



STOP and think before you allow any entry into the program by emergency responders, law enforcement, process servers, Office of Children's Services employees, guardians ad litem/child custody investigators or other outside individuals or agencies.

Unless there is a civil, criminal, or administrative proceeding occurring the only exceptions for state and federal confidentiality laws includes mandatory reporting with child and vulnerable adult abuse and an immediate life threatening safety risk to the program participant or program staff. For confidentiality questions when there is a civil, criminal, or administrative proceeding occurring contact the Legal Advocacy Project at 1-800-914-7867.

ALWAYS INFORM YOUR EXECUTIVE DIRECTOR IF YOU RECEIVE A SUBPOENA OR IF LAW ENFORCEMENT ARRIVES WITH A SEARCH OR ARREST WARRANT!

Four Protocols

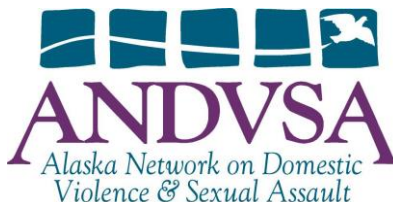
Protocol for Subpoenas and Court Orders

Protocol for Emergency Responders

Protocol for Law Enforcement Child Custody Orders

Protocol for Law Enforcement Search Warrants and Arrest Warrants

Call ANDVSA Legal Advocacy Project for Help with Confidentiality Concerns
1-800-914-STOP (7867) Juneau



Updated July 2012

CONFIDENTIALITY PROTOCOLS

Property of ANDVSA

Protocol for Subpoenas

1. Identify what type of subpoena you have received? Is it a CINA (Child in Need of Aid) subpoena received from AK Attorney General's Office?, civil divorce or custody case, criminal case, or other?
2. **Always call the LAP 1-800-914-7867 or 1-888-520-BONO if you have questions or need help.** Remember you cannot ignore a subpoena or court order and could be held in contempt of court if you do not respond in a timely manner. You cannot destroy or alter any records in response to a subpoena so make sure you are following good record keeping practices before you receive one.
3. Is the subpoena requesting records and/or staff testimony on a certain date? When is that date?
4. Does the subpoena specifically list the domestic violence/sexual assault program by name and what type of information is it requesting? It may be outside the scope of program services.
5. Do you have a record on the person listed in the subpoena? **(Remember it is important to have a uniform response to subpoenas even if you have never had contact with the person listed. If you say you don't have a record in some cases it will indicate when you have records with a program participant violating state and federal confidentiality laws.)**
6. Uniform Response: ***"The program cannot confirm or deny whether the person has had contact with the agency and the information requested is protected under state and federal confidentiality laws unless we get a release of information from the program participant or there is a signed court order (not just a subpoena) from the judge requesting the program provide the information or testimony."***
7. If you have a record, immediately contact program participant and let them know about the subpoena and find out if they want you to release the requested record and/or testify on their behalf.
8. If appropriate ask for a release of information to talk with their attorney and explain the program's policies on protecting confidentiality and release of information protocol.
9. If program participant provides informed written consent then their record may be released and/or staff may testify in the proceeding. It is important if staff is planning to testify in a court proceeding that they are prepared for their testimony and they limit their testimony to information that is specific and necessary to the proceeding. Call the LAP for more assistance on testifying in court. Also remember to obtain an interpreter for Limited English Proficient (LEP) victims in order for their release to be knowing and voluntary. The LAP will pay for interpreters through the Alaska Immigration Justice Project (AIJP) Language Interpreter Center. Call Barb Jacobs with LIC at (907) 297-2761 for arranging an interpreter.
10. If program participant does not want their record released or staff to testify than program response depends on the type of proceeding. AK has a semi-absolute confidentiality privilege for communications between a victim and their advocate. CINA cases are one exception to AK's victim/advocate confidentiality privilege. In those types of cases the program can ask for in-camera review requesting the judge to review the shelter file and only release information to all parties that is relevant and necessary to the proceeding. Other types of proceedings such as civil divorce or custody or criminal proceedings do not have a specific exception to AK's victim/advocate testimonial privilege and the program can file a motion to quash the subpoena.
11. The ANDVSA Legal Advocacy Project attorneys can walk you through on how to respond to a subpoena from the court requesting confidential program participant records or staff testimony. They also have sample letters requesting in-camera review from the court and sample motions to quash the subpoena.

