Frequently Asked Legal Questions

A Manual for Oregon's Domestic and Sexual Violence Advocates

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This manual is not a substitute for legal advice. It is designed to serve as a general reference guide to Oregon state (and, where relevant, select federal) laws, and to provide information on issues frequently affecting Oregon's sexual and domestic violence programs and the survivors and participants they serve.

Nothing in this manual should be construed or relied upon as legal advice. If you, your organization, or a participant in your program need legal advice, please consult an attorney.

The information provided here is current as of July 2015. Because laws and regulations are subject to change, you should confirm that the information in the manual is current before you rely on it definitively for any purpose.

The Oregon Coalition Against Domestic and Sexual Violence (OCADSV) is not liable for any direct, indirect, special, incidental, or consequential damages arising out of the use of the material in this manual.

A Note on Terminology: In this manual, we use the terms "participant," "survivor," and "victim" interchangeably. We recognize, however, that a program participant might be someone other than a survivor (*e.g.,* a victim's parent, partner, child, etc.). Where this distinction is significant, we rely on the terms "victim" and "survivor." We also recognize that, while the data tell us that women are the overwhelming majority of victims and most perpetrators are men, victims and perpetrators may be any sex, gender identity, sexual orientation or preference.

This project was funded by the Office on Violence Against Women (OVW) Recovery Act Grant 2009-EU-S6-0064 and VRLC's OVW grant 2013-TA-AX-KO18. The opinions, findings, conclusions, and recommendations expressed in this publication are the views of the Oregon Coalition Against Domestic and Sexual Violence, and do not necessarily reflect the official position or policies of the Office on Violence Against Women or the U.S. Department of Justice.

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Introduction

This manual is a publication of the Oregon Coalition Against Domestic and Sexual Violence ("OCADSV" or the "Coalition"). It was created to help meet advocates' need for a statewide reference and resource to address commonly asked legal questions. This manual includes questions submitted to the Coalition by advocates and other service providers from across the state. The information in this manual is not legal advice and should not be applied to specific circumstances. If you need case-specific legal advice, consult with an attorney.

What if you don't see your question in this manual?

Most of the questions submitted to the manual do not appear exactly as they were submitted. If you submitted a question and don't see it here, the answer to your question is likely contained within the answer to a similar or related question. If you have additional questions, we invite you to contact OCADSV.

CHAPTER I. Protecting Survivor Confidentiality: Considerations and Limitations

Confidentiality is a cornerstone of successful advocacy. Survivors rely on advocacy programs to guard and protect their private information; it is key to their sense of safety and autonomy. Confidentiality is also key to programs' ability to build trust within their community, and to be a resource for future and potential participants in need.

In the past, domestic violence (DV) and sexual assault (SA) providers in Oregon could not guarantee confidentiality to those they served because there was no advocate privilege or advocate confidentiality under state law. In October 2015, however, a new law went into effect establishing confidentiality and an absolute privilege for certified advocates working for a qualifying victim services program. Absolute privilege means there is, in almost every case, a non-rebuttable presumption that communications between a victim and a "certified advocate" working for a "qualified victim services program" are privileged and confidential, and neither the advocate nor documents relating to the services the advocate provided may be ordered produced in court without the victim's consent. Note: The new laws do not change Oregon's mandatory reporting laws.

This chapter addresses survivors' privacy rights, summarizes Oregon's new confidentiality and advocate privilege statutes, outlines the confidentiality provisions of the Violence Against Women Act (VAWA) which apply to VAWA-funded entities, and offers suggestions for how programs and providers can maximize confidentiality for program participants. It also identifies some confidentiality limitations, such as mandatory reporting requirements.

A. Considerations for an Agency Privacy Policy

Our agency doesn't have a comprehensive confidentiality policy. What should such a policy contain?

An agency should have confidentiality policies for both volunteer and paid staff ("staff") and program participants.

Staff / program policy: The agency's employee confidentiality policy should apply to – and be signed by – agency staff, volunteers, contractors, and other individuals who may have access to participants' personal information. This includes contractors off-site who have access to the program's computers (server, offsite back-ups, etc.). The employee policy should explain what constitutes "personally identifying information," why it may not to be shared, and the sanctions for violating the agency's policy, including potential liability under state or federal law. If board members have access to participants' personal information they should sign confidentiality agreements, too. As a general rule, however, there is no reason a board member should have access to this information.

Your organization's confidentiality policy should address individuals' use of personal and/or portable electronic devices such as home computers, cell phones, tablets, etc. This includes what staff are required to do to protect the confidentiality of survivor and program information accessed or stored on these devices. See Appendix A for the Victim Rights Law Center's sample list of policies to consider (reprinted here with permission).

Another programmatic policy issue to consider is whether your organization needs – and if so how you will implement – internal protocols to prevent disclosure of participants' confidential information program among staff when privacy obligations dictate that information not be shared. This is especially important in multi-service agencies or in organizations where some but not other staff are privileged or some but not all staff are mandated to report certain types of abuse.

Participants' policy: A separate confidentiality policy and agreement should be in place to inform participants whether, how, and to what extent the agency will keep their personal information private. The policy should explain, in simple terms, what information the organization is required to report under state or federal law, what information is confidential, and what information / with whom communications are protected by privilege. The policy should include a summary of what steps the agency will take if (a) abuse must be reported and (b) a staff member or a participant's records are subpoenaed. It is also helpful to include here information about the agency's document destruction policy.

A template for drafting an Oregon-specific confidentiality policy can be downloaded at the OCADSV website: www.ocadsv.org. (The template was adapted from materials developed by Julie Field in partnership with NNEDV's Safety Net Project.)[i] The template is intended to serve as a starting point for developing your own agency's confidentiality policies including responding to subpoenas and warrants, reporting child, elder and vulnerable adult abuse and neglect, and the governing state and federal laws. You may want to revise it to be more accessible for individuals with limited literacy or whose first language is not English. (The Victim Rights Law Center has a more recent, OVW-approved bilingual (Spanish-English) release form that can serve as a model for your agency.)

B. Privileged Versus Confidential Communications

What is a confidential communication or document?

A confidential communication is a statement made under circumstances demonstrating that the survivor intends for the words or conversation to be heard only by the person the survivor is addressing. As a general rule, when a communication is "confidential" there may be an ethical but not necessarily a legal obligation to keep the information private. This is not the case for advocates in Oregon, however. In this state, the law specifically protects as confidential communications between or documents created or received on behalf of a victim and a certified advocate. Oregon Revised Statute (ORS) 147.600 states that "without the written, informed consent of the victim that is reasonably limited in duration, a certified advocate or a qualified victim services program may not disclose: (a) Confidential communications between a victim and the certified advocate or qualified victim services program made in course of safety planning, counseling, support, or advocacy services [and] (b) Records that are created or maintained in the course of providing services regarding the victim." ORS 147.600(2). The statute defines who is a "certified advocate" and a "qualified victim services program."

What are privileged communications or documents?

A "privilege" is a rule of evidence that creates the presumption that certain information is not admissible in court. It may apply to testimony and/or to documents. The purpose of a privilege is to encourage and promote honest communications between two individuals for whom privacy is considered especially important. Because of the heightened respect for privacy, neither the protected party (*i.e.*, the person receiving services or sharing the information) nor the service provider may be forced to disclose communications or produce documents without the privilege holder's consent. In the context of professional relationships, the privilege holder is the person who is seeking, or receives, services; for OCADSV programs it is the participant / survivor.

C. Advocate Privilege in Oregon

Is there advocate privilege in Oregon?

Yes! Previously, there was no advocate privilege in Oregon. This changed, however, in 2015 when the Oregon Legislative Assembly passed a new law that established victim-advocate privilege in this state. The new statute, Oregon Revised Statute (ORS) 40.264, states that, as a matter of law, communications between victims and the advocates who serve them are considered confidential. With few exceptions, they may be disclosed only with the victim's consent. ORS 40.264 provides that "a victim has a privilege to refuse to disclose and to prevent any other person from disclosing: (a) Confidential communications made by the victim to a certified advocate in the course of safety planning, counseling, support or advocacy services and (b) Records that are created or maintained in the course of providing services regarding the victim." The privilege statute is distinct from and in addition to the confidentiality provisions discussed above and below.

Note that the statute is not limited to communications with an individual victim, but more generally "regarding the victim," and so may include an advocate's communications with a survivor's parent, partner, spouse, other provider, etc.

In addition to the victim-advocate privilege,[ii] other common evidentiary privileges in Oregon include attorney-client,[iii] psychotherapist-patient,[iv] physician- patient,[v] nurse-patient,[vi] school employee-student,[vii] between spouses,[viii] clergy-penitent,[ix] and counselor-client.[x]

What is the difference between "privileged" and "confidential" communications or documents?

Oregon has two separate laws: ORS 40.264 is the "certified advocate-victim privilege" statute and ORS 147.600 addresses "confidentiality of certain victim communications and records." Privilege is an evidentiary rule (*i.e.*, a provision under the Rules of Evidence). Advocate-victim privilege in Oregon applies in civil, criminal, administrative, and post-secondary school disciplinary proceedings. Confidentiality will apply in non-legal proceedings.

In what circumstances does the new advocate privilege law apply?

As noted above, Oregon's new advocate-victim privilege law applies in civil, criminal and administrative hearings as well as in school disciplinary hearings conducted at any post-secondary school that receives an Oregon Opportunity Grant. This includes 2- and 4-year colleges, technical / vocational schools, etc. The law is silent as to whether it extends to disciplinary hearings at middle and high schools. Because the statute specifically references post-secondary schools, though, it appears that the protections do not apply to school hearings involving students in younger grades.

Are all advocates covered by the new privilege and confidentiality law?

No, it only applies to certain advocates. The confidentiality and privilege protections apply to all "certified advocates." The term "certified advocate" is defined by statute. A certified advocate "is an employee or a volunteer of a qualified victim services program" who has completed 40 hours of training approved by the Attorney General's Office (through its rulemaking power) in how to advocate for victims of domestic violence, sexual assault and/or stalking. The 40-hour training must include two (2) hours specifically on Oregon's new confidentiality and privilege laws.

Are there specific topics the required 40 hours must address for an advocate to be certified?

Yes. The Oregon Administrative Rules (OARs) detail what the 40-hour advocate training must address for an advocate to be certified. OAR 137-085-0080 sets forth the training requirements. It states that the training must include at least 26 hours covering each of the following topics:

a. Dynamics of domestic violence;
b. Dynamics of sexual assault;
c. Dynamics of stalking;
d. Anti-oppression, anti-racism, cultural competency theory and practice;
e. Effects of trauma on survivors and family members;
f. Adults molested as children;
g. Effects of exposure to violence on children;
h. Dynamics of domestic violence abusers;
i. Dynamics of sexual offenders;
j. Vicarious traumatization and self-care;
k. Advocacy and crisis response;
l. Confidentiality and privilege;
m. Advocacy skills; and
n. Working with system-based providers and other service providers.[xi]

In addition, the training must include at least "an additional 12 hours regarding SANE exams, court accompaniment, working with law enforcement, support group facilitation, shelter intake, working with children, campus response, or other topics as approved by the Crime Victim Services Division of the [Oregon] Department of Justice."[xii] The Rule specifically requires that, for an advocate to be certified, "[a]t least 2 hours of the [40-hour] training shall focus on confidentiality and privilege, the Violence Against Women Act [VAWA], and other funding requirements relating to confidentiality, the provisions set forth in [House Bill] 3476 [the legislation establishing advocate privilege and confidentiality, now codified at ORS 40.264 and ORS 147.600, respectively]."[xiii]

Do advocates who worked or volunteered for a community-based victim service agency before the advocate privilege and confidentiality laws went into effect still have to complete the required 40-hour training to be certified?

If the staff person previously completed a 40-hour training consistent with the training required by Oregon DHS or Oregon DOJ contracts, the advocate may be certified after completing an additional two (2) hours of training on the new advocate privilege and confidentiality laws. Specifically, OAR 137-085-0070(6) states that, "A person employed at or volunteering with a qualified victim services program who completed 40 hours of training before October 1, 2015 [the date the new laws went into effect], that is substantially similar to training requirements described in contracts between such programs and the Department of Justice or Department of Human Services, is a certified advocate at such time as the person completed an additional 2 hours of training on confidentiality, advocate privilege, and HB 3476 as described in subsection (5) of this rule."[xiv]

What is a "qualified victim services program?"

ORS 40.264 defines a "qualified victim services program" as one of the following: A) A nongovernmental, nonprofit, community-based program receiving moneys administered by the state Department of Human Services or the Oregon or United States Department of Justice that offers safety planning, counseling, support or advocacy services to victims of domestic violence, sexual assault or stalking; or (B) A sexual assault center, victim advocacy office, women's center, student affairs center, health center or other program providing safety planning, counseling, support or advocacy services to victims that is on the campus of or affiliated with a two- or four-year post-secondary institution that enrolls one or more students who receive an Oregon Opportunity Grant." [xv] Oregon's new law is unique in that it covers programs based on college campuses. Advocate privilege in other states does not typically extend to such programs.

Who is a "victim" under the new law?

Both the advocate-victim confidentiality and privilege statutes define a victim as "a person seeking safety planning, counseling, support or advocacy services related to

domestic violence, sexual assault, or stalking at a qualified victim services program."[xvi]

What kinds of records or communications are protected by the new advocate privilege law?

The new law applies to "confidential communications made by the victim to a certified advocate in the course of safety planning, counseling, support or advocacy services."[xvii] It also applies to "records that are created or maintained in the course of providing services regarding the victim."[xviii]

What kinds of records or communications are protected by the new advocate confidentiality law?

The communications and documents protected are similar to those in the advocate privilege. The confidentiality statute applies to "confidential communications between a victim and the certified advocate or qualified victim services program made in course of safety planning, counseling, support or advocacy services."[xix] It also applies to records that are created or maintained in the course of providing services regarding the victim.[xx]

Are participants' statements in support group protected by the new confidentiality and privilege law?

Yes. Oregon's new advocate privilege and confidentiality statutes both specifically address this situation. While generally information is confidential only if it "is not intended for further disclosure" there is an exception in the advocate privilege and confidentiality statutes for statements made to "[o]ther persons, in the context of group counseling."[xxi] This means that disclosures made in the context of a support group or group counseling session are still protected by advocate privilege and confidentiality even though third parties are present.

What if one of the participants in a support group or the group's facilitator is a mandatory reporter?

Oregon's new advocate-privilege and advocate-confidentiality laws do not over-ride Oregon's mandatory reporting laws. For this reason, it is very important that group participants know in advance whether someone in the group is mandated to report abuse. This will allow participants to make an informed decision whether to attend the group and what to disclose.

If a mandatory reporter of child abuse is a participant in a support group and another member of the support group discloses that their child was abused, or that they are a vulnerable adult who was abused, is the first participant mandated to report the abuse? Or was the disclosure protected by Oregon's advocate privilege?

In Oregon, the obligation to report abuse of a child, an individual age 65 or older, or an adult with a disability, is a 24/7 requirement unless the professional is exempt from disclosing. For example, a lawyer is not mandated to report abuse that is revealed as part of an attorney-client communication (but is required to report abuse she encounters on the street). A disclosure by a fellow support group member is not a privileged communication, and so would not fall within an exception to the reporting obligation. Remember, however, that the obligation to report abuse is only triggered when the reporter "comes in contact" with the abuser or with the person who was abused (*i.e.*, the child or the adult 65 years of age or older or the adult with a disability).

Can our records still be subpoenaed now that there is advocate-privilege in Oregon?

While anyone can issue a subpoena, Oregon's new privilege bill was intended to protect communications with, and records retained by, community and post-secondary school-based victim service providers. The new law went into effect October 2015 and certain protections apply retroactively. This means that communications or records made before the privilege law was passed are still protected (unless they were previously disclosed to a 3rd party).

While the advocate-victim privilege is "absolute," other providers may still be compelled to disclose some or all of the content of a communication. For example, social workers, school employees, counselors and certain other providers in Oregon do not enjoy an "absolute privilege." Also because they are mandated to report certain kinds of abuse a court may order production of their records or testimony (though some providers try to resist such efforts).

What should I do if I get a subpoena and we don't know if the participant wants to assert the privilege?

If you receive a subpoena you should contact the survivor right away to discuss what information is requested in the subpoena (testimony, documents or both) and how the survivor wants you to respond. If you cannot locate the survivor and do not know whether they want you to disclose their information, you should err on the side of protecting victims' privacy. You will want to consult with a lawyer as soon as possible. The best practice is to inform the person who issued the subpoena that you cannot confirm or deny whether you provided services to the victim or have any documents pertinent to the request but that if you do have any communications or records they are protected by Oregon's advocate-victim privilege.

For those doing cross-border work, it is useful to know that there are also sexual assault advocate-victim and domestic violence-advocate privileges in Washington and California. There is currently no advocate privilege law in Idaho.

What is "waiver" of a privilege and how does it occur?

A waiver occurs when a person, whose confidential communications or records are protected by a privilege authorizes release of that information and the release is not in itself a protected communication. For survivors, one important issue is whether sharing information waives the entire privilege or only some of the conversations or records. Under Oregon law, a privilege is waived if the privilege holder "voluntarily discloses or consents to disclosure of any *significant* part of the matter or communication."[xxii] There is no specific definition as to what is or is not "significant." This will be decided on a case-by-case basis.

It is important to note though that under Oregon law there is no waiver of a privilege "if the disclosure itself is a privileged communication." What this means is that when there are two providers and the survivor's communications with each one of them is privileged then (with the survivor's permission) those two providers may speak to one another or share documents and neither privilege is waived. In other words, if a survivor is working with an advocate (and thus the communications are protected by advocate-victim privilege) and is also working with a lawyer (and thus the communications are covered by attorney-client privilege), with the survivor's written consent the advocate and the lawyer may share information and neither the victim-advocate nor the attorney-client privilege is waived.[xxiii]

Are an Oregon college student's school counseling and health records private?

Yes, consistent with other laws in Oregon regarding confidentiality. The 2016 legislature passed a new law, effective March 3, 2016, that prohibits the disclosure of college or university student health or counseling records to other people, offices, or entities within, affiliated with, or acting on behalf of, the college or university. The bill applies to health centers, mental health center or counseling centers, and health professionals retained by the college or university to provide health care, mental health care or counseling services. These records may not be disclosed without the patient-client's consent to the same extent those records would be protected by non-campus affiliated service providers. (In other words, if for example the patient/client was someone whose abuse must be reported the mandatory reporting law would still apply.)

The new law also states that the college may not define their students' health records, mental health records or counseling records to be "student records." This is important because of the provisions in Title IX that allow a school to access "student records." This new law makes it clear that it will Oregon's statutory privilege and confidentiality laws rather than Title IX will govern the privacy of records for students who receive such services on campus.

D. Releases of Information

Before a survivor signs a release of information authorizing the disclosure of personal information with another program or provider, the survivor should be advised:

1. Who has access to the survivor's information once it is in the program's possession, and why;
2. What will happen with the information disclosed;
3. How a privilege is waived; and
4. With whom and under what circumstances the survivor's information will be shared without the survivor's written and informed consent. This includes telling survivors at the outset whether any of the other providers are mandatory reporters of child or elder abuse, or abuse of adults with disabilities (if a report was not yet made to law enforcement), and the program's protocol for responding to a subpoena for records or oral testimony.

Note: As referenced above, advocates are not mandatory reporters of abuse per se. If an advocate is a mandated reporter for a different reason – for example, the advocate is a licensed social worker, health care provider, or pursuant to some provision of the law - the advocate and the program should be sure to recognize, address and communicate this *before a participant reveals any personal information*.

Before a survivor is asked to sign a release of information, be sure to discuss the consequences of signing the release, including any risks or benefits of disclosure, whether it's possible to get the benefit sought without signing a release, and whether signing the release waives a privilege. If the participant is signing a release authorizing disclosure of your records, it is a good practice to share with the participant the information recorded in your files, so that the consent is truly informed.

Remember that Oregon's new victim-advocate confidentiality and privilege laws require that releases must be in writing, reasonably time limited, and signed with

the victim's "informed consent." The release should specify what information will be released, to whom, for what purpose, for how long the release will remain in effect, and how to revoke the release.

Is it necessary to complete a new release any time a different person needs to be contacted at one agency or anytime a new piece of information needs to be exchanged?

Yes, if the person or agency to whom the participant's information is being released or the specific piece of information to be shared was not included in the original release of information the survivor signed, a new or updated release of information form is required. Advocates may share only the specific information authorized in the release form, and only for the period of time covered by the release. While this may place an additional burden on advocates and programs to secure a new signed release, these steps protect both a program participant's personal information and help ensure the survivor is making as informed a decision as possible regarding the potential consequences of disclosing the additional information.

Is it necessary to have an expiration date on the release of information form?

Yes. Oregon law requires releases to be time-limited, as do contracts with the Oregon Crime Victim Services Division and awards made to organizations under the Family Violence Prevention Services Act (FVPSA),[xxiv] the Violence Against Women Act (VAWA)[xxv] and the Victims of Crime Act (VOCA).[xxvi] A release may be reaffirmed and extended (in writing) if the survivor: (1) confirms that it is still valid; and (2) authorizes a new expiration date. The extension, too, should be reasonably time-limited.

What is the right length of time for a release of information?

This depends on the circumstances. Oregon state law, FVPSA, VAWA and VOCA all require releases to be "reasonably time-limited." Whether a time limit is "reasonable" should be determined by the purpose of the release and the survivor's specific situation. The length of time that a release is effective should be the minimum required to provide the assistance the survivor is requesting. For example, a release could be valid for a few minutes, or a few hours or days. Such

time limited releases help ensure that services are guided by the survivor and take into account situations that may change radically from day to day. While this may seem unduly burdensome, one important benefit is that it compels the advocate to check back in with the survivor to discuss the current status and affirm that sharing the information is still safe and appropriate.

A 15 or 30-day release is typically most appropriate at the outset. The release can be reaffirmed and extended as necessary, and the survivor can authorize a new expiration date. The Office on Violence Against Women (OVW) specifically disfavors releases that are valid for 1 year (or longer).

Even if a release is still valid, it can be useful (and may be very important) to speak with the survivor before certain information is released. Survivors' privacy needs are often in flux; they may change from day to day or week to week. Because both survivors' circumstances and their willingness to disclose personal information are likely to change throughout the course of your relationship, having to execute new releases of information helps ensure that a survivor's consent truly is "informed" and consistent with the survivor's safety and privacy needs.

What if it is unreasonably difficult to have a particular program participant sign a release every 15 or 30 days? For example, what if a participant lives in a rural area but receives regular phone support from our program?

The purpose of a release is to share specific information for a specific reason; it should not be open-ended. For example, VAWA states that releases have to be "reasonably time-limited," which means under the circumstances for individual cases and situations. It may be that a longer release could be reasonable and appropriate in a situation like this, especially since you have regular phone contact with the survivor. In addition, it is always good practice to ensure that you are checking in regularly with survivors to determine whether their circumstances have changed and remind them that they have the right to withdraw that release at any point. This ensures that the informed consent is based on up-to-date information and current circumstances.

If a speaker comes to support group, does each participant in the group need to sign a release of information?

No, unless your program is going to be sharing individually identifying information about group participants with the speaker (such as a list of group attendees). If participants are informed in advance that a guest will be there that day, and they are told who the guest is and where the guest is from, the participants can choose whether to attend that session. (In small communities in particular, it is quite possible that a speaker will recognize at least some of those in attendance.) If group participants choose to share personal information with the speaker, that is their choice and therefore no release is required. The speaker should sign the agency's confidentiality agreement.

If a community convenes a team of representatives from law enforcement, victim services, prosecution, and courts, such as a CCR or SART, is the victim services representative prohibited from disclosing the survivor's personally identifying information without a release?

Yes. A DV or SA program representative may talk generally about a great many things that are useful to the group, such as DV and SA dynamics, services that are available to survivors, gaps in services and unmet needs, frequency of incidents, law enforcement response time, barriers to accessing help, and general information that is not personally identifying. However, a victim service provider may not disclose a survivor's personally identifying or confidential information without written, informed consent. To minimize the risk of inadvertent disclosure, some agencies elect to have a community educator attend these meetings, rather than an advocate who provides services to survivors.

Representatives from other agencies are not necessarily bound by the same privacy restrictions. Each partner in a multi-disciplinary team is likely to have different confidentiality requirements; each partner needs to understand her or his own privacy obligations as well as the obligations of the other participants. For example, while police and prosecutors do not need a release to speak about a case, an advocate from a DV or SA program may still only discuss the individual survivor's situation with the survivor's written and informed consent if any personally identifying information will be disclosed. A program may not require a survivor to

sign a release of information as a condition of receiving services. Also, keep in mind that a group confidentiality agreement does not suspend a group member's mandatory reporting obligation. Before signing a release to have their personal information shared at a SART or CCR meeting, survivors should be informed of every agency that is part of the coordinated community response team; this information should be updated if additional people are added to the team. As noted above, it can be helpful to have a staff person that is not involved with any specific cases be the point of contact to avoid accidental disclosure of details.

Survivors may choose to allow some, but not all, of their information to be released. Similarly, a survivor may authorize information be released to some but not other community partners. If a survivor wants to share some limited information it will be important to discuss the issue of waiver. See below for a discussion of how waiver of a privilege operates in Oregon. Contact the Victim Rights Law Center (www.victimrights.org) if you wish to receive a copy of their OVW-approved Privacy Toolkit for coordinated community responses to gender based violence.

May a release of information form include instructions from a survivor on what and to whom information may be released in the event the survivor is missing or deceased?

Advocates are encouraged to have this discussion, in a thoughtful and delicate way, with a survivor. This is never an easy conversation to have. If it is standard practice within your program to ask these questions, it can be presented as such. For example, the advocate might explain, "As part of our Intake procedure one of the questions we ask all participants is what if any steps you would like us to take in the event that you do not return to the shelter and we do not know your whereabouts." This discussion should include the amount of time the advocate should wait before notifying the contact person the participant designated for this purpose. It would be important to discuss how the advocate would know if the survivor is missing or perhaps dead versus if the survivor fled and didn't tell anyone. Releasing a survivor's information without knowing when or why could be dangerous to the missing person if they fled for safety reasons.

Does privilege survive the death of the privilege holder?

Oregon's new advocate privilege law does not address whether advocate privilege survives after the participant's death. The law is also silent as to whether the nurse, regulated social worker and professional counselor privileges survive the client's death. In contrast, the law does provide that a client's communications with a lawyer, psychotherapist, or physician remain privileged after death.

Although neither the Violence Against Women Act's confidentiality provision nor Oregon law specifically addresses whether a deceased victim's advocate-privilege or confidentiality rights continue after death, there is an argument to be made that it does survive, because the Violence Against Women Act requires a provider to protect both the survivor's *and other interested parties'* privacy and safety. A victim's children, parents or current partner may all remain at risk if victim privacy is compromised posthumously.

