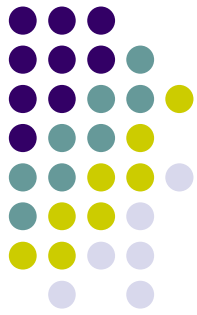


Understanding Your Role: Notice & Mandatory Reporting Made Easy



A presentation for the
National Network to End Domestic Violence
September 27, 2009, Scottsdale, Arizona

by
Jessica Mindlin, Esq.
Victim Rights Law Center
National Director of Training & Technical Assistance

www.victimrights.org
JMindlin@victimrights.org

- Preparation of this material was supported in part by VRLC grant number 2004-WT-AX-K062, awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, and conclusions expressed are those of the author(s) and do not represent the official position or policies of the U.S. Department of Justice.



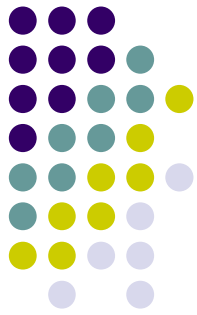
Workshop Goals

- Identify and discuss the “six W’s (+ 1 VW)”
 - Who
 - What
 - Why
 - When
 - Where
 - What Not?
 - VW (VAWA)

. . . (but not in this order)



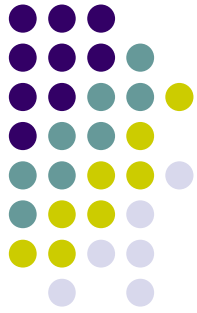
Learning Objectives



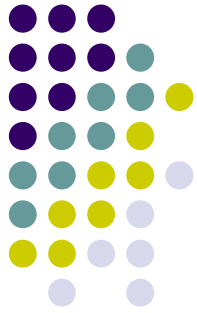
- What we mean by “mandatory reporting” and why it exists
- Who has to report
- What has to be reported
- To whom it has to be reported
- When it has to be reported
- What may not be reported
- Common problem spots for providers

WHY?

- Why Do We Have Mandatory Reporting Laws?
 - 1.
 - 2.
 - 3.
 - 4.

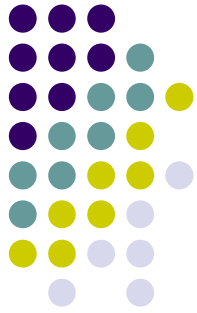


What are Some Reasons Not to Report Suspected Abuse (if a report is not required)?

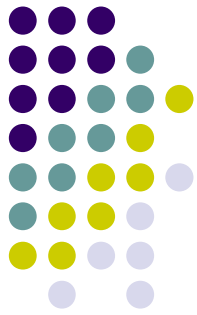


- Please list your reasons here:

Why Does Victim Privacy Matter?



Why not report all abuse all of the time?



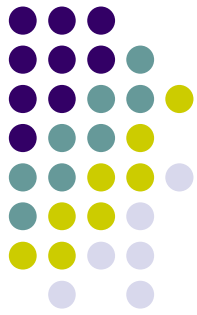
A Few Considerations:

- Trust within the community
- No guarantee of safety or continued confidentiality;
- Provider may not be trained on how to respond to particular set of (or individual) victims;
- Safety
- Loss of care and/or independence for the victim;
- Loss of privacy
- Stigma of being a victim
- May reduce V's access to care (including medical)



ABOUT WHOM MUST ABUSE BE REPORTED?

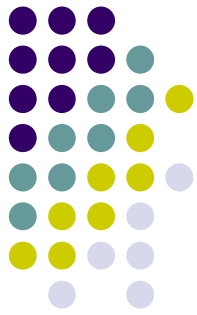
Who May Be the Subject of A Report?