Protocol for Court Orders Signed by a Judge

1. Identify what type of proceeding is going on with the court order you received? Is it signed by a judge? Is it a court order from a CINA (Child in Need of Aid) proceeding, civil divorce or custody case, criminal case, or other?
2. **Always call the LAP if you have questions or need help.** Remember you cannot ignore a court order and could be held in contempt of court if you do not respond in a timely manner. You cannot destroy or alter any records in response to a court order so make sure you are following good record keeping practices before you receive one.
3. Is the court order requesting records and/or staff testimony on a certain date? When is that date?
4. Does the court order specifically list the domestic violence/sexual assault program by name and what type of information is it requesting? It may be outside the scope of program services. Some court orders list several different agencies within the community the person may have worked with and ask for drug counseling or psychological records which DV/SA programs do not have.
5. Do you have a record on the person listed in the court order? **(Remember it is important to have a uniform response to court orders even if you have never had contact with the person listed. If you say you don't have a record in some cases it will indicate when you have records with a program participant violating state and federal confidentiality laws.)**
6. Uniform Response: ***"The program cannot confirm or deny whether the person has had contact with the agency and the information requested is protected under state and federal confidentiality laws unless we get a release of information from the program participant or there is a signed court order (not just a subpoena) from the judge requesting the program provide the information or testimony."***
7. If you have a record, immediately contact program participant and let them know about the court order and find out if they want you to release the requested record and/or testify on their behalf.
8. If appropriate ask for a release of information to talk with their attorney and explain the program's policies on protecting confidentiality and release of information protocol. (Never take the original program file to court. The program must maintain the original file for at least three years from the last date of service to the program participant. Copies of the program record should be made for the court and/or program participant if they are going to be released.)
9. If program participant provides informed written consent then their record may be released and/or staff may testify in the proceeding. It is important if staff are planning to testify in a court proceeding that they are prepared for their testimony and they limit their testimony to information that is specific and necessary to the proceeding. Call the LAP for more assistance on testifying in court. Also remember to obtain an interpreter for Limited English Proficient (LEP) victims in order for their release to be knowing and voluntary. The LAP will pay for interpreters through the Alaska Immigration Justice Project (AIJP) Language Interpreter Center. Call Barb Jacobs with LIC at (907) 297-2761 for arranging an interpreter.
10. If program participant does not want their record released or staff to testify than program response depends on the type of proceeding. AK has a semi-absolute confidentiality privilege for communications between a victim and their advocate. CINA cases are one exception to AK's victim/advocate confidentiality privilege. In those types of cases the program can ask for in-camera review requesting the judge to review the shelter file and only release information to all parties that is relevant and necessary to the proceeding. Other types of proceedings such as civil divorce or custody or criminal proceedings do not have a specific exception to AK's victim/advocate testimonial privilege and the program can file a motion to quash the court order.

Protocol for Emergency Responders

- 1.** Develop protocol response in advance with local emergency responders including fire department and local and state law enforcement on how they will respond to health and fire emergencies. This could include an optional duress code to verify the identity of bona fide responders. Optional: Duress code for this month/year _____ is _____.
- 2.** Emergency responder shows up at program in response to 911 call from program staff.
- 3.** Is this an Emergency or Non-Emergency situation?
- 4.** Emergency Situation: The more serious the exigent circumstances than emergency responders such as fire fighters, paramedics or law enforcement should be allowed immediate entry. An emergency situation could include: a serious life-threatening safety risk such as a medical condition (heart attack, choking, seizure), fire within the building, or assault with a deadly weapon within the program. A non-emergency situation could include allegations that someone is using drugs within the program, theft or fights within the program. If possible even in an emergency situation, staff should try to notify other program participants in advance about emergency responder coming into program to minimize breach of confidentiality. If advance notice is not possible to other program participants than letting them know after entry is still important. In a non-emergency situation the executive director should be contacted immediately and emergency responders not allowed immediate access to the program.
- 5.** Emergency responder shows up at program in response to 911 call from unknown source. Program staff response will depend on type of situation. Is it emergency or non-emergency? Program staff should allow immediate access for an emergency situation such as immediate life threatening safety risk or fire in the building.
- 6.** In the case of non-emergency situation staff shall prioritize protecting confidentiality of all program participants while cooperating with emergency responder to ensure safety of program participants.
- 7.** Only authorized program staff shall answer program phone and door. In an emergency situation program staff may direct a program participant to answer the program phone or door.

