

Confidentiality For Domestic Violence
Service Providers
In Arizona
Under Federal And State Law



ACKNOWLEDGEMENTS

We want to thank the Pennsylvania Coalition Against Domestic Violence for their sample policies we have provided in this manual.

We would also like to thank legal intern Erin Radin who was primarily responsible for the 2003 update of the manual.

This project is partially funded by the Arizona Department of Health Services, Grant number H1361144

Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

This manual or portions thereof can be copied without further permission so long as the information on this page is credited.

Dianne Post J.D.
Director of Systems Advocacy
Arizona Coalition Against Domestic Violence
100 W Camelback Rd. Suite 109
Phoenix, AZ 85013
Tel: 602-279-2900 or 800-782-6400
TTY: 602-279-7270 Fax: 602-279-2980
acadv@azcadv.org

© Arizona Coalition Against Domestic Violence, August 2003.

Table of Contents

Confidentiality For Domestic Violence	1
Service Providers	1
In Arizona	1
Under Federal And State Law.....	1
Confidentiality For Domestic Violence Service Providers.....	5
In Arizona Under Federal And State Law	5
What kind of protection exists?	5
At-A-Glance Regulations.....	6
For applicable laws and interpretation, refer to pages in text.....	6
■ Primary duties of shelters, advocates and therapists:.....	6
■ Communications that are confidential: (Pages 13 -25).....	7
■ Information that is not or is no longer confidential	9
■ When confidential (or privileged) information must be released:	11
Frequently Asked Questions	12
Arizona Law.....	14
Testimonial Privilege Laws	14
Confidentiality Laws.....	15
Duty to Warn/Duty to Protect.....	18
Duty To Report	18
Related Statutes.....	20
Requirements to Obtain Records	21
Administrative Regulations	22
A. Department of Health Services	22
B. Department of Economic Security	22
Federal Law	23
Postal Service (39 CFR Part 265).....	23
Substance Abuse Among Government and Other Employees (42 USC 290dd-2)...	23
Justice System Improvement, Confidentiality of Information (42 USC 3789g)	23
Family Violence Services and Prevention Act (42 USC 10402).....	23
Crime Victims Fund 42 USC 10604.....	24
Housing Assistance, Emergency Shelter Grants (42 USC 11375 (c) (5))	24
Violence Against Women Act (42 USC 13942).....	24
Health Insurance Portability and Accountability Act.....	24
(45 CFR 164.512)	24
Federal Regulations	26
Confidentiality of Identifiable Research and Statistical Information (28 CFR 1 et seq.).....	26
Confidentiality of Alcohol and Drug Abuse Patient Records.....	27
(42 CFR 1 et seq.).....	27
State Cases	28
Bishop v. Bishop.....	28
State of Arizona v. Benjamin Spano.....	28
Johnson v. DES and Mesa Police	28

Federal Cases	29
In U.S. v Valenzuela-Bernal	29
In Pennsylvania v. Ritchie	29
In U.S. v. Sindel.....	29
In Ralls v. U.S.....	29
In Carrie Jaffee v. Marylu Redmond et al.....	30
Appendix.....	31
Model Confidentiality Policy.....	31
Women’s Center Confidentiality Policy.....	31
Statement of Confidentiality.....	31
Definitions.....	32
A. Confidential Client/Advocate Communications	32
B. Confidential Program Communications	32
Access To Client Files	33
A. Staff Access	33
B. Client Access	34
C. Access by Board Members	34
D. Access by General Public	35
Content of Client Files.....	35
Maintenance/Destruction of Client Files	36
Release Information.....	37
A. Client-Initiated Disclosure.....	37
B. Subpoenas/Search Warrants/Arrest Warrants	38
C. Telephonic Communications	40
D. Program-Initiated Disclosure.....	40
Responding To Subpoenas And Warrants	42
State Statutes.....	46
GLOSSARY	51

Confidentiality For Domestic Violence Service Providers In Arizona Under Federal And State Law

The issue of exactly what are the rights and duties of a domestic violence program regarding confidentiality of client information has often arisen in the context of law enforcement, court proceedings, provision of benefits and health care treatment. Line staff often call and ask, “do I have to turn over the client file to the police,” or “can DES require me to give them my counseling notes.” This manual has been prepared by the Arizona Coalition Against Domestic Violence (AzCADV) in an attempt to answer those questions for Arizona programs. In addition, AzCADV has developed a companion training component. Please contact AzCADV if you would like to arrange training for your program.

What kind of protection exists?

First, different kinds of rules relate to confidentiality:

- Testimonial privileges – apply only to the courtroom or other legal proceedings. The focus is on relationships between individuals.
- Evidentiary privileges – apply to legal rules governing the disclosure or admissibility of evidence in judicial and other proceedings. The focus is on ensuring a fair process.
- Nondisclosure laws – apply to court proceedings and proceedings outside the litigation forum, but they do not prevent courts from compelling disclosure by court order. The focus is on relationships between individuals and institutions, e.g. hospital, shelter etc.
- Confidentiality of communications – applies to ethical guidelines of professions and applies in all or most situations. The focus is on relationships between individuals and professionals.

Second, state and federal laws, regulations, and cases outline the requirements of confidentiality and applicability to specific situations. “Law” means several things:

- Statutory law – the laws passed by a legislature
- Common law – the law carried over from England that is still used
- Case law – the law made by judges embodied in the decisions they issue
- Regulations – the rules made by agencies to carry out laws passed by legislatures

All of these types of laws are important to understand confidentiality for your shelter or domestic violence program.

At-A-Glance Regulations

For applicable laws and interpretation, refer to pages in text.

■ **Primary duties of shelters, advocates and therapists:**

- Maintain strict confidentiality of individuals served. All requests for records or information about a client should be given to the custodian of records for your agency or, if you don't have one, your executive director. (Pages 14-30)
- Maintain strict confidentiality of shelter locations. (Page 15)
- Know your sources of funding to identify the laws and regulations that apply. (Pages 14-30)
- Develop written procedures to assure confidentiality. (Appendix, Pages 31-41)
- Submit a signed privacy certificate, along with its procedures, that will comply with the confidentiality laws and qualifications to receive program funding. (Page 27)
- Draft written confidentiality and file disposal policies. (Page 22 and Appendix, Pages 31-45)
- Assure that release-of-information forms contain the necessary, specified information. (Page 22)
- When appropriate, file written challenges to court orders or subpoenas that require the release of information. (Page 21)

■ **Communications that are confidential: (Pages 14 -30)**

- Testimonial Privilege in legal actions between: (Page 14)
 - Husband/wife (See exceptions in "Not Confidential")
 - Clergy/penitent
 - Attorney/client
 - Doctor/patient
 - Reporter/informant (Even in criminal actions)
 - Domestic Violence Victim Advocate/victim (See exceptions in "Not Confidential")
 - Crime Victim Advocate (person or agency)/victim (See exceptions in "Not Confidential")
 - Certified Behavioral Health Professional/client (See exceptions in "Not Confidential")

- Types of records covered by confidentiality laws: (Pages 14-30) (See exceptions in "Not Confidential")
 - Medical records (Page 14)
 - Individual records of child abuse & neglect (Page 15)
 - Adult Protective Services records (Page 15)
 - Certified Public Accountant information (Page 15)
 - Records of services for those with developmental disabilities (Page 15)
 - EMS and trauma system records (Page 15)
 - Communicable disease records (Page 15)
 - Without consent of client any communication with a certified behavioral health professional, even if professional is questioned in the course of any legal action (see exceptions in "Not Confidential") (Page 16)
 - Files of programs funded by the Department of Health Services (Page 16)
 - Mental health records (Page 16)
 - Silent Witness and Crime Stop records (Page 20)
 - Insurance investigations (Page 20)
 - Tax records (Page 20)
 - School records (Page 20)
 - HIV-related information even if compelled by subpoena, order, search warrant or other judicial process, except HIV Duty to Report Page 19)
 - Substance abuse records, (drug or alcohol), if assistance is given by any agency of the U.S. government (Pages 23 and 27)
 - Public Health Service records if assistance is given by any agency of the U.S. government (Page 23)
 - Postal Service records of addresses of domestic violence programs and domestic violence victims (Page 23)
 - Research and Statistical Information (Pages 26-27)

- Domestic Violence Shelter Fund (Page 15)
- Types of shelter records covered by confidentiality laws: All information relating to a specific individual, even if the information is subpoenaed or ordered by the court in any legal action including criminal, civil, divorce, investigation, or grand jury if the agency or program receives assistance under the:
 - Justice System Improvement, Confidentiality of Information Act (Page 23)
 - Family Violence Services and Prevention Act (Page 23)
 - Housing Assistance, Emergency Shelter Grants (Page 24)
 - Crime Victims Fund (Page 24)
 - Crime Control Act (Page 24)
 - Juvenile Justice Act (Page 24)
 - The Victims of Crime Act (Page 24)
 - The Family Violence and Prevention Act (Page 23)
 - BJA -- Bureau of Justice Administration (Page 24)
 - OJJDP -- Office of Juvenile Justice and Delinquency Prevention (Page 24)
 - BJS -- Bureau of Justice Statistics (Page 24)
 - NIJ -- National Institute of Justice (Page 24)
 - OJP -- Office of Justice Programs (Page 24)

■ **Information that is not or is no longer confidential**

- Between husband and wife (Page 14)
 - Not confidential in matters of divorce, criminal action or alienation of affection.
- Between domestic violence victim advocate and victim (Page 14)
 - Information is not confidential when it relates to the physical injury or neglect of a minor.
 - Information is not confidential if the victim has given or will give perjured testimony.
- Between crime victim advocate and victim in a criminal context if perpetrator is arrested or charged: (Page 14)
 - Information is not confidential that relates to compensation or restitution.
 - Information is not confidential if the victim consents to its disclosure.
 - Information is not confidential if the victim has or will give perjured testimony.
 - Information ruled by an *in camera* court hearing that is *exculpatory* is not confidential. (See glossary for the terms *in camera* and *exculpatory*)
 - Information disclosed to the prosecution or law enforcement by victim's consent is no longer confidential and must be shared with the defense attorney if *discoverable*. (Glossary and Page 14)
- Information determined by an *in camera* court hearing to have greater benefits than harm if disclosed, and would not endanger anyone identified in the disclosure, is no longer confidential. (Page 15)
- Information disclosed to a mental health provider that meets two conditions: 1) an explicit threat of serious harm or death to clearly identified victims, and 2) the apparent intent and ability to carry out the threat. If both conditions are met, the information is no longer confidential, and must be reported to the intended victim and anyone in a "reasonably foreseeable area of danger," and the police. The provider also must initiate voluntary or involuntary hospitalization of the client, or other precautions. (Page 18)
- Information on the abuse of a child is not confidential. (Pages 15, 18, and 23)
- Information on the abuse of an incapacitated or vulnerable adult is not confidential. (Glossary and Page 15-19)

