



# VAWA CONFIDENTIALITY & CRIMINAL JUSTICE COLLABORATIONS

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# Alicia Aiken

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- Attorney who has practiced in urban, suburban, and rural areas.
- Help collaborations navigate privacy.
- 15 years representing survivors of violence & people living in poverty.
- Experience in criminal defense and civil rights cases.



# Learning Objectives

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- Articulate the distinctions between privacy, confidentiality & privilege.
- Consider how information sharing practices differ across professions.
- Understand how VAWA confidentiality rules apply to grantees.



# Privacy Concepts

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## ***Privacy***

I decide who knows my information.

## ***Confidentiality***

You have a duty to protect my information.

## ***Privilege***

They can't make you share my information.



# Know your sharing profile

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- For whom is your work being done?
- Are your services “confidential”?
- Are you subject to disclosure requirements (e.g., reporting, open records, exculpatory evidence)?
- How do you determine which victim information to share with partners?
- Do you know partners’ sharing profiles?



# Transparency

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- Default ethic in many government functions
  - Including law enforcement, prosecutor, probation, courts
- Confidentiality only in special circumstances
  - Sometimes cannot be offered even if professional wants to do so



# Confidentiality

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- By Ethical Requirement
  - License at risk if violate
  - Liability if harm from the disclosure
- By Law
  - Possible crime
  - Fines
  - Revocation of funding
  - Liability if harm from disclosure



# Communicate Your Norms

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# Services to Survivors & VAWA Confidentiality

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- Grantees required to protect confidentiality of Personally Identifying & Individual Information
- Rule does not apply to
  - Court-generated information
  - Law enforcement & Prosecution-generated information
    - For law enforcement/prosecution purposes



# “Systems-Based Advocates”

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- Employed by Law Enforcement or Prosecution (“LE/Pr”)
- Follow LE/Pr rules on disclosure
  - VAWA confidentiality not applied
  - State advocate privilege doesn’t apply
  - Disclosure rules DO apply
    - (open records, exculpatory evidence, etc.)
- May have policies to limit internal sharing except when legally mandated



# VAWA Non-Disclosure Rule

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- Grantees shall **NOT** disclose, reveal or release any:
  - personally identifying information (PII)
  - individual information
  - collected in connection with program services
    - requested,
    - utilized or
    - denied



# “Personally Identifying”

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- (A) a first and last name;
  - (B) a home or other physical address;
  - (C) contact information;
  - (D) a SSN, Student ID#, Drivers License#;
- and
- (A) any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.



# Can't Confirm Receiving Services

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- Names of people receiving services?
  - Confidential!
- Regardless of whether community partner “already knows”
  - Situations can change rapidly



# Confidentiality Circle

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## Inside the Circle

Confidential  
professionals in same  
victim services unit  
following same info  
rules

## Outside the Circle

- Law Enforcement
- Government agencies
- Other confidential professionals
- Non-confidential professionals
- Funders
- Allies



# Community Partnerships & Confidentiality

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- MDT, SART, HRT, CAC, FJC, LAP
  - Non-disclosure/disclosure rules don't change!
- MOU's cannot change the law on non-disclosure/disclosure requirements



# Why Doesn't Collaboration Change Disclosure Rules?

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- VAWA confidentiality puts decisions in hands of survivors
  - If you aren't the survivor, it's not your judgment call what is "safe"
- Government transparency laws enforce fairness & accountability
  - If you aren't the legislature, it's not your judgment call what's "fair"





# Survivor-Led Disclosure of Confidential Information

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- Disclosure addresses SURVIVOR's goal
  - Grant reporting/Outcomes tracking is an organizational goal, not survivor goal
- Agency facilitates multiple ways for survivor to meet their goals
  - Don't assume a release for agency-sharing is the only way to refer/partner



# Agency Participation in Survivor-Led Information Control

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- Facilitating survivors sharing directly- for themselves- with partners
  - Assisting with written statements
  - Accompanying for in-person meetings
  - Three-way phone calls
- Requesting info from partners w/o disclosing PII
- Following disclosure instructions (found in written releases)



# VAWA Written Consent

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- Grantees shall **NOT** disclose, reveal or release any PII or individual information
- without consent that is:
  - **W**ritten
  - **I**nformed
  - reasonably **T**ime-limited
  - **S**urvivor-centered & **S**pecific
    - NEVER a condition of services
- *Grantees Cannot Use “Blanket Releases”*



# “Digital” Written Releases

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- VAWA requires “written” release
- Questions for “digital” written release
  - Do you know who you are communicating with?
  - Is consent informed?
    - Opportunity to consider pros/cons?
  - Can you verify who sent request to release?
  - Are instructions about information clear?
  - Is there a time-limit/expiration date?



# “Reasonably Time-Limited”

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



# Exceptions to VAWA Non-Disclosure Rule

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- Statutory Mandate
  - E.g. making mandated abuse report
- Court Mandate
  - Complying with lawful court order
  - Following settled case law
    - e.g. duty to warn (in some places for some professions)



# NOT Statutory or Court Mandates to Share

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- Contract terms
- MOU language
- Regulations
- Department policies
- Historical routines
- Membership on collaboration team
- Grant partnerships



# Best Practices for Collaboration

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- Within boundaries of confidentiality/transparency rules,
  - How do you work well together?
  - What are some of your experiences?
    - Success?
    - Frustrations?





# Ask Questions & Teach!

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- Ask others what their norms are
- Teach others what your norms are
- Respect each other's roles & norms
  
- Eliminating violence in communities is going to require many different paths!



# TECHSAFETY.ORG



TECHSAFETY.ORG TECHNOLOGY SUMMIT RESOURCES TECH SAFETY APP NNEDV

The Safety Net Project develops resources and information on the use of technology for agencies and survivors of domestic violence, sexual assault, stalking, and trafficking. Below are toolkits that contain a variety of information that can be helpful for victim service agencies as well as survivors.

For additional resources on general technology safety, please visit the [resources page on our main website](#), the National Network to End Domestic Violence.

## SAFETY CHECK

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If you think someone is monitoring your devices, visit this website from a computer, tablet, or smartphone that isn't being monitored. [Exit from this](#)

# Further Questions

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