- Child Abuse: All U.S. states, territories, D.C., and the Commonwealth of Puerto Rico have laws mandating certain professions to report child abuse.
- Abuse of Adults: Some jurisdictions also require reports of abuse, neglect or assault of certain other individuals.
 - “Vulnerable” adults (older individuals; adults with disabilities)
 - Domestic violence victims
 - Sexual assault victims
 - Victims injured by use of certain weapons (firearm, knife)



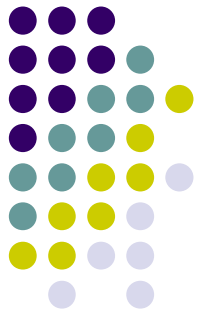
WHO HAS TO REPORT?



Who Has To Report?

- Different in every jurisdiction
 - Varies by age of V;
 - Who the provider is
 - Type of victimization
 - How injury is inflicted
- May be based on:
 - Profession (teacher, physician, etc.)
 - Licensure
 - Court order
 - DV but not SA advocate may be a M.R. (or vice versa)
 - Note: DV and SA reporting usually only applies to medical providers

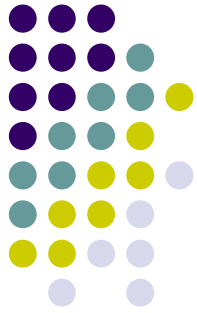
List of Who Has To Report May Be Extensive (and Varied)



For Example:

- Bank tellers and bank managers
- DHSS employees
- Law enforcement officers
- Social Worker, mental health counselor, marriage and family therapist, nursing assistant, chemical dependency professional
- School personnel
- Employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency
- County coroner or medical examiner
- Any funeral home worker
- Christian Science practitioner
- Joint tenant / tenant in common (UT)
- Athletic trainer (NV)

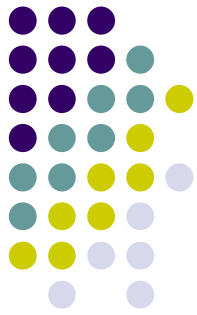
Individuals in the Medical Fields:



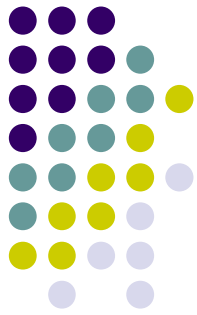
Physician, podiatrist, chiropractor, dentist, optometrists, osteopath, pharmacists, psychologist, nurse, physical or occupational therapist, psychologists, optician, naturopath, midwife, ocularist, massage therapist, dental hygienist,

acupuncturist, x-ray technician, respiratory therapist, health care assistant, dietitian, emergency medical technician, denturist, orthotist, prosthethist, surgical technological and recreational therapist

California law:



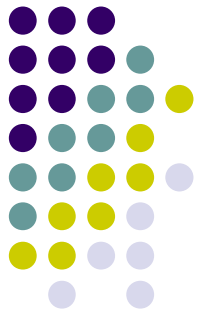
- (a) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, *in his or her professional capacity or within the scope of his or her employment*, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subdivision
- (b)(1) Any person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.
- (2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.



Arizona Law

- “Under circumstances likely to produce death or serious physical injury, any person who causes a child or vulnerable adult to suffer physical injury or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered”

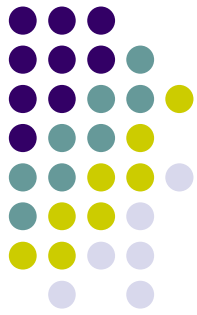
MA's Sexual Assault reporting law



- “Every physician attending, treating, or examining a victim of rape or sexual assault, or, whenever any such case is treated in a hospital, sanatorium or other institution, the manager, superintendent or other person in charge thereof, *shall report such case at once to the criminal history systems board and to the police of the town where the rape or sexual assault occurred but shall not include the victim’s name, address, or any other identifying information.* The report shall describe the general area where the attack occurred. Whoever violates any provision of this section shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars.”

MGL c. 112 § 12A^{1/2}

Statutes That Encourage Voluntary Reporting Are Common



- Colorado

“In addition to those persons specifically required by this section to report . . . any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the local law enforcement agency or the county department.”