- Information that a third party is at risk of HIV infection makes confidential HIV-related information no longer confidential in that it may be reported to DHS in writing with the name and address of the identifiable third party and the name and address of the person making the report, but not the address of a shelter. (Page 18)
- If a law enforcement agency is investigating patient abuse, records are no longer confidential. (Page 21)
- Health care records subpoenaed 10 days in advance of production, and with no objection by patient within five days after notification, are no longer confidential, although the health care agency may file a written objection to the court. (Page 21)
- Information that the client reveals indicating future criminal conduct is not confidential. (Page 23)
- A court order, after an *in camera* hearing, can compel release of records in making criminal charges or an investigation of drug and alcohol abuse. (Page 27)

■ **When confidential (or privileged) information must be released:**

- Testimonial Privilege (if criminal charges have been filed) (Page 14)
- Domestic violence victim advocate/victim (civil cases)
 - Information if the victim has or will commit perjury
 - Information that the court finds reasonable cause to disclose after an in camera hearing as to whether privilege should apply
- Crime victim/advocate privilege
 - Information on compensation and restitution
 - Information that the victim consents to release
 - Information if the victim has or will commit perjury
 - Information ruled exculpatory
 - Information already disclosed to prosecutor and law enforcement, if perpetrator is charged
- Other privileged material
 - Child Protective Service records upon court order (Page 15)
 - Mental health records if a judge rules they be released (Page 15)
 - Information that a third party or parties may be in "a reasonably foreseeable area of danger" because of a patient's threats and ability to cause death or serious physical harm (Page 18)
 - HIV-related information if a third party can reasonably be assumed to be at risk of infection (Page 19)
 - Information on abuse or neglect of a child (Pages 15, 19, 23, and 27)
 - Information on abuse or neglect of a vulnerable or incapacitated adult (Page 19)
 - Information connected with an investigation of patient abuse, with or without a subpoena (Page 21)
 - For medical emergency, research, audits, evaluation of the program, court order, or upon the client's consent, records of the identity, diagnosis, or treatment of any patient in connection with any drug abuse prevention function assisted by the U.S. government may be released by a judge upon good cause weighing the public interest against injury to the patient...(Page 23)

Frequently Asked Questions

Q: If a police officer comes to my door with a subpoena what do I do?

A: Give the subpoena to your custodian of records or executive director. Do not tell the police officer anything and do not give him or her anything. (Appendix, Pages 37-39)

Q: If a police officer comes to me with a warrant what do I do?

A: Find out if it is a search warrant or an arrest warrant, and then follow procedures. (Appendix, section VI, B., v. and vi, on Pages 37 and 38)

Q: Should I advise my client to tell her therapist everything?

A: Only if the therapist is a certified behavioral health specialist or a licensed psychologist, so that the information or testimony is confidential. If the therapist is a crime victim advocate and charges are filed information is also confidential except for the items on Page 14. (Pages 14-16)

Q: Should I turn over records to other agencies without my client's consent?

A: No, not even to the funding agency. (Pages 20-27)

Q: Whom should I tell if my client is HIV positive?

A: No one unless you have reasonable cause to believe a third party is at risk. (Pages 15-19)

Q: If my client is returning to her abuser should I call child protective services?

A: No, because you only need to report abuse that has already occurred and about which you have reasonable cause to believe – for instance, bruises or other physical signs. (Appendix, Page 41)

Q: Can I release statistical or demographical information?

A: Yes, unless the information would identify a particular individual, which might occur in a small community or one that is distinct from the larger community, such as a group of monks or child advocates. (Pages 26-27)

Q: If my client tells me she's going to lie in court, must I report it?

A: No, but, if you are called to testify about the lie, the statement is not confidential because it falls under perjury. (Pages 14 and 26)

Q: My client says she's going to kill her abuser. Do I have to report it?

A: You must decide whether she is just "blowing off steam" or whether she has the intent and the capability to carry out the threat. If you can reasonably assume that she intends to carry it out, you must report it to the intended victim and the police. (Page 18)

Q: If the client does not object to the release of records, should the agency?

A: The agency can object, even though the client does not, if the agency believes the release would be harmful to the client. (Page 21)

Q: If the client consents in writing to the release of records, can the agency still object?

A: The agency can object, but probably will not prevail. (Pages 1, 21 and Appendix, Page 37)

Q: What if the police ask me to turn over my client's file?

A: Information in the client's file should never be turned over to the police, even with a search warrant. In some cases it must be turned over to the court that has legally ordered it. In other cases you must not turn it over even with a court order. Give all warrants to the agency legal counsel for determination. (Pages 15-30 and Appendix, Pages 42-45)

Q: Can DES require me to give them my counseling notes?

A: No, not under federal law. Give any such requests to your agency's legal counsel.

Q: If I know or suspect that my client is an illegal alien should I call the Immigration and Naturalization Service? (INS)

A: No. Federal law requires that health and safety services, and all the services that shelters offer, must be delivered without discrimination based on national origin. There is no requirement to report undocumented women.

Q: If my client tells me she's committed a crime (not child abuse) do I have to report it?

A: No. The United States has no general requirement to tell anyone about crimes.

Q: If the client arrives with a child she says is hers, do I believe her or do I need to investigate?

A: If she tells you it is her child you have no further need to investigate.

Arizona Law

Testimonial Privilege Laws

Arizona has established a whole host of privileges that prohibit testimony in legal actions: husband/wife (ARS 12-2231) except for divorce, a criminal action, or alienation of affection (ARS 12-2232); clergy or priest/penitent (ARS 12-2233); attorney/client (ARS 12-2234), which includes those working for an attorney; doctor/patient (ARS 12-2235); reporter/informant (ARS 12-2237), which also applies to criminal actions, and domestic violence victim advocate/victim (ARS 12-2239).

Passed in 2003, ARS 12-2239 defines domestic violence victim advocate as an employee or volunteer at a domestic violence shelter or service provider for victims of domestic violence. These advocates must have participated in at least 30 hours of training including an explanation of privileged communication and the reporting requirements prescribed in ARS 13-3620. The domestic violence victim advocate's privilege does not extend to situations where the advocate knows or should have known that the victim will give or has given perjurious statements or statements that would tend to disprove the allegation of domestic violence. The advocate must still report non-accidental injuries and physical neglect of minors.

Consultation between a crime victim advocate and victim is also privileged information (ARS 13-4430). A crime victim advocate means a person who is employed or authorized by a public entity or a private entity that receives public funding primarily to provide counseling, treatment or other supportive assistance to crime victims (ARS 13-4401). An advocate shall not disclose as a witness or otherwise any communication except compensation or restitution information unless the victim consents. The privilege does not apply if the victim will give or has given perjured testimony or if the communication contains exculpatory material. The court must hold an *in camera* (private) hearing to determine if the material is exculpatory. If, with the victim's consent, the advocate discloses the material to the prosecutor or a law enforcement agency, the advocate must also disclose such information to the defense attorney if such information is otherwise discoverable, i.e., compensation or restitution information or exculpatory material. If the advocate works for a prosecutor's office, information can be disclosed with oral consent of the victim.

The problem with this statute is that it only comes into effect when the perpetrator is arrested or charged and only applies in the criminal context (ARS 13-4402). Since very few are arrested or charged, and many of the problems involve domestic relations and civil cases, the statute has limited impact.

The testimonial privilege is also extended to a licensed psychologist (ARS 32-2085). Information discussed during mediation conducted by a neutral third party, except for actual or threatened violence, is confidential (ARS 12-2238).

Unless otherwise provided, all medical records are privileged and confidential (ARS 12-2292) and shall not be released even to the patient herself, if the physician or psychologist determines that such release would be harmful to the patient (ARS 12-2293).

Confidentiality Laws

A. According to state statute, Arizona has established a public policy interest in protecting confidentiality of victims of crime.

- Child Protective Services (CPS) records on individual cases of child abuse and neglect are confidential (ARS 8-807(B)). A court must make an *in camera* inspection before releasing records (C)(13) and balance the rights and the benefits to ensure that the benefits of releasing the information outweigh the possible harms (F). The information should not be released if doing so would endanger the child or another person. If the court releases the record, it must take precautions to protect the safety of the person who reported the child abuse (G).
- Adult Protective Services records are also confidential (ARS 41-1959).
- Information received by Certified Public Accountants is confidential (ARS 32-749).
- Information obtained when providing services for people with developmental disabilities is protected (ARS 36-568.01).
- Emergency medical services or trauma system information is protected (ARS 36-2220).
- Also, communicable disease information is protected (ARS 36-664).
- Shelters that receive funding under the Domestic Violence Shelter Fund (36-3002) are required to maintain the confidentiality of any information that would identify persons served by the shelter (ARS 36-3005(A)(3)). Those that do not receive such funding come under other sections described in this booklet.
- The location of a shelter is confidential and may not be disclosed (ARS 36-3009).
- Because of the important public interest in the prevention of child fatalities, information collected by the child fatality review team is confidential (ARS 36-3503).

- Domestic violence victims with or without an order of protection may request their voter registration to be sealed. If a victim has an Order of Protection or Injunction Against Harassment, they may simply present it to the county elections department and their registration will be sealed. Without one of these documents, a victim may proceed by submitting an affidavit to the presiding judge of the superior court in the county where they reside. The office of the presiding judge should have the affidavits available. The affidavit must state: the person's full legal name, residential address, date of birth, the fact that they are a victim of domestic violence, their reasons for believing they are in danger and why the sealing of this record will reduce the danger, and any documentation supporting that they are a victim of domestic violence. This documentation includes: Findings from a court of competent jurisdiction, police reports, medical records, child protective services records, domestic violence shelter records, and school records. If the judge grants the request, the record must be sealed within 120 days, but is usually effective immediately. (ARS 16-153).

