



# Centering Survivors with Intellectual and Developmental Disabilities

A Guide for Navigating Confidentiality and  
Mandated Reporting for Rape Crisis Centers

# **A Guide for Navigating Confidentiality and Mandated Reporting**

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# Guide Introduction

The purpose of this mandated reporting guide is to focus on the survivor and their decision-making abilities in order to facilitate the healing process, while following all relevant state and federal laws. The process recommendations provided in this document are intended to be suggestions and considerations. It is important to remember that each person and each situation are unique and require their own personalized process.

This document is not meant to be distributed as a policy. It is a guide that can be adapted to meet the needs of your organization while formulating your own internal policies and procedures.

This document is not to be regarded as legal advice, but is meant to provide guidance, strategies, and protocols. Following all state and federal laws on reporting is still legally required.

## California Legal Considerations

Portions of the California mandated reporting laws for “dependent adults” are ambiguous and subject to interpretation. Due to this, please ensure you review all relevant laws and regulations prior to creating your mandated reporting policy.

The following mandated reporting policy is meant to act as a suggested guidelines for creating a policy that should be tailored to each individual agency.

# Rape Crisis Center Confidentiality and Mandated Reporting Example Policy Guidelines: Dependent Adults

## Introduction and Purpose of Policy

Reporting the abuse or suspicion of abuse of a dependent adult to Adult Protective Services has serious implications for survivors of sexual assault. While reporting has the potential to remove a survivor from a dangerous situation, it can also destabilize and uproot a survivor's way of life, their interpersonal connections, and impact their physical and mental health.

Adopting an agency-wide mandated reporting policy for dependent adults ensures that the agency follows relevant state and federal laws while centering the survivor and supports their decision-making abilities to facilitate the healing process.

Specific mandated reporting procedures and transparency around these procedures can provide staff and volunteers with a summary of best practices for reporting abuse. This clear communication and honoring of one's autonomy will act to reduce any harm done by mandated reporters who are forced to break the trust of survivors. Well-written guidelines and procedures can aid in repairing the relationship between survivor and support staff.

## Confidentiality

Confidentiality assures clients that access to their personal information will be taken seriously and strictly managed. Violations of confidentiality are a breach of the client's faith, invasion of their privacy, and a threat to their safety.

According to federal law, VAWA/FVPSA/VOCA (see links in resources) grantees are required to protect the confidentiality and privacy of persons receiving or seeking services. Reporting dependent adult abuse **when not required** could be a violation of federal law's confidentiality provisions.

The VAWA Confidentiality Provision refers to 34 U.S.C. 12291(b)(2), a provision of the Violence Against Women Act (VAWA) that requires all grantees and subgrantees receiving VAWA funding from the Department of Justice, Office on Violence Against Women, to protect the confidentiality and privacy of persons to whom those grantees and subgrantees are providing services. The VAWA Confidentiality Provision is designed to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, and stalking.

In California, Evidence Code Section 1035.4 states, "Confidential communication between sexual assault counselor and victim means information transmitted between the victim and the sexual assault counselor in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the sexual assault counselor is consulted."

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Sexual Assault Advocates **who are mandated reporters** have a legal responsibility to report dependent adult abuse. Since this requirement often conflicts with an organizational commitment to confidentiality, it is important that advocates understand how to coach a survivor through this process safely, confidently, and respectfully.

### Designated Mandated Reporters

In California, sexual assault counselors/advocates are not explicitly listed as mandatory reporters of dependent adult abuse. In general, volunteer or staff advocates are not mandated to report dependent adult abuse unless they are specifically serving these populations or have reporting requirements due to their profession/licenses (e.g., LCSW, psychologist, clinical therapist).

Any counselor/advocate that has completed the 40 hour sexual assault advocate training and is serving solely in a volunteer capacity at a Rape Crisis Center is not **typically** a mandated reporter, whether or not they are mandated reporters in their employment outside of the Rape Crisis Center. Advocates may be mandated to report if they are volunteering “in their professional capacity”, i.e. a therapist volunteering to counsel. All advocates must follow up with their regulating body to ensure their mandated reporting requirements do not interfere with their confidentiality requirements.

