RELEASES, WAIVERS & PRIVILEGE FOR VIOLENCE SURVIVORS

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Alicia Aiken

- 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

• Understand the connection between survivor control over information, survivor safety and perpetrator accountability.

• Articulate key considerations for organizations when designing survivor release and waiver policies.

• Explain release and waiver requirements for VAWA-funded programs.
Privacy Concepts

**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.
Choose to Share Confidential Information?

- Wait & See
- Instruct You To Do It
- Speak for myself
Privacy & Safety Are Linked
Autonomy v. Beneficence

• **Autonomy**: Personal rule of self
  – free from controlling interferences
  – free from limitations preventing choice

• **Beneficence**: Action done for the benefit of others
  – to prevent or remove harms
  – to improve someone else’s situation
Autonomy v. Beneficence

• Releases & Waivers
  – Tools of autonomy
• Mandatory disclosures &
  Professional discretion disclosures
  – Tools of beneficence
Autonomy v. Beneficence

- Releases
  - Tools of autonomy

- Mandatory disclosures &
  Professional discretion disclosures
  - Tools of beneficence
Privilege & Confidentiality

• Are tools for promoting Autonomy
• Specific exceptions may promote beneficence

• KNOW what the exceptions are
  – Don’t guess or use “gut reactions”
Your organization-type?

• Promoting self rule?
  – But exceptions to prevent harm?

• Promoting prevention of harm?
  – But exceptions to foster self rule?

• Balancing the two?
  – How do you strike the balance?
DESIGNING RELEASE & WAIVER POLICIES
“Just sign here.”
VOLUNTARY

• Releases & waivers are voluntary.
  – Can’t assume all will sign.
  – How will serve if choose not to sign?
• Survivors chooses which risks wants to take
  – Which risks are not ok
KNOWING

• Releases & waivers are knowing.
  – Does survivor understand content of form?
    • Does worker understand it?
  – Does survivor understand consequence of sharing in this way?
    • Consequence of not sharing?
SERVES SURVIVOR GOALS

• Releases & waivers are client-centered
  – Not center-centered
  – Not funder-centered
  – Not collaboration-centered

• Client goals might align with goals of others
  – How will you discuss that possibility?
FREELY GIVEN

• Facilitate real choice
  – Counteract survivor’s experience of “no choice” in past

• Decide when & how to discuss possibility of release
  – Communicate that wait & see is ok.
Can Releases Facilitate Collaboration?

Wait & See Whether Share

Use Release to Instruct You How to Share for Me

Share for Myself

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RELEASE REQUIREMENTS
VAWA-FUNDED VICTIM SERVICES
VAWA No Disclosure Rule

- Grantees shall **NOT** disclose, reveal or release any:
  - personally identifying information (PII)
  - individual information [for VAWA only]
  - collected in connection with program services
    - requested,
    - utilized or
    - denied
Court, Police, Prosecutor Exemption

• No Disclosure Rule DOES NOT APPLY to:
  • Court & Law enforcement-generated information
  • Contained in secure registries for P.O. enforcement
  • Law enforcement- and prosecution-generated information
  • Necessary for LE and prosecution purposes
Non-Identifying, Aggregate Data = OK to Share

• VAWA/FVPSA allows grantees to decide to share:
  – Nonpersonally identifying information in the aggregate regarding service to their clients
  – Demographic nonpersonally identifying information in order to comply with reporting, evaluation, data collection requirements.
Written Consent to Disclose

- Grantees shall **NOT** disclose, reveal or release:
  - personally identifying information or individual client information
- without consent that is:
  - **Written**
  - **Informed**
  - reasonably **Time-limited**
  - **Survivor-centered & Specific**
## W.I.T.S. Release

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<td>• VAWA has no exception for oral</td>
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<td>• Understand pros/cons of release</td>
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<td>• Release ≠ condition of service</td>
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<td>• Clear identifiable items subject to release</td>
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Minors & Written Consent

• VAWA
  • BOTH Minor and 1 Parent/Guardian must sign
    • Abuser of Minor or of other parent cannot sign

• If minor can legally receive services without parental consent,
  • Minor can consent to release without parent knowledge or signature
People with Guardians & Written Consent

• **VAWA:**
  • In the case of legal incapacity
    • Guardian signs for ward
  • If ward can legally receive services without guardian consent,
    • Ward signs without guardian
Exception for Mandated Disclosure

• If a statute OR a court order requires disclosure
  • Only release info required by statute/order

• If disclosure is mandated by court/statute
  • Must attempt to provide notice to victim
  • Must take steps to protect privacy & safety
  • Challenge validity of court order/subpoena?
State Law

• Local statutory release procedures
• May be STRONGER than VAWA
Reconciling Different Rules

- When two privacy laws have different terms
- AND both apply
  - Best practice to follow the most protective law
  - That most protects privacy
  - Gives Survivor most choice
To Sum Up:

• Privacy is control over information
• Fostering Control & Preventing Harm are distinct & different goals
• Releases communicate choices
• VAWA requires:
  – Honoring Choice
  – Written Releases about Choice
Got Questions?

- “How do I work well with my allies without violating confidentiality?”
- “How do I explain all this to victims?”

Watch for more Confidentiality Institute webinars on these topics
- Sponsored by BWJP
Further Questions

• Alicia Aiken, alicia@confidentialityinstitute.org

• NNEDV Safety Net, safetynet@nnedv.org

• BWJP, www.bwjp.org/contact-bwjp.html
Thank you!