The problem with this provision is that the victim can then never vote at the polling place because they will not be listed on the voting rolls. If they request a ballot by mail, it will unseal their address. They must vote by going to the elections office to obtain a ballot and then returning it there or at the polling place in the vote by mail envelope.

B. Arizona has also established a procedure for those working with victims of crime to become certified, and thus be granted confidentiality rights under its statutes.

- In any legal action, a certified behavioral health professional shall not be questioned regarding any communications made by that client nor divulge any information obtained by the professional without the consent of the client (ARS 32-3283). For information on how to obtain such certification, see ARS 32-3291 (Social worker); ARS 32-3292 & 3293 (Masters of Social Work); ARS 32-3301 (counseling); ARS 32-3303 (associate counselor); ARS 32-3311 (marriage and family therapist); ARS 32-3313 (associate marriage and family therapist); and ARS 32-3321 (substance abuse counselor).

C. The files of programs that receive funding from Department of Health Services are confidential as well.

- Clinical records maintained as a result of services authorized by the Arizona Department of Health Services (DHS) are confidential (ARS 36-160). Almost all domestic violence programs receive money from DHS. DHS is able to keep patient records, including clinical records, confidential (ARS 36-404). It then follows that the original service provider must be able to keep clinical records confidential. There would be no reason for DHS to keep a record private, unless service providers are able to keep the same record confidential.

- Mental health records are confidential (ARS 36-509) and need not be released, even to the patient, if doing so would harm that patient (B). However, the patient can challenge that ruling (ARS 36-517.01) and eventually a judge will decide.

Duty to Warn/Duty to Protect

A mental health service provider shall release information when two tests have been met:

1. If the patient has communicated to the mental health provider an explicit threat of imminent serious physical harm or death to a clearly identified or identifiable victim or victims,
2. And the patient has the apparent intent and ability to carry out the threat,

then the provider shall tell the intended victim and the police, initiate voluntary or involuntary hospitalization of the client, or take other precautions (ARS 36-517.02).

ARS 36-517.02 states that there is no legal liability to the service provider unless the patient has communicated an explicit threat of imminent action and the mental health provider fails to take reasonable precautions. However, in Little v. All Phoenix South Community Mental Health Center Inc., 186 Ariz. 97, 919 P. 2d 1368 (1996), the Arizona Court of Appeals held that this part of the statute was unconstitutional because it violated common law. Common law recognizes a general negligence cause of action. Under Hamman v. County of Maricopa, 161 Ariz. 58, 775 P. 2d 1122 (1989), general negligence includes harm to someone who is in the “reasonably foreseeable area of danger”, not only those against whom an explicit threat has been made. A statute cannot eliminate a common law cause of action. Eliminating a common law cause of action is prohibited under Article 18, section 6 of the Arizona Constitution. Thus that part of the statute was declared unconstitutional.

In the Little case, Dennis Little’s wife was hospitalized after being stabbed by her husband. Dennis Little had repeatedly made threats against his wife prior to the stabbing. She sued Phoenix South for failing to take reasonable precautions to protect her. Phoenix South’s defense was based on an argument that the victim was not “clearly identified” as required in the statute. However, she was a “foreseeable victim within the zone of danger” under previous Arizona case law. The court upheld the case law and declared the statute unconstitutional because it conflicted with the common law. The result of the ruling is that mental health providers should warn foreseeable victims within the zone of danger, even though the patient may not explicitly name those victims.

Duty To Report

Any physician, physician’s assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor, or social worker who develops the reasonable belief in the course of treating a patient, or any peace officer, member of the clergy, priest or Christian science practitioner, or any parent, stepparent, or guardian of the minor, or school personnel or domestic violence victim advocate who develop the reasonable belief in the course of their employment, or any other person who has responsibility for the care or treatment of the minor who reasonably believes that a minor is or has been the victim of abuse, child abuse, a reportable offense,

or physical injury must immediately report this information to a peace officer or child protective services. Failure to do so is a class six felony. (ARS 13-3620) (See pages 47-50)

Also, a person who has responsibility for the care of an incapacitated or vulnerable adult and who has a reasonable basis to believe that abuse or neglect has occurred shall report to a peace officer or protective services worker in the same manner as child abuse reports (ARS 46-454). Permitting the life or health of an incapacitated or vulnerable adult to be endangered is a class 5 felony (ARS 46-455). A vulnerable adult means an individual who is 18 or older who is unable to protect himself/herself from abuse, neglect or exploitation by others because of a physical or mental impairment (ARS 46-451 (A)(10)).

While communicable disease information is protected (ARS 36-664), if a person in possession of confidential HIV-related information reasonably assumes that an identifiable third party is at risk of HIV infection, the person may report that risk to DHS (ARS 36-664(K)). The report shall be in writing and include the name and address of the identifiable third party and the name and address of the person making the report. The address of the shelter should not be revealed.

Except as provided in ARS 36-665, a person with confidential HIV-related information shall not disclose that information or be compelled by subpoena, order, search warrant or other judicial process to disclose that information.

Related Statutes

Silent witness and crime stop program records are not public records because of the public policy implications of obtaining information regarding crime in order to prevent it. For example, victims in a shelter are not going to seek help, which might prevent future crime, if they know their statements could become public record. Law enforcement may argue that getting the information is necessary if the victim is the one accused of committing a crime. However, under the Fifth Amendment to the U.S. Constitution, no one is obligated to provide self-incriminating information.

Even insurance investigations are confidential (ARS 20-481.21). Tax records are confidential (ARS 28-5938). School records are confidential (ARS 32-129). Social Security Numbers are confidential and beginning in January 2005 a person or entity shall not make an individual's social security number available to the general public, print an individual's SSN on a card required to receive products or services, require the transmission of a SSN over the internet unless the connection is secure, require the use of a SSN to log onto a website unless a password is also required, or print an individual's SSN on materials that are mailed to them unless required by law. (ARS 44-1376).

Currently, Arizona Law allows the Motor Vehicle Division to release information contained in drivers' licenses and other vehicle records. (ARS 28-447) Although the person requesting information must provide the name of the owner, vehicle identification number, and license plate number for information on title and registration and the name of the licensee, license number, and date of birth or expiration date for license information, a former partner or spouse could likely provide such data. (ARS 28-450) Further, a person is required to update their records if their name or address changes, thus it is difficult for a victim to relocate and stay safe. (ARS 28-448)

However, the federal Driver Privacy Protection Act, (18 USC 2721-2715) prohibits state motor vehicle departments from knowingly disclosing personal information from the department records to any person. To comply with this law, Arizona passed ARS 28-452(G)(2) that when a persons renews the drivers license, title or registration, they can mark on their forms that they do not want information released. Since Arizona licenses may be valid for many years, this is a problem. The federal law requires states to have a procedure for prohibiting disclosure when they rely on renewal dates to comply with the law.

According to the Arizona Motor Vehicle Division, they have "tagged" all pre-existing title, registration and driver license records in the database to indicate the individual recordholder has not consented to the release of any information. Upon renewal, a person will have to indicate if they DO want the information released, other wise it will not be released.

Requirements to Obtain Records

A. A subpoena seeking health care records must be served at least 10 days before the date of production (ARS 12-2282). The patient must also be given notice and can object (B) within five days after receiving notice. The health care provider cannot release the records until the time has passed for the patient's objection (D). A subpoena is not required if a law enforcement agency is investigating patient abuse (C)(3) or if the records are subject to release (C)(4). Shelter records, however, are not subject to release pursuant to State and Federal law described in this booklet. With a subpoena, copies of the file are delivered to the court and remain sealed until the court orders them to be opened (G).

B. Health care providers can object to releasing records by filing a written objection (ARS 12-2285), and if applicable, should state that they are subject to the confidentiality requirements in federal law and regulation and that the court must make a determination under applicable federal law and regulations on whether the records must be released. When there is any conflict between state and federal law, federal law is supreme (ARS 41-1962). Most domestic violence programs in Arizona are subject to the federal law restrictions.

C. DES or other agencies administering a title IV-D program under the Social Security Act can only request and receive consumer reports on individuals when the obligor obligor has been determined to be the parent of a child to whom a support obligation relates (ARS 44-1692). The report may only be used to establish their capacity to make support payments or to set an amount for support payments.

Administrative Regulations

Programs that receive monies from the Arizona Department of Economic Security (DES) and Arizona DHS are also subject to the administrative regulations that guide those agencies and the funding distributed by those agencies.

A. Department of Health Services

- R9-20-211, “Requirements for Client Recordkeeping,” require that there be written confidentiality policies and disposal policies to protect confidentiality. The regulation specifically references ARS 36-509 and federal regulations 42 CFR 2.11, et seq.; incorporates by reference the federal law into DHS requirements; and requires that release of information forms have certain specified information.

B. Department of Economic Security

- R6-13-1201, “Confidentiality,” requires that no information concerning an applicant or recipient of services or funds shall be disclosed to any party except those specifically named, including contracted agencies for the purpose of social, financial or medical services.
- R6-5-7427, “Confidentiality,” states that licensees’ records concerning children or families in their care shall not be disclosed. A licensee shall have written policies for keeping records secure and may withhold information if releasing it would be contrary to a child’s best interests, except under named conditions.

Federal Law

Postal Service (39 CFR Part 265)

This rule applies to Application for Post Office Box, PS Form 1093, or Caller Service and Application for Delivery of Mail through Agent, PS Form 1583. It blocks access for the general public to personal information contained on the above-mentioned forms. With a copy of a protective order, the postal service will not release the name, address, or telephone number of the holder of the post office box. For change of address, post cards are sent to the previous address to confirm the new address is accurate. This can present a confidentiality problem. To prevent this, the victim should go to the Post Office with a letter from a domestic violence shelter, an order of protection, or with an advocate, and ask to speak to a supervisor or the Post Master and request a change of address without a confirmation letter. More information is available at www.usps.com/moversnet or 800-275-8777.

Substance Abuse Among Government and Other Employees (42 USC 290dd-2)

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with substance abuse education, prevention, training, treatment, rehabilitation, or research that is assisted in any way by any agency of the U.S. government shall be confidential and only disclosed under the requirements of 42 USC 290dd-2. A record can be released by consent, for medical emergency, research, audits, evaluation of the program, or court order after showing good cause and weighing the public interest against injury to patient, physician-patient relationship, and treatment services. This law does not apply to child abuse reporting. Punishment for a violation is a fine.