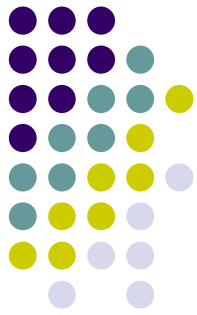
Colo. Rev. Stat. § 19-3-304 (3)

- Oregon

The Legislative Assembly finds that for the purpose of facilitating the use of protective social services to prevent further abuse, safeguard and enhance the welfare of abused children, and preserve family life when consistent with the protection . . . it is necessary and in the public interest to require mandatory reports and investigations of abuse of children *and to encourage voluntary reports*.

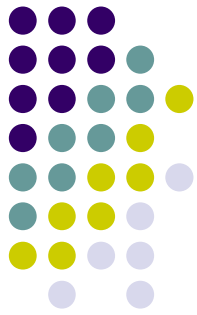
ORS § 419B.007 (emphasis added).

Other Mandatory Reporting Requirements that May Impact Survivors



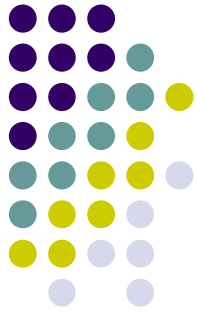
- Health care profession may be required to report:
 - Injuries that were caused by criminal activity;
 - Possible danger to self
 - Possible danger to others
 - Sexual assault of a competent adult

Anyone/Everyone May Be M.R.



- 18 States and P.R. require all citizens, regardless of profession, to report child abuse or neglect.
- For example: Texas Family Code 261.101:
 - (a) “A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.”

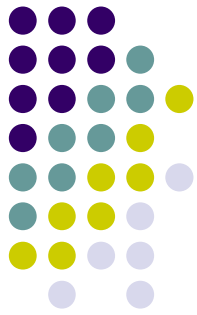
* * *
 - (c) The requirement to report under this section applies *without exception to an individual whose personal communications may otherwise be privileged*, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, and an employee of a clinic or health care facility that provides reproductive services.



Who May Not Have to Report?

Who Is Prohibited From Reporting?

Who May Not Have to Report / May Be Prohibited From Reporting?



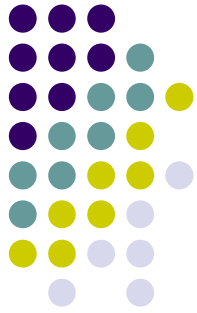
- Kansas – 39-1431

“An employee of a domestic violence center shall not be required to report information or cause a report of information to be made under this subsection. ”

- Oregon – ORS 419B.005

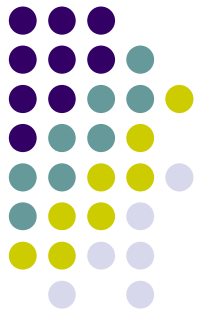
“[A] psychiatrist, psychologist, member of the clergy, attorney or guardian ad litem . . . is not required to report such information communicated by a person if the communication is privileged . . . An attorney is not required to make a report under this section by reason of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client.”

VAWA 2005



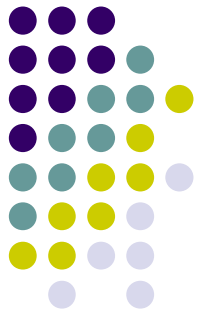
- Confidentiality is a grant condition for every state, tribe or territory receiving VAWA \$.
- Grantees are required to protect the confidentiality and privacy of those receiving services
- Grantees may not disclose *personally identifying information or individual information* or reveal individual client information unless:
 - (a) secure informed, written, reasonably time-limited consent *or*
 - (b) release is compelled by statute or court mandate.

What Is Personally Identifying Information Or Individual Information?

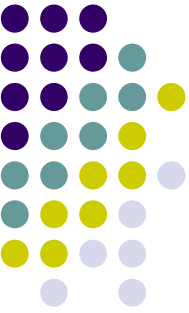


- Information that is likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including:
 - First and last name; a home or other physical address; contact information (including a postal address, e-mail address, telephone or fax number); social security number, and
 - Any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any of the above information, would serve to identify any individual
 - Must look at facts of each individual case.