E. Other Confidentiality Requirements Under the Violence Against Women Act (VAWA) and the Victims of Crime Act (VOCA)

What else does VAWA require regarding victim confidentiality?

VAWA states that, "[i]n order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees . . . shall protect the confidentiality and privacy of persons receiving services."[xxvii] One exception is that the VAWA confidentiality provisions do not extend to "law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes."[xxviii]

Grantees and subgrantees may not "disclose, reveal, or release any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether that information has been encoded, encrypted, hashed or otherwise protected."[xxix] Because the provision extends to "subgrantees," it applies to the organization that receives VAWA funds and to other organizations that receive funds through a partnership with the primary grantee.

"Personally identifying information" (PIH) is information that is "likely to disclose the location of a victim . . . including a victim's first and last name, a home or other physical address, contact information (including a postal address, e-mail address, telephone or fax number), social security number, or any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any of the above information, would serve to identify any individual."[xxx] An advocate must look at the facts of each individual case and the totality of the circumstances to determine whether the information to be disclosed will reveal the victim's personally identifying information.

VAWA also imposes certain obligations if a survivor's privacy is breached pursuant to a court or statutory mandate (*e.g.,* a mandatory report of child or elder abuse). These obligations include reasonable steps to notify the victim and to protect the privacy and safety of the victim and other persons affected by the disclosure.

What does VOCA require regarding victim confidentiality?

VOCA's confidentiality language now mirrors the confidentiality requirements in place under VAWA. The exact language is set forth in 28 CFR § 94.115.

F. Subpoenas and Court Orders

This manual provides only basic information about subpoenas and court orders. It is not a substitute for legal advice from your program's attorney, but is instead intended to serve as a general reference guide. Remember that statutes and rules change over time. The information in this manual was correct as of the publication date but the law is ever-evolving and your program should check to make sure this information is current.

What is a subpoena?

Subpoenas and court orders are orders of the court which typically must be dealt with in a timely manner. Failure to respond to a subpoena can result in legal action against the person or agency to whom the subpoena was issued. Therefore, it can be risky to ignore a subpoena or a court order.[xxxi] Depending on the posture of the

case, possible sanctions for refusing to comply with a valid and enforceable subpoena include dismissal of the case and/or contempt of court charges (contempt penalties in Oregon include a fine and/or jail time). Not every subpoena a program receives is valid and enforceable, however, so it is best to consult with a lawyer if you receive one.

Help! We got a subpoena!

Now that there is advocate privilege in effect, we hope and expect there is a reduced likelihood that programs will be served with a subpoena. If one is served, though, Oregon's advocates for survivors of domestic and sexual violence are understandably concerned about how to respond. There are 2 kinds of subpoenas: (1) one is a request for records (subpoena *duces tecum*); (2) the other is a request for a witness to appear to give oral testimony (subpoena *ad testificundum*).

The first step is to be familiar with your program's subpoena response protocol and to follow it. (It's best to review the policy before you ever get a subpoena!) If you receive a subpoena, typically the first step is to notify your program director. You will also need to contact the survivor to let them know of the request, and to discuss how the survivor wants to proceed. It is possible, for example, that the survivor wants the records produced or wants the advocate to testify, but you need to determine if this is the case. Of course, it is also possible that the survivor wants the information to remain private. Because the privilege law is still fairly new, it is also possible that the lawyer who issued the subpoena is not aware of Oregon's new advocate privilege law!

When a primary goal of most programs is to work to maintain confidentiality and safety of program participants, how can we do that when faced with a subpoena?

The purpose of this section is to address the basics of handling a subpoena in the midst of program participants' legal actions that are not complaints against the advocate (*i.e.*, the advocate and the program are not parties to the legal action), and suggest options for responding. Note that there is an exception in the privilege statute if a victim is suing the advocate or the program.

OCADSV recommends that you consult an attorney if you or your program receive a subpoena or is otherwise ordered to reveal confidential client information. An attorney can help you determine how best to respond.

What if we get a subpoena because the survivor is suing the program or an individual advocate?

Oregon's new privilege and confidentiality laws do not extend to communications that need to be disclosed in order for a certified advocate or qualified victim services program to defend themselves in a civil, criminal or administrative proceeding brought by or on behalf of the victim.[xxxii]

Definitions:[xxxiii]

Court order: A legal directive issued by a judge requiring a person or entity to do something or face civil or criminal charges for contempt of court.

***In camera* review:** A judge's review of confidential documents, conducted in the judge's chambers rather than in open court, where the judge decides what documents or portions of documents should be released to the requesting party(ies) in a case. Documents submitted for *in camera* review may also be submitted under seal and/or subject to a protective order, so that they are not available to the general public or accessible in the public part of the court file.

Motion for protective order: A "motion" is a request to the court. A motion may be made verbally or in writing. A motion for protective order (which is typically submitted in writing) is a request that the judge require the person(s) to whom the private or confidential documents are being released not to share the documents with anyone other than the specified individuals, and even then that the documents be used only for the specific and designated purposes. A judge may also require that the documents be returned to the court or destroyed by the party possessing them once the proceeding is over.

Motion to quash: A request to the court that a subpoena be vacated and dismissed.

Note: Lawyers will sometimes ask for more than one remedy in a single motion, listing the request in the alternative. For example, the lawyer might ask the judge to quash or dismiss the subpoena but, if the court declines to do so, in the alternative to allow the record holder to redact (block out) irrelevant portions of the record or, if the request to redact is denied, for the judge to review the records *in camera* and release only certain excerpts of the record deemed relevant. The caption of such a motion might read "Motion to Quash Defendant's Subpoena and, in the Alternative, to Permit Production of Redacted Records."

Objection letter or letter of objection: A letter sent to the attorney who issued the subpoena advising that attorney that the person to whom the subpoena was issued cannot comply with the request. The letter may detail that the request cannot be met because, for example, the records or communications are privileged, program policy requires confidentiality and federal law also prohibits disclosure of the requested document(s).

Proceedings: A formal term used to refer to legal hearings in civil or criminal cases, administrative matters, depositions or grand juries.

Protective order: An order signed by a judge that limits the use of confidential documents disclosed in a proceeding. Under a protective order, the person to whom confidential documents are disclosed may only use the documents for the proceeding during which they are disclosed, must keep them otherwise confidential and must, as directed, destroy them or return them to the court or the records holder when the proceeding is over. The person requesting that the documents be maintained confidentially will file a motion for protective order (they may also submit a motion to file under seal).

Redact: Edit ("black out") a record to prevent viewing of material that is confidential or irrelevant or otherwise not to be revealed.

Service: Providing or giving a subpoena to a person by either delivering it in person (personal service), by mail, or by fax, depending on the circumstances and (if done correctly) consistent with what the law allows. Sometimes referred to as "service of process." In Oregon, certain documents must be served in person, while others may be served by mail. This is determined by the governing Oregon statute or rule.

In a domestic violence Family Abuse Prevention Act (FAPA) or Sexual Abuse Protective Order (SAPO) proceeding, the respondent (alleged abuser/offender) must be personally served with a copy of the petition. A petitioner may have law enforcement serve the respondent; law enforcement must do this for free. A petitioner may also hire a process server or use a private party. The person serving the documents must be 18 or over and not a party to the case. Certain documents must be filed after the petition and order have been served so the information can be entered into the court and law enforcement databases.)

Subpoena: A legal document requiring a person to show up at a deposition, court hearing, grand jury or administrative proceeding and answer questions, under oath.

Subpoena *duces tecum*: *Duces tecum* is Latin for "bring it with you." A subpoena *duces tecum* is a legal document commanding a person to either show up at a deposition, court hearing, grand jury or administrative proceeding with the documents described in the subpoena *duces tecum*, or provide the documents and, if the documents are provided, no appearance is necessary. The person to whom the subpoena is directed complies if the person produces copies of the specified items in the specified manner and certifies that the copies are true copies of all the items responsive to the subpoena or, if all items are not included, why they are not.

Under seal: Providing documents to the court in a sealed envelope bearing the case number and the words "Filed Under Seal" with an outer envelope addressed to the court so that only a judge may view what is in the sealed envelope. When documents are submitted for *in camera* review, it is best to file them under seal.

Deposition: A deposition is when a party or a witness in a criminal, civil or administrative case is directed to answer questions posed by another party's lawyer and, under oath, give oral testimony which is then recorded (by a court reporter and/or audio or videotape).

What are Oregon's subpoena rules and requirements – Who may issue a subpoena?[xxxiv]

A subpoena may be issued by a clerk, judge or attorney. In Oregon, subpoenas may be issued by the judge or by the attorney who represents a party to the case.[xxxv]

Subpoenas may also be issued by the clerk of court and delivered to any party requesting the subpoena for completion and service.[xxxvi]

What are grounds for issuing a subpoena?

An Oregon resident may only be required to attend a deposition or produce documents in the county where he or she resides, is employed or regularly transacts business in person, or, in the alternative, at a convenient place designated by court order. Someone who is not an Oregon resident may only be required to attend a deposition or make production in the county where he or she was served, or at a convenient place designated by court order.[xxxvii]

What should a subpoena contain?

Subpoenas must state the name, court, and title of the action.[xxxviii] There is no particular form provided or required by the court.

What if we don't respond to the subpoena?

A person who disobeys or ignores a subpoena, or refuses to be sworn or answer as a witness, may be held in contempt of court, either by the court before where the action is pending or by the judge or justice issuing the subpoena. If the witness is a party to the case and disobeys a subpoena or refuses to be sworn or answer as a witness, the party-witnesses' complaint, answer, or reply may be stricken (not allowed).[xxxix]

How must a subpoena be served?

A subpoena must be served in person; in some circumstances a subpoena may be served by mail.

Service by mail is permitted if:

- The subpoena commands only the production of documents, not testimony;[xl] **or**
- An attorney issuing the subpoena or his or her staff:
    - Has had personal telephone contact with the witness and the witness has indicated a willingness to appear at trial if subpoenaed;

- Has made provision for payment of witness and mileage fees; **and**
- Mailed the subpoena to the witness more than 10 days before trial by certified mail or other receipt-type mail.[xli]

If all three criteria above are not met, a subpoena compelling a person's testimony must be served in person.

What are program options for responding to a subpoena?

- **Contact the participant**

Programs that receive a subpoena should notify the participant as soon as possible that a court order or subpoena was received.

- **Ask if the participant consents to the release**

Before you ask participants if they're willing to release the records, ask if they want to know what information their records contain. Together, you can identify and discuss the potential risks and benefits of consenting to the records' disclosure. Because the communications to be revealed may result in a waiver of the victim-advocate privilege, carefully review with the survivor the implications of such a waiver.

If the participant consents to release the information, the participant should sign an authorization indicating that they consent to the release of information for this purpose. You may want to include a statement in the release that the participant recognizes and is voluntarily waiving the victim-advocate privilege.

When releasing information in response to a subpoena, it is important to clarify with the participant what information is contained in the record and to confirm that they are prepared for the disclosure of detailed personal information. For example, it may be time to update or modify the existing safety plan. Such conversation assures that the participant's consent is fully informed.

- **Offer counsel a summary of the information**

Sometimes, a participant wants to agree to release some – but not all – of their records. In this situation, you could offer to write a letter summarizing the

contents of the participant's file. This may help the participant keep certain information private, arguing that there was only a partial, not a complete, waiver.

- **If the participant does not consent to release**

If the client does not consent to releasing the records or communications requested, you should contact a lawyer to help your program decide how best to proceed. Some remedies the lawyer may consider may include contacting the lawyer who issued the subpoena and asking that lawyer to withdraw it on the grounds that the communications are privileged.

- **Object to the subpoena**

Before sending a letter of objection, you may wish to contact the attorney who issued the subpoena and explain that both your agency's records and communications with individuals who sought and/or received services from your agency are protected by Oregon's advocate-privilege law (in addition to your funder's requirements of victim confidentiality. Upon hearing this, hopefully the attorney will decide to withdraw the subpoena. If this is the case, you should ask for confirmation in writing that the subpoena was withdrawn.

- **If you cannot contact the participant**

If you cannot contact the participant to find out whether they want to give consent, you should err on the side of confidentiality and protect the participant's privacy. One option is for the program to contact the attorney that issued the subpoena (preferably in writing) acknowledging receipt of the subpoena and stating, as a general matter, that while you cannot confirm or deny whether this individual received services from your agency information about all clients is confidential and privileged, and therefore agency policy prohibits its release.

- **Work with an attorney to file a motion to quash or modify the subpoena**

If you file your request to dismiss or modify the subpoena within the proscribed time period, a judge should quash the subpoena on the basis that it was improperly issued. Most if not all Oregon judges have received training on the new advocate privilege bill, but sometimes lapses occur. In addition to the advocate-victim privilege argument, a program may want to raise additional issues. For example, Oregon law authorizes pre-trial discovery against a third party only under limited circumstances. (OCADSV, legal aid, the Oregon Crime Victim Law Center

(www.ocvlc.org) and the Portland office of the Victim Rights Law Center (www.victimrights.org) all have examples of Oregon-specific motions to quash.)

What should our program pay attention to when we receive a subpoena?[xlii]

A) How the subpoena was served

Even though there is a compelling basis for quashing any subpoena seeking information protected by the advocate privilege, it is important to have a general understanding of the rules, in case an advocate or a program receives a friendly (or unfriendly) subpoena. A subpoena must be properly served to be fully enforceable.

B) To whom the subpoena is directed and from whom it was received

It is important to know who is asking for the records or testimony and why they want this information. The subpoena will identify the sender, his or her address and phone number. The document will also include a caption that shows the court or administrative agency where the case is being heard, whether it is a civil or criminal case and who are the parties involved (except for grand jury subpoenas). The subpoena may be "friendly" in that it may have been issued by a lawyer representing the survivor, or by a prosecutor or civil lawyer requesting the information with the survivor's consent. Ideally, the survivor will have communicated this to the program directly beforehand, but this may not always be the case.

- Be sure to note who or what information is being subpoenaed; is it the program, the executive director or an individual advocate? This can help determine who responds to the subpoena and what information is requested.

- If the participant whose records are being requested is listed as one of the named parties in the case (*i.e.,* the name of a current or former program participants appears in the caption) the participant may have an attorney. If so, you may want to ask the participant for and get a written release authorizing you to speak with the participant's attorney to discuss how best to respond to the subpoena. It can also be helpful at this time to share your records with the participant to ensure they are making an informed decision.

Whether your program has the records being requested

If the subpoena you received was not issued at the participant's request, and your program does not possess any of the records requested, or the records were previously destroyed (*e.g.,* pursuant to your regular retention schedules) then your program has two options. First, it can refuse to provide the information requested based on the advocate privilege law. Second, the program may send a letter to the requesting party advising that you cannot admit or deny whether you provided services to the participant but that your program does not retain records for more than X number of years. Regardless of which argument(s) you raise, request in writing that the subpoena be withdrawn. If it is, confirm withdrawal of the subpoena in writing. You can do this by asking the lawyer to send you a written confirmation and/or sending a confirming email to the lawyer who issued the subpoena.

If your program does have the records, and the survivor consents to their release, start gathering them and determine which documents are relevant, responsive to the subpoena, and should be released. For example, if the records include lists of participants who attended support groups, only the name of the participant to whom the subpoena pertains should be released. Other names on the support group attendance page should be redacted.

What do VAWA and VOCA require us to do if we have to release a survivor's personal information in response to a subpoena or court order?

As noted above, VAWA and VOCA both require that grantees and sub-grantees "shall protect the confidentiality and privacy of persons receiving service." If the release of information is compelled by subpoena or court order, the program must do at least 2 things:[xliii]

1) Make reasonable attempts to provide notice to victims affected by disclosure of information, and;

2) Take steps necessary to protect the privacy and safety of persons affected by the release.

To satisfy the first requirement, programs can develop (and implement) a protocol for providing notice to victims whose records have been requested. For example, contacting a participant by phone, e-mail, and a safe mailing address would constitute a reasonable attempt to provide the victim with notice of the subpoena.

The second requirement is quite broad; note that it is not limited to protecting only victims, but rather extends to "other persons affected by the disclosure." There are a number of ways to try and protect the privacy and safety of persons affected by the release of information compelled by a subpoena. Some examples include:

1) Redact (black out) addresses, phone numbers, and any other contact information.

2) Respond to the subpoena with a letter of objection drafted by your program's director or other appropriate point person. (OCADSV can provide a sample response letter.)

3) Submit documents "under seal" subject to a protective order and for *in camera* review. This means the program provides documents to the court in a sealed enveloped bearing the case number and the words "Submitted for *In Camera* Review" with an outer envelope addressed to the court so that only a judge may view what is in the sealed envelope.

4) Hire an attorney to file a motion to quash the subpoena.

5) With victim consent, notify the persons affected by the release and help them safety planning in preparation for the release.

If a victim's information has to be released pursuant to a court order or mandate, and you can contact the survivor, try to develop a specific and appropriate safety plan. Keep in mind that the safety needs – and therefore the safety plans - for survivors of non-intimate partner sexual assault or stalking will differ from those for domestic violence survivors.

Our program doesn't have a policy for responding to a subpoena. As we develop one, what should we include?

A subpoena response policy should include at least the following protocols:

1) Notifying the director: The staff person who receives the subpoena should immediately notify the executive director that a subpoena was received. The staff person should record the time, date, place and method of delivery (was the subpoena sent by mail? Handed over to whomever answered the door? Personally delivered to the individual named in the caption?)

2) Contacting the survivor whose information has been requested: As discussed above, the protocol should require a discussion with the survivor that includes: what information you hold; the benefits and risks associated with releasing the information requested; and helping the survivor decide whether s/he wishes to release some, all, or none of the requested information. Remember, it is the survivor's – and not the program's - decision whether to consent to the release. If you cannot reach the survivor, you are obliged to err on the side of caution and not release the information.

3) When, who, and under what circumstances an advocate, executive director or other program staff member will contact a lawyer to help quash a subpoena or vacate a court order.

4) Determining who will be responsible, if information must be released, for redacting confidential information that may be withheld such as the shelter address, staff addresses and phone numbers, support group participants, etc.

6) Under what circumstances you will ask for *in camera* review.

We are not a VAWA or VOCA grantee, but we do receive VAWA or VOCA funds through a grant partner. Do the VAWA and/or VOCA confidentiality provisions apply to us?

Yes. The confidentiality requirements apply to all grantees or sub-grantees. If your organization is an umbrella organization that operates multiple programs (Salvation

Army, YWCA, etc.), VAWA and VOCA apply to your violence against women or victim services programs. Even if VAWA or VOCA funds only a small portion of your victim services, you should provide the same confidentiality protections to all victims who use your services.

G. Mandatory Reporting Requirements for Advocates

Are advocates in Oregon mandated to report child abuse or abuse of an older or vulnerable adult?

No. Advocates in Oregon are not, per se, mandatory reporters of child, elder or vulnerable adult abuse. However, certain individuals who work for a DV or SA program may be mandatory reporters of child and/or elder or vulnerable adult abuse because of their other licensing or occupation (*e.g.*, a licensed clinical social worker or health care provider) or professional employment (*e.g.,* a school or nursing home employee). Licensed child care agencies and registered or certified childcare providers are also mandatory reporters of child abuse in Oregon.

There is a very important exception in Oregon's child abuse mandatory reporting law. This exception states that the child abuse mandatory reporting law in Oregon excludes from the definition of "public or private officials" who must report abuse individuals working for "community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking."[xliv] It is critically important to know whether you or your program falls within this definition and you are therefore exempt from reporting, or whether you are still required to report.

Everyone who works at your agency should also know who else, if anyone, within the agency (and among your partners and referrals) is mandated to report child, elder or vulnerable adult abuse. This is critical for two reasons. First, the participants you serve have a right to know whether the person they're speaking with is mandated to report. This information should be disclosed **before** the survivor makes any disclosures to you or other staff. Second, you as an advocate need to know who else is mandated to report so that you do not, without victim consent, disclose information to them that will trigger a reporting obligation. Your agency should have policies and protocols in place so that any confidential

information which would trigger a report is protected by a virtual and electronic "firewall," so that it is not shared with a mandatory reporter without the victim's (written and informed) consent.

Remember: If you are not mandated by law to report the abuse, you need the participant's written authorization to release information for you to call the Child Abuse or Adult Protective Services hotline. If you are a mandated reporter, you may report the abuse without a release. If possible, try and get the victim's consent to report but even if the victim does not consent you must fulfill your obligations if you are required to report. If you must report, under both VAWA and VOCA you must "make reasonable attempts to provide notice to victims affected by the disclosure of the information, and take reasonable steps necessary to protect the privacy and safety of the persons affected by the release of the information. (For a discussion of mandatory reporting of elder abuse, see Mindlin, J. and Brandl B., "*Respecting Elders, Protecting Elders: Untangling the Mystery of What Sexual Assault Advocates Need to Know About the Mandatory Reporting of Elder Abuse.*")[xlv]

Who are mandatory reporters of child abuse in Oregon?[xlvi]
Oregon law sets out who is required to report child abuse. The designated individuals must report abuse if they come in contact with either: (1) a child they have reasonable cause to believe has been abused; or (2) a person who has abused a child. This obligation is in effect 24-hours/day and 7 days/week; it is not limited to the reporter's working hours or contact made in an official capacity.

Oregon law (ORS 419B.023) identifies the following "public and private" officials as the mandated reporters of child abuse:

A) Medical personnel: Physicians, psychiatrists, surgeons, residents, interns, dentists, dentist hygienists, medical examiners, pathologists, osteopaths, coroners, Christian Science practitioners, chiropractors, podiatrists, optometrists, naturopathic physicians, registered and licensed practical nurses, emergency medical technicians, substance abuse treatment personnel, hospital administrators and other personnel involved in the examination, care or treatment of patients.

B) School and child care personnel: Teachers, school personnel, educational advocates assigned to a child pursuant to the School Code, truant officers, directors and staff assistants of day care centers and nursery schools.

C) Public employees: Members of the Legislative Assembly, employees of the State Commission on Children and Families, the Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health and developmental disabilities program, a county juvenile department, and all DHS employees.

D) Law Enforcement: Truant officers, probation officers, law enforcement officers, and field personnel of the Department of Corrections.

E) Others: Psychologists, licensed clinical social workers, licensed professional counselors, licensed marriage and family therapists, members of the clergy, attorneys, firefighters, court appointed special advocates (CASAs), registered or certified child care providers, and foster care providers and their employees.

Although lawyers are included in the list of mandatory reporters of child abuse, a lawyer is not required to report if the information was protected by the attorney-client privilege or if its release would be detrimental to the lawyer's client. Several other Oregon professionals are covered by similar exceptions to the reporting rules.

Are domestic violence program staff mandated to report child abuse on the basis that the agency serves children?

No. The child abuse mandatory reporting law in Oregon excludes from the definition of "public or private officials" who must report abuse "community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking."

If I am not a mandated reporter, but I observe something I think should be reported as child abuse and the parent refuses to provide a release, am I still able to report?

No. If a report is not mandated under the law then Oregon law as well as various funders (FVPSA, VAWA, VOCA) require you to have a signed release to call the child abuse hotline. However, there are other ways to provide effective advocacy including working with the child, the parent, and others who provide care or services to the child. (You are similarly restricted from reporting elder abuse or abuse of a person with a disability if the vulnerable adult is a participant, you are not a mandated reporter, and the participant does not consent to the release.)

If I am a mandated reporter, how much information should I release?

If you are a mandatory reporter, you may call the child or elder abuse hotline or law enforcement without a release or the victim's consent. However, you may disclose only the information required. It is a violation of Oregon's advocate confidentiality laws, the federal regulations under VAWA and VOCA, and the conditions of your state funding to release, without a victim's consent, any additional information that is not mandated by law. It is very useful to review Oregon's mandatory reporting requirements before you initiate a report to ensure that you know what information you may and may not disclose.

Are some minors not covered by Oregon's child abuse reporting laws?

Certain minors, such as those who are emancipated, serving in the military, or married may not be subject to Oregon's mandatory reporting laws. The law is not always clear about this so it is best to consult a lawyer before disclosing information if you are not certain whether you are mandated to report.

Do I have to report any other types of abuse?

Yes. As noted above, mandatory reporting laws in Oregon are not limited to children. Oregon law requires certain individuals to report the abuse of older adults and the abuse of adults with disabilities. Healthcare providers also have to report certain types of injuries.

Who is covered by the Elder Abuse statute?

ORS 124.050(2) defines an "elderly person" as any person 65 years of age or older. (There are special rules governing reporting the abuse of residents in long term care facilities.)

Who are mandatory reporters of elder abuse in Oregon?[xlvii]

The list of mandated reporters of elder abuse is similar to - but not the same as - mandatory reporters of child abuse. The list includes:

A) Medical and other healthcare personnel: Physicians (including naturopaths and osteopaths), chiropractors, physician assistants or podiatric physicians and surgeons, including any intern or resident, licensed practical nurses, registered nurses, nurse practitioners, nurse's aides, home health aides or employees of an in-home health service, physical, speech or occupational therapists, audiologists, and speech-language pathologists.

B) Public employees: Employees of the Department of Human Services, community developmental disabilities program, Oregon Health Authority, county health department or a community mental health program, senior center employees, and information and referral or outreach workers.
C) Peace and safety officers: Law enforcement, firefighters and emergency medical technicians.

D) Others: Member of the clergy, regulated social workers, licensed professional counselors or licensed marriage and family therapists, psychologists, providers of adult foster care or employee of the providers, attorneys (if the communication is not privileged or otherwise protected) and any other public officials who come in contact with elderly persons. Note that this law was revised in 2015. It used to be that the reporting obligation was triggered only when the reporter came in contact with the elderly person "in the performance of the person's official duties." This limitation no longer applies.

How is "elder abuse" defined?[xlviii]

The definition of "elder abuse" is much broader than the definition of physical abuse under Oregon law. It includes financial exploitation, seclusion, withholding care by a caretaker, threatening to take money or property, and verbal abuse. (Note: For this reason, older victims of abuse who are not eligible for a FAPA order may qualify for a protection order for older adults.) Elder abuse is one or more of the following:

(a) Any physical injury to an elderly person caused by other than accidental means, or which appears to be at variance with the explanation given of the injury;
(b) Neglect, as defined as "failure to provide the care, supervision or services necessary to maintain the physical and mental health of an elderly person that may result in physical harm or significant emotional harm to the elderly person";
(c) Failure of a caregiver to make a reasonable effort to protect an elderly person from abuse;
(d) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person;
(e) Willful infliction of physical pain or injury upon an elderly person;
(f) An act that constitutes a crime under ORS §§ 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467;
(g) Verbal abuse;
(h) Financial exploitation;
(i) Sexual abuse;
(j) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person; or
(k) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a licensed physician and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.[xlix]

What are the mandatory reporting laws for adults with disabilities?