Justice System Improvement, Confidentiality of Information (42 USC 3789g)

Any program that receives assistance under this chapter shall not reveal information about an individual to whom they provide services. Such information is immune from process, i.e., it cannot be subpoenaed or obtained by court order and may not be used in any legal action including criminal, civil, divorce, investigation, grand jury etc. A violation may be punished by a \$10,000 fine plus other penalties.

Family Violence Services and Prevention Act (42 USC 10402)

Any grant recipient receiving funding under this chapter shall develop procedures to assure confidentiality of records pertaining to any individual who received assistance

from that program. Failure to follow the policy, after notice and opportunity for correction, can result in withdrawal of funds.

Crime Victims Fund 42 USC 10604

No recipient of money under this fund shall reveal any information about a client that could be identified as any specific private person. Such information is immune from legal process in all proceedings. Violation can result in suspension of funding.

Housing Assistance, Emergency Shelter Grants (42 USC 11375) **(c) (5)**

Any grant recipient must implement procedures to ensure confidentiality of records pertaining to any individual who is provided family violence prevention or treatment services. The grant recipient must certify that the address of the family violence shelter will not be made public without permission of the agency.

The federal laws mentioned above cover any Arizona domestic violence program that receives money under the Crime Control Act, the Juvenile Justice Act, the Victims of Crime Act, The Family Violence and Prevention Act, BJA, OJJDP, BJS, NIJ, or OJP.

Violence Against Women Act (42 USC 13942)

Under the Violence Against Women Act of 1994, (Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, s. 40153), the attorney general was mandated to study and develop model legislation on confidentiality. A report was filed in December 1995. The attorney general's office developed two models, one that grants an absolute privilege and another that grants a qualified privilege, resulting in less coverage. AzCADV has this report on file.

Health Insurance Portability and Accountability Act **(45 CFR 164.512)**

Health Insurance Portability and Accountability Act, HIPAA, ensures that minimum levels of privacy protection are in place in all states. However, in states that already have protective privacy laws, such as Arizona, the impact is minimal. In fact, most shelters in Arizona are not health care providers so do not fall under HIPAA. To be considered a healthcare provider you must supply care, services, or supplies related to the health of an individual such as; physician's services, services commonly furnished by physician offices, hospital services incident to physicians' services rendered to outpatients, various diagnostic services provided by a hospital, outpatient physical therapy, rural health clinic services, qualified psychologist services, or clinical social worker services. If you do qualify as a healthcare provider then, you must determine whether you bill for or receive payment for these services in the normal course of

business. If not, you are not covered by HIPAA. Finally, if you are a healthcare provider and do bill for or receive payment for such services, you must also conduct electronic standard transactions. Electronic standard transactions are insurance related transactions conducted on any form of electronic medium, such as computer, e-mail, disk, etc. Again, unless you meet all of these criteria you are not covered by HIPAA. **www.endabuse.org** has further information on determining a summary, whether a domestic violence service agency is covered by HIPAA, and frequently asked questions.

Federal Regulations

As with state regulations, programs that receive federal money are also covered by the federal regulations that implement the above statutes. The following regulations apply to programs that receive federal money.

Confidentiality of Identifiable Research and Statistical Information (28 CFR 1 et seq.)

- 22.1 (f) -- The purpose is to ensure the confidentiality of information provided by crime victims to crisis intervention counselors working for victim services programs receiving funds provided under the Crime Control Act, the Juvenile Justice Act, and the Victims of Crime Act.
- 22.2 (c) – This section defines research or statistical project as any project, program, or component thereof which is supported in whole or in part with funds from the act and whose purpose is to develop, measure, evaluate, or otherwise advance the state of knowledge in a particular field. Programs that receive federal funding do develop, measure, evaluate and advance knowledge in the field of violence against women. Therefore, they should be covered by this definition.
 - (d) -- Research or statistical information means any information collected including information collected directly from the individual or obtained from any agency or individual having possession, knowledge, or control thereof. The statistical information, or any research information gathered, is protected under this provision.
 - And it includes (e)(2) information that can, by virtue of sample size or other factors, be reasonably interpreted as referring to a particular private person. Shelters in small, rural communities where identification information could easily be traced to a particular person are protected.
 - (f) Recipient of assistance includes any grant recipient, contract, interagency agreement, subgrant, or subcontract, or any person employed by any of the above. If the program receives a grant, the program is covered as is any person working for the program.
 - (h) The laws covered are the Omnibus Crime Control and Safe Streets Act of 1968, the Juvenile Justice and Delinquency Prevention Act of 1974, and The Victims of Crime Act of 1984. If the program receives money under any of these programs, the program is covered.
- 22.20 (c) The regulations do not apply to future criminal conduct. Similar to the “duty to warn” state requirements, if the client reveals future criminal conduct, then the confidentiality requirements are not applicable.
- 22.21 Such information identifiable to a private person may be used only for research or statistical purposes unless there is prior consent (22.22(b)). Information that could identify a person, especially in a small, rural community,

can only be used for research and statistical purposes with permission of the client.

- 22.23 Requires that any applicant for support from BJA, OJJDP, BJS, NIJ, or OJP support directly or under a state plan must submit a privacy certificate, along with its procedures, that it will comply with the confidentiality laws. A program receiving monies under any of these programs must sign a privacy certificate and submit its confidentiality policies.
- 22.24 Makes any violation punishable.

Confidentiality of Alcohol and Drug Abuse Patient Records **(42 CFR 1 et seq.)**

- 42 CFR 2.1 - Disclosure of the records of the identity, diagnosis, prognosis, or treatment of any person in connection with any drug abuse prevention program that is directly or indirectly assisted by any department of the United States is prohibited unless specifically authorized under this section. If a program gets money for any kind of drug or alcohol treatment, directly or indirectly, disclosure of such records is prohibited.
- 42 CFR 2.2 -- Disclosure of the records of the identity, diagnosis, prognosis, or treatment of any person in connection with any program or activity related to alcoholism or alcohol abuse education, training, treatment, rehabilitation or research prevention program that is directly or indirectly assisted by any department of the US is prohibited unless specifically authorized under this section.
 - There is a specific prohibition against use of the record in making criminal charges or investigation of the patient (c) unless there is a court order. The prohibition continues after the person is no longer a recipient of the services.
 - The provisions do not apply to child abuse reporting statutes (e)(2).
 - The penalty (f) is a fine of not more than \$500 on the first offense and not more than \$5,000 on the second and subsequent offenses.
- The regulations outline disclosures that can be made with patient consent (subpart C), disclosures that may be made without written consent or a court order (subpart D), and disclosures that may be made with a court order, and the procedures and criteria for the entry of such order. (Subpart E)
Nothing in the regulations compels disclosure (b)(1).

State Cases

Bishop v. Bishop

In 1987, attorney Dianne Post, then working for Community Legal Services, filed a protective order for Autumn House to protect the records of a previous client. The attorney of the client did not ask for the records to be protected. The client, however, also did not consent to release. Judge Rebecca Albrecht, based on 42 USC 3789g, found that the information was immune from legal process and the records were not released.

State of Arizona v. Benjamin Spano

In 1989, the Maricopa county prosecutor sought records from Chrysalis Shelter in connection with a child abuse case against Benjamin Spano. Chrysalis sought a protective order and was denied. Attorney Dianne Post appealed the motion and Judge Frank Galati granted the motion that shelter records are immune from process based on 42 USCA 10604 (d) and 42 USC 3789g.

Safehouse of Bullhead City Inc and Janet Does 1-10 v. Theodore Zellner and Grace Rogers, No. 30814

In 1989, a consent order was agreed to by attorney Penny Willrich of Community Legal Services that the defendants would no longer picket outside the safehouse, make its location public, or harass or disturb the peace of the safehouse.

Johnson v. DES and Mesa Police

In 1990, the Mesa Police Department told an abuser where they had transferred a victim (from Autumn House to Faith House). In addition, the abuser called Department of Economic Security, which in violation of the law and its own regulations, gave him her address. Attorney Dianne Post brought a prelitigation request for discovery under state law rules of procedure and resolved the case.

Federal Cases

In U.S. v Valenzuela-Bernal

458 U.S. 8568, 102 S. Ct. 3440, 73 L. Ed. 1193 (1982) the Supreme Court held that a defendant was guaranteed compulsory process for obtaining witnesses in his favor. The defendant can subpoena a reluctant witness to come to court but only to testify in his favor. Thus if a shelter resident is not testifying in the defendant's favor, the defendant does not have a right to force her to testify. If the defendant is seeking to impeach her when she testifies against him, that still is not a witness in his favor. He will be able to cross-examine her at the trial but cannot compel her to testify, for example, at a deposition before trial. A constitutional violation is found only when the government is responsible for the loss of evidence. If the shelter does not divulge a victim's presence so she can be subpoenaed, the shelter is not violating the Sixth Amendment confrontation right, because a shelter is not the government and because she presumably would not be testifying in favor of the accused.

In Pennsylvania v. Ritchie

107 S. Ct. 989, 94 L.Ed. 2d 40 (1987), a child abuse case, the Supreme Court held that the right to confront accusers is a trial right and does not include the power to require pre-trial disclosure of any and all information that might be useful in contradicting unfavorable testimony. Therefore, a defendant has a right at the trial to confront a victim who is accusing him, but not before. Also the defendant does not have a right to every possible shred of evidence that might be used for or against him. So, the records of the shelter are not necessary to preserve the defendant's Sixth Amendment right.

In U.S. v. Sindel

53 F 3d 874 (8th cir. 1995) the court outlined the three exceptions to releasing client and fee information between an attorney and a client: 1) the legal advice exception (when disclosing the name would implicate the client); 2) the last link exception (when the client would be incriminated by providing prosecution with the last link in a chain of evidence); and 3) confidential communications exception (when to reveal the name of the client would reveal the confidential communication).

In Ralls v. U.S.

52 F 3rd 223 (9th cir. 1995) an attorney refused to release the name of his client after being ordered to do so. He was then held in contempt. The appeals court held that usually the name of the client and the fee arrangement are not privileged because privilege applies only to the confidential professional communication. However, there are exceptions. If the disclosure conveys information that would ordinarily be a part of the usual privileged

communication, then the information remains privileged. The issue in the Ralls case was not self incrimination, but infringing a privileged communication. If identifying the client reveals the purpose for the consultation, then the name of the client is confidential. Similarly, a woman who seeks services from a program providing services to victims of violence conveys, simply by seeking the services, information that would ordinarily be part of a privileged communication (i.e., that she was battered). Therefore, the reasoning of this case should apply to such victims.