If information must be released (*i.e.*, is compelled by statute or court mandate):



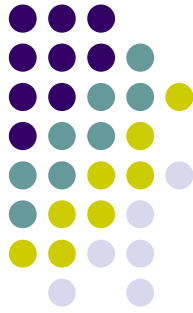
- Must comply with VAWA release requirements:
 - Make reasonable attempts to notify victim
 - Take steps necessary to protect the privacy and safety of the persons affected by the release of information



It's Not Just VAWA!

- Other federal laws that protect privacy:
 - VOCA
 - FVPSA
 - HIPAA

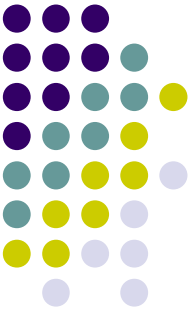
FVPSA



- “A “written, time-limited release” must be signed by the client or an appropriate representative (for example, a non-abusive parent can sign for a minor, or a non-abusive guardian can sign for a person with an adjudicated cognitive disability).

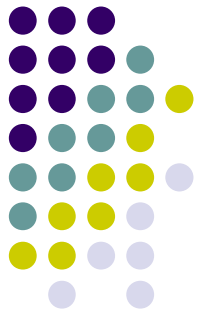
The release must be limited in time as appropriate to meet the client’s individual needs. The time limit must be as short as possible to meet the client’s needs, and should be limited to a few hours or a few days as appropriate. Some states may allow releases to be terminated by an event, such as “when the client leaves the shelter.” If a release is needed for a longer period, the client or representative can extend the release or can sign a new release. The release should be limited to the specific service provider or individual with whom the victim wants information to be shared. The release must also be limited in scope to the specific issues at hand. State laws governing releases can vary widely, and sharing information can sometimes make it subpoenaable.

- While reports of child abuse and emergency CPS calls may be made in compliance with state mandatory reporting laws, information that goes beyond the information statutorily required to be reported (such as lists of current or former clients or information about clients with open CPS cases) cannot be shared. FVPSA grantees may not provide information to CPS [beyond what is required by statute] without a written, time-limited release signed by the client in question. This should only be done in specific circumstances and at the behest of the client.
- A program cannot require a survivor to provide a release of information in order to receive services. Releases of information should be client-initiated to enhance services provided to the survivor and not simply to ease administration and case-management or for statewide data collection.” FVPSA Confidentiality Q&A



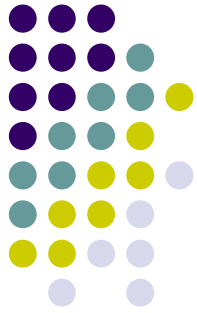
WHAT KINDS OF HARM MUST BE REPORTED?

What Forms of Abuse Must be Reported?

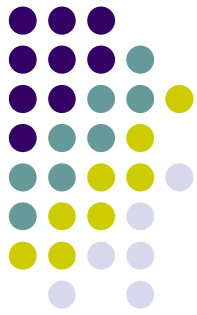


- Varies by Jurisdiction
- Statutes are typically specific and detailed (though may also use general terms such as “reasonable”)
- Most common forms of reportable abuse include:
 - Physical
 - Sexual
 - Emotional
 - Financial

Word of Caution

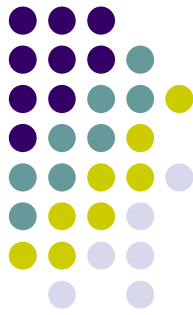


- Pay attention to definitions. *e.g.*,
 - Who is an “older” victim”
 - Is the “profession: defined?”
 - What kind of contact (if any) with the victim is required?
 - What constitutes “abuse?”

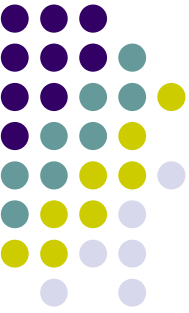


What is “Abuse?”