## What is Informed Consent?

Informed consent is an ethical perspective that involves providing all relevant information about the nature and consequences of legally consenting, including the risks, benefits, and any possible alternatives. Informed Consent is often not practiced with survivors with disabilities because it is assumed they do not have the capacity or competency to provide consent. Everyone has the right to informed consent, no matter their communication or access needs. Regardless of perceived abilities, it is important to inform survivors of their options.

## Reporting Guidelines

1. Confidentiality policies apply to all advocates, other department staff, including administration, volunteers, and interns. This policy shall apply to any information provided by a client who is sexually assaulted to any employee of *[insert organization]*. Any employee of *[insert organization]* shall make every effort to safeguard the information and function within the guidelines of this policy.
2. Mandated reporters **must** report suspected sexual assault of a dependent adult (see page 11 for legal definition).
3. Non-mandated reporters should not share suspected sexual assault of a dependent adult with mandated reporters, as this would cause the mandated reporter to have to make a report, and would be a violation of the confidentiality.

Mandated reporters who are employed by RCCs fall into two categories:

**Category 1:** Independently licensed employees. Examples include: Social workers, therapists, associates, and trainees who are supervised by a licensed therapist.

**Category 2:** Those specifically supporting children, elderly or dependent adults. Examples include: presenters at schools, persons providing childcare or supervision of children on site.



# Best Practices for Including Survivor

- **Describe** reporting process to survivor in **plain language**

**Plain language is easier for most people to understand. Whether you have a cognitive or intellectual disability, know English as a second language, or are experiencing trauma, simplifying language and removing hard to understand words or abbreviations can make the process much easier.**

**Describing what is going to happen and what might happen can be helpful for people with disabilities who may struggle to adjust to new situations. Remember to be clear about what WILL happen and what MIGHT happen.**

- Involve survivor in process of reporting
  - » Ask survivor if they want to know who you are informing
    - Describe all required parties you inform, stress that you are not aware of who other parties inform
  - » When possible, ask survivor if they would like to be present when you report
  - » Ask if there is anyone that they would like to join the process to help support them
  - » Write report in plain language
    - Ask survivor if they would like you to read written report to them, or read it themselves
  - » Describe some possible outcomes
    - Inform survivor that you don't know all the possibilities or what will likely happen
  - » Call & send report to as few parties as possible (regional center & conservator will be notified by APS, if required)
    - Discuss additional supports and trusted individuals the survivor may want to reach out to, offer to assist them

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- Provide follow up care
- » Ask survivor if you can have someone from RCC check on them, inquire if this would be **safe**
  - Follow through with check in on survivor
- » Ask if they want to bring home materials about RCC services, inquire if this would be **safe**
- » Ask if they want you to describe some services offered
  - List and describe services offered by your RCC
- » Ask if they want you to assist with adding hotline and/or office number to their phone, inquire if this would be safe

**Safety is the goal of reporting. If the abuser lives with the individual, bringing home materials or having someone call the home may cause problems. Troubleshoot this with them. Offer to add the hotline number to their phone under a different name, or have the RCC call them at a different location.**

## Sample Scripts

Informing a survivor that you need to report this incident:

“You have told me that someone is hurting you. Part of the law in California says that I cannot keep this a secret. I don’t have to tell anyone in your family, unless you want to. I do have to tell [*insert reporting authority*] (Adult Protective Services/Ombudsman). I will call them on the phone, and then also fill out a form to send in the mail. You can be with me when I tell them, if you would like. I will tell them the same thing you told me.”

Informing the survivor about some of the possible outcomes:

“I cannot tell you exactly what will happen after I make the report. Here are some things that **might** happen”:

- Someone from APS/Ombudsman office will decide if they need to investigate. This means they want to find out more information.
- Someone from APS/Ombudsman office might call you or come visit you to ask you questions about what happened. This does not mean you are in trouble.
- They might tell the police about what happened.
- A police officer may call you or come visit you to ask you questions about what happened. This does not mean you are in trouble.
- You might not see the person who harmed you anymore. But sometimes you might still have to see them. It is important to tell people if the abuse keeps happening.