In Carrie Jaffee v. Marylu Redmond et al,

528 U.S. 1 (1996) a police officer shot a man at the scene of a conflict. The officer subsequently had some 50 sessions with a social worker and then resigned from the department. The department was sued for the death of the man. The court addressed whether there was a patient/psychotherapist privilege in federal evidence law. They held that there was because the court must “continue the evolutionary development of testimonial privilege,” and a privilege protecting confidential communications between a psychotherapist and her patient “promotes sufficiently important interests to outweigh the need for probative evidence” The Supreme Court specifically held that confidential communications between a licensed psychotherapist or social worker and her patients in the course of diagnosis or treatment are protected from compelled disclosure under Rule 501 of the Federal Rules of Evidence.

Appendix

Model Confidentiality Policy

*This policy was drafted by the Pennsylvania Coalition Against Domestic Violence (Barbara J. Hart, Staff Counsel) in December 1992, for discussion and adaptation by Pennsylvania programs.

Women's Center Confidentiality Policy

Statement of Confidentiality

As a human service agent dealing with issues of domestic violence and/or sexual assault, the Women's Center becomes involved in particularly private and personal areas of people's lives. Confidentiality is critical to the services and advocacy we provide. It is a fundamental underpinning both of client/provider safety and the integrity/efficacy of our services. Confidential communications are accorded to any victim, child or non-abusive significant other who seeks our assistance.

It is the policy of the Women's Center (WC) to hold confidential all communications, observations and information made by, between, or about clients. This includes all client, service, and administrative records, including any and all logs/records resulting from telephone contacts, and any other work product of staff related to recipients of service. Communications are confidential whether made by adults or children, and whether to or between staff, volunteers, safe home providers, student interns or board members of this organization. Furthermore, the address of the agency, as well as the safe home providers and volunteers are not to be disclosed except with the explicit written permission of the individual involved.

All service recipients, whether they are receiving services in person or on the telephone, will be informed of the confidential nature of our services. Persons served by telephone will be informed of the importance of maintaining confidentiality regarding any information relayed to them, including but not limited to the name of the program person, procedures for accessing shelter or locations of support group meetings. Those women who seek accompaniment through the legal system or any other face-to-face services will be informed regarding the confidentiality policy, and asked not to disclose any information regarding other clients both during service receipt and after termination of services. All will be required to sign an agreement to maintain confidentiality. Significant others and human service professionals will, likewise, be asked to protect our communications with them.

Confidential information will be released only in accordance with the guidelines established in Section VI below.

Definitions

A. Confidential Client/Advocate Communications

A confidential client/advocate communication is any written or spoken information exchanged between a client and a counselor/advocate in the course of a counseling/advocacy relationship, between advocates in the course of service delivery, between the client and other recipients of service associated with the agency, and between clients and the administrative personnel of a domestic violence program. Any and all knowledge, advice, records, logs, client and organizational records or working papers relating to a service recipient are confidential and not to be shared with any third party. Even the fact that a person is a client or has contact with the agency is privileged information. Communication is confidential even when shared by the client in the presence of the counselor/advocate with third parties who are working to further the interest of the client. Furthermore, confidential documents received from other agencies for which a client had to execute a written release are, likewise, confidential and incorporated within the scope of confidential client/advocate communication.

All confidential communications are privileged and may not be disclosed either during the period when the person is associated with or is served by the Women’s Center or after termination of service or association.

Confidential client/advocate communications are protected by statute. Unless a client waives the privilege or confidentiality in a signed writing, a domestic violence counselor/advocate is not competent or permitted to disclose confidential communications made to or by the counselor/advocate by or to the client.

Any dispute as to the meaning or validity of this definition is to be evaluated in light of the statutory victim privileges set forth in Title 42 and Title 23 of the Pennsylvania Code, the Pennsylvania constitution, the contract with PCADA and other contractual non-disclosure provisions.

(Suggested replacement language) – “ ... set forth in the state and federal law regulations and contractual non-disclosure provisions.”

B. Confidential Program Communications

A confidential program communication includes any written or spoken information related to the operation of the program, including but not limited to, communications or writings made by staff, interns, volunteers and board members, related to the internal operations of the program, including but not limited to, administration, personnel and board functions, except as approved for disclosure by a

supervisor, the executive director or the chairperson of the Board. Confidential program communications are privileged and not to be disclosed either during the period of association with the program or after termination of association.

However, any confidential program information related to a legal claim that an employee, intern, volunteer or board member has filed against the Women's Center may be disclosed in the pleadings and in litigation but should be fashioned in such a way as to protect clients and persons associated or formerly associated with the Center in keeping the *Statement of Confidentiality* in Paragraph I of this document.

Access To Client Files

The Women's Center maintains records of client contact for statistical and information purposes.

A. Staff Access

i. Access to client records, both open and closed files, is permissible only to persons who meet all statutory requirements. These requirements are embodied in 42 PA C.S. Sec. 5945.1 for sexual assault clients and 23 PA C.S. Section 6102 for domestic violence clients. Additionally, access is permissible only to persons in compliance with such other requirements as may be established by the WC to implement this policy.

(**Alternative language:**) "Access to client records, both open and closed files, is permissible only to those people who are:

1. present at the time the information is shared and working to further the interests of the client.
2. working for the _____ (name of organization) and also working on behalf of the client, such as counselors, advocates, students, volunteers, etc.
3. not associated with the _____ (name of organization), but working on behalf of the client, such as an attorney, counselor, welfare worker, housing worker, or other social service agent.)
4. Access to client and administrative files will be controlled and monitored by the executive director or her delegate."

B. Client Access

Requests by clients to review their files are honored. Requests by any third party, including but not limited to a client's attorney, will not be honored without a client's informed, written consent. A review of the file must be done in the presence of the executive director or her delegate. The client, or an authorized third party, may make notes about the contents of her file and make a written request for a copy of those portions of the file that are not the work product of the Women's Center. The client may be required to pay the costs of photocopying. Information received from other confidential sources may not be reviewed or copied; the client will be referred to the original source for copies of those materials. The request and the response to the request will then be referred to the original source for copies of those materials. The request and the response to the request will then become part of the record. The organization has the right to require a twenty-four hour notice for purposes of making the file available.

The client should be informed that a copy of her file released to any third party is not covered by confidentiality and disclosure laws, may not thereafter be claimed as confidential, either in whole or part, related to the person or proceeding to which the copy was released, and may be used against her.

The client may request the correction or removal of inaccurate, irrelevant, out-dated or incomplete information from her file. Any such request shall be considered. Any document or notation required by a contract must remain in the file. The file may be corrected to make it accurate; however, if the Center and the client dispute the accuracy of a proposed correction, the dispute shall be noted and the file shall remain unchanged. A client may submit rebuttal data or memoranda to her records.

Written documents/materials held by the WC merely for safe-keeping for the client are not to be kept in the client's file and must be released upon her request. These materials are not subject to review even by authorized persons who otherwise have access to client and administrative files.

Client files may not be removed from the agency except with prior written permission of the executive director or her delegate.

The Center reserves the right to deny access to any file related to litigation by the client or her agent against the Center.

C. Access by Board Members

All members of the program's board of directors are required to sign an agreement to maintain confidentiality. Board members do not have access to open or closed client files, nor to information that would identify a client; except as the executive director authorizes board member access, such authorization being for the purpose of handling specific administrative situations, including but not limited to, a subpoena for a client's file, proceedings related to DPW appeal, or litigation against the Center related to

the client. The executive director or her delegate will monitor access to administrative files.

D. Access by General Public

Neither the general public nor the justice system is entitled to access the Center's records. Names and other case information that, standing alone or collectively, could identify a client must never be used in training or public speaking. Disclosure should be made only with the explicit, written permission of the client.

Content of Client Files

1) The content of client files is limited to information that is required for statistical and funding purposes, establishing goals for the counseling/advocacy relationship, and documenting the need for services.

2) Verbatim statements made by or concerning a client are never included in the client file. Clients are not to write in a client file.

3) Any person writing in the client file should sign and date each entry, and by virtue of said signature, it may never be inferred that the client has verified the entry. Clients shall not be required to sign entries made into their file.

4) Certain specific documents will need to be signed by the client, such as but not limited to: service plans, individual rights, house rules, confidentiality statement, medical and child care releases, and releases of information. Such documents, as well as incident reports, internal grievances, and contractual appeals will be maintained in administrative files, not client files, after cessation of service provision.

5) Information received from sources other than the client may be included in client files, as appropriate.* Copies of protection orders, as well as petitions and orders in other family law matters, may be retained in the client file. Otherwise, client files should not contain legal documents or statements containing legal conclusions, except as these are made by a court of law or by an attorney acting as counsel for the client and are deemed covered by the communications privilege by a court and might potentially be used against her.

6) Written statements, letters, or comments of a client should not be kept in the client file except where they are critical to service delivery or advocacy and then only for the duration of service delivery. The client should be carefully informed that any statement not addressed to workers of the WC may not be deemed covered by the communications privilege by a court and might potentially be used against her.

* Summarizing documents obtained from other sources is generally not appropriate practice. The original, if relevant, should be maintained in the client's file until cessation of service provision.

When a client asks that a domestic violence shelter or safe home hold papers for safekeeping, those papers should not become part of the client file, but should be kept in a locked place where other client valuables are kept. Such materials are not deemed client records. Counseling centers should not hold papers for safekeeping for any of their service recipients, but should assist a woman in finding a safe place for such papers.

7) All entries in a client file must be made in such a fashion that they are legible and in language familiar to clients.

8) Shelter logs and/or telephone logs should use only the first name of clients whenever reasonable. These logs must be factual only and must not include interpretive or evaluative remarks about the client.

9) Essential communications about individual clients that cannot effectively be made orally to other workers in the program should be made in memo form and must be immediately destroyed by the recipient worker.

10) Students/interns working in the program are not authorized to make entries in the client files. Counseling notes of the students should be kept in the student's supervision file in the Center. If and when student notes are released to college instructors, all identifying material must be removed from these notes, including the names of staff, volunteers, battered women and their children, and other students.

11) Any record keeping concerning children must specify the agency's policy regarding photographs, and audio or video identification of the child and the use of children or children's records in research.