There are similar but separate mandatory reporting laws in Oregon for adults with disabilities. See ORS 430.735 to 430.765 for reporting obligations regarding adults with developmental disabilities and ORS 430.735 to 430.765 for the statutes addressing reporting abuse of adults with mental illness. For victims who are residents of nursing facilities, see ORS 441.630 to 441.680.

H. Other Confidentiality Considerations

What if I believe a participant might hurt or kill herself?

Before disclosing a participant's information without consent, you must determine whether you are mandated to report it. Advocates in Oregon are not required to report someone who is a danger to themselves or others. Some other providers are, however. For this reason, you will want to be familiar with all your obligations as well as those to whom you may refer a participant for services. For example, in Oregon, licensed clinical social workers are mandated to report potential harm to *others*, but not harm to self. Thus, if you are an Oregon licensed clinical social worker and a participant is threatening to kill another person and the threat is credible, then you may do so without a release. If you are not mandated to report, you must protect a participant's privacy.

If you need advice from emergency medical services, for example, you can call and tell them the nature of the emergency without telling them identifying information. In some cases, the survivor at risk for harming herself may be able to speak with emergency medical services and decide how much she wants to share. Remember that, even if it is appropriate to call 911, it is never appropriate to share the survivor's entire history and/or case file. Identifying information is not necessary for 911 to respond. You may be able to give non-identifying information (*e.g.,* "she's around 45 years old" instead of an actual birth date) when the 911 operator or medics ask these questions. In addition, it is not appropriate to comment specifically or to explain why the survivor was receiving services from your organization.[1] It is likely that, if you make a report, you will be asked many questions that exceed the scope of your reporting obligation. Unless you have consent, you are not authorized to provide this additional information.

Navigating participants' **confidentiality** issues can be very complex for survivors as well as the programs that serve them**.** The National Network to End Domestic Violence (NNEDV) has a very helpful "FAQ's on Survivor Confidentiality Releases" which, although not Oregon specific, can be very helpful in navigating this complex area of state and federal law. For a copy of the publication, email tcip@nnedv.org.

For Oregon state-specific consultation, contact OCADSV or the Victim Rights Law Center (VRLC). VRLC can provide resources such as "Privacy Tips for Advocates," "Ten Tips for Protecting Victims' Privacy in the Courts," a privacy quiz for advocates, as well as sample pleadings and other resource materials.[li]

APPENDIX A

Developing Program Policy on Staff Use of Personal and Remote Devices: Ten Tips

Victim service provider staff are increasingly using electronic devices offsite to communicate with survivors and to access survivors' personal information remotely. Many of these organizations, however, have been slow to develop and implement policies that address staff use of these devices. While each provider's needs and services are unique, there are some general principles and policies that organizations should consider and address. The following "Ten Tips" are a starting place for this discussion. They highlight some key policies and practices organizations may wish to consider.

1. Require passwords for all electronic devices. Passwords may not be stored in obvious or accessible locations (e.g., passwords should be stored on slips of paper tucked under the keyboard!)

2. Passwords for all devices that contain survivors' personally identifying information should be changed at regular intervals.

3. Determine whether you will allow staff to use personal devices to access client-related information, whether by email, text, remote computer access. If you will allow it, develop specific policies to govern their use.

4. If staff may use personal devices for work purposes require deletion of survivors' personal information stored on personal devices at the end of each week, month or quarter or as appropriate.

5. Require deletion of all client-related documents from staff's personal devices at the end of a staff person's affiliation with the program.

6. For any personal device that receives client-specific, personally identifying information, prohibit notification/banners for emails or texts so that such

information does not appear on the home screen, and instead may only be viewed after a password has been entered.

7. Consider who, if anyone, will have remote access to electronic client files. Maintain adequate safeguards. For example, require approval for every ISP address authorized to access client information.

8. Develop and implement policies regarding staff use of home computers and other devices for client-related purposes. For example, address whether participants' personal information may be left up on a screen if the staff person steps away or if documents may be printed on a home printer with participants' personal information, and whether they must be shredded or kept secure pending a return to the office.

9. Specify the level of security required on devices carried outside the office. For example, require mobile devices to be protected with fingerprint recognition or with a 6-digit (rather than 4-digit) password.

10. Require staff, contractors, and any other individuals who access participant information outside the office on personal or work devices to sign an agreement to abide by the organization's policies governing use of personal and remote access of electronic devices.

 This project was supported by grant number 2015-TA-AX-KO25 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, and conclusions expressed are those of the author(s) and do not necessarily represent the views of the U.S. Department of Justice.

APPENDIX B. VRLC's OVW-approved Release of Information

Authorization and Release of Information Form / Formulario de autorización para divulgar información

I understand that _____ [Name of your Agency] has an obligation to keep confidential our conversations, my records, and my personal and identifying information. I also understand that I can choose to allow [Name of your Agency] to share this information with specific people or agencies, and to request information from them on my behalf.

Entiendo que _____ [Nombre de su Agencia] tiene una obligación de mantener confidencial nuestras conversaciones, mi información personal, información que me identifica, y mis expedientes. También entiendo que puedo permitir que [Nombre de su Agencia] comparta esta información con ciertos individuos o agencias y solicita información de estos individuos o agencias de parte de mí.

I (Yo), _____, give _____permission to ☐ give the following information to and/or to ☐ get information from the following (**doy permiso a _____ para ☐ dar información a y/o ☐ recibir información de lo siguiente**):

Who I want my information to be shared with: Quien deseo que tenga mi información:	**Name/** Nombre: **Title or Agency/** Titulo o Agencia: **Telephone number/** Número de teléfono:
What information will be shared: Qué información será compartida:	

The information may be shared / La información se puede divulgar:

☐ in person / en persona ☐ by phone / por teléfono ☐ by fax / por fax ☐ by mail / por correo ☐* by email / por correo electrónico

** I understand that electronic mail is not confidential and can be intercepted and read by other people.*

** Entiendo que el correo electrónico (E-mail) no es confidencial y puede ser interceptado y leído por otras.*

I understand that / Entiendo que:

____ **I do not have to sign a release form. It is my choice to allow _____ to share my information or request information on my behalf.**

No tengo que firmar un formulario de autorización de divulgar información. Es mi decisión dar permiso al _____ para compartir o solicitar información de parte de mí.

____ **Releasing or requesting information could give another person or agency information about my location *because they will know that _____ is assisting me and where its offices are located. I also understand that as information is shared the possibility of privacy breaches increases too.***

El divulgo o solicitud de información podría informarle a otras agencias o personas sobre mi ubicación porque confirmaría que _____ está asistiéndome, y sabrán donde se encuentran las oficinas del _____. También entiendo que cuando la información será compartida la posibilidad de violaciones de la privacidad aumenta también.

____ ***By signing a release of information it is possible that some or all of my information will no longer be considered "privileged." Both "privilege" and "waiver" have been explained to me.***

Es posible que una parte o toda mi información no estará considerada privilegiada después de que firmo este permiso limitado. Alguien me ha explicado lo que significa "privilegio" y la renuncia de ese privilegio.

____ **Sending information by e-mail may not be secure, and may compromise confidentiality.**

Compartiendo información por correo electrónico podría ser inseguro y podría poner en peligro la confidencialidad.

____ **This release is limited to what I write above. If I want _____ to give or get additional information about me or my case, I may need to sign another time-limited release.**

Este formulario de autorización está limitado a lo que escribí arriba. Si quiero que el _____ divulgue u obtenga más información sobre mí o mi caso, necesitaré firmar otro formulario de autorización para divulgar información, de limitado tiempo.

____ **[Agency Name] and I may not be able to control what happens to my information once it has been released. The person or agency getting my information may be required by law, or practice, to share it with others.**

Es posible que [Nombre de su agencia] y yo no podamos controlar lo que suceda con esta información después de que se comparta. La agencia o la persona que obtiene dicha información puede ser requerida por ley, o práctica, a divulgar mi información con otras.

This release is valid for a period of ____ days after signature.

Esta autorización es válida por ____ días después de que se firma.

I understand that this release is valid when I sign it, and that I may withdraw my consent to this release at any time either verbally or in writing.

Entiendo que esta autorización es válida cuando la firmo, y que puedo retirar mi consentimiento en cualquier momento, oralmente o por escrito.

Client signature / Firma del cliente:_____ **Date / Fecha:**_____
Parent/Guardian signature (if applicable)**:** _____ **Date:** _____

_____ I am choosing to renew or extend this release of information. The release now expires on _____.
Estoy eligiendo a renovar o ampliar esta autorización. Ahora esta autorización se vence _____.

Firma del Padre/Tutor(a) (si se aplica)**:** _____ **Fecha:** _____

CHAPTER II. Civil Protection Orders

Currently, there are four different types of civil protection orders available in Oregon for victims of abuse. These include: (1) Family Abuse Prevention Act (FAPA) orders for victims of abuse who have a qualifying relationship with the abuser; (2) Stalking orders; (3) Elderly Person or Person with a Disability Abuse Protection Act (EPPDAPA) orders; and (4) Sexual Abuse Protective Order (SAPO). The SAPO is the newest of the four civil protection order schemes in Oregon. It went into effect January 2014. For additional information on protection from abuse laws in Oregon, including guides for advocates, visit Oregon Law Help at: http://www.oregonlawhelp.com/OR/StateForeignLanguages.cfm/OR/StateForeignLanguages.cfm/itopicid/883. For help generally identifying potential civil legal remedies for victims, contact the Victim Rights Law Center (www.victimrights.org). For an overview of the criminal justice process in general, see "A Criminal Justice Guide: Legal Remedies for Adult Victims of Sexual Violence," by Oregon attorneys Doug Beloof, Jessica Mindlin, and Liani Jean Heh Reeves.

May the court make civil protective order pleadings available on the internet?

No, if publishing the information would likely reveal the petitioner's identity or location. The Violence Against Women Act (VAWA) reauthorization of 2013 specifically states that, "a State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes."[lii]

A. Family Abuse Prevention Act (FAPA) Restraining Orders to Prevent Abuse

1. Introduction

This section of the manual addresses the prerequisites for obtaining a Family Abuse Prevention Act[liii] (FAPA) restraining order, the legal process, possible outcomes and post-judgment issues that may arise. Obtaining a restraining order can be a physically and emotionally draining process for a survivor, but the process can be made less difficult with the guidance and support of an informed advocate. An easy to follow Guide for Advocates on FAPA Orders, developed by Legal Aid Services of Oregon, is available online at: http://www.oregonlawhelp.com/documents/202221FAPA%20Pamphlet%20for%20Advocates.pdf?stateabbrev=/OR/.

2. Definitions[liv]

Family Abuse Prevention Act- Who is eligible for a FAPA and the process for obtaining a FAPA order is set out in Oregon state law at ORS 107.700 *et. seq*. You can find the statute online at http://www.leg.state.or.us/ors/107.html
The statute contains the following definitions:

Abuse- The occurrence of one or more of the following acts between family or household members:

- Attempting to cause or intentionally, knowingly or recklessly causing bodily injury;
- Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury; or
- Causing another to engage in involuntary sexual relations by force or threat of force.

Child- An unmarried person who is under 18 years of age.

Family or household member- Includes spouses; former spouses; adult persons related by blood, marriage or adoption; persons who are cohabitating or who have cohabited with each other; persons who have been involved in a sexually intimate

relationship with each other within two years immediately preceding the filing by one of them of a petition for a restraining order to prevent abuse; or unmarried parents of a child. This definition includes same sex partners.

Interfere- To interpose in a manner that would reasonably be expected to hinder or impede a person in the petitioner's situation.

Intimidate- To act in a manner that would reasonably be expected to threaten a person in the petitioner's situation, thereby compelling or deterring conduct on the part of the person.

Menace- To act in a manner that would reasonably be expected to threaten a person in the petitioner's situation.

Molest- To act, with hostile intent or injurious effect, in a manner that would reasonably be expected to annoy, disturb or persecute a person in the petitioner's position.

Peace officer[lv]- a member of the Oregon State Police or a sheriff, constable, marshal, municipal police officer, investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or any other state, or an investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon.

3. Prerequisites for Obtaining a FAPA Restraining Order

The petitioner is the person asking for the order of protection.

The respondent is the person against whom the order is sought / the person whose actions are to be restrained.

Is the petitioner eligible for a restraining order?

To be eligible to obtain a restraining order, a petitioner must have been abused by a family or household member in the 180 days preceding filing.[lvi] This 180 day period does not include any time the respondent, or the person who the petitioner seeks to restrain, was incarcerated (in prison or jail) or living more than 100 miles from the petitioner. The petitioner must also show that she or her children are in imminent danger of further abuse.

What if the petitioner is under 18 years old?

If the petitioner is under 18 years old, the respondent must be older than 18 years and be the petitioner's spouse or former spouse or someone with whom the petitioner has been in a sexually intimate relationship.[lvii]

What if the petitioner and respondent are of the same sex?

A petitioner may seek a restraining order against a same-sex partner, as long as the respondent meets the definition of a "family or household member" as defined above.

What if the petitioner is undocumented?

An individual does not need to be a United States citizen or legal resident to get a restraining order. Neither the court nor law enforcement should ask about a victim's immigration status. If the victim needs to call the police to enforce the order, however, the victim will want to know what the local law enforcement practice is regarding asking people about their immigration status, reporting undocumented victims to Immigration and Customs Enforcement (ICE), etc.

Does the petitioner need an attorney to get a FAPA?

A victim does not need to have a lawyer to get a restraining order. The process is designed to be accessible for individuals who are *pro se* (*i.e.*, who represent themselves). The abuser is not usually present for the initial (*ex parte)* hearing. Some courthouses have family law facilitators whose job it is, in part, to review the FAPA forms before they're submitted to ensure they are complete. If the respondent contests the restraining order and asks for a hearing, however, it can be very helpful if the victim has a lawyer.

Are there any costs involved?

No. It is free to file a petition for a restraining order and to have law enforcement serve a copy of the order on the respondent.

4. Process for Obtaining a Restraining Order

Where should the restraining order be filed?

A restraining order must be filed in either the county where the petitioner resides or the county where the respondent resides.[lviii] Before filing, the petitioner should gather as much of the following information about the respondent as possible: home address, work address and hours, phone number, vehicle make and model, license plate number, whether the respondent owns any guns and whether the respondent is known to use drugs or alcohol.

Where can I find the paperwork?

A "Petition for Restraining Order to Prevent Abuse" is available for free from the civil court clerk at your county courthouse, or online at www.courts.oregon.gov.

What are the guidelines for completing the petition?

The petition should be filled out legibly, in blue or black ink. An advocate may assist in filling out the form, but the petitioner should answer all of the questions herself, as honestly and completely as possible. The petitioner will have an opportunity to detail the incidents of abuse and should do so very descriptively, by stating exactly how the abuse occurred, any injuries sustained, whether the abuser used or threatened to use a weapon, and whether the abuse took place in front of the children. It is helpful to be as specific as possible. For example, rather than writing "he punched me," the petitioner might explain, "he punched me in the face with a closed fist, his ring broke the skin and left me bleeding. My left eye swelled shut from the punch."

The petitioner must also disclose any past or pending suits between the petitioner and respondent, including divorce, separation and custody proceedings. Petitioners do not have to disclose an address if they prefer to keep it confidential. They may provide a "contact address" instead, such as the address of an advocacy agency (see section on address confidentiality for more detail).

The petition must be notarized, so it should be signed before the court clerk at the courthouse or before another notary public. A driver's license or other government

issued ID will be required. Once the petition is signed and notarized, it is ready to be filed with the clerk.

What may the petitioner request in the order?[lix]

The petitioner has several options regarding the scope and type of relief that may be requested. In every order, the respondent will be ordered to refrain from intimidating, molesting, interfering or menacing the petitioner or any children in the petitioner's custody. The respondent will be ordered not to contact the petitioner in person, by phone, mail or electronic device (unless the petitioner requests otherwise).

The petitioner may request that the respondent be restrained from entering a reasonable area around the petitioner's home, which must be set out specifically, (*e.g.,* 100 yards). The petitioner may also request that the respondent be restrained from entering any premises and surrounding area necessary to prevent intimidation, molestation, interference or menace of the petitioner or any children in the petitioner's custody, such as the petitioner's place of work, worship, family members' home, etc.

What if the petitioner and respondent live together?

The petitioner may ask that the respondent be ordered removed (ousted) from the home if the parties live together and jointly own or rent the residence, or if the parties are married. If the judge grants this request, the respondent must vacate the premises. If the respondent wants to return to collect essential personal effects, an officer of the peace may be asked to provide a (20-minute) stand-by, to escort the respondent to the residence to move out his or her personal effects.

What if the petitioner and respondent have children together?

The petitioner may request custody of any children in common with the respondent (unless the mother consents, paternity must have been established before the father may be awarded custody or parenting time). The petitioner must provide information on the children's residence in the five years preceding filing, as well as information on any person who has custody or parenting time with the children. (See ORS 107.710(5)(a)-(g).)

The petitioner may also request "any other relief necessary for the safety and welfare of herself or her children." This may include a request for emergency monetary assistance (financial payment) from the respondent. As the judge's FAPA Benchguide explains: "The statute authorizing 'any relief the court considers necessary' specifically includes, but is not limited to, 'emergency monetary assistance.'" Examples of such assistance might include money to change locks or to repair damaged doors or windows, to obtain an unlisted telephone number, or to move to a new residence. Responsibility for certain debts might also be addressed.[lx]

What happens after the FAPA restraining order is filed?

Being "served" means the respondent is hand-delivered a copy of the paperwork by the Sheriff's Department or other eligible process.

Once the petitioner submits all of the documents to the court clerk, the judge will review the paperwork at a court hearing held in the petitioner's presence. This is called an *ex parte* hearing. Some judges conduct the *ex parte* hearing in chambers, while other judges conduct the hearing in an open courtroom. The judge may want to ask the petitioner questions. If the judge concludes the petitioner has met the legal standard for the restraining order, the judge must issue the order, including any custody award requested if the children named are the petitioner's alone or the petitioner's children with the respondent. (If paternity has not yet been established, the court may not award custody or parenting time to the alleged father without the mother's consent.) Once the judge signs the restraining order, a copy of this order and the petition must be served on the respondent before it can be enforced.

The petitioner may not serve the respondent with the petition and order. The petition and order may be served by : (1) a private person (who is 18 or older, a resident of Oregon, and not a party to the case; (2) a private process server; or (3) the Sheriff's Department (or other local law enforcement). Law enforcement may not charge a victim for serving the order; they must serve the respondent for free.

May the respondent contest the FAPA restraining order?

Yes. Once served, the respondent has 30 days to request a contested hearing. If the respondent requests a hearing, the court will notify the petitioner that a

hearing has been scheduled. The hearing must be held within five (5) business days if the respondent contests the custody award. Otherwise, it must be held within 21 business days of the request. If the petitioner requires an interpreter or accommodations for a disability for the hearing, the court clerk should be notified as soon as possible.

If the respondent does not contest the order, it will remain in effect for one year. The order may be renewed, but it must be renewed before it expires.

What happens at a contested FAPA hearing?

At the contested hearing, the petitioner will testify about the abuse experienced. The respondent will also testify. The petitioner should bring in any evidence of abuse, including pictures, medical records, witnesses and/or witnesses' sworn statements (preferably made under oath and notarized), broken or destroyed items, and any relevant police reports. If there were any witnesses to the abuse, the petitioner may ask (or subpoena) them to appear at the hearing to testify. The petitioner does not need an attorney at the hearing, but if the respondent appears with an attorney, the petitioner may ask for a continuance for additional time to hire legal counsel.

After hearing testimony and viewing evidence, the judge will decide whether to continue the FAPA order. If the judge finds for the petitioner, the restraining order will be granted for one year. (Again, it may be renewed before the one-year period expires.) The petitioner should make several copies of the order so that a copy is accessible at all times (*e.g.,* at home, work, childcare, etc.). If the victim wishes, copies can also be given to a victim's work, school, or any other places the victim and/or the victim's children or other family member frequent, so that they are aware of the terms of the order, too.

5. After a Contested Hearing in Which the Order Is Upheld

What if the respondent violates the order?

If the respondent violates the restraining order, the victim may call the police; under the law, the respondent is supposed to be arrested, even if he has fled the scene. (Oregon's mandatory arrest law requires the police to arrest a respondent

who violates a restraining order.) The petitioner should ask the police to make a report and then obtain a copy of the police report that was filed. It is important to keep records of any violations for future order renewal or modification requests.

May the order be changed or renewed?[lxi]

Yes, an order may be changed (modified) and/or renewed. The terms of a FAPA order remain in effect for one year unless the order is modified or dismissed before then. As noted above, the order may be renewed, but it must be renewed before it expires.

Renewals may be requested from the same court that granted the order. A renewal requires a showing that the petitioner is still in reasonable fear of abuse from the respondent.

The petitioner may request a modification of the order at any time. Like the renewal, a modification must be requested before the order expires and can be obtained from the same court that granted the order.

The petitioner may also request the restraining order be dismissed at any time. The process for dismissal varies, depending on the judge who hears the request. Some judges will grant a dismissal, no questions asked. Others may require the petitioner to answer questions first or even take a class with other domestic violence victims. If an order is dismissed but the petitioner experiences further abuse by the respondent, the petitioner may return to court and file a new restraining order petition.

Note: If a petitioner moves out of state, the Oregon order does not need to be registered in the new jurisdiction. As long as the order meets certain basic criteria, it is supposed to be honored anywhere in the United States, by every state, tribe and territory. This is called "full faith and credit."

6. Where to Find the FAPA Application and Related Forms

A complete FAPA restraining order packet is available at http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/fapaforms

.page. Translations of the FAPA forms are available in Spanish, Russian, Vietnamese, and Korean. However, the forms and their answers must be translated into English before they are filed with the court. Contact your local court if you need an interpreter.

B. Stalking Protection Orders

1. Introduction

A Stalking Protection Order can provide security and a sense of relief to someone who is being stalked by a known or unknown stalker. Stalking orders are also one of the few civil protection orders available in Oregon for victims of non-intimate sexual violence because – in contrast to FAPA – no qualifying relationship is required to be eligible for a stalking order. This section addresses the legal criteria for a stalking order, the process for applying and securing an order, and other stalking order-related issues.

2. Definitions[lxii]

Stalking[lxiii] (a) knowingly alarming or coercing another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person; (b) it is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; (c) the repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

Alarm- Cause fear or apprehension resulting from the perception of danger.

Coerce- Restrain, compel or dominate by force or threat.

Contact- Consists of any of the following:

- Coming into the visual or physical presence of the other person;
- Following;
- Waiting outside the home, work, or school of a person or person's family or household member;

- Sending or making written or electronic communication;
- Speaking by any means;
- Communication through a third person;
- Committing a crime against a person;
- Communication with someone who has a relationship with a person, intending to affect that relationship;
- Communicating with a business entity to affect an interest or property of a person;
- Damaging property, home, work, or school of a person;
- Delivering or having a third person deliver any object to a person's home, property, work or school; or
- Having someone served with legal documents, unless it is done in accordance with Oregon's Rules of Civil Procedure.

Household member- Any person residing in the same residence.

Immediate family member- Father, mother, child, sibling, spouse, grandparent, stepparent, stepchild.

Law enforcement officer- Any person employed in this state as a police officer by a county sheriff, constable, marshal, or municipal or state police agency.

Repeated- Two or more times.

School- Public or private institution of learning or a childcare facility.

Probable cause- There is a substantial objective basis for believing that it is more likely than not an offense has been committed and the person accused has committed it.[lxiv]

3. Prerequisites for Obtaining a Stalking Order

Is the petitioner eligible for a stalking order?

The petitioner is the person asking for the order of protection.

The respondent is the person against whom the order is sought / the person whose actions are to be restrained.

A petitioner is eligible for a stalking order against anyone who has stalked the petitioner or any member of the petitioner's family within the two years previous to filing. As noted above, "stalking" is defined as repeated and unwanted contacts. Two or more unwanted acts are sufficient to meet the criterion that the contact be "repeated." In contrast to FAPA, a stalking order does not require any particular relationship between the petitioner and respondent. A petitioner may file for a stalking order even if the victim has an existing restraining order to prevent abuse.

What if the petitioner is under 18 years old or a dependent?

If the petitioner is under 18 years old (and not emancipated), a parent or guardian may file a stalking order on the minor's behalf. A minor may not file the stalking petition on his or her own behalf.

What if the respondent is under 18 years old?

A stalking order may be granted against a minor without the appointment of a guardian *ad litem*.[lxv]

What if the petitioner is undocumented?

An individual does not need to be a United States citizen or legal resident to get a stalking order. A court should not ask about immigration status. If the victim needs to call the police to enforce the order, however, the victim will want to find out whether local law enforcement is asking people about their immigration status, reporting undocumented victims to Immigration and Customs Enforcement (ICE), etc.

What information should the petitioner have before filing a stalking order?

The petitioner will need as much of the following information as possible to complete the paperwork for a stalking order: the respondent's name and address; a physical description of the respondent; a detailed description of all the unwanted contacts that constitute the stalking conduct, including (to the extent known) the time, date, location of the contacts, witnesses, and any communications between the petitioner and the respondent, whether direct or through 3rd parties.

Does the petitioner need to have an attorney to get a stalking order?

No. A victim does not need to have a lawyer to apply for a stalking order. It can be helpful to have an attorney's assistance but the initial petition or complaint process is designed to be accessible to *pro se* litigants (*i.e.,* individuals who represent themselves). When the stalking complaint or citation goes to hearing, it can be very helpful for the victim to have a lawyer, especially if the respondent is represented by counsel.

Are there any costs involved with filing a stalking order?

No. It is free to file a petition for a stalking order and to have the sheriff serve the respondent with a copy of the documents. (A petitioner may also hire a private process server or have a friend deliver the documents and return the required proof of service form.) A petitioner survivor may not serve her or his own papers.

4. Process for Obtaining a Stalking Order

Where do you go to request a stalking order?

A petitioner can follow one of two different routes to initiate the request for a stalking order: (1) Citation from a law enforcement officer; or (2) Filing an application directly to a judge at the county courthouse. The processes are fairly similar. While the law enforcement route can sometimes be faster, a judge has the authority to issue an actual temporary order rather, than just a citation commanding the respondent to appear in court at a designated date and time and, until that time, not to have any contact with the petitioner. Both routes will

culminate in a hearing in front of a judge who will determine whether a permanent stalking order will be granted.

Route 1: Law Enforcement Agency[lxvi]

A petitioner may go to any law enforcement agency and ask to file a stalking complaint. Most agencies will have a complaint form for the petitioner to fill out. A copy of the complaint form can also be found at the end of this section as well as online in English and Spanish.

The complaint may need to be notarized, so the petitioner should wait to sign it until a notary can witness the signature. The petitioner will need to bring photo identification. A police officer will read the complaint and determine whether the officer has probable cause[lxvii] (see definitions at the beginning of this section) to issue a stalking citation. The citation commands the respondent to appear in court at a designated time and date.

