

CONFIDENTIALITY QUICK GUIDE

FOR ADVOCATES

For all interactions with law enforcement neither confirm nor deny the presence of anyone who has or may be receiving services; provide the same answer regardless of whether someone is or is not residing in shelter.

What to do if Law Enforcement Shows Up at Your Door with a...

SEARCH WARRANT

- ☐ Request ID from the officer and record their name and agency.
- ☐ Ask to see the warrant. Note who or what it pertains to, and (if possible) make a copy.
- ☐ Regardless of whether the person is in shelter, ask if it's possible to surrender the person or item voluntarily, in order to avoid disruption of other clients and maintain their confidentiality.
- ☐ Without confirming or denying the presence of the person or item, request some time to notify a supervisor/Executive Director prior to entry. Follow your program's notification procedures in any case.

A **search warrant** is a written order signed by a judge, which gives law enforcement the authority to search a specific place, person or item for evidence.

ARREST WARRANT

- ☐ Request ID from the officer and record their name and agency.
- ☐ If possible, speak with the officer outside or away from the residential area of the shelter.
- ☐ Ask to see the warrant and inform the officer that you don't allow entry into the shelter without a search warrant. Neither confirm nor deny the presence of the person in your shelter.
- ☐ Share the search warrant requirement statute with the officer (on reverse).
- ☐ Contact a supervisor/Executive Director as soon as possible.
- ☐ If the subject of the warrant is a client, discuss the matter with him/her privately. Give him/her the option to surrender voluntarily, but allow him/her to choose.

An **arrest warrant** is an order signed by a judge, which gives law enforcement the authority to arrest a specific person for committing a criminal offense. *New Mexico law requires law enforcement to get a valid search warrant before they can serve an arrest warrant within a domestic violence shelter; unless exigent circumstances exist necessitating immediate entry.*

[New Mexico Statutes Annotated Section 30-22-2.1; for more in-depth discussion see the Confidentiality Manual, available through the NMCADV.]

MISSING PERSONS REPORT

- ☐ Request ID from the officer and record their name.
- ☐ Note the name of the person the officer is looking for.
- ☐ Tell the officer that you can neither confirm nor deny the presence of anyone who has or may be receiving services, but that if they are receiving services, you will let them know that the officer wants to speak with them. Take the officer's business card.
- ☐ If the person the officer is looking for is a client: notify him/her of the missing person investigation; discuss options with them including contacting the investigating officer, or contacting another law enforcement agency in another jurisdiction, and/or taking no action. Let him/her decide what to do.

New Mexico law requires law enforcement officers to investigate **missing person reports** to determine whether the missing persons are endangered. However, *you can and should request that law enforcement not disclose the victim/survivor's location in their report.*

SEARCH WARRANT REQUIREMENT STATUTE

[NMSA Section 30-22-2.1 B]:

Prior to attempting to serve an arrest warrant within a domestic violence safe house or shelter, a law enforcement officer shall obtain a valid search warrant, unless exigent circumstances exist necessitating immediate entry.

For more in depth discussion see the Confidentiality Manual available through NMCADV



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This project was supported by subgrant #2014-WF-919 awarded by the NMCVRC for the STOP Formula Grant Program. The opinions, findings, conclusions and recommendations expressed in the publication are those of the author(s) and do not necessarily reflect the views of the NMCVRC or the Department of Justice, Office on Violence Against Women.

PRIVILEGE

- The right of domestic violence victim/survivor's to prevent the disclosure of their personal information that was shared in confidence with an advocate.
- Neither the victim nor the advocate can be compelled to provide testimony or produce records concerning confidential communications between advocates and victim/survivors in any criminal or other proceeding.
- Protects the identification and location of domestic violence programs.

The New Mexico privilege applying to domestic violence advocates is called the Victim Counselor Confidentiality Act (New Mexico Statutes Annotated Sections 31-25-2 through 6, for discussion see *Confidentiality Manual*, available through the NMCADV).

CONFIDENTIALITY

- Refers to rules prohibiting disclosure of a victim/survivor's personal information by victim service providers.
- Confidentiality provisions limit or totally prohibit disclosure of client related information by almost all community based domestic violence victim service providers without the **informed, written, time-limited release of the victim/survivor**.

Those obligations come from state and federal law, regulations, grant conditions, agency policies and codes of ethics.

FEDERAL LAW

- Federal law (VAWA, FVPSA AND VOCA) forbids grantees and sub-grantees from **disclosing, revealing or releasing any personally identifying information** collected in connection with providing services.

- Examples of personal and/or personally identifying information include:

- first and last name
- home or other physical address
- contact information (including a postal, e-mail or Internet protocol address, or telephone or fax number)
- social security, drivers license, passport or student identification numbers
- date of birth
- racial or ethnic background
- religious affiliation
- *OR any information that in combination with any other information would identify any individual*

- VAWA limits the information that grantees and sub-grantees can share without a release of information to: non-personally identifying aggregate data regarding services to their clients (e.g. number of clients served in a year) and non-personally identifying demographic information (e.g. number of clients between ages of 40 and 50).
- Under VAWA there are two situations which might mandate disclosure of confidential information held by a grantee or sub-grantee:
 - statutorily required reports of child abuse and neglect
 - valid court orders

Communicate
Collaborate Connect
Coalition
Coordinate