Maintenance/Destruction of Client Files

11) Open and closed files must be kept in locked file cabinets or a locked area, which is secure at all times. Access to the keys to the files should not be less restricted than access to the files. The keeper of the records, who is responsible for the secure maintenance of all client and administrative files, is the executive director.

12) All files will be maintained as contractually required.

(Arizona DHS requires files to be kept five years except for minors which shall be not less than three years following the client's 18th birthday.)

13) For purposes of the PCADV contract, the files must contain a PW652, the service plan and documentation of services. Minimally, the Center conducts a file review every 6 months, and all documents, except those contractually required, shall be removed unless essential for on-going service provision.

14) The client should sign a statement acknowledging that she has been notified of the retention and destruction procedures of the WC. The executive director or her delegate will supervise the destruction, if any, of client files and program logs. Under no circumstances is a file, or any part thereof, to be destroyed to avoid a subpoena.

Release Information

Battered women seek the services of domestic violence programs because their safety is endangered by their abusing partner. Women fear that if their abusive partner discovered that they had called a domestic violence program, or discovered the whereabouts of the shelter, or obtained information about the receipt of any services, they will be assaulted again or killed. Battered women who seek our services depend on the maintenance of confidentiality of all communications with and among our program staff. Confidentiality is essential to a full and satisfactory relationship between the battered woman and the program. Therefore, the release of any information to a third party must be purposeful and clear with informed consent.

All staff are bound by statute and staff, student interns, volunteers and board are bound by this policy and their signed agreement to maintain confidentiality. The client is bound to confidentiality by her non-disclosure agreement.

A. Client-Initiated Disclosure

The client generally makes decisions regarding disclosure. In order to ensure that the client is giving informed consent with respect to the release of information, the following conditions must be met:

i. When a client wants the program to release information to a third party, she should review the requested information and evaluate the benefits and drawbacks of releasing the information before deciding whether or not to give consent for its release. The program has the responsibility to ensure that the client is informed regarding the scope of the information to be disclosed, the purpose of the information, the duration for which the release is valid and the ramifications of disclosure.

ii. The client's consent must be in writing and must include the SPECIFIC information to be released; the date the release is signed; the beginning and ending dates that the release is effective (not to exceed thirty days total); and the purpose for which the information is released. Blank release forms must never be signed.

iii. Information that is released, once the client gives consent, should be limited to that information which is essential to respond to the request.

iv. A release of information form from another agency may not be substituted for a signed release from the WC.

v. In cases involving minors, the minor's non-abusive parent or legal guardian will make the decision whether or not the records are released. A minor's file is the adult parent's client file.

vi. When more than one adult is involved in a counseling situation, the consent of all parties must be obtained for the release of any information.

vii. Release of information by telephone is appropriate only in the presence of the woman herself, or as deemed appropriate by the executive director or her delegate in emergency situations outlined in VI. D. It is preferred that the client herself discloses information to the third party.

viii. Notwithstanding any of the above, the Center may determine that disclosure of any information subject to confidential communications shall not be made even though a client executes a written release. Where the Center concludes that the requested release would endanger the client, the Center, other clients, staff, student interns, volunteers or board members, the executive director is not bound by the written release. The Center may also conclude that disclosure in a particular case will create an appearance of non-confidential services that will deter other battered women from seeking life-preserving services. The executive director is authorized to resist disclosure by all appropriate means, citing statute, public policy, contractual obligation, constitutional privacy claims, etc. Where the client, nonetheless, seeks disclosure, the executive director should advise the Chair of the Board of the decision to resist and seek board support for her decision since Center resources may have to be allocated to the protection of the confidential information.

B. Subpoenas/Search Warrants/Arrest Warrants

This program is committed to avoiding court appearances except as necessary to further the interests of justice or to protect the victim of battering from further violence.

i. All subpoenas should be addressed to the executive director or her delegate.

ii. Pursuant to the Rules of Civil Procedure, subpoenas for program testimony or records may be served upon any adult answering the door of the shelter or staffing the office. Even though the Center has designated that all subpoenas be addressed to the executive director, service need not be made upon her. Thus, when a subpoena is served, the person receiving service must immediately inform and/or deliver the subpoena to the executive director.

iii. Upon receipt of a subpoena, the executive director shall contact counsel for the Center to evaluate whether the program should resist or cooperate with the subpoena.

iv. The Center must not disclose any information without the explicit, informed, written consent of the client. The Center is under no affirmative obligation to seek out a former client to advise her of the subpoena or to seek her release of information. Without client consent, the Center must resist disclosure and should file a Motion to Quash the subpoena.

v. As to search warrants, the adult answering the door of the shelter or staff in the office should advise the officer with the warrant that only the executive director is authorized to permit a search and that the person will make every effort to immediately contact the executive director. The executive director should be immediately alerted to the search warrant, and, if she cannot be located, the attorney for the Center should be immediately apprised. Assuming that neither can be contacted, the chair of the board should be notified of the search warrant. The warrant should be scrutinized for its validity. If there are defects on the face of the warrant, the executive director (the attorney or the chair of the board) shall call the issuing authority and ask that the warrant be quashed based on the defect. If the search warrant is for anything other than a resident of the shelter, the officer should be asked to wait until those women and children residing in the shelter may be informed about the search warrant and elect whether to remain in the building or temporarily exit the building while the search takes place. If the search warrant is for a particular individual, the executive director may advise the individual that the program would prefer that she cooperate with the warrant rather than expose all of the other residents and staff to the disclosure attendant upon a search.

Search warrants should never be issued for client or administrative files of the program, and if the warrant is directed at files or records, the executive director should immediately call the issuing authority and ask that the warrant be quashed and that a subpoena be issued immediately instead. If the issuing authority will not agree to the dismissal or withdrawal of the warrant, the executive director should immediately contact a judge of the court by telephone asking that the court direct that the warrant be terminated. Search warrants should be related to the evidence of a crime. Since evidence of the crime committed by the batterer against the client is not likely to be located in a shelter, a search warrant for evidence of a crime will likely be issued when the police or prosecutor believes that a battered woman has committed a crime. If that is the case, the executive director should immediately contact the attorney for the battered woman, if any, and advise of the warrant and inquire whether the attorney wants to seek to quash the warrant by telephone communication with the appropriate authority. If a warrant is not terminated by any of the above means, the program will have to honor the search warrant. To safeguard the interest of the Center, all efforts to resist the warrant should be documented and pictures or videotapes may be taken of the officer executing the warrant.

vi. When an officer produces an arrest warrant at the shelter or the Center office, personnel at the Center shall comply with the warrant. Should staff learn of an arrest warrant before it is effected, staff should notify the person subject to the arrest warrant of issuance and encourage the client to immediately contact counsel and turn herself in to the issuing authority or the police department. The Center is not obligated to assist law enforcement in effecting arrest.

C. Telephonic Communications

The Center is committed to the preservation of private and safe telephone communications. The introduction of new telephone technology has made privacy and safety more complicated and costly. All those associated with the Center are expected to be conversant with strategies to preserve telephone safety and confidentiality for themselves and clients. It is critical that no confidential communication be inadvertently disclosed and, thus, the Center has established telephone procedures and will revise them as necessary.

D. Program-Initiated Disclosure

There may be circumstances under which the Center may disclose confidential information without the consent of a client. The executive director or her designee alone has the authority to make a decision regarding disclosure without written consent of the client. This decision should be exercised carefully and should only be exercised in the following circumstances:

i. If a client is incompetent and a legal guardian has been appointed for the client, the guardian has the right to consent to disclosure. Disclosure of a client's file will be made to the legal guardian of any incompetent client. The legal guardian must provide a certified copy of his/her appointment and affirm that the appointment is current before disclosure is given. Likewise, the client should be advised that disclosure is anticipated. Release of any confidential information is governed by this document, as explicitly set forth in the paragraph above.

ii. If a situation involves a medical emergency that is life threatening to the client or child, and the client is not able to authorize the release of information or the client cannot be quickly found, pertinent information limited to the medical emergency may be released without signed consent. However, the client must be notified of this action orally and in writing as soon as possible.

iii. If the Center concludes that a client's safety or welfare is at grave risk, the executive director may disclose to law enforcement and/or others the basis for this conclusion and information that may assist in safeguarding the client. The client must be notified of this action orally and in writing as soon as possible.

iv. If a domestic violence client died under circumstances that suggest homicide, the executive director may choose to disclose that the deceased domestic violence client was served by the Center. The disclosure should be made with the permission of any family member who was seen as an ally by the deceased domestic violence client. Disclosure of pertinent information related to the domestic violence client, the abuser and the history of violence perpetrated by the abuser should be directed to the county attorney. Any disclosure to the media should generally be made after consultation with the county attorney, but should not disclose information that would

negatively affect justice on behalf of the deceased domestic violence client. The statutory privilege covering client/advocate communications terminates at the death of a domestic violence client.

v. Where an employee has had face-to-face contact with a child and has reasonable grounds to believe that a child is or has been abused either physically or sexually, a report of suspected child abuse must be made to the local Child Protective Services agency or the police. The report shall be made by telephone with a written report within 72 hours. The written report should contain:

a. The names and address of the minor and minor's parents or the person(s) having custody of the minor, if known. (The address of the shelter remains confidential.)

b. The minor's age and nature and extent of injuries or physical neglect, including any evidence of previous injuries or physical neglect.

c. Any other information that might be helpful in establishing the cause of the injury or physical neglect (ARS 13-3620).

d. The Executive Director or her delegate shall submit both the oral and written reports to Child Protective Services.

e. The information required by law to be in a report is only that information which is available at the time of making the report. The address of the shelter should not be given because it is legally "unavailable." The reporting agency is not required to complete an investigation before reporting. Information obtained after making the report, need not be disclosed.

f. If the battered woman is willing to report the abuse, herself, the agency will have complied with the requirement for reporting if they assist her in making that report. The agency personnel, however, should volunteer no information from the files when the battered woman is making the report herself, unless the battered woman asks the executive director or her delegate to disclose the information she has provided and signs a release of information therefore. Before the release is signed, the battered woman should review the documents in her file that might be sent to Child Protective Services and be given the opportunity to correct any misstatements made therein.

vi. When a client informs a worker that she intends to commit a violent crime, the information must be reported to the executive director (or her delegate) who may disclose the information to the appropriate legal authority, but the director or delegate should only report when she was not able to dissuade the client from pursuing the contemplated violent crime, where disclosure is reasonable, and where the executive director (or her delegate) believes that there is a substantial likelihood that the client will commit the violent crime. Disclosure may also be made to the identified, intended victim(s) where feasible. The executive director (or her delegate) will inform the client that she is taking this action. In short, the confidential client relationship does not protect a counselor from the responsibility to report the intent to commit a violent crime. Arizona statute requires that a mental health service provider shall release information if the patient has communicated to the mental health provider an explicit threat of imminent serious physical harm or death to a clearly identified or identifiable victim or victims, and the

patient has the apparent intent and ability to carry out the threat, and the provider fails to take reasonable precautions. The provider shall tell the intended victim, tell the police, initiate voluntary or involuntary hospitalization, or take other precautions (ARS 36-517.02). Case law has extended the reporting requirement to victims within the foreseeable area of danger.

vii. In domestic violence situations, disclosure may be made to another shelter/program in order to accomplish the transfer of a client or services for the client upon agreement by the client with a written release of information. This release may only be to other domestic violence programs under contract. Disclosure should only include the intake and service plan of the client, along with any court pleadings or orders.

viii. Participation on multi-disciplinary teams or with other human service agencies for the purpose of case management is constrained by the requirements of this policy and by statute.

ix. If the Center intends to use the story of any client in community education or external communication with enough particularity that a person outside the Center might identify the client thereby, the Center shall obtain written permission for the use of the story from the client, who may specify limitations on the scope and circumstance of Center usage thereof.