# Considerations for Mandated Reporters

Staff and clients aren't always aware of who is a mandated reporter. This can be difficult when someone chooses to disclose their disability status. Confiding in someone can be difficult, and later finding out that someone is unable to keep that confidentiality can be damaging to individuals as well as to working relationships. When approaching the topic of mandated reporting be sure that everyone is informed about their own responsibilities as well as who holds the mandated reporter title.

Prior to working with survivors or community members, all staff and volunteers must:

- Ensure they are thoroughly acquainted with internal policies and procedures on mandated reporting;
- Ensure they are thoroughly acquainted with federal laws on confidentiality and state laws on mandated reporting;
- Establish their position as a mandated reporter or as exempt from reporting duties;
- Talk to their supervisor about mandated reporting and clarify any questions.

It is recommended that all staff mandated reporters:

- Consult with a supervisor about any situation in which a report of suspected abuse may need to be made;
- Periodically review reporting policies and procedures;
- Discuss their duty to report with clients/survivors on the onset of their contact with them as well as sporadically throughout the working relationship.

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Relevant reminders for all staff members and volunteers:

- Regardless of supervisor instruction or opinion, each mandated reporter has the legal duty to report suspected abuse.
- Mandated reporting does not guarantee safety. Sometimes the survivor may remain in the same environment or relationship. They may continue to be abused. They may choose or be forced into a situation that is similar or worse. Continue to listen to the survivor and provide resources and assistance.
- A report can initiate several drastic changes. Change can be uncomfortable and traumatic for people, even when it may be positive. Be patient with the survivor.

# Definitions

## **Dependent Adult:**

California's Welfare & Institutions Code, ARTICLE 2. Definitions –

- (a) Dependent adult means a person, regardless of whether the person lives independently, between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.
- (b) "Dependent adult" includes any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility.

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=15610.23&lawCode=WIC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=15610.23&lawCode=WIC)

## **Sexual Assault Counselor:**

California Evidence Code, Section 1035.2

- (a) A person who is engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to Section 13837 of the Penal Code and who meets one of the following requirements:

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- (1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling.
- (2) Has 40 hours of training as described below and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:
  - (A) Law. (B)Medicine. (C)Societal attitudes. (D)Crisis intervention and counseling techniques. (E)Role playing. (F)Referral services.
  - (G) Sexuality.
- (b) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of counseling and assisting sexual assault victims, and who meets one of the following requirements:
  - (1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape assault counseling.
  - (2) Has the minimum training for sexual assault counseling required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:
    - (A) Law. (B)Victimology. (C)Counseling. (D)Client and system advocacy. (E)Referral services

# Resources

## **Federal Legal Considerations**

Federal laws requiring that grantees protect confidentiality and privacy include:

- Violence Against Women Act (VAWA)  
<https://nnedv.org/content/violence-against-women-act/>
- Family Violence Prevention and Services Act (FVPSA)  
<https://nnedv.org/content/family-violence-prevention-services-act/>
- Victims of Crime Act (VOCA)  
<https://nnedv.org/content/victims-of-crime-act/>

## **State Legal Considerations**

State law requiring reporting of abuse or neglect of elder and dependent adults:

- Elder Abuse and Dependent Adult Civil Protection Act  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=15630&lawCode=WIC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=15630&lawCode=WIC)
- State law defining Sexual Assault Counselor-Victim Privilege:  
[https://california.public.law/codes/ca\\_evid\\_code\\_div\\_8\\_chap\\_4\\_art\\_8.5](https://california.public.law/codes/ca_evid_code_div_8_chap_4_art_8.5)
- California Evidence Code Section 1035.2  
[https://california.public.law/codes/ca\\_evid\\_code\\_section\\_1035.2](https://california.public.law/codes/ca_evid_code_section_1035.2)

Please note – There are separate requirements for mandated reporting of abuse and neglect committed against dependent adults, elderly adults (65 years and older) and children. For more information on mandated reporting for elderly adults and children, consult your agency's policies.





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