After the respondent is served with a copy of the complaint, the respondent has three (3) days to contest it. The petitioner will be notified of the time and date of the hearing in writing, but in the interim the respondent must obey the conditions set forth in the citation, such as having no contact with the petitioner pending the hearing.

Route 2: County Courthouse

The second route to secure a stalking order is to file a stalking petition at the courthouse. Some courthouses have free forms available for a petitioner to fill out and file, but other courts do not. As noted above, the forms are provided both at the end of this section and online (in English and Spanish), at the Oregon Judicial website:
http://www.ojd.state.or.us/Web/OJDPublications.nsf/Civil%20Stalking%20Protective%20Order?OpenView&count=1000.

The forms will need to be notarized before they are filed with the court, so the petitioner should wait to sign the forms in front of the court clerk or before another notary public. Once the petition is filed, the petitioner will appear before a judge; the judge may ask the petitioner to answer a few questions. If the judge

determines that the petitioner meets the legal standards for an order, the judge will issue a temporary stalking order and schedule a hearing to determine whether a permanent order should be granted.

The sheriff will then serve the temporary order on the respondent free of charge. The temporary order will be in effect for up to 30 days, or longer if it is extended or made permanent at the stalking order hearing.

What does the petitioner need to know about the hearing?

The petitioner must attend the hearing either in person or, if the court permits, by telephone.[lxviii] If the respondent doesn't appear at the hearing, the judge will grant a permanent stalking order and issue a warrant for the respondent's arrest.[lxix] If the respondent does appear, both parties will have an opportunity to give testimony to the judge, and to call witnesses, present evidence, etc. The petitioner should bring documentation of the unwanted contacts, including if possible a log of the date, time, and locations of the contacts, what the respondent said or did that caused the petitioner apprehension, and why those acts caused the petitioner to experience a reasonable fear of physical harm. The petitioner may wish to bring witnesses and written affidavits that support petitioner's claims of unwanted contacts and/or the fear petitioner experienced.

What may the petitioner request in the stalking order?

The petitioner may request that the respondent be prohibited from engaging in any form of stalking behavior. This can include any direct or indirect contacts (*e.g.*, contact through third parties, by email, or online). The petitioner may want to provide specific locations that the respondent must avoid. These can include the petitioner's home, work, gym, place of worship, and school. If the stalking order is granted, the respondent will be prohibited from contacting the petitioner in any manner. If the petitioner is living in a rental residence, the petitioner may request that the landlord change the locks or release the petitioner from the rental agreement. (The petitioner would have to pay the cost of the lock change. See the discussion on housing remedies for survivors for additional information.)

The petitioner may also request that the respondent be restricted from activities involving firearms, or be prohibited from owning or possessing any firearms

whatsoever.[lxx] In addition, the petitioner may request that the respondent be ordered to undergo a mental health evaluation or treatment.[lxxi] If the petitioner incurs any costs, such as attorney's fees, or would like to request punitive or general damages, the court may order the respondent to pay the petitioner a monetary award.[lxxii]

Is it possible to get a stalking order against a respondent who is a minor?

Yes. Under ORS § 163.738, the Circuit Court may enter an order against a minor respondent, and the court is not required to appoint a guardian *ad litem* for the minor.[lxxiii]

How long will the stalking order last?

A stalking order is permanent, unless the court issues it for a more limited period of time, or terminates it. The petitioner may also ask the court to modify (rather than dismiss) the order.

What if the respondent violates the stalking order?

If the respondent violates the stalking order, the victim may want to call the police immediately. The police are required to arrest the respondent. The respondent may be charged with both a violation of the stalking order and the underlying criminal offense committed that constituted the violation (such as stalking, harassment, assault, etc.).

5. Where to Find the Stalking Order and Accompanying Forms

Stalking order forms are available in English, Spanish, Russian, Vietnamese, and Korean at the Oregon Judicial Department's Website: http://www.ojd.state.or.us/Web/OJDPublications.nsf/Civil%20Stalking%20Protective%20Order?OpenView&count=1000

Additional information about the stalking order process is available online at: http://www.ojd.state.or.us/web/ojdpublications.nsf/Files/StalkingInstructions031809.pdf/$File/StalkingInstructions031809.pdf.

C. Protection Orders for Older Adults and Adults with Disabilities

1. Introduction

Oregon law provides special protections for individuals aged 65 and older (the "elderly") and for persons with disabilities. The Elderly Persons and Persons with Disabilities Abuse Protection Act (EPPDAPA) is a protection order scheme designed specifically to protect older adults and adults with disabilities.[lxxiv] In contrast to FAPA and stalking orders, EPPDAPA orders are available to victims who have suffered emotional, verbal or financial – not just physical – abuse.

2. Definitions[lxxv]

Abuse- One or more of the following:

- Any physical injury to an elderly person caused by other than accidental means, or which appears to be at variance with the explanation given of the injury;
- Neglect;
- Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person;
- Willful infliction of physical pain or injury upon an elderly person;
- Verbal abuse.;
- Financial exploitation;
- Sexual abuse;
- Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person; or
- A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a licensed physician and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

Elderly person- Any person 65 years of age or older. Persons who are not covered by the protections detailed in the long-term care facility abuse protections (O.R.S. 441.640 - .665) are eligible for a civil protection order under the Elderly Persons and Persons with Disabilities Protection Act.

Facility- Includes any of the following:

- A long term care facility- a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the Director of Human Services, to provide treatment for two or more unrelated patients. "Long term care facility" includes skilled nursing facilities and intermediate care facilities but may not be construed to include facilities licensed and operated pursuant to ORS 443.400 to 443.455.[lxxvi]
- A residential facility-a facility that provides, for six or more socially dependent individuals or individuals with physical disabilities, residential care in one or more buildings on contiguous properties, including but not limited to an assisted living facility.[lxxvii]
- An adult foster home- any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.[lxxviii]

Financial exploitation- Includes any of the following:

- Wrongfully taking the assets, funds or property belonging to or intended for the use of an elderly person or a person with a disability;
- Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out;
- Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability; or
- Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

Intimidation- Compelling or deterring conduct by threat.

Law enforcement agency- Any city or municipal police department, county sheriff's office, the Oregon State Police or district attorney.

Neglect- Failure to provide the care, supervision or services necessary to maintain the physical and mental health of an elderly person that may result in physical

harm or significant emotional harm to the elderly person; or the failure of a caregiver to make a reasonable effort to protect an elderly person from abuse.

Person with a disability- A person who is eligible for Supplemental Security Income or for general assistance; and who meets one of the following criteria:[lxxix]

- Has mental retardation or a developmental disability or is mentally or emotionally disturbed, and resides in or needs placement in a residential program administered by the department.
- Is an alcohol or drug abuser and resides in or needs placement in a residential program administered by the department.
- Has a physical or mental disability other than those described above.

OR

Any person experiencing an injury defined as an injury to the brain caused by extrinsic forces where the injury results in the loss of cognitive, psychological, social, behavioral or physiological function for a sufficient time to affect that person's ability to perform activities of daily living shall be considered a person with a disability.[lxxx]

Public or private official- Includes the following:

- Physician, naturopathic physician, osteopathic physician, chiropractor, physician assistant or podiatric physician and surgeon, including any intern or resident.
- Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.
- Employee of the Department of Human Services or community developmental disabilities program.
- Employee of the Oregon Health Authority, county health department or community mental health program.
- Peace officer.
- Member of the clergy.
- Regulated social worker.
- Physical, speech or occupational therapist.
- Senior center employee.
- Information and referral or outreach worker.

- Licensed professional counselor or licensed marriage and family therapist.
- Any public official who comes in contact with elderly persons in the performance of the official's official duties.
- Firefighter or emergency medical technician.
- Psychologist.
- Provider of adult foster care or an employee of the provider.
- Audiologist.
- Speech-language pathologist.

Services- Includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an elderly person.

The petitioner is the person who wants to get the protective order for him or herself, or the guardian, conservator or guardian *ad litem* of the abused elder or disabled person.

The respondent is the person from whom the petitioner seeks protection.

Sexual abuse- Includes:

- Sexual contact with an elderly person who does not consent or is considered incapable of consenting to a sexual act under ORS 163.315;
- Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;
- Any sexual contact between an employee of a facility or paid caregiver and an elderly person served by the facility or caregiver;
- Any sexual contact between an elderly person and a relative of the elderly person other than a spouse; or
- Any sexual contact that is achieved through force, trickery, threat or coercion.

Sexual abuse does not include consensual sexual contact between an elderly person and a paid caregiver who is the spouse of the elderly person.

Sexual contact-[lxxxi] Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

Verbal abuse- To threaten significant physical or emotional harm to an elderly person or a person with a disability through the use of:

- Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or
- Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

3. Prerequisites for Obtaining an EPPDAPA Order

The petitioner is the person who wants to get the protective order for him or herself, or the guardian, conservator or guardian *ad litem* of the abused elder or disabled person.

The respondent is the person from whom the petitioner seeks protection.

Is the petitioner eligible for an EPPDAPA protection order?

To obtain a protection order, the petitioner must be an elder (65 years of age or older) or a person with a disability (as defined above) or else the guardian, conservator or guardian *ad litem* for an elder or disabled person. The victim must have been abused (see definition above) within the preceding 180 days of filing the petition. [lxxxii] Any period of time that the respondent was incarcerated or living more than 100 miles from the petitioner is not included in calculating the 180-day period. The petitioner must also be in immediate and present danger of further abuse from the respondent.

What if the abuser is the elder or disabled person's current court-appointed guardian or conservator?

A protection order may not be requested against a current court-appointed guardian or conservator. If an elder or disabled person is being abused by a guardian or conservator, the judge who appointed the guardian or conservator should be notified and an attorney should be consulted.

What if the petitioner is undocumented?

Oregon law does not require a victim to be a citizen or legal resident of the United States to get a protection order. Indeed, a court should not ask about immigration status. The victim should be aware, however, that enforcing the order can require calling the police. See the section on non-citizen victims in this manual for a more detailed discussion of serving non-citizen victims and potential law enforcement response.

What information should the petitioner have before filing a petition for an EPPDAPA protection order?

The petitioner will need as much of the following information as possible to complete the paperwork for a protection order: respondent's name and address; a physical description of the respondent; a detailed description of the incidents of abuse including, if possible, the dates, times, location, and witnesses if any to what occurred.

Does the petitioner need an attorney?

An attorney is not required to obtain a protection order. It may be helpful to have an attorney assist in completing the paperwork and guiding the petitioner through the hearing, especially if the respondent has an attorney.

Are there any costs involved?

No. There is no cost to file a petition for a protection order, to serve the petition on the respondent, or for the court hearing at which the judge will determine whether a protection order is appropriate.

What kind of protection does an EPPDAPA[lxxxiii] order offer?

At the request of the person seeking protection, an EPPDAPA can include provisions requiring an abuser to: stay away from the elder or disabled person; not to bother or threaten the victim; stay away from certain places where the victim usually goes such as work, place of worship, volunteer locations, exercise class, medical offices and a specific library branch; return to the victim belongings such as house and car

keys and medicines. In some cases, the court can even order a person to be removed from the person's own home if that is where the victim lives.

4. Process for Obtaining an EPPDAPA Order

Where should the petition be filed?

The petition should be filed at the courthouse in the county where the respondent lives, or the county where the elder or disabled person lives.

The petitioner is the person who wants to get the protective order for him or herself, or the guardian, conservator or guardian *ad litem* of the abused elder or person with disability.

Where can I find the paperwork?

A petition can be obtained from the civil court clerk at your county courthouse, or online at www.courts.oregon.gov. The forms are available in English, Spanish, Russian, Vietnamese or Korean online. A blank form is also included in the appendix at the end of this section.

What are the guidelines for completing the petition?

The petition should be typed or handwritten legibly, in blue or black ink. The petitioner should answer all of the questions, as honestly and completely as possible; in addition to friends or neighbors, staff from a local Senior and Disability Services office, a rape crisis center, a domestic violence program, or a DA-based victim's assistance worker may help a petitioner complete the forms. A victim also may hire an attorney to help with the process. The petitioner will have an opportunity to describe the incidents of abuse and should do so very descriptively, by describing exactly how the abuse occurred (including the specific words, if possible), any emotional or physical injuries incurred as a result, the harm threatened or care withheld, etc.

Being "served" means the respondent is hand-delivered a copy of the paperwork. Tpyically this is by a qualified adult, a private process server or a sheriff's deputy.

What happens after the petition is filed?

After the petition is completed and signed, the judge will hold an *ex parte* hearing that day, in person or by phone, to determine if abuse has been proven. If the

judge decides that emotional or physical abuse as defined by the statute has occurred, the judge must issue a protection order. The EPPDAPA order will remain in effect for a maximum of one year, unless it is modified or terminated before then.

The sheriff will serve a copy of the order on the respondent free of charge. The respondent has thirty (30) days from the day of service to request a hearing to contest the order.[lxxxiv]

What happens at the contested hearing?

At the hearing, the petitioner will be asked to testify about the abuse experienced. The respondent will also testify. The petitioner should bring in any evidence of abuse, including pictures, medical records and police reports. If there were any witnesses to the abuse, the petitioner may ask them to appear at the hearing and testify.

If a hearing could result in a traumatic confrontation for the petitioner, the petitioner may ask that the court, within its discretion, make alternate hearing arrangements.[lxxxv]

The petitioner is not required to have a lawyer for the contested hearing, but it may be helpful. If the respondent appears with an attorney, the petitioner may ask for a continuance to give the petitioner time to seek legal counsel.

After hearing testimony and viewing evidence, the judge will make a decision whether to grant a permanent injunction. If the judge finds for the petitioner, the restraining order will be granted for one year. The *Judge's Benchguide for the Elderly Persons and Persons With Disabilities Abuse Prevention Act* provides additional details and information; it is available online at http://courts.oregon.gov/Deschutes/docs/forms/restraint/ElderAbuseBenchguideMarch2008.pdf.

5. After an EPPDAPA Order Is Issued

How long does the EPPDAPA protection order last?

The terms of the protection order will remain in effect for one year, unless the

petitioner asks the court to modify or dismiss the order before then. The order can be renewed in one-year increments if the petitioner still fears abuse from the respondent. Renewals must be requested before the order expires.

What if the respondent violates the order?

If the respondent violates the EPPDAPA order, the victim may call the police; Oregon's mandatory arrest law requires the police to arrest a respondent who violates a restraining order. The petitioner should ask the police to make a report and then obtain a copy of the police report that was filed. It is important to keep records of any violations for future order renewal or modification requests.

6. Where to Find EPPDAPA and Accompanying Forms

EPPDAPA forms are available in English, Spanish, Vietnamese, Korean, and Russian at the Oregon Judicial Department's website http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/EPPDAPA.page?

D. Sexual Abuse Protective Order (SAPO)

1. Introduction

In 2013, Oregon passed the Sexual Abuse Protective Order (SAPO) statute to address a critical gap in the protections available to survivors of non-intimate partner sexual assault. Sexual assault survivors assaulted by a friend, acquaintance, co-worker, fellow student, stranger, etc., are now eligible to apply for a civil protection order in Oregon. This next section of the manual addresses the prerequisites for obtaining a SAPO,[lxxxvi] the unique eligibility requirements, the application process, possible outcomes and potential post-judgment issues or considerations.

At the outset, know that pursuing a SAPO can be difficult in certain counties in Oregon, as the remedy is still relatively new and courts seem to be adjusting to the process. For example, some courts allow a FAPA but not a SAPO to be heard remotely (*i.e.*, with the survivor appearing in court via closed circuit camera from a

family justice center); others decline to have the SAPO forms accessible through pre-programmed court computers. Hopefully over time these challenges will disappear. Advocates can play a crucial role in helping survivors access this important new remedy. Keep in mind, though, that civil protection orders such as a SAPO, FAPA, EPPDAPA or stalking order are just one component of effective safety planning. There are many other safety factors to consider, including how best to promote a survivor's safety at work, school (whether primary, middle high school or college), home, and in the community at large.

2. Definitions

Sexual Abuse Protective Order (SAPO)- The eligibility requirements and the process for obtaining a SAPO are set out in Oregon state law at ORS 163.760 *et. seq*. You can find the statute online at http://www.leg.state.or.us/ors/163.html. Note that eligibility for a SAPO is quite limited, especially when compared to the other Oregon CPO schemes such as FAPA and EPPDAPA.

For a definition of the terms "family or household members," "interfere," "intimidate," "menace," and "molest," the SAPO statute employs "the meanings given those terms in ORS 107.705" (the FAPA statute).[lxxxvii] The FAPA definitions are as follows:

Family or household member- Includes spouses, former spouses, adult persons related by blood, marriage or adoption, persons who are cohabitating or who have cohabited with each other, persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing by one of them of a petition for a restraining order to prevent abuse, or unmarried parents of a child. This definition includes same sex partners.

Interfere- To interpose in a manner that would reasonably be expected to hinder or impede a person in the petitioner's situation.

Intimidate- To act in a manner that would reasonably be expected to threaten a person in the petitioner's situation, thereby compelling or deterring conduct on the part of the person.

Menace- To act in a manner that would reasonably be expected to threaten a person in the petitioner's situation.

Molest- To act, with hostile intent or injurious effect, in a manner that would reasonably be expected to annoy, disturb or persecute a person in the petitioner's position.

As with FAPA, in a SAPO the petitioner is the person who wants to get the restraining order for him or herself.

The respondent is the person from whom the petitioner seeks protection.

3. Prerequisites for Obtaining a SAPO

Is the petitioner eligible for a restraining order?

Eligibility: The eligibility for a SAPO is much more limited than for the other types of civil protection orders (FAPA, stalking, and EPPDAPA). The statute provides that "A person who has been subjected to sexual abuse and who reasonably fears for the person's physical safety may petition the circuit court for a [Sexual Abuse] restraining order if:

(a) The person and the respondent are <u>not</u> family or household members (emphasis added);
(b) The respondent is at least 18 years of age; and
(c) The respondent is not prohibited from contacting the person pursuant to a foreign restraining order, [a stalking, EPPDAPA, or child abuse restraining order issued by a juvenile court]."[lxxxviii]

How is "sexual abuse" defined for purposes of getting a SAPO?

"'Sexual abuse' means sexual contact with:

(a) A person who does not consent to the sexual contact; or
(b) A person who is considered incapable of consenting to a sexual act under ORS 163.315, unless the sexual contact would be lawful under ORS 163.325 or 163.345."[lxxxix]

Who does Oregon law say is incapable of giving consent?

ORS 163.315 addresses capacity to consent. The statute states that "a person is incapable of consenting to a sexual act if the person is:

(a) Under 18 years of age;
(b) Mentally defective;
(c) Mentally incapacitated; or
(d) Physically helpless."[xc]

What sexual contact is lawful (legal) under ORS 163.325 and ORS 163.345 such that someone is not eligible for a SAPO?

The exceptions (ORS 163.325 and ORS 163.245) listed in the definition of "sexual abuse" are statutes that provide for when a mistake about the victim's age or the age difference between the parties may be available to a defendant in a criminal case of sexual abuse.

What if the petitioner was not eligible for a SAPO because the assailant was subject to a "no contact" order in a criminal case but that case has since been dismissed?

The petitioner will become eligible to apply for a SAPO if an order that once precluded eligibility, such as a no contact provision in a criminal case, is no longer in effect. The petitioner will need to apply for the SAPO within 180 days of when the sexual assault occurred; the 180-day period is extended for any period of time that the petitioner was not eligible for the order due to another qualifying no contact order, the respondent's incarceration, or the respondent living more than 100 miles away from the petitioner. For example, if a victim was assaulted on January 1st, the defendant was arrested and released subject to a no contact order on January 31st, and the case was dismissed on August 31st, then the victim will have 150 days from August 31st to file the petition (*i.e.,* 180 days from September 1st *minus* the 30 days in January).

What if the petitioner is under 18 years old?

The SAPO is unique in that the SAPO petition may be filed without the appointment of a guardian *ad litem* by a petitioner who is at least 12 years of age or by a parent or lawful guardian of a person who is under the age of 18.[xci] Petitioners who are minors should be cautioned, however, that if they petition the court for a SAPO on their own in the hope that their parent(s) will not learn of the assault, it is unlikely the information will remain private as the judge will be mandated to report the abuse under Oregon's mandatory reporting statute. Petitioners under the age of 12 still need a guardian *ad litem* to petition for a SAPO.

What if the petitioner and respondent are of the same sex?

The SAPO applies equally to all individuals regardless of sex, sexual orientation or gender identity.

What if the petitioner is undocumented?

An individual does not need to be a United States citizen or legal resident to get a restraining order. Neither the court nor law enforcement should ask about a victim's immigration status. If the victim needs to call the police to enforce the order, however, the victim will want to know what the local law enforcement practice is regarding asking people about their immigration status, reporting undocumented victims to Immigration and Customs Enforcement (ICE), etc.

Does the petitioner need a lawyer to get a SAPO?

A victim does not need to have a lawyer to get a SAPO. The process is designed to be accessible for individuals who are *pro se* (*i.e.*, who represent themselves). The perpetrator is not usually present for the initial (*ex parte)* hearing. If the respondent contests the SAPO and asks for a hearing, however, it can be very helpful if the victim has a lawyer.

Are there any costs involved?

No. It is free to file a petition for a sexual abuse protective order (SAPO) and to have law enforcement serve a copy of the order on the respondent.

4. Process for Obtaining a Sexual Abuse Protective Order

What information does a SAPO petition need to include?

The petition must state that: "(A) The petitioner reasonably fears for the petitioner's safety with respect to the respondent; and (B) The respondent subjected the petitioner to sexual abuse within the 180 days preceding the filing of the petition."[xcii] This 180-day period does not include any time the respondent was incarcerated (in prison or jail), had a principal residence more than 100 miles from the petitioner's principal residence, or the respondent was subject to a no contact order listed in ORS 163.763(1)(c) (*i.e.,* a foreign restraining order, stalking order, EPPDAPA, FAPA, juvenile court child abuse restraining order, or an order entered in a criminal case).[xciii]

Where should the SAPO be filed?

A SAPO must be filed in either the county where the petitioner resides or the county where the respondent resides.[xciv] Before filing, the petitioner should gather as much of the following information about the respondent as possible: home address, work address and hours, phone number, vehicle make and model, license plate number, whether the respondent owns any guns and whether the respondent is known to use drugs or alcohol. In cases of stranger sexual assault, and also in some cases where the victim was assaulted by an acquaintance, the survivor may not know the assailant's name, address, or other identifying information. In these cases, the police may be able to help gather this information if the survivor reported to law enforcement. A private attorney may also be able to help track down this information.

Where can I find the SAPO forms?

A "Petition for Restraining Order to Prevent Abuse" is available for free from the civil court clerk at your county courthouse. You can also find the forms online at http://courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP/SAPO.aspx.

What information does a SAPO petition need to include?

The petition must state that: "(A) The petitioner reasonably fears for the petitioner's safety with respect to the respondent; and (B) The respondent subjected the petitioner to sexual abuse within the 180 days preceding the filing of the petition."[xcv] This 180 day period does not include any time the Respondent was incarcerated (in prison or jail), had a principal residence more than 100 miles from the Petitioner's principal residence, or the Respondent was subject to a no contact order listed in ORS 163.763(1)(c) (*i.e.,* a foreign restraining order, stalking order, EPPDAPA, FAPA, juvenile court child abuse restraining order, or an order entered in a criminal case). [xcvi]

What are the guidelines for completing the petition?

The petition should be filled out legibly, in blue or black ink. An advocate may assist in filling out the form, but petitioners should answer all of the questions themselves, as honestly and completely as possible. The petitioner will have an opportunity to detail the incidents of abuse and should do so very descriptively, by stating exactly how the assault occurred, any injuries sustained, whether the respondent used force or threat of force, and how the Respondent behaved. It is helpful to be as specific as possible. For example, rather than writing "we had sex" or "he forced me to have sex," the petitioner might explain, "he held me down on the couch, grabbed both my hands with his so that I could not fight back, and removed my pants and underwear. Then he forced his penis into my mouth and continued doing this until he ejaculated."

Petitioners do not have to disclose an address if they prefer to keep it confidential. They may provide a "contact address" instead, such as the address of an advocacy agency (see section on address confidentiality for more detail).

The petition must be notarized, so it should be signed before the court clerk at the courthouse or before another notary public. A driver's license or other government issued ID will be required. Once the petition is signed and notarized, it is ready to be filed with the clerk.

What may the petitioner request in the order?[xcvii]

The petitioner has several options regarding the scope and type of relief that may be requested. In every order issued, the respondent will be ordered to refrain from intimidating, molesting, interfering or menacing the petitioner. If the petitioner requests, the court may order that respondent also be restrained from intimidating, molesting, interfering or menacing the petitioner's children or family or household members, and from entering any premises and a reasonable area surrounding the petitioner's residence or any other premises. The restraining order must specifically describe the area or premises.

The petitioner may also request "[o]ther relief necessary to provide for the safety and welfare of the petitioner or the petitioner's children or family or household members."[xcviii]

What happens after the SAPO order is filed?

Being "served" means the respondent is hand-delivered a copy of the paperwork by the Sheriff's Department.

Once the petitioner submits all of the documents to the court clerk, the judge will review the paperwork at a court hearing held in the petitioner's presence. This is called an *ex parte* hearing. Some judges conduct the *ex parte* hearing in chambers, while other judges conduct the hearing in an open courtroom. The judge may want to ask the petitioner questions. If the judge concludes the petitioner has met the legal standard for the restraining order, the judge must issue the order. Once the judge signs the restraining order, a copy of both the *ex parte* petition and the order must be personally served on the respondent before the order can be enforced.

The petitioner may not serve the respondent with the petition and order. The petition and order may be served by a: (1) private person (who is 18 or older, a resident of Oregon, and not a party to the case; (2) private process server; or (3)

Sheriff's Department (or other local law enforcement) officer. Law enforcement may not charge a victim for serving the order; they must serve the respondent for free.

May the respondent contest the SAPO?

Yes. Once served, the respondent has 30 days to request a contested hearing.[xcix] If the respondent requests a hearing, the court will notify the petitioner that a hearing has been scheduled. The hearing must be held within 21 business days of the request. In certain circumstances, the court may extend the hearing date for up to five (5) days to allow a party to hire a lawyer.

If the respondent does not contest the order, it will remain in effect for one-year. The order may be renewed, but it must be renewed before it expires. [c]

If one party but not the other is represented at a hearing, the court may extend the hearing date for up to five (5) days at the other party's request, so that the other party can try and hire a lawyer too.[ci]

What happens at a contested SAPO hearing?

At the contested hearing, the petitioner will testify about the sexual abuse or assault. The respondent will also testify. The petitioner should bring in any evidence, including pictures, medical records, witnesses and/or witnesses' sworn statements (preferably made under oath and notarized), and any relevant police reports. If the petitioner is alleging that they did not have capacity to consent due to intoxication, it may be helpful to have witnesses who can testify to how much the petitioner drank over what period of time, who supplied (or had access to, in the case of drug facilitated sexual assault) the alcohol, whether the petitioner appeared intoxicated (or drugged), and other information that may help a judge decide whether the victim was capable of giving consent.