Responding To Subpoenas And Warrants **Organizational Preparation**

I. Review Record Keeping Procedure

Ask yourself these questions:

- A. What kinds of records are maintained?
- B. How much factual information is kept in the records?
- C. Do you need them for therapeutic reasons?
- D. Are statements taken verbatim from the victim and quotation marks used?
- E. What sources of money does your facility receive?
- F. What state and federal laws apply to you?
- G. What do the laws require?
- H. Which staff have confidentiality privileges by statute?

After you have answered these questions:

- I. Decide how and where files are kept.
- J. Decide who has access.
- K. Decide your retention and destruction policy.
- L. Decide when you will release information
- M. Revise record keeping policies.
- N. Review your forms.
- O. Train staff how to use new forms.

- P. Advise clients about policy.
- II. Designate a Custodian of Records who shall:
 - A. Maintain control over the records.
 - B. Bring the records to court.
 - C. Be the sole custodian designated, i.e. director.
 - D. Ensure conformity in procedures.
 - E. Ensure compliance with subpoena.
 - F. Keep track of number and types of subpoenas served.
 - G. Respond in established pattern.

Include in your policies that:

- H. If there is an administrative office separate from the shelter, the custodian should be at the administrative office.
- I. Use address of your attorney as agent of service.
- J. Only the custodian or person named on document can accept subpoenas and warrants.
- III. Develop a relationship with an attorney who:
 - A. Advises the program on its potential liability.
 - B. Is committed to the policy of the program.
- IV. Inform staff of policies and procedures:
 - A. Specifically spell out procedures.
 - B. Tell staff that only authorized persons can accept subpoenas.
 - C. Ensure that receptionist is well trained.
- V. Proceed on a case-by-case basis for each subpoena:
 - A. Never reveal information to any one who is serving the subpoena.
 - B. Do not answer any questions of process server.
- VI. Develop procedures:
 - A. Assess the impact records will have in court.
 - B. Secure the resident's consent before releasing records or testifying.
 - C. Have attorney explain to the client the effect of release.
 - D. Consider changing record keeping so that no confidential information is kept in the file.
 - E. Require all volunteers and staff workers to sign confidential agreements with the program.
 - F. Ensure that workers or volunteers who receive a subpoena contact the program immediately.

Remember that a subpoena, even one signed by a judge, is not the type of court order required by the federal or state confidentiality regulations. Therefore, the program should not release information in response to a subpoena.

- VII. Determine how far the program will go to challenge a subpoena:
 - A. Release nothing at all from the start.
 - B. Risk contempt citation and possible imprisonment.
 - C. Appear in court or at a hearing and assert a privilege.
 - D. Show records to the judge *in camera* but release nothing to the party requesting information.
 - E. Refuse release order and risk contempt.
 - F. Appeal confinement, if jailed, by writ of habeas corpus.
 - G. Publicize incarceration to garner community support.

- VIII. Take the appropriate legal actions:
 - A. File a Motion to Quash the subpoena.
 - B. Object to procedural defects with documents – e.g., incomplete, over broad, unclear, improperly served.
 - C. Insist that the information sought is confidential.
 - D. Learn why the records are sought and what use is intended.
 - E. Present testimony on critical importance of confidentiality to battered women.
 - F. Use litigation to educate judge on purpose of the program and why confidentiality is so essential.
 - G. If the Motion to Quash is unsuccessful, file a Motion for Protective Order.
 - H. Argue for partial protection to the records or scope of questions.
 - I. Ask for *In camera* review.
 - J. If both motions are unsuccessful, appeal with other organizations joining by *amicus curiae*.

- IX. Penalties for noncompliance with a subpoena:
 - A. Fines, imprisonment or both for failure to appear or destruction of subpoenaed records.
 - B. Confinement in jail until compliance.
 - C. Issuance of arrest warrant, confinement, no bail.
 - D. Fine of up to \$10,000.
 - E. Loss of federal funding.
 - F. Other federal penalties.
 - G. Civil action by client for violation of confidentiality or invasion of privacy or worse if client is injured or killed by perpetrator.

- X. When someone must take the witness stand:
 - A. Consult attorney immediately.
 - B. Prepare for questions most likely to be asked.
 - C. Listen carefully to the language of the questions.
 - D. Pause before answering – for objection.
 - E. Limit answer to what was asked.
 - F. Bring bail money, copies of policies and records to court.
 - G. Tell the truth.
 - H. Do not volunteer information.

- I. Do not show anger.
- XI. Responding to search warrants:
- A. Contact attorney immediately.
 - B. Give a copy of the federal regulation and state law to the officer(s) and explain that the program cannot allow access to patients or patient records without an appropriate court order.
 - C. If the officer does not respond, ask to contact the prosecuting attorney or commanding officer to repeat the argument, stressing that a court order is necessary and any records seized illegally would not be admissible in court.
 - D. Request that attorney be present during search.
 - E. Read search warrant carefully.
 - F. Argue that search is not the appropriate legal method of obtaining records.
 - G. Program workers should not consent or do anything that connotes consent.
 - H. Workers should not physically obstruct an officer from a search. Improper interference is interference with judicial process.
 - I. Two program workers should accompany the officer(s) during the search.
 - J. Document exactly what the officer(s) does during the search.
 - K. Take pictures or video the search.
 - L. Make sure the areas to be searched are specifically listed on the warrant and followed by the officers(s).
 - M. Make verbal objections, not physical.
- XII. Responding to an arrest warrant
- An arrest warrant does give law enforcement officials the right to search the facility. The program is not obligated to assist and should not name any individuals. As above, two staff should accompany the officer(s) and record their actions and statements.

Adapted from the Pennsylvania Coalition Against Domestic Violence in Protecting Confidentiality: A Legal Manual for Battered Women's Programs, The National Center on Women and Family Law, 1986.

State Statutes

13-3620. Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions

A. ~~Any physician, hospital intern or resident, surgeon, dentist, osteopath, chiropractor, podiatrist, county medical examiner, nurse, psychologist, school personnel, social worker, peace officer, parent, counselor, clergyman or priest or any other person having responsibility for the care or treatment of children whose observation or examination of any minor discloses reasonable grounds to believe ANY PERSON WHO REASONABLY BELIEVES that a minor is or has been the victim of PHYSICAL injury, sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212, death, abuse pursuant to section 8-201, CHILD ABUSE, A REPORTABLE OFFENSE or physical neglect which THAT appears to have been inflicted on that THE minor by other than accidental means or which THAT is not explained by the available medical history as being accidental in nature or who has reasonable grounds to believe REASONABLY BELIEVES there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant less than one year of age WHO IS protected under section 36-2281 shall immediately report or cause reports to be made of this information to a peace officer or to child protective services in the department of economic security, EXCEPT IF THE REPORT CONCERNS A PERSON WHO DOES NOT HAVE CARE, CUSTODY OR CONTROL OF THE MINOR, THE REPORT SHALL BE MADE TO A PEACE OFFICER ONLY. A clergyman MEMBER OF THE CLERGY, CHRISTIAN SCIENCE PRACTITIONER or priest who has received a confidential communication or a confession in that person's role as a clergyman MEMBER OF THE CLERGY, CHRISTIAN SCIENCE PRACTITIONER or a priest in the course of the discipline enjoined by the church to which the clergyman MEMBER OF THE CLERGY, CHRISTIAN SCIENCE PRACTITIONER or priest belongs may withhold reporting of the communication or confession if the clergyman MEMBER OF THE CLERGY, CHRISTIAN SCIENCE PRACTITIONER or priest determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations the clergyman MEMBER OF THE CLERGY, CHRISTIAN SCIENCE PRACTITIONER or priest may otherwise make of the minor. FOR THE PURPOSES OF THIS SUBSECTION, "PERSON" MEANS:~~

1. ANY PHYSICIAN, PHYSICIAN'S ASSISTANT, OPTOMETRIST, DENTIST, OSTEOPATH, CHIROPRACTOR, PODIATRIST, BEHAVIORAL HEALTH PROFESSIONAL, NURSE, PSYCHOLOGIST, COUNSELOR OR SOCIAL WORKER WHO DEVELOPS THE REASONABLE BELIEF IN THE COURSE OF TREATING A PATIENT.
2. ANY PEACE OFFICER, MEMBER OF THE CLERGY, PRIEST OR CHRISTIAN SCIENCE PRACTITIONER.
3. THE PARENT, STEPPARENT OR GUARDIAN OF THE MINOR.
4. SCHOOL PERSONNEL OR DOMESTIC VIOLENCE VICTIM ADVOCATE WHO DEVELOP THE

REASONABLE BELIEF IN THE COURSE OF THEIR EMPLOYMENT.

5. ANY OTHER PERSON WHO HAS RESPONSIBILITY FOR THE CARE OR TREATMENT OF THE MINOR.

B. A report is not required under this section for conduct prescribed by sections 13-1404 and 13-1405 if the conduct involves only minors ~~age~~ WHO ARE fourteen, fifteen, sixteen or seventeen YEARS OF AGE and there is nothing to indicate that the conduct is other than consensual.