- How is “abuse” defined? Does it include:
 - Emotional abuse?
 - Drug use in front of a minor?
 - Possession of chemicals or equipment to be used to manufacture illegal drugs?
 - Use of profanity?
 - Failure to provide adequate clothing and shelter?
 - Domestic abuse by one parent against the other in front of a child?
 - Sweepstake Sign-ups
 - Emotional manipulation?
 - Ridicule and demeaning language?
 - Sexual harassment?



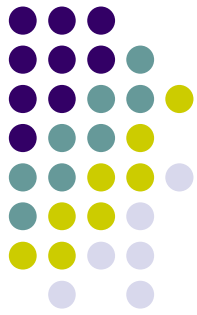
- AZ 13-3623.(C) Manufacturing of a dangerous drug: For the purposes of subsections A and B of this section, the terms endangered and abuse include but are not limited to circumstances in which a child or vulnerable adult is permitted to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug
- AZ: 13-3623.((F)(3). "Emotional abuse" means a pattern of ridiculing or demeaning a vulnerable adult, making derogatory remarks to a vulnerable adult, verbally harassing a vulnerable adult or threatening to inflict physical or emotional harm on a vulnerable adult.



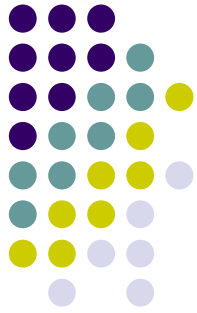
WHEN?

... AND HOW / TO WHOM?

WHEN? What timing does the statute require?



- Indiana - IC 12-10-3-10 (a) Each endangered adult report made under this chapter shall be communicated immediately to at least one (1) of the following: (1) The adult protective services unit. (2) A law enforcement agency.(3) The division by telephone on the statewide toll free telephone number.
- Nevada: NRS 200.5094 – “By telephone or, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, by any other means of oral, written or electronic communication that a reasonable person would believe, under those facts and circumstances, is a reliable and swift means of communicating information to the person who receives the report.

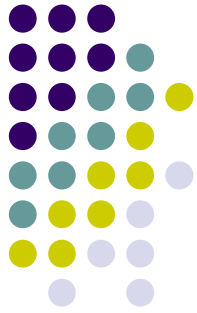


HOW / TO WHOM?

- How?
 - Victim Self-Reporting
 - Explain options / Discuss reasons V may want to self report
 - If statute allows, as appropriate provide victim with time to be able to accept self reporting
 - Have relationships in place with agency receiving report to facilitate victim-centered services
 - Discuss what information does / does not have to be disclosed
 - VSP Reporting
 - Have a policy on point.
 - Does the specific provider report? The program director? Or a designee?
 - With whom can the provider consult? (Privileged consultation?)
- Safety Plan
- To Whom?
 - Law Enforcement?
 - Adult protective services?
 - Child Protective Services?

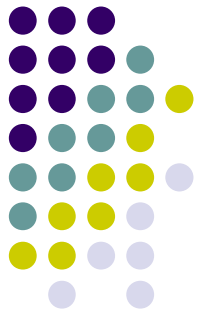
Note: Document in file that report was made and by whom.

Consequences of Not Reporting as Mandated



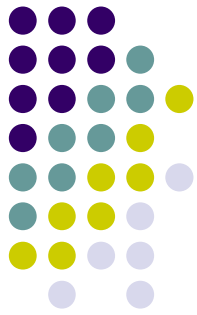
- Depends on jurisdiction's statute
- May have criminal sanctions (*e.g.*, Penn.)
- May have civil liability
- Program/ethical obligations

If a Report is Required: What Information Must Be Disclosed?