After hearing testimony and viewing evidence, the judge will decide whether to continue the SAPO. If the judge finds for the petitioner, the restraining order will be granted for one year. (Again, it may be renewed before the one-year period expires.) The petitioner should make several copies of the order so that a copy is

accessible at all times. If the victim wishes, copies can also be given to a victim's work, school, or any other places the victim and/or the victim's children or other family member frequent, so that they are aware of the terms of the order, too.

What if the respondent wants to agree to be restrained but does not want to be subject to the SAPO?

The court may approve a consent agreement between the two parties if the court decided that the agreement provides sufficient protection for the petitioner. Note that the court may not approve a consent agreement if it provides for the petitioner to be restrained, unless the respondent also filed for and was granted his or her own restraining order under this statute (ORS 163.765).[cii] The survivor should understand that a consent agreement is not going to qualify for the full faith and credit protections available to qualifying protection orders issued by a different jurisdiction.

5. After a Contested Hearing in Which the SAPO Is Upheld

What if the respondent violates the order?

If the respondent violates the restraining order, the victim may call the police; under the law, the respondent is supposed to be arrested, even if he has fled the scene. (Oregon's mandatory arrest law requires the police to arrest a respondent who violates a restraining order.) The petitioner should ask the police to make a report and then obtain a copy of the police report that was filed. It is important to keep records of any violations for future order renewal or modification requests.

May the order be changed or renewed?[ciii]

Yes, an order may be changed (modified) and/or renewed. The terms of a SAPO remain in effect for one year unless the order is modified or dismissed before then. As noted above, the order may be renewed, but it must be renewed before it expires.

Renewals may be requested from the same court that granted the order. A renewal requires a showing that the petitioner is still in reasonable fear of abuse

from the respondent. Petitioner is not required to show additional sexual abuse has occurred. As with the *ex parte* order, if the respondent objects to the renewal the court will hold a hearing within 21 days of the respondent's request.[civ]

The petitioner may request a modification of the order at any time. Like the renewal, a modification must be requested before the order expires and can be obtained from the same court that granted the order.

The petitioner may also request the restraining order be dismissed at any time. The process for dismissal varies, depending on the judge who hears the request. Some judges will grant a dismissal, no questions asked. Others may require the petitioner to answer questions first or even take a class with other domestic violence victims. If an order is dismissed, but the petitioner experiences further abuse by the respondent, the petitioner may return to court and file a new restraining order petition.

Note: If a petitioner moves out of state, the Oregon order does not need to be registered in the new jurisdiction. As long as the order meets certain basic criteria, it is supposed to be honored anywhere in the United States, by every state, tribe and territory. This is called "full faith and credit." See 18 USC 2265.

6. Where to Find the SAPO Application and Related Forms

A complete SAPO Restraining Order packet is available at http://courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP/SAPO.aspx. Translations of the SAPO forms are available in Spanish, Russian, Chinese, Vietnamese, and Korean. at http://courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP/SAPO.aspx. However, as of May 2016 the forms had not yet been updated to reflect any changes passed during the 2015 legislative session. Also, although the forms are available in these five (5) languages a party's answers must be translated into English before they are filed with the court. Contact your local court if you need an interpreter.

E. Emergency Protection Order

May a law enforcement officer apply for an emergency protective order for a victim?

Yes. In 2015, a new law was passed in Oregon to allow peace officers to apply for short-term, emergency protective orders on a 24-hour basis. The peace officer may contact the court to seek an order if: 1) the officer has responded to an incident of domestic disturbance and the circumstances for mandatory arrest exist; or 2) a person is in immediate danger of abuse by a family or household member; and 3) an emergency protective order is necessary to prevent a person from suffering the occurrence or recurrence of abuse. The application process is similar to seeking an arrest warrant. The emergency order is limited in duration. It expires on the seventh (7^{th}) judicial business day following the day of its entry into the Law Enforcement Data System (LEDS). Weekends and holidays do not count as business days. A violation of the order is contempt of court punishable by up to six months in jail.

When does the new Emergency Protection Order law take effect?

The new law took effect January 1, 2016.

How is "peace officer" defined?

A Peace officer is the one who applies for the emergency protection order. In Oregon, a peace officer[cv] is defined as someone who is a member of the Oregon State Police or a sheriff, constable, marshal, municipal police officer, investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or any other state, or an investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon.

F. Tribal Protective Orders

May a tribal court issue a protective order?

Yes. A tribal court may issue a protective order.

May tribal courts issue a civil protective order against a non-Indian respondent?

Yes. The 2013 Violence Against Women Act reauthorization made clear that tribal courts have jurisdiction over non-Indians in civil protection order cases. In VAWA 2013 the federal government also recognized that tribes can have jurisdiction over non-Indians who commit the crimes of domestic violence, dating violence, and protection order violations so long as the tribes provide certain (enumerated) due process rights.[cvi]

Do Oregon state law enforcement agencies have to enforce a tribal protective order?

Yes. Federal law requires that all states, tribes and territories recognize and enforce all qualifying protection orders from other states, tribes and territories as if they were their own. An order is a "qualifying" order if it was issued by a court who had personal and subject matter jurisdiction to hear the matter, and the order was issued after the respondent had reasonable notice and an opportunity to be heard.[cvii]

CHAPTER III. Disability and Medical Accommodations

Accommodations for people with disabilities are governed by both federal and Oregon state law. In addition, more than one law may be applicable, so it is important to consider a provider's obligations under any/all applicable laws and regulations.

A. What Are Our Obligations to Accommodate Assistance Animals?

Shelter programs often have many questions relating to accommodations for residents with service animals. Some common questions include: "If someone comes to one of our shelters or support groups with an animal and says it's a service animal, what are our obligations?" "May we ask the survivor for more information?" "May we deny admission if we have a no-pet policy?" "What if we're working with someone who relies on her animal for support, but the survivor's landlord has a 'no pets allowed' policy?" "What do we do if we have one person who requires a service animal and another person who has a potentially life threatening condition such as asthma (which can be triggered by the presence of pet hair)?"

The Americans with Disabilities Act (ADA), the Fair Housing Act (FHA), and the Rehabilitation Act of 1973, §504 are the three federal laws that address accommodations for people with disabilities, including accommodations for assistance animals. The similarities and differences in how the laws address assistance animals are summarized in the chart below.

	Americans with Disabilities Act (ADA)	***Fair Housing Act (FHA)***	***Rehabilitation Act of 1974, § 504***
What is the general purpose of this law?	The ADA gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.[cviii]	The primary purpose of the Fair Housing Act is to protect the buyer or renter of a dwelling from discrimination by the seller or landlord. Under the FHA, no person shall be subjected to discrimination because of race, color, religion, sex or gender, disability, familial status or national origin.[cix]	Applies to any program that receives federal assistance, including public or subsidized housing.[cx]
Which law applies to our shelter program?	This law applies.	This law applies.	This law applies.
We don't have a shelter. All of our services are outreach-based. Which law applies?	This law applies.	This law probably doesn't apply. However, if you assist your program participants with housing, the FHA applies to that housing.	This law may apply if the housing is publicly subsidized. A landlord who accepts Section 8 rental assistance is not subject to § 504[cxi].
How do these laws define "person with a disability?"	Under all three laws, the tenant must meet the statutory definition of having a "disability" in order to qualify for a reasonable accommodation. The statutes recognize three broad categories of disabilities: (1) a physical or mental impairment that substantially limits one or more major life activities (such as walking, seeing, working, learning, washing, dressing, etc.); (2) a record of having such an impairment; or (3) being regarded as having such an impairment.[cxii]		

	Americans with Disabilities Act (ADA)	***Fair Housing Act (FHA)***	***Rehabilitation Act of 1974, § 504***
How do these laws define assistance animals?	The ADA uses the term "service animal" and defines it as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.[cxiii]	Neither the FHA nor §504 contain a specific definition of the term "service animal." However, an animal does not need to be individually trained. Any animal, not just dog, may be a service animal under the Fair Housing Act and §504.[cxiv] In order to qualify as a service animal, the individual with the disability who needs the accommodation must demonstrate the accommodation is necessary, related to his/her disability, and needed to assist in utilizing and enjoying their home.[cxv]	
If someone wants to request a reasonable accommodation, are they only allowed to have a certain kind of animal?	The ADA refers to dogs and miniature horses only.[cxvi] This means that if someone requests a reasonable accommodation under the ADA, the service animal must be a dog or a miniature horse for the accommodation to be considered.	Any kind of animal could be an assistance animal under the FHA.	Any kind of animal could be an assistance animal under §504.
What kind of assistance may the animal provide?	The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include: assisting those who are sight-impaired with navigation and other tasks; alerting those who are hearing-impaired to the presence of people or sounds; pulling a wheelchair; assisting during a seizure; alerting someone to the presence of allergens; retrieving items.[cxvii]		
If an animal is for emotional support only, is a landlord required to accommodate in the animal if there's a "no pet" policy?	No.[cxviii]	Yes.	Yes.

	Americans with Disabilities Act (ADA)	***Fair Housing Act (FHA)***	***Rehabilitation Act of 1974, § 504***
What if our program (shelter or non-shelter) has a policy stating "No animals allowed?"	If the animal meets the definition of "service animal" as defined by the ADA (see the definition in section above), the DV or SA program must make a reasonable modification of the policy and allow the animal in.[cxix]	An assistance animal is not a pet. Therefore, if there is a 'no pet' policy the housing provider must allow the service animal in. Subsequently, the housing provider may not charge a fee for the service animal even if the housing provider would normally charge for pets.	
I'm working with a participant who's moving to an apartment that has a no pet rule. The dog eases the participant's anxiety. What should the participant do?	The participant will want to ask for a "reasonable accommodation." To qualify for a reasonable accommodation under any of the laws, the tenant must meet the statutory definition of having a "disability" (defined above). Then s/he should request a reasonable accommodation in writing from the landlord, manager, or other appropriate authority. The request should state that the tenant has a disability and explain how the requested accommodation will be helpful. The tenant should also include a note from a service provider verifying the need for the support animal. Note that the tenant need not disclose the details of the disability, nor provide a detailed medical history.		
The animal is not "individually trained to perform specific tasks" as required by the ADA definition. Now what?	Then the animal does not meet the ADA definition of "service animal" and the shelter does not have an ADA obligation to allow the animal to accompany the individual with a disability.[cxx]	Your program or the landlord must determine whether denying the animal would deny the individual equal opportunity to use and enjoy a dwelling (the shelter). If it would, then the animal must be allowed.	
What can I ask a program participant about her animal and her disability?	The person with the disability may be asked two questions only: 1) whether they have a disability, and 2) if their animal is a service animal.[cxxi] No other questions about the disability or the animal are allowed.	The person with the disability may be asked to demonstrate that the accommodation for the animal in necessary, related to his/her disability, and needed to assist in utilizing and enjoying	

	Americans with Disabilities Act (ADA)	***Fair Housing Act (FHA)***	***Rehabilitation Act of 1974, § 504***
		the home. No probing questions into the disability may be asked.	
May I ask a program participant for documentation of her disability?	No.	Yes. Demonstration that accommodation for the animal is necessary can be done through a letter from a doctor, a social worker, a counselor, etc.	
May I ask for proof of training of the animal?	No.[cxxii]	No.	No.
May we exclude a service animal if it has behavior issues?	Yes, a public entity may ask an individual with a disability to remove a service animal from the premises if the animal is out of control and the animal's handler does not take effective action to control it; or the animal is not housebroken.[cxxiii]	Yes. Housing providers are not required to provide any reasonable accommodation that would pose a direct threat to the health or safety of others[cxxiv], result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation, pose an undue financial and administrative burden, or fundamentally alter the nature of the provider's operations.	

B. Medical Marijuana

What is Oregon's Medical Marijuana Act?

The Oregon Medical Marijuana Act regulates the use of marijuana for medicinal purposes. People who possess a registry identification card issued under ORS § 475.309 may produce, possess, deliver, or administer marijuana within certain permissible limits.

However, state laws impose certain restrictions on the medical use of marijuana. For example, a person may be prosecuted for a criminal offense for: driving under the influence of marijuana; using medical marijuana in public view,

correctional center, or public place.[cxxv] Public place is defined as "hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation."[cxxvi]

Is our program obligated to accommodate use of medical marijuana by program participants?

No. Federal and state non-discrimination laws do not require Public Housing Agencies (PHAs) and owners of other federally assisted housing to accommodate requests by current or prospective residents to use medical marijuana on their premises. Therefore, PHAs and owners do not have to grant reasonable accommodations for medical marijuana use. Moreover, they have the authority to evict or continue to rent to current residents who engage in such use.[cxxvii] Thus, your organization may decide whether to accommodate the use of medical marijuana by a registered card holder.

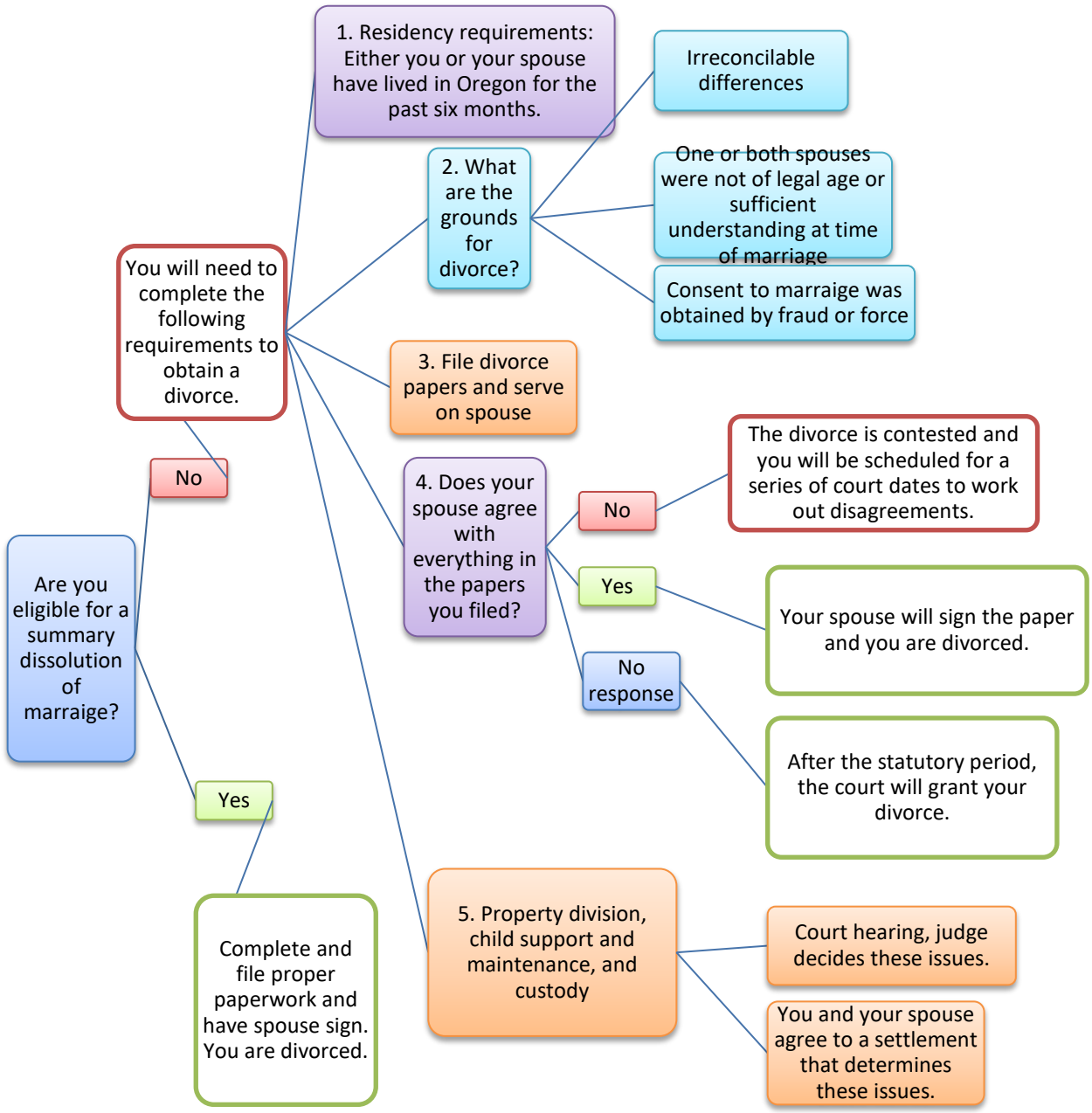
Is our program obligated to accommodate possession of medical marijuana by program participants?

The law remains unsettled in this area. As with the use of medical marijuana, it is within the discretion of your organization whether to permit program participants to possess medical marijuana on your premises.

Note: Oregon's recreational marijuana law went into effect July 1, 2015. Oregon residents are now allowed to grow up to four (4) marijuana plants on their property, possess up to eight (8) ounces of marijuana in their homes, and carry up to one (1) ounce on their person. Recreational marijuana may not be sold or smoked in public. Additional information about medical and recreational marijuana is posted on the state government website at: https://www.oregon.gov/olcc/marijuana/pages/frequently-asked-questions.aspx#Medical_Marijuana.

CHAPTER IV. Family Law

A. Divorce



B. Custody

1. Introduction

OCADSV recommends that anyone facing child custody issues seek the advice of an attorney, especially if there is more than one state involved. Child custody is a complex area of the law and an attorney specializing in the issue will be able to guide a client through this sensitive process. This section provides a very general overview and basic information about custody proceedings. It is not a substitution for legal advice.

2. Definitions[cxxviii]

Joint custody- An arrangement by which parents share rights and responsibilities for major decisions concerning the child, including, but not limited to, the child's residence, education, health care and religious training. In Oregon, a court may not order joint legal and physical custody unless the parties agree.

A county may allow both parents to retain legal equal rights and responsibilities but specify one home as the primary residence of the child and designate one parent to have sole power to make decisions about specific matters. (Other decisions must be made by both parents or at least in consultation with the parent who does not have primary custody.)

Sole (or exclusive) legal custody- Only one parent has the right to make decisions regarding a child's care, education, health, religion and residence.

Sole physical custody- The child lives with only one parent. Parenting time (previously referred to as "visitation") may or may not be authorized or required by the court.

Parenting plan- Document that sets out guidelines for parents sharing custody of a child, may be general or detailed.

Supervised visitation- A designated third party, which can be a family member or friend, must be present during a party's visit with a child.

Paternity- Fatherhood. Paternity of a child must be established before the court will grant a father visitation or custodial rights under a FAPA.

Best interest of the child- Includes the child's emotional ties with family members, interest and attitude of the party seeking custody, desirability of continuing an existing relationship, abuse of one parent by the other, preference for primary caregiver (if fit), willingness of parent to support continuous relationship with other parent and child (unless that parent abused or sexually abused the other parent or child, relationship would endanger health or safety of parent or child), and any other factors the judge decides is relevant.[cxxix] In making a custody or parenting time decision, the court is obliged to determine what is in the best interests of the child.

3. Parenting Plan

What is a parenting plan?

A parenting plan is a document that sets out the guidelines for parenting time, decision-making, and other logistics when the child's parents live apart. There are generally two kinds of parenting plans: general and detailed.

A general parenting plan outlines how parental responsibilities and time will be shared and sets a minimum amount of parenting time for a non-custodial parent.[cxxx] This kind of parenting plan allows the parents to adjust the specifics as needed.

A detailed parenting plan specifies the child's residential schedule, with whom the child will spend holidays/birthdays/weekends, school and summer vacations, and other parenting time, decision-making and responsibility division, information sharing and access, relocation of parents, telephone access, transportation to activities and between the parents, and the method of resolving disputes.[cxxxi] The court will develop a detailed parenting plan when either party requests or the parents cannot agree[cxxxii] and will consider only two things: 1) the best interest of the child and 2) the safety of the child and parents.[cxxxiii] Many survivors prefer to have a detailed parenting plan. If a plan says "dad will have the children every other weekend" that may not be specific enough to help keep the survivor safe and

out of conflict. Does the weekend begin on Friday night or Saturday morning? Does dad pick up the children or does mom drop them off? When specific days, times, and locations are clearly spelled out, there is less need for interaction and thus fewer opportunities for batterer manipulation.

Either parent may request supervised visits. The court will not provide a supervisor for the visitation, so the party requesting supervised visitation should be prepared to identify possible supervisors.

When is a parenting plan required?

A parenting plan is required whenever an action is brought to establish or modify a judgment setting parenting time.[cxxxiv]

4. General Custody Questions

Legal Aid Services of Oregon publishes a series of self-help materials for survivors on consumer, housing, family (including custody, child support, and spousal support) and other law matters. There are also resource materials specifically for survivors, as well as links to Oregon Judicial Department resources. You can access these state-specific resources online at: www.oregonlawhelp.com.

How does a party establish paternity?

If the mother and father were not married at the time their child was born, paternity must be established before a court will decide an issue of custody.[cxxxv] There are several options for establishing paternity.

One way paternity is established is by the father signing a "Voluntary Acknowledgment of Paternity" and filing it with the state registrar of the Center for Health Statistics,[cxxxvi] or following a similar process in a different state.[cxxxvii]

Another way paternity is sometimes established is when the mother applies for assistance through the Oregon Child Support program.

An affidavit is a sworn, written statement that a party signs in the presence of a notary.

Child Support will help the mother file an affidavit swearing to the paternity of the child, or obtain genetic testing to scientifically prove whether the potential father is the child's biological father. The mother should consult an attorney before doing this, if there are safety reasons for the mother not to establish paternity.

Paternity is assumed if the parties were married at the time the child was born, but may be challenged if one party does not believe the husband is the father of the child.[cxxxviii]

What factors does the court consider in custody cases?

The overarching principle the court considers is the best interest of the child. The best interest of the child encompasses several factors including: the child's emotional ties with family members; interest and attitude of the party seeking custody; desirability of continuing an existing relationship, preference for primary caregiver (if fit); willingness of parent to support continuous relationship with other parent and child; and any other factors the judge decides is relevant. The court may consider a child's preference and the testimony of expert witnesses, such as psychologists, teachers, social workers, counselors, psychiatrists or other witnesses knowledgeable about the child. The court may also consider the parents' conduct, marital status, income, social environment and lifestyle of either party only if it is shown that any of these factors are causing or may cause emotional or physical damage to the child.[cxxxix]

How can the custody or parenting time order be changed?

Oregon law provides for changes in custody and parenting time (visitation orders) when circumstances change. The person seeking a change in the order must file a motion requesting the change. Court forms are available at http://courts.oregon.gov/OJD.

What if one parent has a history of abuse?

If one parent has abused the child, the court must presume it is not in the best interest of the child to allow extensive parenting time to that parent, unless otherwise persuaded by the evidence. The same is true if one parent has been

violent toward the other; the court is to presume it is not in the best interest of the child to be with the abusive parent.[cxl] If the child is in immediate danger, an emergency custody order can be put into place, called a Temporary Protective Order of Restraint.

A parent may request supervised visitation when there has been abuse, drug activity or neglect by the other parent. If the parents wish, they may agree upon a designated third party to supervise visits, such as a trusted friend or family member. There are also facilities that will provide a neutral location and supervisor for these visits, but there is often a cost involved. (If the petitioner requests supervised parenting time in a FAPA petition, some judges require the petitioner to designate who will be that supervisor before granting that condition.)

The court also has the discretion to order daytime visits only, or that a parent attend counseling and/or classes or abstain from drugs or alcohol during visits (or at any time). It should be noted that it can be very difficult for a victim to persuade a judge to completely deny parenting time to the other parent.

Is there a special parenting plan for custody cases where there has been abuse?

Yes. In cases where there has been abuse, the parent will be offered a "Safety-Focused Parenting Plan." The Oregon Judicial Department has a comprehensive guide on creating a safety-focused parenting plan, which can be found on its website: www.courts.oregon.gov.

What if the parents are going through a divorce?

If a child's parents are in the process of getting divorced, and there has been no abuse, the parents are considered to have equal rights. Often the court will put into place a "status quo order," in which the parents are to continue whatever parenting arrangement is in place at the time the papers are filed, until the court makes a final judgment on the divorce and custody.

5. Limitations on Changing Residence

If a parent wants to move away with a child, does the parent have to tell the child's other parent about the move?

It depends on whether a court order is in place, what the court order says, and how far from the other parent the first parent plans to move.

If there is no court order in place, both parents generally share legal custody. This means the parents share the decision-making about a child regardless of the amount of actual time the child spends with, or lives with, one parent or the other. Joint custody does not mean that a child lives with each parent fifty percent (50%) of the time. In fact, there may be joint legal custody where a child lives primarily (or even exclusively) with one parent. Under Oregon law, both parents almost always have the right to access the child's school, medical, dental, police and counselor's records. Both parents can also typically authorize emergency medical care. In addition, most parenting plans will restrict a party from moving more than 60 miles from the other parent without telling the other parent and the court 30 to 60 days before moving.

If a parent is moving within 60 miles of the other parent, that parent generally does not have to notify the other parent of the move. However, if a court order is in place requiring notice of even short-distance moves, the order must be followed. To change the order, or to request an exception to the rule of providing notice to the other parent for a move more than 60 miles away, a parent must speak to the judge and demonstrate a good reason to refrain from notifying the other parent about the move.

What is "custodial interference?"

Oregon law prohibits anyone from keeping a person from her or his legal custodian or violating a joint custody order. Doing so is considered custodial interference, which is a felony offense.[cxli] Additionally, individuals whose custodial rights have been interfered with, or a person 18 years of age or older who has been taken in violation of Oregon law, may bring a civil action for damages against the person(s) who interfered with their rights.[cxlii]

How may a victim legally take a child out of state?

If a person wishes to avoid criminal liability for custodial interference, but wishes to leave the state with a child, or keep a child from his or her parent or legal guardian for a permanent or protracted period, consider whether a restraining order under FAPA and/or an emergency custody order (see discussion below) from the court are appropriate options. See Chapter II for more information about FAPA restraining orders.

What is an "emergency" custody order?

Oregon courts can award temporary emergency custody even if there is no previous custody determination between the parties. State law provides, in part, that a court may enter, *ex parte,* (*i.e.,* an order issued with only one party present) a temporary order providing for the custody of, or parenting time with, a child if:

(A) The party requesting an order is present in court and presents an affidavit alleging that the child is in immediate danger; and

(B) The court finds, based on the facts presented in the party's testimony and affidavit and in the testimony of the other party, if the other party is present, that the child is in immediate danger.[cxliii]

Oregon courts can also award emergency custody even if there is already a custody judgment between the parties. State law provides that, following entry of a judgment, a court may enter *ex parte* a temporary order providing for the custody of, or parenting time with, a child if:

(A) A parent of the child is present in court and presents an affidavit alleging that the child is in immediate danger;

(B) The parent has made a good faith effort to confer with the other party regarding the purpose and time of this court appearance; and

(C) The court finds by clear and convincing evidence, based on the facts presented in the parent's and other party's testimony and affidavit, that the

child is in immediate danger.[cxliv]

The main difference between the two provisions is that ORS 107.139 requires the party requesting the order to make a good faith effort to confer with the other party regarding the purpose and time of the court appearance. Notice is not required for a pre-judgment request.

