2024 Danu Center for Strategic Advocacy, LLC



19

19

## Yes or No (& Discuss): Survivor-Centered Release Process?



- Lawyer has client sign a stack of blank release forms and assures clients they will discuss any disclosures before lawyer makes them.

© 2024 Danu Center for Strategic Advocacy, LLC



20

20

## Before Any Release Process...



- Have a discussion
  - What is the problem survivor is trying to solve?
  - What are the options for how you can support survivor to solve it?
  - For options that require you to share, what are the pros & cons?
- Agency policy which assumes every survivor will sign a release
  - *Is not survivor-centered.*

© 2022 Danu Center for Strategic Advocacy, LLC



21

21

## Communicate Carefully

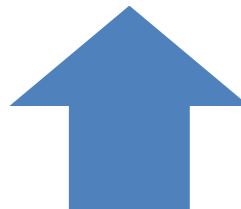


**Try not to say:**

“You have to disclose this.”

**Be clear if its strategy:**

“This information strengthens your case.”



© 2024 Danu Center for Strategic Advocacy, LLC

22

22

## Guidance for Good Discussion



### How to Work with Survivors Regarding the Release of Personal Information

#### Have A Conversation

Before starting the written release process, you should have a conversation with the survivor. Releases should only be used to meet the survivor's goals, not the program's. When you talk with a survivor about the possibility of releasing their personal information, the focus should be on helping the survivor:

- identify their goals
- generate ideas for meeting those goals
- consider if having the program share information helps meet those goals
- consider current or future risks that may arise if the program releases their

© 2022 Danu Center for Strategic Advocacy, LLC & NNEDV

23

23

## Applying Release Goals to Digital Written Releases



- Confirm who is communicating with you?
- Do you have clear written instructions?
  - What information, to whom & time limit?
  - Narrowly written to solve immediate issue?
- Method for survivor to mark approval?

© 2022 Danu Center for Strategic Advocacy, LLC



24

24

## Agency Tech Options



- Investment in providing options
- Policies for how staff uses/does not use tech
- Clear rules around use of staff personal devices

© 2024 Danu Center for Strategic Advocacy, LLC



25

25

## Safety Planning with Survivor



- Tech Safety Planning – Survivor decides risk
- Does someone else have access to files or communications?

© 2022 Danu Center for Strategic Advocacy, LLC

26

26

## No “One-Size Fits All” Tool



- What tech does the survivor have access to?
- What tech fits safety plan and surveillance risks?
- Who has access to the filled form or record?

© 2024 NNEVD



27

27

## Digital Written Consent



### Technology Safety

exploring technology in the context of intimate partner violence, sexual assault, and violence against women

#### Digital Written Consent to Share Information

ESPAÑOL

*This document discusses best practices related to the use of digital tools to obtain written consent to share information. Before reading this document, we strongly encourage you to review [how to work with survivors regarding the release of personal information](#) and [what the law requires related to survivor privacy and confidentiality](#).*

#### Why Written Consent is Important

Federal confidentiality guidelines require that when survivors want a victim service program to share information about them with a third party, the program must first obtain informed, time-limited, written consent.



28

28

## TechSafety.org Toolkits



- Agency Use
- Digital Services
- Confidentiality
- Legal Systems
- Survivor
- App Safety Center



## Contact Information



Safety Net Project  
[safetynet@nedv.org](mailto:safetynet@nedv.org)

Confidentiality Institute  
[alicia@confidentialityinstitute.org](mailto:alicia@confidentialityinstitute.org)



Questions?



The illustration shows a row of seven hands in various colors (yellow, brown, orange, red, green, purple, pink) raised against a light blue background. Above the hands are several question marks in different colors (red, orange, green, blue). The entire graphic is enclosed in a thin black border.



31