Protocol for Search Warrants and Arrest Warrants

- 1.** Carefully review the type of warrant being served by law enforcement. What type of warrant is being served on the program? Is it a search warrant or arrest warrant? Immediately contact the program Executive Director about the warrant and explain to law enforcement your protocol. *“Please wait here (outside the shelter door) while I go get our Executive Director. She is the only one authorized to accept the warrant and allow any entry into the program due to strict state and federal confidentiality laws that our program is required to follow.”*
- 2.** Do not let law enforcement enter the premises before first checking with the program’s Executive Director, or Executive Director’s Designee, and/or program attorney. Staff should explain to law enforcement that only the Executive Director or her designee are authorized to accept the warrant and allow entry into the program.
- 3.** Do not allow access by Homeland Security into the program. Request that they wait outside while you immediately contact your Executive Director, the LAP, and Alaska Immigration Justice Project at (907) 279-AIJP (2457) for assistance if Homeland Security wants entry into the DV/SA program.
- 4.** Staff can call the Legal Advocacy Project for immediate help at 1-800-914-STOP (7867) Juneau or 1-888-520-BONO (2666) Sitka.
- 5.** Immediately notify the program participant about the warrant and that law enforcement is waiting at the premises or have called about the warrant. Explain her legal rights and options and give her the opportunity to voluntarily give herself up to law enforcement. Most victims have very few options when there is an arrest warrant for them and they will likely work with an advocate to give themselves up to law enforcement and avoid a search of the premises violating other program participant’s confidentiality.
- 6.** If the program participant refuses to give themselves up to law enforcement and poses a significant safety risk to other program participants based on details in the search or arrest warrant the executive director may have to allow entry into the program while trying to minimize breach of other program participant’s confidentiality.

What is the difference between a search warrant and arrest warrant? **A search warrant** is a written order, issued by a judge or magistrate in the name of the state, directed to a peace officer of the state commanding her or him to search the person or place named for the property or person specified in the warrant. A search warrant can also be issued by the federal government. A search warrant says what crime the police believe has been committed and what can be seized. There are very few circumstances where a search warrant would be served on domestic violence and sexual assault program. If a search warrant is served at a program it would probably be for physical evidence, such as clothing or a weapon, believed to be connected with a crime. Records are not often considered "fruits" or instrumentalities of a crime. A search warrant could also be issued to allow entry by law enforcement into the shelter to arrest someone inside. **An arrest warrant** is a written order, issued by a judge or magistrate in the name of the state, directed to a peace officer, commanding her or him to arrest a specified person for a crime for which there is probable cause. An arrest warrant can also be issued by the federal government. An arrest warrant does not give law enforcement authority to search program premises. However, law enforcement will get a search warrant if they believe a wanted person is at the program.

Protocol for Law Enforcement Enforcing a Child Custody Order

Law enforcement may show up at the DV/SA program with an Alaska custody order signed by a judge as part of a child custody/divorce proceeding. Temporary child custody can also be granted in a domestic violence protective order. A writ of assistance as part of a domestic violence protective order gives law enforcement the authority to help obtain custody of the minor children named in the order.

- 1.** Only the executive director or her designee is authorized to accept the order and allow access into the program. Immediately notify the DV/SA program Executive Director about the child custody order as well as your program attorney. You can also contact the Legal Advocacy Project for immediate assistance.
- 2.** Explain this protocol to law enforcement and that the program is required to follow strict federal and state confidentiality laws regarding victims receiving services in the program. For example: ***“Please wait here (outside the shelter door) while I go get our Executive Director. She is the only one authorized to accept the child custody order and allow any entry into the program due to strict state and federal confidentiality laws that our program is required to follow. Our intention is to comply with the order but we need to follow our confidentiality procedures and verify the order.”***
- 3.** Make sure to get a copy of the order. Carefully check the order to see what names are listed, date of issuance, who signed it?
- 4.** Immediately notify the program participant about the child custody order and that law enforcement are waiting at the premises or have called about the order. Explain her legal rights and options and give her the opportunity to voluntarily talk with law enforcement and/or give her children to law enforcement as directed in the court order.
- 5.** Do not allow law enforcement access into to the program without a search warrant. However, a writ of assistance as part of a domestic violence protective order authorizes law enforcement to enter any location where they have probable cause to believe the children may be found.
- 6. Most importantly! Encourage the program participant to talk with an attorney as soon as possible. Immediately make a referral to the LAP Pro Bono Program if appropriate.**