If the court grants an emergency custody order, the responding party is entitled to an expedited hearing. The issue at the hearing is limited to whether or not the child was in immediate danger at the time the emergency order was issued. However, the emergency custody statutes do not offer much guidance to the courts, and judges in the same courthouse can have different interpretations of what both "immediate" and "danger" mean.

6. Low Cost Legal Resources

If you are unable to afford an attorney, the Oregon Child Support Program's website has a list of low cost or no cost legal resources based on county. The website is www.oregonchildsupport.gov/resources/legal.shtml.

C. Mediation in Family Law Cases

What is mediation?

Mediation is a process in which parties who can't come to an agreement are provided with a neutral third party, who is trained in problem solving, to help them resolve disputes and reach a mutually agreed upon resolution. Each Oregon county is required to provide some form of mediation service in family law cases. All mediation proceedings are private and confidential.[cxlv]

Are parties to a family law case required to participate in mediation?

No. However, where child custody, parenting time or visitation is in dispute, a mediation orientation session is required. There are exceptions to this requirement

in matters pertaining to temporary protection orders (*e.g.*, FAPA, EPPDAPA), or upon a finding of good cause.[cxlvi] The orientation session is designed to make parties aware of what mediation is, mediation options available to them, and the advantages and disadvantages of each method of dispute resolution.[cxlvii] Once informed (or excused from the orientation for good cause) either party may opt out of mediation.[cxlviii]

Is mediation appropriate when domestic violence is present?

Many people believe that the power imbalance inherent in domestic violence makes mediation inappropriate, and sometimes, even impossible. Advocates should be aware of the special concerns involved and encourage appropriate accommodations in the mediation process to ensure a fair and safe process for all parties.

Does Oregon's statute on mediation consider domestic violence?

Yes. Oregon statutorily mandates that domestic violence issues be addressed in mediation.[cxlix] The law states that a mediation orientation session is required for all parties where child custody, parenting time or visitation is in dispute, *except in matters pertaining to temporary protection orders*, or upon a finding of good cause (emphasis added).[cl] Each judicial district is required to develop a plan that addresses domestic violence issues and other power imbalance issues in the context of mediation.[cli] However, the plan is restricted by the mandate that, notwithstanding any other provisions of law, the mediation orientation session and mediation itself cannot be encouraged or provided in proceedings brought under the Family Abuse Prevention Act (FAPA), the Elder and Disabled Persons Abuse Prevention Act (EDAPA), or in an action to obtain a stalking protection order.[clii]

While the law prohibits mediation of terms for a protection order, it does not prohibit the mediation of terms for a domestic relations agreement, even if one of the parties has a protection order in place, including a criminal protection order (*i.e.*, no contact order).

The interpretation of the law is unsettled as regards to whether mediation of parenting time terms as part of a domestic relations agreement is permitted when

there are parenting time terms contained in a protection order. Particular judges or courts may have developed a specific policy on this point, and the question may be posed to your jurisdiction's family court.

Furthermore, Oregon's statute requires mediators and mediation programs to have a screening process and ongoing evaluations for domestic violence issues in all mediation cases, and a provision for opting out of mediation after parties are informed of the advantages and disadvantages, or at any time during the mediation.[cliii] A set of safety procedures must be developed by courts intended to minimize the likelihood of intimidation or violence in the orientation session, during mediation, or on the way in or out of the building in which the orientation or mediation takes place.[cliv] In developing its plans, judicial districts are required to consult with a statewide or local multi-disciplinary domestic violence coordinating council and or a nonprofit program designed to prevent, identify and treat family violence.[clv]

Who is the mediator?

Mediators in family law cases are trained social workers, psychologists, or attorneys. Some mental health professionals are not allowed to mediate certain issues, such as support and property division, while some attorneys are not allowed to mediate custody or parenting time disputes, so you should inquire before hiring them.[clvi]

What is the mediation process in family law cases?

In some counties, as soon as the petition is filed, the parent filing the petition must tell the court if there is a controversy over custody or parenting time with a minor child. The parents are then required to attend a mediation orientation session (unless they show good cause to not attend), a parenting class, and meet with a mediator to resolve those disputes. In other counties, the court requires parties to attend mediation when one or more parties ask the court to hold a custody hearing or hearing on parenting time. In other counties there is no mandatory mediation requirement, but the court maintains a list of private mediators who will, upon request, assist parents in resolving custody and parenting time disputes.

Even if there are no children, many counties have a number of private mediators who will assist parties in family law cases, typically divorces and other types of separations. Typically, a mediator may first meet with both parties (and their lawyers), and then meet with each side confidentially, going back and forth between the parties until an agreement is reached.

If the parties reach an agreement, the mediator will usually draw up an agreement that the parties sign, which may then be presented to the court for its approval. If the dispute is not settled in mediation, then the case proceeds to trial before a judge. Anything that was said in mediation is confidential, and the court decides the issues. Most courts have a standard parenting time schedule that they may impose on parties if they do not offer a mediated plan of their own.

If one of the parties in a case reasonably believes mediation is not appropriate because it will expose him or her to violence or intimidation, mediation can be structured to minimize the danger, or the mediation requirement might be waived.[clvii]

CHAPTER V. Minors' Rights

In Oregon, a minor is anyone under the age of 18. Minors have limited rights under the law, as compared to adults. Although their rights are abridged, minors in Oregon are still entitled to make decisions and enforce their rights in the realm of certain privacy, medical, mental health, and family planning care (including contraceptive) decisions. Some minors, however, are accorded the full rights of adults. Typically, this is because the minor is emancipated, married or in the military. Not every state has a specific emancipation statute, but Oregon does.

It is important to keep in mind, however, that even though a minor has the right to make certain medical, mental health or other decisions, the minor's information is not necessarily treated as confidential from the minor's parents.

A. Emancipated Minors

Treating a minor like an adult[clviii]

Emancipation means that a minor is treated as an adult even though they are under the age of 18. The term "emancipation" is used to describe the point at which a minor must no longer answer to their parents, and parents are no longer responsible for their children. Once emancipation occurs, parents do not have to give permission for anything that a minor may want to do. However, parents no longer have to provide their minor child with support or necessities, such as food, shelter, or medical care.

How does a minor become emancipated?

In Oregon, emancipation occurs automatically when a minor turns 18 years old or if a minor legally gets married. The information in this manual focuses exclusively on the final way a minor may become emancipated in Oregon: by petitioning for emancipation in Juvenile Court.

Please note: Running away from home is not a legal means of becoming emancipated. As long as a child is under 18 years of age, parents cannot legally abandon their responsibilities by forcing them out of the home.

Who can be emancipated?

A minor who is at least 16 years of age can become emancipated by obtaining an emancipation decree from the juvenile court in the county in which the minor resides.

How does a minor apply to be emancipated?

First, a minor seeking emancipation should call the juvenile court in their county. Request an application form from the intake counselor in charge of emancipation. The intake counselor may be able to help the minor complete the application for emancipation and the court process.

After filling out the application, file it with the court clerk at Juvenile Court. The current filing fee is $150.00. This may change periodically, so when speaking to the intake counselor, ask about the current fee. The fee is not refundable if the judge denies emancipation.

Do the parents or legal guardians have to be informed?

Minors must give notice to their parents that they are filing for emancipation. The minor's parents must be served with a summons. The summons will state when the hearing will be held, and will contain a copy of the minor's application.

Will there be a hearing in court?

Yes. There are usually two hearings: a preliminary hearing and a final hearing.

A preliminary hearing will be held within 10 days of filing the application. At that hearing, the court will consider the application and may make some preliminary decisions appropriate to the case. The court will advise the minor of the civil rights and liabilities, and criminal rights and liabilities of an emancipated minor.

A final hearing will be held no later than 60 days from the filing date of the application. This hearing may be "waived" (canceled) by a minor and their parents, or just the parents, so that the minor does not have to go back to court after the

preliminary hearing. This means that the orders, which were made at the preliminary hearing, will continue.

Specific Information for Multnomah County Applicants:

The Multnomah County Juvenile Court has established the following guidelines to help minors determine if they are good candidates for emancipation.

- Have a high school diploma, GED, or demonstrate good attendance, performance, and conduct in school such that parental assistance is not needed;
- Have medical insurance arranged (OHP or other insurance);
- Have at least $1200 in savings/checking to cover emergencies and potential move-in costs; and
- Have demonstrated steady income or employment for six months sufficient to support oneself (usually $750 per month).
- 3 letters of personal reference from non-family members.
- A written explanation, which should include the reasons for emancipation and all long-term plans.

What rights does an emancipated minor have?

Emancipated minors have the same rights as adults. They do not have to obey curfew laws, can enter into contracts, buy and sell property, maintain an independent residence, and be involved in lawsuits. Emancipated minors are responsible for their own support and other financial affairs.

After a minor obtains a decree of emancipation from the juvenile court, the emancipated minor will be instructed to obtain an identification card from the Department of Transportation which indicates the minor's status as legally emancipated.

Once a minor is emancipated, medical, dental, and mental health care may be obtained without parental notification.

Emancipation does not affect the age requirements for purchasing or consuming alcoholic beverages or tobacco, the requirements for obtaining a marriage license, or the age of voting.

A minor who is not emancipated can consent to medical and dental treatment once they are fifteen years of age, and mental health treatment once they are fourteen years of age, but the law states that a parent may be notified by the healthcare professional.

What special considerations should my organization consider when working with an emancipated minor?

By law, an emancipated minor must obtain an identification card that indicates the minor's status as "legally emancipated." If you want to confirm a minor's emancipated status you may request to see the card. Once you have verified that the minor is emancipated, you may treat that minor the same way you would treat an adult client.

What special considerations should an organization consider when working with a minor who is not emancipated?

Under Oregon law, teenagers under the age of 18 are considered children.[clix] However, in some circumstances, the law does not require parental consent for minors to receive certain services.

What kinds of services are available to a minor without parental consent?

A minor of any age may receive birth control services or information without parental consent. A minor of any age may also be treated for a venereal disease without parental consent.[clx] (Note that, as a practical matter, and depending on the age of the patient, the minor's parents may be informed if the circumstances are such that the provider is required to file a report under Oregon's mandatory reporting law.)

A minor 15 years of age or older may give consent to hospital care, medical or surgical diagnosis by physician or nurse (licensed in the state of Oregon), and dental or surgical diagnosis by a dentist (licensed in the state of Oregon), without the consent of a parent or guardian of the minor.[clxi] A licensed physician, nurse, or dentist may choose to advise the minor's parents or legal guardians of the care, diagnosis or treatment, or need for treatment, without the patient's consent.[clxii]

A minor 14 years of age or older may obtain without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional or a chemical dependency (excluding methadone maintenance) by a licensed or registered physician, nurse, psychologist, clinical social worker, or community mental health program. Parents may be notified by the person providing treatment, when disclosure is clinically appropriate or in the patient's best interest. But, the parents of a minor who has been sexually abused by a parent do not have to be notified of such treatment. [clxiii]

Parents are not liable for payments for any services rendered without their consent.

May a minor contract for a dwelling unit and utilities without parental consent?

Yes, under certain circumstances. Unemancipated minors who are: 1) not married; 2) not living with their parents; and 3) 16 or 17 years old may contract for the necessities of a residential dwelling unit and utility services for that unit.

Similarly, a minor under 16 years of age and the parent of a child or children who are in the physical custody of the person, or a minor under 16 years of age who is

pregnant and expecting the birth of a child who will be living in the physical custody of the person, can contract for rental units and the necessities associated with that unit. [clxiv]

What if I am not sure if a minor needs parental consent for something?

Oregon laws do not cover every possible situation where a minor may or may not need parental consent to act. Where gray areas exist, service providers must use their best judgment and follow the ethical guidelines of their profession to determine the best course of action.

What are some other resources that address minors' rights and emancipation?

The Oregon State Bar offers a service called *Problem Solvers* that offers free legal information and advice to young people. Children between the ages of 11 and 17 years old may call 503-684-3763 or (800) 452-7636, or go online at http://www.osbar.org/public/ris/ris.html and fill out a referral request form. The service will refer them to a lawyer who will give them a free 30 minute visit.

For more information on emancipation, visit the website of *Youth, Rights & Justice, Attorneys at Law*, www.youthrightsjustice.org.

B. Unemancipated Minors

What rights do unemancipated minors have?

A minor 16 years or older

- May become emancipated by obtaining an emancipation decree from the juvenile court in the county which they reside.
- May rent an apartment and contract for utilities, if they are unmarried and not living with their parents.

A minor 15 years or older

- May consent to hospital care, medical or surgical diagnosis by a physician or licensed nurse, and dental or surgical diagnosis by a licensed dentist. However, a parent is not liable for payment if they have not consented.
- A doctor, nurse or dentist may choose to advise the parent or legal guardian of the care, diagnosis or treatment without consent of the minor.

A minor 14 years or older

- May obtain outpatient diagnosis or treatment of a mental, emotional or chemical dependency (excluding methadone treatment) by a licensed or registered doctor, nurse, psychologist, clinical social worker, or community mental health program.
- However, parents may be notified when clinically appropriate or in the patient's best interest.
- But, the parents of a minor who have been sexually abused by a parent do not have to be notified of such treatment.

A minor of any age

- May receive birth control services or information without parental consent
- May receive treatment for venereal diseases without parental consent
- If the minor is a custodial parent or is pregnant and expects the birth child will live in the physical custody of the minor, the minor may rent an apartment and contract for utilities.

C. Appendix

IN THE CIRCUIT COURT OF THE STATE OF OREGON
THIRD JUDICIAL DISTRICT
Juvenile Division

In the Matter of the Emancipation of:)
)
_____)
Applicant)

No.

APPLICATION FOR JUDGMENT OF EMANCIPATION

The Applicant states as follows:

1) I was born on the _____ day of _____, 19___ and I am now _____ years of age.

2) I currently reside at _____, in the city of _____, County of Marion, Oregon, and I intend that Marion County be my place of residence for the indefinite future.

3) My custodial parent(s) or guardian(s) ___do ___do not consent to my emancipation.

4) I am substantially able to be self-sufficient and self-supporting without parental guidance and supervision.

5) I am sufficiently mature and knowledgeable to manage my own affairs without parental assistance.

WHEREFORE, I request that the Court enter a Judgment as follows:

1) Declaring me to be an emancipated minor;
2) Advising me of my civil and criminal rights and liabilities; and
3) Instructing me to obtain from the Oregon Motor Division an Oregon driver's license or identification card with a notation thereon of my emancipated status.

_____
Parent's Name

_____
Street Address

_____
City, State, Zip Code

_____
Phone

_____
Applicant

_____
Street Address

_____
City, State, Zip Code

_____
Phone

_____
Applicant Signature

SUBSCRIBED and SWORN to before me

this ____ day of _____, 20____.

_____
Notary Public for the State of Oregon

My Commission Expires:_____

JUV-PROBATION-010.app
REV: 3-21-04

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE
Juvenile Department

In the Matter of the Emancipation of: _____ Applicant.	APPLICATION FOR DECREE OF EMANCIPATION CASE NO._____

The Applicant states as follows:

I.

I was born on the _____day of _____, _____ and I am now ____ years of age.

II.

I currently reside at _____ in the city of _____, County of Lane, Oregon, and I intend that Lane County be my place of residence for the indefinite future.

III.

My custodial parent(s) or guardian(s) ☐ do, ☐ do not consent to my emancipation.

IV.

I am substantially able to be self-sufficient and self-supporting without parental guidance and supervision.

V.

I am sufficiently mature and knowledgeable to manage my own affairs without parental assistance.

WHEREFORE, I request that the Court enter a Decree as follows:

1. Declaring me to be an emancipated minor;
2. Advising me of my civil and criminal rights and liabilities; and
3. Instructing me to obtain from the Oregon Motor Division an Oregon driver's license or identification card with a notation thereon of my emancipated status.

_____
Mother's Name

_____
Street Address

_____
City, State, Zip Code

_____
Telephone Number

_____
Father's Name

_____
Street Address

_____
City, State, Zip Code

_____
Telephone Number

_____
Applicant's Name

_____
Street Address

_____
City, State, Zip Code

_____
Telephone Number

_____
Applicant's Signature

SUBSCRIBED AND SWORN to me before this ____ day of _____,_____.

_____
Court Clerk/Notary Public for Oregon
My Commission expires_____

Revised 7/16/02

CHAPTER VI. Victim- and Survivor-Specific Protections in Oregon

A. Crime Victims' Rights and Compensation

1. Introduction

The Oregon Constitution and state and federal statutes list rights for crime victims. Some victims' rights are automatically enforced, but others must be requested. This section contains a general summary of those rights. The table in the Appendix at the end of this section summarizes which rights are automatic and which need to be requested.

2. Rights

Federal Crime Victims' Rights Act

In 2004, Congress passed a federal Crime Victims' Rights Act (CVRA), which amended the federal criminal code to give crime victims the right to confer with prosecutors, to have timely notice of hearings, to be heard on issues of release, plea and sentencing and to receive "full and timely" restitution.[clxv] Other victim rights under the CVRA include the right to be present at public court proceedings involving the crime[clxvi] and to be "reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding."[clxvii] The CVRA also imposes a duty on the federal courts to ensure that victims are afforded those rights. Note that these CVRA rights are limited to federal courts.

Oregon crime victims' rights

Unlike the CVRA, Oregon's victims' rights provisions have no enforcement mechanism. In other words, there is no remedy if the rights set out in the Oregon Constitution are disregarded or otherwise not enforced. However, awareness among the domestic and sexual violence advocacy community of these rights can help facilitate victim participation in the criminal process.

The material below focuses on Oregon's victims' rights provisions and is organized by phase of the case: after arrest, trial, and after trial, post-conviction.

Victim: Oregon's Constitution's definition

Oregon's Constitution defines a "victim" as any person determined by the prosecuting attorney or the court to have suffered direct financial, psychological, or physical harm as a result of a crime and, in the case of a victim who is a minor, the minor's legal guardian.[clxviii]

General rights

- A crime victim has the right to: justice; a meaningful role in the criminal/juvenile justice systems; due dignity and respect; and impartial treatment.[clxix] These rights shall be protected at every stage of the criminal process.

- Victims also have the right to be given notice of their rights under Oregon's constitution as soon as practicable. The law enforcement agency should explain to the victim which rights must be requested (versus those which are automatic) and the time period in which the request must be made.[clxx]

- Victims may choose a support person to accompany them to all phases of investigation and prosecution, except for grand jury proceedings and some child abuse assessments.

- If bodily fluids were transmitted during the criminal act, the crime victim may request HIV testing of the person charged or convicted with the offense. If the HIV test comes back positive, the victim will be provided with counseling and a referral for healthcare.[clxxi] The cost of the testing and counseling will be paid for by the Crime Victims' Compensation Program.[clxxii]

After arrest

Victims have the right to be notified of the release hearing and may appear personally.[clxxiii] If the victim decides to appear the victim may reasonably express any views relevant to the issue.[clxxiv] This right is not automatic; the victim must submit a request to exercise it.[clxxv]

- If the defendant is released before trial, the order must prohibit any contact with the victim unless specifically authorized by the court.[clxxvi] If the victim is threatened or intimated by the defendant and wants the defendant arrested or otherwise held accountable by the criminal justice system, the victim should inform the district attorney immediately who will then notify the court and the defense attorney. If the court finds there is probable cause to believe the victim has been threatened or intimated, it should immediately issue an order to show cause why defendant's release status should not be revoked.[clxxvii]

- The victim does not have to talk to anyone from the defense. However, if the victim is contacted by the defense the defendant's attorney must clearly inform the victim who is contacting them and in what capacity.[clxxviii]

- If the victim so requests, a district attorney will consult with the victim regarding any plea discussion or agreement.[clxxix] The judge should ask the district attorney if a victim has agreed or disagreed with the plea discussions.[clxxx]

Trial

- When plea or sentence hearing dates are set, the district attorney should inform the victim of such hearing. These hearings are not mandatory but the victim should inform the district attorney if they plan on attending. If the victim does not plan on attending they may request a copy of the transcript, audiotape, or video if one has been prepared.[clxxxi]

- For any court hearing that requires the presence of the victim, the court should ask the district attorney if the victim has been told of the date and if that date is convenient for the victim.[clxxxii]

- During the trial, the victim may make a request to prohibit distribution of evidence in a proceeding involving a sexual offense.

- In a prosecution for rape, sodomy, unlawful sexual penetration, sexual abuse, or attempt of any of these crimes the following evidence is not admissible:[clxxxiii]
    - Opinions on the past sexual behavior or reputation of a victim;[clxxxiv]
    - Opinions presented for the purpose of showing that the way in which the victim was dressed incited the crime or indicated consent;[clxxxv]
    - Evidence of past sexual behavior other than reputation or opinions unless admitted in accordance with Oregon Evidence Code and relates to the motive or bias of the alleged victim, is necessary to rebut or explain scientific, medical, or testimonial evidence offered by the state, is necessary to establish the identity of the victim, or is otherwise constitutionally required to be admitted.[clxxxvi]

- The preparer of a pre-sentencing investigation report should make a reasonable effort to contact the victim for a statement describing the defendant's offense on the victim.[clxxxvii] This statement should be included in the pre-sentence report.

- At sentencing, the victim has a right to appear and to be heard through a victim impact statement.[clxxxviii] However, the victim does not need to attend or speak at any hearings; this is the victim's decision.[clxxxix]

After trial

- Oregon has created a victim specialist position to advocate for victims within the justice system. This person is responsible for informing victims what is happening in their respective cases and notifying them of any board hearings.[cxc] This specialist will also help prepare the victim for the hearing. The specialist, upon request, will accompany the victim to the hearing.

- The Oregon Board of Parole and Post-Prison Supervision can notify the victim, in writing, 30 days prior to hearings and 90 days prior to releases.[cxci] A victim needs to register with the Board to receive notification. At the Board hearings, the victim may make statements to the Board about the crime and the offender.[cxcii] For this to occur, the victim must contact the hearing specialist to set up an appointment. Because most hearings are held at the prisons, some restrictions may apply.

- A victim who chooses not to attend the hearing may still submit a letter to the Board for consideration.[cxciii] This letter needs to arrive 14 days prior to the hearing date. The letter should include the inmate's name and state identification number, but should not be addressed to the inmate. Any letter written by registered victims of the offender's actual crime can be held as confidential. Any letter written by a non-victim, including a family member, is not guaranteed to be held in confidence.

What is a victim impact statement?

A victim impact statement is a statement that refers to either oral or written information about the impact the crime had on the victim and the family of the victim. Usually, a victim impact statement describes the harm that the criminal offense has caused to the victim's emotional, financial, and physical wellbeing.[cxciv] This can include the victim's medical treatments, burdens on family/friend relationships, and the struggles that resulted from the crime in the victim's daily life. Additionally, the impact statement allows victims to give input on what they believe is the appropriate sentence for the offender.

Who may give a victim impact statement?

Generally, any person that is affected by the crime may prepare an impact statement. This usually includes the victim, the parent or guardian of a child victim, the spouse or relative of the victim, or a representative of the victim if the victim is unable to make a statement.

How does a victim let the court know that the victim wants to give a victim impact statement?

A victim who wishes to give an impact statement must fill out a request form and submit it to the district attorney. A sample request form, from Josephine County, is in the Appendix at the end of this section. For your local form, ask your district attorney's office.

To give a statement at a parole board hearing, the victim must contact the hearing specialist at *(*503) 945-0902 or (503) 945-9009.

When is the victim impact statement read?

Victim impact statements are most commonly delivered at sentence hearings.

Does the court have to allow the victim to make a victim impact statement?

Yes. According to Oregon's Constitution article 1, section 42 (1)(a), a victim has the right "to be heard at the pretrial release hearing and the sentencing or juvenile court delinquency disposition."

For a federal crime, the victim has a "right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding."[cxcv]

Do victims have to read their own victim impact statement or may someone else read it?

Someone else may read the statement for the victim, or the victim may submit the statement in writing for only the judge to read. In some cases, victims will request court permission to show a video or slide show as part (or in lieu) of the written or verbal statement. (Some judges may refuse to allow a video or slide show.)

Is it mandatory to make a victim impact statement?

No, making a victim impact statement is completely voluntary.

Is it a good idea to make a victim impact statement?

Only each individual victim or survivor of a crime can determine whether making a victim impact statement is a good idea. Delivering a victim impact statement gives some survivors or victims an opportunity to say, within reason, anything they want. Some have found this has brought closure and empowerment. For many victims, it is the first time they have been able to say directly, to the offender, "what you did was wrong" or "this is the harm I experienced as a result of what you did." For others, making a statement would make them feel unsafe, unnecessarily vulnerable, or the thought of doing so is just too stressful. Whatever the victim or survivor decides to do is the right decision for that individual victim. There is no right or wrong; each victim and each circumstance is unique.

3. Compensation

What is restitution?

After conviction, a judge my order an offender to pay a sum of money to help cover the cost of the damage the offender caused to a victim. This can include any loss of income, loss of the ability to earn income, and expenses incurred for substitute domestic services. It does not include any noneconomic damages. Restitution may be ordered in addition to a compensatory fine.[cxcvi] Restitution is a constitutional right for victims.[cxcvii]

Is restitution the same as Crime Victims' Compensation funds?

No. Restitution is paid by the defendant. In contrast, Crime Victims' Compensation (CVC) is a state program administered by the Oregon Department of Justice. A victim may qualify for financial assistance from CVC if the answer to each of the following five questions is "yes":[cxcviii]

1. Have you been the victim of a violent crime?
2. Did the crime take place in Oregon?
3. Was the crime reported to law enforcement within 72 hours? (Note that this 72-hour reporting requirement may be waived for "good cause.")
4. Did the crime occur within the last six months?
5. Did you cooperate fully with law enforcement?

The CVC application also gives a brief overview of the types of expenses that are covered and those that are not. Covered items include medical, dental, hospital, funeral, counseling expenses; loss of wages and support; physical rehabilitation; and transportation.

CVC funds may not pay for: loss of or damage to property, pain and suffering, earnings lost while attending court and earnings lost by family members. Loss of earnings is payable only if the victim was employed and working at the time of the incident.[cxcix]

The CVC fund is a payer of last resort. The CVC application explains that expenses incurred as a result of the incident must first be submitted to prior resources for payment including insurance companies, Oregon Health Plan, Medicare, and Medicaid. Only expenses not fully covered by prior resources will be considered for payment. Victims are not required to be a U.S. citizen to apply for Crime Victim Compensation. Note: A separate (SAVE) fund covers the cost of forensic sexual assault exams. When Oregon receives federal VAWA STOP funding, it certifies to the federal government that it will not charge victims for the cost of a forensic medical exam.