- Know your statute! Information required may include:
 - Victim's name, address, location, tel #
 - Why abuse or neglect is suspected
 - Name of reporter
 - Name of caretaker
 - Follow up information from provider

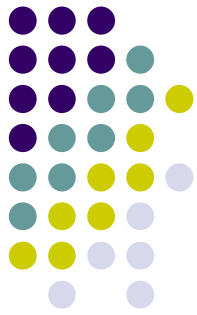
Fact Sheet from Kansas Dep't of Social and Rehabilitation Services:



- Report the name and address of the adult suspected of being abused, neglected, exploited, or financially abused. Give your name and how to contact you. Add any information you think might be helpful in the investigation and protection of the adult. This includes addresses, telephone numbers and directions to the home(s) of relatives, caretakers, the alleged perpetrator(s), risk factors to the adult or social worker - i.e., violence, guns, dogs, etc.

Give information about the nature of the concern. Please be specific about the abuse, neglect, exploitation, or fiduciary abuse allegation, including whether you think the adult is in immediate danger. Please also include what you saw, how long you believe it has been occurring, when you last saw the adult, who is the alleged perpetrator.

E.g., ORS 430.743



An oral report shall be made immediately by telephone or otherwise . . . If known, the report shall include:

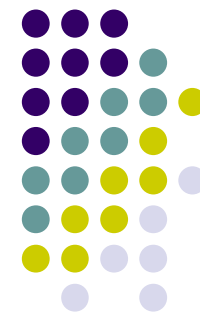
- (a) The name, age and present location of the allegedly abused adult;
- (b) The names and addresses of persons responsible for the adult's care;
- (c) The nature and extent of the alleged abuse, including any evidence of previous abuse;
- (d) Any information that led the person making the report to suspect that abuse has occurred plus any other information that the person believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator; and
- (e) The date of the incident.

Indiana - IC 12-10-3-10



- (c) Reports must include as much of the following information as is known:
- (1) The name, age, and address of the endangered adult.
- (2) The names and addresses of family members or other persons financially responsible for the endangered adult's care or other individuals who may be able to provide relevant information.
- (3) The apparent nature and extent of the alleged neglect, battery, or exploitation and the endangered adult's physical and mental condition.
- (4) The name, address, and telephone number of the reporter and the basis of the reporter's knowledge.
- (5) The name and address of the alleged offender.
- (6) Any other relevant information regarding the circumstances₃₉ of the endangered adult.

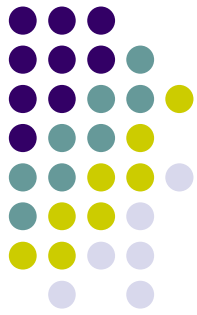
Protect Victim Confidentiality to the Extent Allowed/Required



- Only report what you have to.
- Know the governing federal/state/tribal/territorial law
- Avoid violating confidentiality by providing too much information.

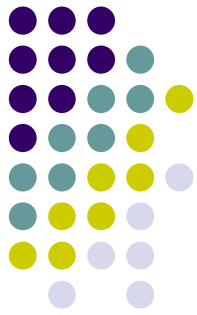


Educate Your Community Partners (and Your Mandatory Reporters)



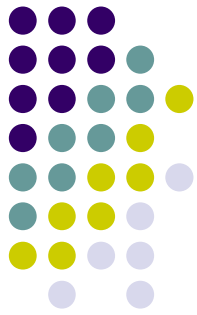
- Educate your community partners regarding your reporting and confidentiality obligations
- Don't be afraid to ask the questions BUT... know the consequences.
 - If mandatory reporter is not reporting, educate
 - If you are a mandatory reporter, inform and plan
 - If you're not a mandatory reporter, don't report

Advise Victims of Your Reporting Obligations Before They Make Disclosures!



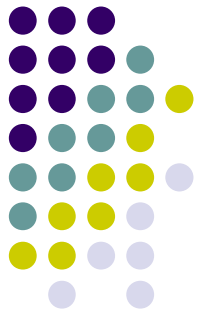
- Survivors should be notified in writing of your mandatory reporting obligations, including:
 - What initiates a report
 - What will have to be reported
 - Who the report will go to
 - What may occur due to the report
- Allow survivors to choose what information to disclose (*informed* consent to services).