C. IF A PHYSICIAN, PSYCHOLOGIST OR BEHAVIORAL HEALTH PROFESSIONAL RECEIVES A STATEMENT FROM A PERSON OTHER THAN A PARENT, STEPPARENT, GUARDIAN OR CUSTODIAN OF THE MINOR DURING THE COURSE OF PROVIDING SEX OFFENDER TREATMENT THAT IS NOT COURT ORDERED OR THAT DOES NOT OCCUR WHILE THE OFFENDER IS INCARCERATED IN THE STATE DEPARTMENT OF CORRECTIONS OR THE DEPARTMENT OF JUVENILE CORRECTIONS, THE PHYSICIAN, PSYCHOLOGIST OR BEHAVIORAL HEALTH PROFESSIONAL MAY WITHHOLD THE REPORTING OF THAT STATEMENT IF THE PHYSICIAN, PSYCHOLOGIST OR BEHAVIORAL HEALTH PROFESSIONAL DETERMINES IT IS REASONABLE AND NECESSARY TO ACCOMPLISH THE PURPOSES OF THE TREATMENT.

D. Reports shall be made ~~forthwith~~ IMMEDIATELY by telephone or in person ~~forthwith~~ and shall be followed by a written report within seventy-two hours. The reports shall contain:

1. The names and addresses of the minor and the minor's parents or the person or persons having custody of the minor, if known.
2. The minor's age and the nature and extent of the minor's ~~injuries~~ ABUSE, CHILD ABUSE, PHYSICAL INJURY or ~~physical~~ neglect, including any evidence of previous ~~injuries~~ ABUSE, CHILD ABUSE, PHYSICAL INJURY or ~~physical~~ neglect.
3. Any other information that the person believes might be helpful in establishing the cause of the ABUSE, CHILD ABUSE, PHYSICAL injury or ~~physical~~ neglect.

~~B-~~ E. A health care professional who is regulated pursuant to title 32 and ~~whose~~ WHO, AFTER A routine newborn physical assessment of a newborn infant's health status or ~~whose~~ FOLLOWING notification of positive toxicology screens of a newborn infant ~~gives the professional reasonable grounds to believe,~~ REASONABLY BELIEVES that the newborn infant may be affected by the presence of alcohol or a ~~substance prohibited by chapter 34 of this title~~ DRUG LISTED IN SECTION 13-3401 shall immediately report this information, or cause a report to be made, to child protective services in the department of economic security. For the purposes of this subsection, "newborn infant" means a newborn infant who is under thirty days of age.

~~C-~~ F. Any person other than one required to report or cause reports to be made ~~in~~ UNDER subsection A of this section who ~~has reasonable grounds to believe~~ REASONABLY BELIEVES that a minor is or has been a victim of abuse, CHILD ABUSE, PHYSICAL INJURY, A REPORTABLE OFFENSE or neglect may report the information to a peace officer or to child protective services in the department of economic

security, EXCEPT IF THE REPORT CONCERNS A PERSON WHO DOES NOT HAVE CARE, CUSTODY OR CONTROL OF THE MINOR, THE REPORT SHALL BE MADE TO A PEACE OFFICER ONLY.

~~D.~~ G. A person ~~having~~ WHO HAS custody or control of medical records of a minor for whom a report is required or authorized under this section shall make the records, or a copy of the records, available to a peace officer or child protective services worker investigating the minor's neglect, CHILD ABUSE, PHYSICAL INJURY or abuse on written request for the records signed by the peace officer or child protective services worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.

~~E.~~ H. When ~~such~~ telephone or in-person reports are received by ~~the~~ A peace officer, ~~they~~ THE OFFICER shall immediately notify child protective services in the department of economic security and make the information available to them. Notwithstanding any other statute, when child protective services receives these reports by telephone or in person, it shall immediately notify a peace officer in the appropriate jurisdiction.

~~F.~~ I. Any person WHO IS required to receive reports pursuant to subsection A of this section may take or cause to be taken photographs of the ~~child~~ MINOR and the vicinity involved. Medical examinations ~~including, but not limited to, radiological examinations~~ of the involved ~~child~~ MINOR may be performed.

~~G.~~ J. A person ~~furnishing~~ WHO FURNISHES a report, information or records required or authorized under this section, or a person ~~participating~~ WHO PARTICIPATES in a judicial or administrative proceeding or investigation resulting from a report, information or records required or authorized under this section, ~~shall be~~ IS immune from any civil or criminal liability by reason of ~~such~~ THAT action unless the person acted with malice or unless the person has been charged with or is suspected of abusing or neglecting the child or children in question.

~~K.~~ Except as ~~provided in subsection H of this section, the physician-patient privilege, the husband-wife privilege or any privilege except the attorney-client privilege, provided for by professions such as the practice of social work or nursing covered by law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any~~ FOR THE ATTORNEY CLIENT PRIVILEGE OR THE PRIVILEGE UNDER SUBSECTION L OF THIS SECTION, NO PRIVILEGE APPLIES TO ANY:

1. Civil or criminal litigation or administrative proceeding in which a ~~child's~~ MINOR'S neglect, dependency, abuse, CHILD ABUSE, PHYSICAL INJURY or abandonment is an issue. ~~nor in any~~
2. Judicial or administrative proceeding resulting from a report, information or records submitted pursuant to this section. ~~nor in any~~
3. Investigation of a ~~child's~~ MINOR'S CHILD ABUSE, PHYSICAL INJURY, neglect or abuse conducted by a peace officer or child protective services in the department of economic security.

~~H.~~ L. In any civil or criminal litigation in which a child's neglect, dependency, PHYSICAL INJURY,

abuse, CHILD ABUSE or abandonment is an issue, a ~~clergyman~~ MEMBER OF THE CLERGY, A CHRISTIAN SCIENCE PRACTITIONER or A priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a ~~clergyman~~ MEMBER OF THE CLERGY, A CHRISTIAN SCIENCE PRACTITIONER or a priest in the course of the discipline enjoined by the church to which he belongs. Nothing in this subsection discharges a ~~clergyman~~ MEMBER OF THE CLERGY, A CHRISTIAN SCIENCE PRACTITIONER or A priest from the duty to report pursuant to subsection A of this section.

~~I~~ M. If psychiatric records are requested pursuant to subsection ~~D~~-G of this section, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:

1. Personal information about individuals other than the patient.
2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.

~~J~~ N. If any portion of a psychiatric record is excised pursuant to subsection ~~I~~-M of this section, a court, upon application of a peace officer or child protective services worker, may order that the entire record or any portion of the record ~~containing~~ THAT CONTAINS information relevant to the reported abuse, CHILD ABUSE, PHYSICAL INJURY or neglect be made available to the peace officer or child protective services worker investigating the abuse, CHILD ABUSE, PHYSICAL INJURY or neglect.

~~K~~ O. A person who violates this section is guilty of a class 1 misdemeanor, EXCEPT IF THE FAILURE TO REPORT INVOLVES A REPORTABLE OFFENSE, THE PERSON IS GUILTY OF A CLASS 6 FELONY.

P. FOR THE PURPOSES OF THIS SECTION:

1. "ABUSE" HAS THE SAME MEANING PRESCRIBED IN SECTION 8-201.
2. "CHILD ABUSE" MEANS CHILD ABUSE PURSUANT TO SECTION 13-3623.
3. "NEGLECT" HAS THE SAME MEANING PRESCRIBED IN SECTION 8-201.
4. "REPORTABLE OFFENSE" MEANS ANY OF THE FOLLOWING:
 - (a) ANY OFFENSE LISTED IN CHAPTERS 14 AND 35.1 OF THIS TITLE OR SECTION 13-3506.01.
 - (b) SURREPTITIOUS PHOTOGRAPHING, VIDEOTAPING, FILMING OR DIGITALLY RECORDING OF A MINOR PURSUANT TO SECTION 13-3019.
 - (c) CHILD PROSTITUTION PURSUANT TO SECTION 13-3212.
 - (d) INCEST PURSUANT TO SECTION 13-3608.

13-3806. Duty of physician or attendant upon treating certain wounds;
classification

A. A physician, surgeon, nurse or hospital attendant called upon to treat any person for gunshot wounds, knife wounds or other material injury which may have resulted from a fight, brawl, robbery or other illegal or unlawful act, shall immediately notify the chief of police or the city marshal, if in an incorporated city or town, or the sheriff, or the nearest police officer, of the circumstances, together with the name and description of the patient, the character of the wound and other facts which may be of assistance to the police authorities in the event the condition of the patient may be due to any illegal transaction or circumstances.

B. Any violation of the provisions of this section by a physician, surgeon, nurse or hospital attendant, is a class 3 misdemeanor.

GLOSSARY

Arrest warrant: n. a judge's order to law enforcement officers to arrest and bring to jail a person charged with a crime, also called a warrant of arrest.

Compulsory process: a court order or subpoena that compels someone or an agency to turn over papers or appear at a hearing.

Confidential: information that shall not be disclosed except under named conditions.

Discoverable: either information on compensation, restitution, or exculpatory material.

Exculpatory: adj. applied to evidence which may justify or excuse an accused defendant's actions and which will tend to show the defendant is not guilty or has no criminal intent.

In camera: adj. or adv. phrase. Latin for "in chambers." -- a hearing or discussions with the judge in the privacy of chambers (office rooms).

Incapacitated adult: someone judged in a court hearing to be incapable of handling one's own affairs based upon state standards, usually including mental illness, chronic intoxication, or incompetence due to various causes including advanced age, physical illness or disability.

Perjury: n. the crime of intentionally lying after being duly sworn (to tell the truth) by a notary public, court clerk or other official.

Privileged communication: n. statements and conversations made under circumstances of assured confidentiality that must not be disclosed except under certain circumstances.

Search warrant: n. a written order by a judge that permits a law enforcement officer to search a specific place (e.g. 112 Magnolia Avenue, Apartment 3, or a 1991 Pontiac, Texas license number 123ABC) and identifies the persons (if known) and any articles intended to be seized.

Subpoena: n. an order of the court for a witness to appear at a particular time and place to testify and/or produce documents in the control of the witness.

Third party: n. a person who is not a party to a contract or a transaction, but has an involvement.

Vulnerable adult: an individual who is 18 or older who is unable to protect himself/herself from abuse, neglect or exploitation by others because of a physical or mental impairment (ARS 46-451 (A)(10)).