For more information on Oregon Crime Victims' Compensation Program, visit www.doj.state.or.us/crimev/comp/shtml, or call the Oregon Department of Justice, Crime Victims' Compensation Program at 1-800-503-7983.

Who is entitled to restitution?

The following individuals or entities are entitled to restitution. They will receive payment in the following order:

- The victim;[cc]
- The Crime Victims' Compensation Program;[cci]
- An insurance carrier, if it has paid money on the victim's behalf;
- Any person who is not the victim and whom the court determines has suffered an economic loss due to the crime.[ccii]

How does a victim obtain restitution?

To obtain restitution, the victim must fill out the restitution information form and return it to the district attorney's office. This should be done as promptly as possible and be accompanied by any necessary documentation. For an example, see Josephine County's form in the Appendix at the end of this section. Ask your district attorney's office for a copy of your local form.

What happens if the defendant is unable to pay?

Restitution payment is due in full at the time of the judgment unless the defendant is unable to pay it in full.[cciii] If the defendant is unable to pay in full, the court will order a payment schedule with a minimum amount to be paid at regular intervals.[cciv] Restitution may still be collected even if the defendant is incarcerated.[ccv]

4. Appendix: Crime Victims' Rights

Page 3 of 6

Name: _____
State of Oregon vs. _____ Co-Defendant(s)/Alleged Youth Offender(s)
Case #(s): _____ _____
Charges: _____ _____

Please return this form to: ***Josephine County District Attorney's Office Victim Assistance Program 500 NW 6th Street, Grants Pass, OR 97526, Phone: (541) 474-5200, Fax: (541) 474-5201***

What are restitution and a Restitution Information Form?
Restitution is money the court may order a defendant or alleged youth offender to pay to a victim for certain losses including stolen or damaged property, medical bills, counseling, or lost wages. Restitution is only allowed for losses directly related to the charge(s) against the defendant(s) or alleged youth offenders. The criminal court judge will not order restitution for pain and suffering.

The Restitution Information Form is a way for you to give us information about monetary losses you had as a result of this crime. Please fill out this form as completely as possible and feel free to attach additional pages if you need to. Since we need to give the court documentation of your loss, please give us copies of receipts, estimates, invoices, bills, canceled checks, etc. ***Please complete this form and return it within 10 days.*** If you have any questions about the form, please call our office at *541-474-5200*.

Property Loss: Please list only items that have **not** been recovered or that were damaged before recovery. (Items may be held as evidence and can be recovered after the end of the case.) Replacement cost is based on the value of the property at the time of the loss.

Property Description: Property Value: Replacement Cost:
_____
_____
_____

Has any financial institution covered your loss? Yes ☐ No ☐
Did the defendant's or alleged youth offender's insurance company cover your loss? Yes ☐ No ☐
Did your insurance cover your loss? Yes ☐ No ☐

Insurance Company Information (Complete only if you have made or expect to make a claim.)
Company: _____ Telephone: _____
Address: _____
Contact person: _____ Deductible amount: _____ Claim #: _____ Policy #: _____
Do you have an insurance claim pending? Yes ☐ No ☐
Amount your insurance company has already paid you: _____

PERSONAL LOSS: If you suffered injuries that required medical attention or mental health counseling as a result of this crime, please indicate your expenses:

Injury/Treatment: Provider: Account #: Total Cost to Date:
_____
_____
_____
_____

	Automatic Rights	Requested Rights
General Rights	Right to be informed of rights as soon as practicable[ccvi] • Attend open court proceedings • In adult criminal case, address and phone number will be withheld. • To have a support person accompany the victim	• Notice of court proceedings [ccvii] • In a juvenile case, the victim can withhold address and phone number • Victim can ask that the person charged/convicted be tested for HIV [ccviii]
Following an Arrest	• Refusal to speak to any attorney or investigator for the defendant[ccix] • To be reasonably protected from the defendant throughout the criminal process[ccx]	• Notification of any release hearing. • Consultation about the plea in a violent felony case[ccxi]
Trial and Sentencing	• Right to have evidence of past sexual behavior inadmissible	• Expression of the victim's views at sentencing • Limit distribution of information about sexual conduct • Prevent coverage of sex offense proceedings by the media • Get a copy of the court transcript if one is made (the victim will need to pay for the copy)[ccxii]
After Trial	• Prompt restitution from convicted criminal[ccxiii]	• Notification 30 days prior to release hearing and 90 days prior to release

Josephine County, Oregon

OFFICE OF THE DISTRICT ATTORNEY
Stephen D. Campbell, District Attorney
Josephine County Courthouse
500 NW 6th Street, Dept. 16
Grants Pass, OR 97526
(541) 474-5200 / FAX (541) 474-5201
da@co.josephine.or.us

State vs. _____ **Date_____**

DA Case No.:

We understand that you are a crime victim in a case being prosecuted by the Josephine County District Attorney's Office. The Victim Assistance Program of the DA's Office is available to provide you with the following services:

- Information about victim rights and the criminal justice system
- Referral to available community resources
- Updates on the status of the case
- Documentation of financial loss for the purpose of requesting restitution
- Accompaniment to court hearings
- Emotional support

The enclosed **Financial Statement** will help us document any financial losses you may have suffered as a result of this crime. Please complete and return on or before _____.
Due Date

The **Victim Impact Statement** gives you the opportunity to convey your feelings and reactions about the crime. This is optional; you are not required to provide this information. If you choose to complete a statement please use the enclosed informational sheet to help guide you. Your statement will be submitted to the court at the time of sentencing and will assist the court in its effort to weigh all factors prior to imposing a sentence. The defendant and their attorney will also receive a copy. If you choose to complete a Victim Impact Statement please return it by the due date stated above.

The **Victim Rights Form** describes the rights of crime victims under Oregon law. You may exercise any or all of the rights that are important to you. It is important that you return any documents and communicate with us about which rights you wish to exercise by the due date stated above. Otherwise the court may find you have waived your rights.

If you know you want to be ***present at sentencing*** in this matter please call the Victim Assistance Office by the due date stated above.

You may call the office at any time during regular business hours and talk to a Victim Assistant. We welcome your questions, comments or concerns. We are here to help in any way we can as you go through the criminal justice process.

Very truly yours,

Victim Assistance Program
Victim Advocate

Josephine County, Oregon

JRT OF THE STATE OF OREGON
E COUNTY OF LANE
enile Department

OFFICE OF THE DISTRICT ATTORNEY
Stephen D. Campbell, District Attorney
Josephine County Courthouse
500 NW 6th Street, Dept. 16
Grants Pass, OR 97526
(541) 474-5200 / FAX (541) 474-5201
da@co.josephine.or.us

In the Matter of the Emancipation of:	APPLICATION FOR DECREE OF EMANCIPATION
_____ Applicant.	CASE NO._____

State vs. _____ **Date**_____

The Applicant states as follows:

I.

I was born on the _____day of _____, _____ and I am now ____ years of age.

II.

I currently reside at _____ in the city of _____ County of Lane, Oregon, and I intend that Lane County be my place of residence for the indefinite future.

III.

My custodial parent(s) or guardian(s) ☐ do, ☐ do not consent to my emancipation.

IV.

I am substantially able to be self-sufficient and self-supporting without parental guidance and supervision.

V.

I am sufficiently mature and knowledgeable to manage my own affairs without parental assistance.

WHEREFORE, Petitioner requests that the court enter a Decree as follows:

1. Declaring the above-named petitioner to be an emancipated minor;
2. Advising me of my civil and criminal rights and liabilities; and
3. Instructing me to obtain from the Oregon Motor Division an Oregon driver's license or identification card with a notation thereon of my emancipated status.

_____ _____
Mother's Name Father's Name

_____ _____
Street Address Street Address

_____ _____
City, State, Zip Code City, State, Zip Code

_____ _____
Telephone Number Telephone Number

_____
Applicant's Name

_____
Street Address

_____
City, State, Zip Code

_____
Telephone Number

_____
Applicant's Signature

SUBSCRIBED AND SWORN to me before this _____ day of _____, _____.

_____
Circuit Clerk/Notary Public for Oregon
My Commission expires_____

DA Case No.:

We understand that you are a crime victim in a case being prosecuted by the Josephine County District Attorney's Office. The Victim Assistance Program of the DA's Office is available to provide you with the following services:

- Information about victim rights and the criminal justice system
- Referral to available community resources
- Updates on the status of the case
- Documentation of financial loss for the purpose of requesting restitution
- Accompaniment to court hearings
- Emotional support

The enclosed **Financial Statement** will help us document any financial losses you may have suffered as a result of this crime. Please complete and return on or before _____.
Due Date

The **Victim Impact Statement** gives you the opportunity to convey your feelings and reactions about the crime. This is optional; you are not required to provide this information. If you choose to complete a statement please use the enclosed informational sheet to help guide you. Your statement will be submitted to the court at the time of sentencing and will assist the court in its effort to weigh all factors prior to imposing a sentence. The defendant and their attorney will also receive a copy. If you choose to complete a Victim Impact Statement please return it by the due date stated above.

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If you know you want to be ***present at sentencing*** in this matter please call the Victim Assistance Office by the due date stated above.

You may call the office at any time during regular business hours and talk to a Victim Assistant. We welcome your questions, comments or concerns. We are here to help in any way we can as you go through the criminal justice process.

Very truly yours,

Victim Assistance Program
Victim Advocate

Revised 7/16/02

Page 6 of 6

Victim Contact Information Sheet

Please fill out the information below and return it to Josephine County District Attorney's Office – Victim's Program with the Victim Impact Statement and the Restitution Information Form. It is very important that our office have accurate and current contact information for you so we can keep you informed of case events. Josephine County District Attorney's Office – Victim's Program will keep this information separate and confidential from restitution information sent to the defense attorney. If the court orders the defendant(s) or alleged youth offender(s) to pay you restitution, your contact information will be given to the court clerk's office so that restitution payments are sent to you. Please keep the Josephine County District Attorney's Office – Victim's Program informed of any changes to your contact information.

Name: _____

Mailing Address: _____ _____ ___ _____
Address *City* *State* *Zip Code*

Physical Address: _____ _____ ___ _____
(If different) *Address* *City* *State* *Zip Code*

E-mail Address: _____

Home Phone: _____ Cell Phone: _____ Message Phone: _____

Please give contact information for one or two close family members or friends not living with you who will always know how to locate you:

Name: _____

Mailing Address: _____ _____ ___ _____
Address *City* *State* *Zip Code*

Physical Address: _____ _____ ___ _____
(If different) *Address* *City* *State* *Zip Code*

E-mail Address: _____

Home Phone: _____ Cell Phone: _____ Message Phone: _____

Please return this form to: Josephine County District Attorney's Office
Victim's Program
500 NW 6TH Street, Dept. 16
Grants Pass, Or. 97526.

Victim Impact Statement

Name: _____

State of Oregon vs. _____ Co-Defendant(s)/Alleged Youth Offender(s):

Case #(s): _____ _____

Charge(s): _____ _____

Please return this form to: ***Josephine County District Attorney's Office***
Victim Assistance Program
500 NW 6th Street , Dept. 16,
Grants Pass, OR 97526,
Phone: (541) 474-5200, Fax: (541) 474-5201

If the defendant or alleged youth offender is convicted, you have the right, as a crime victim, to speak at sentencing. If you want to tell the court about the crime, the court will hear you at sentencing or juvenile disposition. You do not have to make a statement. If you want to make a statement, you may use this form as a guide. Feel free to use additional pages. You may ask to have your statement read in court or have it given to the judge. ***Your written or spoken statements may become a part of the official court record. The judge, the prosecutor, the defendant or alleged youth offender, the defense attorney and the probation officer have access to your statement when it is given at sentencing or disposition.*** If you need help getting your statement ready, contact *the Jo. Co. District Attorney's Office – Victim's Program.*

1. Please describe the impact this crime has had on you and your family. Include any physical or emotional harm you experienced from the crime.

2. What would be an appropriate sentence for the defendant or alleged youth offender in this case? (The court will make the final decision about the sentence based on Oregon law.)

3. Is there anything else the court should know about this crime and its consequences?

Signature: _____ Date: _____

If the defendant or alleged youth offender is found guilty, you have a right to be present at the sentencing or disposition hearing and share your thoughts with the court. If you are not present at sentencing or juvenile disposition, this form may be used to help the court know your thoughts.

Would you like to make a statement at sentencing? Yes _____ No _____

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE
Juvenile Department

In the Matter of the Emancipation of: _____ Applicant.	APPLICATION FOR DECREE OF EMANCIPATION CASE NO._____

The Applicant states as follows:

I.

I was born on the _____day of _____, _____ and I am now ____ years of age.

II.

I currently reside at _____ in the city of _____, County of Lane, Oregon, and I intend that Lane County be my place of residence for the indefinite future.

III.

My custodial parent(s) or guardian(s) ☐ do, ☐ do not consent to my emancipation.

IV.

I am substantially able to be self-sufficient and self-supporting without parental guidance and supervision.

V.

I am sufficiently mature and knowledgeable to manage my own affairs without parental assistance.

WHEREFORE, I request that the Court enter a Decree as follows:

1. Declaring me to be an emancipated minor;
2. Advising me of my civil and criminal rights and liabilities; and
3. Instructing me to obtain from the Oregon Motor Division an Oregon driver's license or identification card with a notation thereon of my emancipated status.

_____
Mother's Name

_____
Street Address

_____
City, State, Zip Code

_____
Telephone Number

_____
Father's Name

_____
Street Address

_____
City, State, Zip Code

_____
Telephone Number

_____
Applicant's Name

_____
Street Address

_____
City, State, Zip Code

_____
Telephone Number

_____
Applicant's Signature

SUBSCRIBED AND SWORN to me before this ____ day of _____,_____.

_____
Court Clerk/Notary Public for Oregon
My Commission expires_____

Revised 7/16/02

Page 3 of 6

Name: _____
State of Oregon vs. _____ Co-Defendant(s)/Alleged Youth Offender(s)
Case #(s): _____ _____
Charges: _____ _____

Please return this form to: ***Josephine County District Attorney's Office Victim Assistance Program 500 NW 6th Street, Grants Pass, OR 97526, Phone: (541) 474-5200, Fax: (541) 474-5201***

What are restitution and a Restitution Information Form?
Restitution is money the court may order a defendant or alleged youth offender to pay to a victim for certain losses including stolen or damaged property, medical bills, counseling, or lost wages. Restitution is only allowed for losses directly related to the charge(s) against the defendant(s) or alleged youth offenders. The criminal court judge will not order restitution for pain and suffering.

The Restitution Information Form is a way for you to give us information about monetary losses you had as a result of this crime. Please fill out this form as completely as possible and feel free to attach additional pages if you need to. Since we need to give the court documentation of your loss, please give us copies of receipts, estimates, invoices, bills, canceled checks, etc. ***Please complete this form and return it within 10 days.*** If you have any questions about the form, please call our office at *541-474-5200*.

Property Loss: Please list only items that have **not** been recovered or that were damaged before recovery. (Items may be held as evidence and can be recovered after the end of the case.) Replacement cost is based on the value of the property at the time of the loss.

Property Description: Property Value: Replacement Cost:
_____
_____
_____
_____

Has any financial institution covered your loss? Yes ☐ No ☐
Did the defendant's or alleged youth offender's
insurance company cover your loss? Yes ☐ No ☐
Did your insurance cover your loss? Yes ☐ No ☐

Insurance Company Information (Complete only if you have made or expect to make a claim.)
Company: _____ Telephone: _____
Address: _____
Contact person: _____ Deductible amount: _____ Claim #:
_____ Policy #: _____
Do you have an insurance claim pending? Yes ☐ No ☐
Amount your insurance company has already paid you: _____

PERSONAL LOSS: If you suffered injuries that required medical attention or mental health counseling as a result of this crime, please indicate your expenses:

Injury/Treatment: Provider: Account #: Total Cost to Date:
_____
_____
_____
_____

B. Rental Agreement Considerations Specific to Survivors of Domestic Violence, Sexual Assault, and Stalking

In 2007, the Oregon Legislature passed a bill with several protections for tenants who are victims of domestic violence, sexual assault, or stalking. The bill was codified into law and enacted on January 1, 2008. The law includes the following provisions:

- Victims of domestic violence, sexual assault and stalking are eligible for early lease termination;
- Discrimination by landlords against victims is prohibited; and
- Landlords are allowed to evict a perpetrator without evicting a victim.

Below are some frequently asked questions about these housing laws.

May a victim of domestic violence, sexual assault or stalking terminate a lease?

A tenant must give a landlord at least 14 days written notice and if the notice meets the following conditions the landlord shall release the tenant from the rental agreement:

1. The notice given by the tenant must specify the release date (meaning the date, no sooner than 14 days in the future, when the victim would like the lease to be terminated).
2. The notice must be accompanied by verification that the tenant:
    a. Is protected by a valid order of protection; or
    b. Has been the victim of domestic violence, sexual assault, or stalking within the 90 days preceding the date of the notice.
3. A landlord may require that the tenant and a **qualified third party** (see the definition in the sidebar) submit a signed verification

Definitions:

Qualified third party: a person that has had individual contact with the tenant and is a law enforcement officer, attorney or licensed health professional or **is a victim's advocate at a victim services provider**. ORS § 90.453

Verification includes:
(A) A copy of a valid order of protection issued by a court or any other federal, state, local or tribal court order that restrains a person from contact with the tenant;
(B) A copy of a federal agency or state, local or tribal police report regarding an act of domestic violence, sexual assault or stalking against the tenant;
(C) A copy of a conviction of any person for an act of domestic violence, sexual assault or stalking against the tenant; or
(D) A statement substantially in the form set forth in ORS § 90.453 (3).

statement and any other information required by ORS 90.453 (3). A sample letter with all required components is included in Appendix A at the end of this section. Remember that neither the letter nor the verification need to specify exactly which of the three bases (SA, DV or stalking) the victim experienced. Take care not to breach the survivor's privacy unnecessarily. The survivor may also wish to remind the landlord that, unless an exception applies, the information submitted is confidential under the law.

Once a victim is released from the lease, do they have further financial obligations?

No, a tenant who is released from a rental agreement is not liable for rent or damages **after** the release date. The tenant is also not subject to any additional fees other than what was owed prior to the release date.[ccxiv]

May a landlord disclose why a lease agreement was terminated early?

No, a landlord is not allowed to disclose any information to a third party provided by the tenant unless the: [ccxv]

1. Tenant has consented in writing;
2. Information is required for use in an eviction proceeding;
3. Information is given to a qualified third party (see the definition in the sidebar on the previous page); or
4. Release is required by law.

Even though the law does not allow a landlord to disclose any information to a third party provided by the tenant, many landlords will not know that. Do not assume that the landlord will keep the information confidential. When safety planning with survivors, consider whether advocating with landlords about their obligation to keep the information private is appropriate.

May victims of domestic violence, sexual assault or stalking have their lease terminated by their landlord?

A landlord may terminate the tenancy of a victim if the victim permits or consents to the perpetrator's presence on the premises and the perpetrator is actually or imminently threatening to the safety of persons on the premises other than the victim. A landlord may also terminate a victim's lease if the perpetrator is an unauthorized occupant and the victim allows the perpetrator to live in the home without the landlord's permission.[ccxvi]

May a landlord evict a perpetrator of sexual or domestic violence?

Yes, a landlord may terminate the rental agreement of a perpetrator of domestic violence, sexual assault or stalking who commits the act against a household member. The landlord must give the perpetrator at least 24 hours' notice and must specify the act or omission constituting the cause.[ccxvii] An arrest record is not necessary to remove a tenant, but the landlord must have substantial knowledge that domestic or sexual violence has occurred.[ccxviii]

If a perpetrator is evicted, may the victim be charged additional rent or fees?

A landlord who terminates a perpetrator's tenancy may not require the remaining tenants (*e.g.*, the victim) to pay additional rent or an additional deposit or fee due to the perpetrator's exclusion.[ccxix] However, if the perpetrator was contributing to monthly rent payments, the victim will now be responsible for the full rent due.

May the landlord also evict other tenants on the same lease agreement as the perpetrator?

No, a landlord may not terminate the lease for other tenants.[ccxx] Remember, however, that a landlord may have other valid reasons to evict tenants.

May the landlord physically remove the perpetrator and the perpetrator's belongings from the premises, if the perpetrator does not vacate after receiving notice that the lease was terminated?

A landlord may seek a court order under Oregon statute 105.128 to remove the perpetrator from the premises and to terminate the perpetrator's tenancy.[ccxxi]

Are the remaining tenants responsible for damage done to the premises before the eviction of the perpetrator?

The tenants are jointly liable *with the perpetrator* for any damage that incurred before the date that the perpetrator vacates the premises or the termination date in the notice received from the landlord.[ccxxii] This means that all tenants are equally responsible for damages. Any new damage to the premises after the perpetrator is evicted is the responsibility of the victim and any other non-perpetrating tenants. A victim may want to work with an advocate (as well as the landlord) to document damage to the dwelling that occurred before the perpetrator moved out.

May a landlord discriminate against past victims of domestic violence?

It is against the law for a landlord to discriminate against victims because of their history of domestic violence, sexual assault or stalking. A landlord may not terminate or fail to renew a tenancy or refuse to enter into a rental agreement with someone who is or was a victim. A landlord may not terminate a rental agreement if the tenant or applicant violated the rental agreement due to the domestic violence, sexual assault or stalking they sustained, including any criminal activity in which the tenant or applicant was the victim.[ccxxiii]

Is a landlord responsible for changing the locks for a victim of domestic violence, sexual assault or stalking?

If a tenant requests that the locks be changed due to domestic violence, sexual assault or stalking, the landlord shall promptly change the locks *at the tenant's expense*. The landlord may also give the tenant permission to change the locks on his or her own.[ccxxiv]

Is a tenant required to provide verification of the domestic violence, sexual assault or stalking to initiate the change of locks?

Generally, no. Because a landlord must act promptly after the tenant gives notice, typically no verification is required.[ccxxv] If, however, the perpetrator is the victim's co-tenant, the victim must give the landlord a certified copy of a restraining order or stalking order, signed by a judge, before the landlord may change the locks.[ccxxvi]

If the landlord does not promptly act, may the tenant change the locks without the landlord's permission?

Yes. If a landlord fails to promptly act, the tenant may change the locks without the landlord's permission. If the tenant changes the locks, the tenant must give a key to the new locks to the landlord.[ccxxvii]

Appendix

This sample letter is based on the sample verification statement provided in the Oregon statutes.[ccxxviii] It contains all of the components required for a victim of domestic violence, sexual assault, or stalking to request termination of a lease. Note that the letter does not require the victim to disclose specifically what type of violence or victimization occurred; only that the tenant is a victim of domestic violence, sexual assault or stalking.

Remember, the tenant must give the landlord at least 14 days' notice.

PART 1. STATEMENT BY TENANT

Your Name
Address
City, State, Zip
Date

Landlord Name
Address
City, State, Zip

Dear *Landlord*:

I, _____ (Name of tenant), do hereby state as follows:

(A) Due to the circumstances described below, I respectfully request that my lease agreement be terminated 14 days from receipt of this notice. Subsequently, I will be released from all further obligations regarding the rental agreement in compliance with *ORS § 90.453*.

(B) I (or a minor member of my household) have been a victim of domestic violence, sexual assault or stalking, as those terms are defined in ORS § 90.100.

(C) The most recent incident(s) that I rely on in support of this statement occurred on the following date(s) _____

(Note: the dates must be less than 90 days in the past (or less than 90 days in the past when the perpetrator's periods of incarceration or residency more than 100 miles from my home are not counted. Choose one of the following options.)

___ The time since the most recent incident took place is less than 90 days; or

___ The time since the most recent incident took place is less than 90 days if the following time periods are subtracted. From _____ to _____ the perpetrator was incarcerated. (*And/Or*) The perpetrator lived more than 100 miles from my home from _____ to _____.

(D) I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury

_____
(Signature of tenant)
Date

Statement by Qualified Third Party

I, _____(Name of qualified third party), do hereby verify as follows:

(A) I am a law enforcement officer, attorney or licensed health professional or a victim's advocate with a victims services provider, as defined in ORS 90.453.

(B) My name, business address and business telephone are as follows:
_____
_____
_____

(C) The person who signed the statement above has informed me that the person or a minor member of the person's household is a victim of domestic violence, sexual assault or stalking, based on incidents that occurred on the dates listed above.

(D) I reasonably believe the statement of the person above that the person or a minor member of the person's household is a victim of domestic violence, sexual assault or stalking, as those terms are defined in ORS § 90.100. I understand that the person who made the statement may use this document as a basis for gaining a release from the rental agreement with the person's landlord.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

_____
(Signature of qualified third party making this statement)
Date

The following is a sample letter to evict a perpetrator of domestic violence, sexual assault or stalking.

Your Name
Address
City, State, Zip
Date

Landlord Name
Address
City, State, Zip

Dear Landlord:

I, _____ (Name of tenant), do hereby state as follows:

(A) Due to the circumstances described below, I respectfully request that rental agreement of (*tenant name*) be terminated 24 hours from receipt of this notice in compliances with ORS § 90.445.

(B) I (or a minor member of my household) have been a victim of domestic violence, sexual assault or stalking, as those terms are defined in ORS § 90.100 on the following date(s):_____

(C) The following documentation is attached detailing the incident(s). (Attach citations, court orders, medical records or other documentation.) (Note: while documentation is not required by statute that landlord must have some factual information that can be verified).

(D) I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury

_____
(Signature and date)

C. Workplace Protection: Oregon Victims of Certain Crimes Leave Act (OVCCLA)

What is the OVCCLA?

The OVCCLA requires covered employers to grant leave (time away from work) for victims of domestic violence, sexual assault, or stalking. It also prohibits discrimination against employees who exercise their leave rights under OVCCLA.[ccxxix]

A "covered employer" may not discharge, threaten to discharge, demote, suspend, or in any manner discriminate or retaliate against an eligible employee who takes leave pursuant to the OVCCLA.

"Covered employer" means an employer who employs 6 or more individuals in the state of Oregon for each working day during each of 20 or more calendar workweeks for the calendar year in which an eligible employee takes OVCCLA leave.

"Eligible employee" means an employee who worked an average of more than 25 hours per week for a covered employer for at least 180 calendar days immediately preceding the date the employee takes OVCCLA leave (note, the employee need not perform all the work solely in the state of Oregon); and who is a victim of domestic violence, sexual assault, or stalking, as defined by Oregon Statutes 107.75; 163.305 to 163.467 or 163.525**;** 163.732; or *any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim, including a member of the victim's immediate family*.

What is the employer required to provide under OVCCLA?