IF YOU HAVE TO MAKE A REPORT:



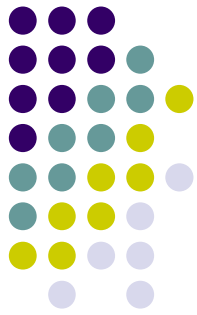
- Remember to safety plan with the victim
- Advise victim what information was revealed
- If parent leaves, file report as required. (No obligation to hold the child or further investigate.)
- Absent a release, provider may not disclose more information than what is required by statute.

Mandatory Reporting Checklist:



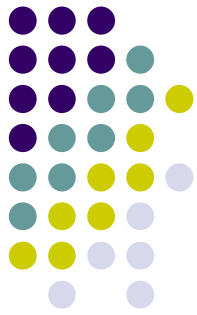
- Know the federal, state and tribal laws that govern mandatory reporting in your jurisdiction.
- Develop a program-wide policy re: mandatory reporting the abuse of a child or an “at-risk” adult.
- Know who you have on staff (paid and unpaid) and what their reporting obligations are, if any.
- Periodically review policies to ensure they are current, relevant and appropriate.

Mandatory Reporting Checklist:



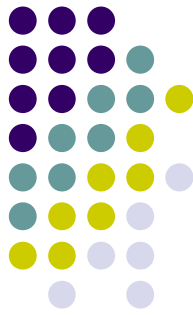
- Have program protocols regarding:
 - Who has access to client information;
 - What information should be kept in written form;
 - Where that information will be kept and how it will be secured;
 - How often, how and by whom paper and electronic records will be purged.
- Disclose your reporting obligations to the victim *before* the victim makes disclosures.
- Provide periodic training for staff and volunteers.

Mandatory Reporting Checklist:

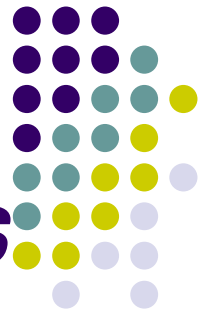


- Don't assume that the survivor is familiar with your policies and obligations.
- Remember under VAWA you need a release or statutory or court mandate.
- If must release, notice and safety planning.

Some National Resources




- 50 State Survey of Mandatory Reporting Laws at:
<http://www.wcl.american.edu/nic/documents/FiftyStateSurveyofMandatoryReportingMARCH2009.pdf?rd=1>
- Elder Abuse Laws and Resources by State:
http://www.ncea.aoa.gov/NCEARoot/Main_Site/Find_Help/State_Resources.aspx
- Mandatory Reporting Laws on Elder Abuse: <http://www.abanet.org/aging/about/elderabuse.shtml>
- http://www.ncea.aoa.gov/NCEARoot/Main_Site/Find_Help/State_Resources.aspx
- Rape and Sexual Assault Reporting Laws: The National for the Prosecution of Violence Against Women
http://www.ndaa.org/apri/programs/vawa/state_rape_reportings_requirements.html
- <http://www.sapr.mil/contents/references/lawsummary.pdf>
- *Mandatory Reporters of Child Abuse and Neglect: Summary of State Laws:*
Child Welfare Information Gateway
http://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.cfm
- See “State Policies in Brief” at <http://www.guttmacher.org/sections/adolescents.php>
- Center for Adolescent Health and the Law: <http://www.cahl.org/>
- Victim Rights Law Center’s national manual, “**Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims -- A Practical Guide for Attorneys and Advocates**” at:
<http://www.victimrights.org/html/manualpdf.htm>



***WE ARE YOUR OVW TA PROVIDER ON ISSUES
OF NON-INTIMATE PARTNER SEXUAL
ASSAULT –
CALL OR WRITE US WITH YOUR QUESTIONS!***

 VRLC Boston Office
115 Broad Street, 3rd Floor
Boston, MA 02110
(617) 399-6720
1-877-758-8132
Email: TA@victimrights.org
Web: www.victimrights.org

 VRLC Portland Office
520 SW Yamhill, Suite 200
Portland, OR 97205
(503) 274-5477
Email: TA@victimrights.org or
jmindlin@victimrights.org