A covered employer must allow an eligible employee to take reasonable leave from employment for the following reasons:

- To seek legal or law enforcement assistance or remedies to ensure the health and safety of the eligible employee or the eligible employee's minor child or dependent, including preparing for and participating in protection order proceedings or other civil or criminal legal proceedings related to domestic violence, sexual assault or stalking.
- To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or stalking of the eligible employee or the eligible employee's minor child or dependent.
- To obtain, or to assist the eligible employee's minor child or dependent in obtaining counseling from a licensed mental health professional related to an experience of domestic violence, sexual assault or stalking.

- To obtain services from a victim services provider for the eligible employee or the eligible employee's minor child or dependent.
- To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the eligible employee's minor child or dependent.

How long a leave is permitted under the OVCCLA?

The leave must be "reasonable." Reasonable leave means any amount of leave that does not cause undue hardship to an employer. An eligible employee may take OVCCLA leave in multiple blocks of time and/or require an altered or reduced work schedule.

Additionally, a covered employer may transfer an employee to an alternate position with the same or different duties to accommodate the leave provided the eligible employee accepts the transfer voluntarily without coercion; the transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits; and no other reasonable option is available that would allow the eligible employee to use intermittent leave or a reduced work schedule.

Leave is unpaid unless otherwise provided for by: 1) A collective bargaining agreement, 2) the terms of an agreement between the eligible employee and the covered employer, or 3) a covered employer's policy.

"Undue hardship" means a significant difficulty and expense to an employer's business and includes consideration of the size of the employer's business, the employer's critical need for the eligible employee, the length of OVCCLA leave requested and the cost to business, the overall financial resources of the employer's facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the OVCCLA leave were granted, among other factors. ORS 659.805

What does an employee do to request leave under the OVCCLA?

An eligible employee who wants to take leave under the OVCCLA must give the employer reasonable advance notice, unless giving advance notice is not feasible. When an eligible employee is able to give advance notice, the employee should

follow the employer's known, reasonable, and customary procedures for requesting any kind of leave.

When taking leave is unanticipated or an emergency, an eligible employee must give oral or written notice as soon as is practicable. This notice may be given by any other person on behalf of an eligible employee taking unanticipated leave. The covered employer may require the eligible employee to provide certification that the employee or the employee's minor child is a victim of domestic violence, sexual assault, or stalking, and that the leave is being taken for one of the purposes indicated under the scope of the OVCCLA.

What information should a victim give an employer who asks for certification of domestic violence, sexual assault or stalking?

Under the statute, the following information is suitable verification of an employee's eligibility for OVCCLA:

- A copy of a police report indicating that the eligible employee or the eligible employee's minor child or dependent was a victim or alleged victim of domestic violence, sexual assault or stalking;
- A copy of a protection order or other evidence from a court or attorney that the eligible employee appeared in or is preparing for a civil or criminal proceeding related to domestic violence, sexual assault or stalking; or
- Documentation from an attorney, law enforcement officer, healthcare professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the eligible employee or the eligible employee's minor child or dependent is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, sexual assault or stalking. [ccxxx]

May an employer disclose information about an employee's OVCCLA leave?

All records and information kept by a covered employer regarding an eligible employee's leave under OVCCLA, including the fact that the eligible employee has requested or obtained leave under OVCCLA, are confidential and may not be released without the express permission of the eligible employee, unless otherwise

required by law. The information may be released, for example, by affidavit or court order.

May someone be fired or treated poorly by her employer for using OVCCLA?

Pursuant to the OVCCLA, it is an unlawful employment practice for a covered employer to retaliate or in any way discriminate against any person with respect to hiring, tenure or any other term or condition of employment because the person has inquired about OVCCLA leave, submitted a request for OVCCLA leave or invoked any provision of OVCCLA.

In addition, it is an unlawful employment practice for a covered employer to count OVCCLA leave against an employee in determining the employee's compliance with attendance policies or to count OVCCLA leave against an employee when determining eligibility for bonuses based on attendance. An employee is entitled to continue eligibility for a bonus based on attendance upon return from OVCCLA leave and may not be disqualified from the bonus as a result of taking OVCCLA leave.

In accordance with the provisions of OVCCLA an eligible employee claiming a violation of the OVCCLA may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

Is a victim still eligible to receive unemployment benefits if domestic violence or sexual assault limit the victim's ability to apply for or accept work?

Yes. Under Oregon law, a victim of domestic violence, sexual assault or stalking may not be disqualified from receiving unemployment benefits if the individual "leaves work, fails to apply for available suitable work or fails to accept suitable work when offered in order to protect the individual or a member of the individual's immediate family from domestic violence, stalking or sexual assault that the individual reasonably believes will occur as a result of the individual's continued employment or acceptance of work." [ccxxxi]

D. Oregon's Address Confidentiality Program (ACP)[ccxxxii]

The Oregon Address Confidentiality Program (ACP) is available for victims of domestic violence, sexual assault, and stalking whose safety is at risk and who have moved to a place in the state that is unknown to their abusers.

The ACP provides a "substitute address" that may be used in place of a residential (home) or contact address. It also provides a mail forwarding service. In addition, ACP participants are able to keep their home addresses out of public records when registering to vote, applying for marriage or drivers' licenses, public assistance, and more.

A victim will want to consider the timing of relocation and participation in the ACP, to ensure that a move to a new, confidential location happens simultaneous with entry into the ACP. The victim's prior address and other will still be accessible through public records.

An ACP application assistant, who can be reached at 503.373.1323 or (toll free) 888.559.9090, can help victims determine whether the program is right for them.

What kind of information is contained in public records?

Personally identifying information includes social security numbers, driver's license numbers, credit card numbers, bank account numbers, prior names, birth dates, and place of birth. Contact information includes name, address, telephone number, employment information.

Both personally identifying information *and* contact information may be in public records, such as court files, mortgage and deed records, school records, and state agencies. Information may also be found on the internet, including through paid research sites.

How can a survivor's information be kept out of public records?

There are several ways to ask that personal identifying and contact information be kept private and out of public records.

- Public benefits: If a survivor is getting benefits from DHS, such as TANF, TA-DVS, or food stamps and is worried about safety, s/he should speak with the benefits worker. There are several ways that DHS may be able to help protect personal identifying and contact information.

- Other public entities / public bodies: A *public body* is a school district, a state agency (such as the Department of Human Services or DMV), a county, city, or state governing body, or any other public agency (like a public utility district). A request for confidentiality must be sent directly to each public body from which the survivor wants protection.

  A survivor can ask any public body to keep home address and telephone number private if release of that information would endanger the victim or a family member at the address.[ccxxxiii]

  To ask for confidentiality from a public body, call or write the public body or agency to find out about its forms and procedures for keeping information confidential. If a public body grants the request for confidentiality, the victim's information will be kept confidential for five years. After that time, the victim must submit a new request.

  Be prepared to provide evidence in support of the request. Evidence may be police reports, court records, medical reports, your own statements, or a court order that shows a release of information may put the survivor in danger.

  For example, the survivor may ask that DMV not disclose a home address on DMV records by completing a Request for Confidential Address Protection form and including proof that the victim's safety or that of a family member living at the same residence is in danger.

- Courts: Most court proceedings require personal identifying and contact information in court papers. This information may be kept private in some circumstances. Keeping this information protected in court cases can be complicated and may require a court order. It may be best to ask an attorney for help.

All court cases:
Because courts are public bodies, home address and telephone number may be kept confidential upon request if that information would put a survivor or family member of a survivor at risk. To ask about confidentiality, speak with a court clerk.

Criminal court cases:
A victim's address and phone number may be kept from the defendant in a criminal proceeding, upon request. Information about victim rights in criminal cases is available from victims' assistance in your local district attorney's office. Also, see Chapter VI of this manual.

Family law and child support court cases:
A survivor may use a contact address and telephone number in place of a home address or telephone number in family law documents. No special permission is needed to do this.

In divorce cases, Social Security numbers must be put in a "segregated information sheet" that will be kept apart from other court papers and out of court papers that are open to the public. A survivor will need to fill out a special affidavit, as well as a segregated information sheet. Note: While this law does not apply in unmarried parent cases, some courts choose to apply it anyway. Check with your local court. This same procedure may also be used to keep other personal identifying information out of the public file, but it cannot be used to protect contact information.

Information in the segregated information sheet **may be released** by the court to anyone with a right to the information. This may include the other party to the case if that party asks and the judge agrees to release it.

If the survivor has children and is afraid of the other parent (or of someone else), the survivor may ask to keep personal identifying information and/or contact information out of court records that are open to the public.

If this protection is granted, the information **may not be released except after a hearing**, at which the court must consider the safety risks to the victim and/or the victim's children.

To ask for this special protection, the survivor should talk to a lawyer. In some counties, a family law facilitator may be able to provide forms and some assistance.

Other civil court cases

A survivor may use the special affidavit for Social Security numbers to protect *personal identifying* information in other civil court cases (such as landlord-tenant and small claims cases).

It is possible for the court to give more complete protection in extreme circumstances. A survivor will want to consult with a lawyer for additional help with these issues.

- Child support: If a survivor is on public assistance or the Oregon Health Plan and there is no safe way for the State to collect child support from the abuser, the victim may have "good cause" to ask that the State not take any steps to collect support. Situations involving rape, incest, sexual assault, or domestic violence can support "good cause" not to collect support from the abuser. Survivors who fall within a "good cause" situation should tell their child support worker and ask for a "Client Safety Packet."

  If a survivor would like to get child support or medical coverage from the abuser but does not want the abuser to be able to get personal identifying information for safety reasons, the survivor should ask the child support worker for a "Client Safety Packet." If the survivor fills out the "Claim of Risk" and "Address of Record" forms and gives a contact address, the State of Oregon must protect the confidentiality of the survivor's personal identifying information and home address in establishing or collecting child support.

  An address of record (for example, a post office box or other contact address) may be used in place of a home address on all the paperwork in a

support case. The survivor should tell the child support worker of the safety risks and fill out the "Address of Record" form. The survivor's address of record must be in the state where the survivor is living, and it should be an address where the survivor collects mail regularly (every one or two days).

What other forms of information protection are there?

Some survivors are in such danger that they want to take a new identity by changing their and/or their child's name and Social Security number. These changes take time and should not be entered into without great thought and discussion, as they can result in a victim's loss of key history such as educational, rental, and financial credit accomplishments as well as references, family, friends, etc. Therefore, the risks and benefits should be carefully weighed. Also, changing identity is not completely safe. Computers have made it easier to find survivors who have changed their identities. A victim who is pursuing privacy measures such as a new Social Security number and identity change will need to coordinate the timing of all these efforts. Information on (and, in some *very* limited circumstances, limited financial support for) identity change is available through a national project funded by the Office on Violence Against Women. For more information, contact OCADSV or the Victim Rights Law Center (TA@victimrights.org).

Some other basic safety measures include:

- Use a private post office box rather than a home address whenever you can. Sign up for a post office box *before* you move to a new address (the post office box provider's records will only have the old address). Beware, however, that it is sometimes possible to get the new address by requesting a forwarding address from the post office.
- For extra protection, consider whether to get a P.O. box in another city.
- Get an unpublished and unlisted phone number. Never use that number for any non-private matter. This includes everything from supermarket discount cards to catalog orders.
- Order complete call-blocking for the phone. Determine in advance whether it is possible to block your caller ID on a cell phone. Make sure that the GPS tracking function is turned off on your cell phone.
- Get a national or local voicemail number instead of a home phone number.

- Have your name removed from any "reverse directories." Because these directories are continually updated with information from public records, these requests may have only a short-term effect.
- Do not use your middle initial.
- Put your utilities in someone else's name, rent an apartment with utilities included or put the utilities in a roommate's name. Talk to your utility companies about ways to protect yourself.
- Be very careful with your Social Security number. Do not give it out unless required by law. Do not use it as an identifier for health insurance or other purposes. If your health insurance provider wants to use your Social Security number, ask to use a different number. (Various service providers often request a Social Security number because it is a unique and therefore easy identifier. When a patron insists, however, they will accept some other form of identification.)
- Ask credit bureaus to "flag" your records to prevent fraudulent access.
- Use an email address that does not include information that your abuser might know or recognize.
- Do not put your name on the front of your home or on the list of tenants on the front of your apartment building.

CHAPTER VII. Advocating for Immigrant and Non-citizen Survivors

A. Introduction to Advocating for Immigrant and Non-citizen Survivors

Immigration laws, regulations and practices are complex and change frequently. As a result, it is vital that advocates ensure that their working knowledge of immigration law is current and accurate. In worst case scenarios, missteps in filing or inaccurate legal advice can lead to dire consequences for non-citizen survivors, such as arrest and incarceration, the break-up of families, and permanent removal from the United States. If at all possible, advocates should develop a working relationship with a local immigration expert who can answer questions about how to help non-citizen survivors, and who will advise non-citizen survivors on immigration matters.

This section contains a brief outline of basic immigration rules that advocates should consider when working with non-citizen survivors. (Not all non-citizens are looking to immigrate to the United States. Some may be here for work, school or travel.) For more and frequently updated information concerning immigrant advocacy, please see: http://www.nationalimmigrationproject.org/legalresources.htm#vcpv.

These are three basic concepts to keep in mind when doing intake with a non-citizen survivor:

- Refer non-citizen survivors to immigration law experts, not the U.S. Citizenship and Immigration Services (USCIS);
- Inform immigrant survivors of what their rights are should they encounter local law enforcement or USCIS. For more information on the rights an immigrant survivor has when interacting with these officials, in English, please see: http://www.aclu.org/files/kyr/kyr_english.pdf. For a Know Your Rights Card handout in both English and Spanish, please see: http://www.nilc.org/ce/nilc/rightscard_2007-03-15.pdf; and
- Encourage immigrant survivors to talk to an immigration expert ***before*** they travel outside the U.S.

General Concerns for Immigrant Survivors

This section is divided into four subsections—Initial Safety Concerns, Financial Concerns, Advocating for Non-citizen Survivors in Oregon, and Identifying Options for Non-citizen Survivors. These subsections include information about calling the police, public benefits, custody, removal, Oregon advocacy resources, and more. As you review this information, keep in mind that the needs and circumstances of non-citizen victims may vary widely. Some may be living in the United States on a short- or long-term basis or live here permanently, while others may be in the U.S. as a visitor or en route to somewhere else. Some may be legally present in the U.S. while others may be undocumented or otherwise out of legal status. Some non-citizen victims may speak English fluently while for others you or the survivor may need or feel more comfortable with the assistance of an interpreter or translator.

1. Initial Safety Concerns[ccxxxiv]

If a non-citizen has been assaulted, stalked or abused, should I advise the survivor to contact local law enforcement? Will the victim be turned over to the USCIS if local law enforcement is contacted?

Domestic violence, sexual assault, and stalking are against the law, regardless of the victim's immigration status. Local law enforcement offices are not supposed to contact USCIS when a non-citizen survivor is reporting these crimes; many police departments in Oregon follow this rule. Additionally, if a non-citizen survivor seeks help at a rape crisis center, domestic violence shelter, or at the courthouse, USCIS is not supposed to use this against the individual in the context of a removal proceeding. Because the consequences are potentially so grave, you will want to be familiar with your local practices and, if possible, refer the survivor to an immigration specialist before advising a non-citizen victim on whether or how to report to law enforcement.

Keep in mind that a victim who wishes to pursue immigration remedies such as the U-visa for victims of certain serious crimes or the T-visa for victims of trafficking, the survivor must report to and cooperate with law enforcement.

When advising noncitizens about contacting local law enforcement, it is important to emphasize the following:

- Noncitizens have the right to keep their immigration status private. Noncitizens do not have to tell the police or a shelter whether they are legally present in the United States.
- If a non-citizen domestic violence survivor calls local law enforcement, the law enforcement agent can escort the victim or the perpetrator out of the house. An abuser who was arrested may be released within as little as two hours. It is important that the survivor use this time to find a safe place to go.
- If the law enforcement officer needs an interpreter, law enforcement should find someone other than the victim's child or abuser to interpret. Many agencies use private resources such as the Language Bank, when needed.
- If the non-citizen survivor needs to document a report to law enforcement, the survivor should be sure to ask the police to complete an incident report and for the incident report number. The survivor should ask for and write down the name and badge number of the officer making the report. This report and information may be vital in developing a case for adjustment of immigration status at a later date.

What is the difference between a U.S. citizen and a lawful permanent resident (LPR)?

A *citizen* is someone who gained United States citizenship either through birth (*i.e.,* was born within the United States or born overseas to U.S. citizens) or through the naturalization process. A *legal permanent resident*, often referred to as "LPR" is not a citizen, but instead has been lawfully admitted to the United States to live and work here permanently. A LPR may still be deported if the LPR is convicted of a deportable offense.

What if the assailant, stalker, or abuser is threatening to have the non-citizen survivor removed (also known as "deported")?

Assailants' threats of reporting a victim to immigration authorities are sometimes valid; sometimes they are not. If you are working with a non-citizen victim who fears being deported, it is best to consult with an immigration specialist right away.

Victims who are lawful permanent residents or possess a valid visa may not be removed or deported unless they entered the United States on fraudulent documents, violated conditions of their visa, or committed certain crimes. These crimes are not specifically listed within the immigration code, but are simply classified as "crimes of moral turpitude," which are evaluated by an immigration officer or judge. An immigration lawyer can probably help if a non-citizen survivor is undocumented or unsure about immigration status, or needs help legalizing status.

Even if USCIS is contacted, removal proceedings will likely not follow immediately. In some – but not all - cases, the non-citizen survivor will have an opportunity to explain the situation to a judge before removal occurs. If the victim is part of a raid, however, the victim may be interviewed and offered a plea deal without ever going to hearing. When this happens, victims sometimes waive their rights in exchange for promises of leniency. It is critical in these cases that the victim try to contact an immigration advocate or lawyer for immediate assistance.

Will a noncitizen abuser or rapist be removed (also known as "deported") if the perpetrator is reported to law enforcement?

Not necessarily. If local law enforcement is contacted and the abuser or rapist is convicted of a crime, the assailant may be ordered deported before, or after, any jail or prison sentence to be served. Whether the conviction triggers removal proceedings depends on the abuser's current immigration status and the seriousness of the crime.

If a non-citizen victim needs to flee his or her home, what if anything should the victim take along?

If it is necessary for a non-citizen survivor to flee his or her home, victim safety is the highest priority. If the victim has time and can safely bring the following documents, they can be very helpful in securing immigration and other benefits:

- Passports (the survivor's and the children's; if the perpetrator is the victim's spouse, intimate partner, parent or other family member, a photocopy of the perpetrator's passport may be very helpful, too);
- driver's license;
- any other identification papers;
- any visas external to the passport;
- birth certificates;
- documents from any public assistance programs;
- rental agreements;
- checkbooks;
- credit cards;
- paycheck stubs;
- marriage license;
- copies of tax returns; and
- information about the perpetrator (copies of or information from visa, green card, certificate of naturalization, passport, or other identification).

For domestic violence or trafficking victims especially, it can be very helpful to prepare these documents in advance. If possible, copies of these documents may be stored at a safe place like a friend's home or an advocate's office. That said, a non-citizen does not need these items to leave. Copies of necessary paperwork can be ordered from relevant agencies, and in some cases, an immigration case can be built without documentation.[ccxxxv] While they can be helpful, a victim's safety is far more important.

Note: If a non-citizen survivor seeks help at a domestic violence shelter, a rape crisis center, a police station, or a courthouse, USCIS is not supposed to use the services an individual has received as a reason to start a removal proceeding, but as always it is in the individual's best interest to contact a lawyer to confirm.

The Oregon Bar Association can help identify local immigration attorneys. The American Immigration Lawyers Association website has a searchable list of immigration lawyers by region: http://www.ailalawyer.com/

The non-citizen's husband or wife is threatening to take the children away. What can the non-citizen survivor do?

If the abuser is threatening to take the non-citizen survivor's children away, the non-citizen survivor can apply for a custodial order at any time. A custodial order can order the other parent not to take the children out of state or out of the country. A court may also order a parent to turn over the children's passports.

See Chapter II to read more about restraining orders and requesting custody of shared children.

See Chapter IV to read more about child custody and related family law issues.

Basic advice a non-citizen survivor should be given when applying for a custody order:

- If the children are U.S. citizens, the non-citizen survivor may want to send a copy of the custody order to both the embassy of his or her spouse's home country and to the U.S. Department of State. This is done with the goal of preventing either country from issuing passports and/or visas for the children.
- It is also important that a copy of the order be given to the children's schools, and that the schools are notified not to allow the children to leave with anyone but the non-citizen survivor.
- If possible, the non-citizen survivor should keep handy recent passport quality photos, birth certificates of the children, and a list of addresses and phone numbers of friends and relatives of both parents.

Do you have to be a legal resident to get a restraining order?

No. You do not have to be a U.S. citizen or legal resident to get a restraining order. There are no citizenship-related requirements to get a stalking, domestic violence, or elder or vulnerable adult abuse protection act order.

See Chapter II for more information on restraining orders.

2. Financial Concerns

What are the financial options for a non-citizen survivor who is concerned about finances and how to care for her children after leaving the abuser?

A non-citizen survivor should be eligible to receive child support regardless of immigration status, even if the survivor and the abuser are living apart or if they were never married. Depending on the circumstances, length of the marriage, and a variety of other factors, some married non-citizen survivors also may be eligible to receive awards of spousal support (formerly referred to as "alimony").

If the non-citizen survivor is a lawful permanent resident, the survivor's resident alien card (also known as the "green card") demonstrates eligibility to work. The survivor can also be authorized to work as part of the VAWA petition or T-visa application process.

The survivor who is the spouse of certain non-immigrant professionals may be able to get work authorization if the survivor can demonstrate that, during the marriage, the petitioner and his or her child(ren) were battered or subject to extreme cruelty by the person with the principal non-immigrant visa. Refugees and other immigrants must apply for authorization to work.

Individuals who use false papers to work or make false claims of United States citizenship can severely jeopardize their otherwise successful claims for legal status in the United States. For example, providing an employer with a fake Social Security number can make it very difficult to adjust a victim's status.

A non-citizen survivor may also qualify for public assistance. See discussion below.

Are legal permanent residents eligible to receive public assistance and Medicaid?

It depends. Some legal permanent residents are eligible for Food Stamps, although most legal permanent residents are not. However, in most cases, state based assistance is available and it is necessary for agencies to be contacted directly to confirm qualification.

Are people who are in the U.S. seeking asylum (asylees) eligible to receive public assistance and Medicaid?

During the first five (5) years after arriving in the United States, asylees are eligible for Food Stamps, Temporary Aid to Needy Families (TANF), Medicaid, and other public benefit programs to the same extent as United States citizens. However, most asylees who have been in the United States for five (5) years or more will no longer be eligible for these benefits on a federal level.

Are undocumented immigrants eligible to receive public assistance and Medicaid?

It depends on the individual's current and specific status:

- If the individual is a battered undocumented survivor whose husband has applied for legal permanent residency on the survivor's behalf, that individual is eligible for the same benefits as a legal permanent resident.
- If the survivor has applied for legal permanent residency under VAWA, the survivor is eligible for the same benefits as a legal permanent resident. See the sections on VAWA and on legal permanent residents receiving aid.
- An individual who is not eligible to apply for legal permanent residency will likely be ineligible for most forms of public assistance, too. Emergency Medicaid may still be available.
- If a survivor is seeking medical care from a hospital, advocates should pre-screen, if possible, to confirm that the hospital does not disclose patients' immigration status to law enforcement.
- Survivors in need should be advised that almost all community services and resources, such as food or clothing banks, do not require individuals to provide information about their immigration status.

Are U.S. citizen children eligible for public benefits and Medicaid?

Yes. Even if the non-citizen parent is undocumented, U.S. citizen children are eligible for public benefits just like any other U.S. citizen children.

It is important to remind the non-citizen survivor that public assistance offices do not need to know a parent's immigration status is in order to give benefits to citizen children. Even if a public assistance officer asks about the parent's citizenship status, it is recommended that the individual avoid providing this information.

It is important to remind and urge non-citizen survivors not to provide or use fraudulent Social Security numbers or other false identification documents when these kinds of inquiries are made. The use of fraudulent documents can result in grounds for removal (also known as "deportation"), and is a difficult immigration hurdle to overcome.

What if a non-citizen survivor cannot afford to meet with a lawyer?

Low-cost or free legal services may be available through non-profit legal services agencies, such as Legal Aid Services of Oregon, Catholic Charities, Immigration Counseling Center and other low or no-cost providers.

For VAWA petitions and waivers, battered spouse and child waivers, U-visas, and T-visas, all application fees can be waived. Non-citizen survivors can also request that the court order a perpetrator to pay the victim's immigration-related legal fees and expenses if the perpetrator was convicted, or if a protection order is in effect. A judge will not necessarily grant this request but a survivor may nevertheless wish to try. An example of a victim's request for restitution is included in the Appendix at the end of this chapter.

3. Introduction to Advocating for Immigrant Survivors in Oregon

For a list of organizations that work on behalf of immigrant rights and provide other helpful resources, see: http://www.nnirr.org/drupal/programs. National organizations may also be able to provide referrals or guidance. For contact

information for national technical assistance providers on immigration issues, contact OCADSV or the Victim Rights Law Center's Portland office (TA@victimrights.org). Contact the VRLC for a variety of resources specific to serving farmworker victims of sexual violence.

B. Immigration Remedies Available Under VAWA

1. Overview of VAWA

What is VAWA?

VAWA is the acronym for the Violence Against Women Act, which was passed by Congress in 1994. Among other things, VAWA created special provisions in United States immigration law to protect battered noncitizens. These provisions were updated in 2000 by the Battered Immigrant Women's Protection Act.

There are a variety of ways to get lawful permanent residency without a spouse's help. Under the Violence Against Women Act (VAWA) non-citizen victims of domestic violence may apply for lawful permanent residency without help or cooperation from their abusive current or former spouse. U-visas (for certain victims of crime) and T-visas (for trafficking victims) are other avenues to lawful permanent residency. These remedies are not exclusive. In some instances, it is necessary or recommended that an individual apply for more than one adjustment status at one time (*e.g.*, adjusting one's status from a "visitor's visa" to "legal permanent resident"). In others, it is possible to apply for only one. In all cases, the non-citizen survivor should be encouraged to seek the help of a lawyer or an immigration specialist.

What type of immigration relief is available under VAWA?

There are two types of VAWA protections—self-petitions and cancellation of removals.

1.) VAWA self-petitions: An individual may be eligible to file an immigrant visa petition through "self-petition" for lawful permanent residency for himself or

herself and his or her children if the batterer is a US citizen or legal permanent resident, and if the petitioner is one of the following:

- A battered spouse;
- A child/step-child who was battered *or* witnessed spousal abuse of his or her parent/step-parent; or
- A parent who is battered by his or her adult child.

Please note that "self-petition" means an individual can apply for this status by oneself, without the help of a spouse or parent. "Self-petition" does not mean that this process should be done *pro-se* (without the assistance of an immigration specialist or lawyer).

2.) VAWA cancellation of removal: This option is available only to individuals who are in or facing removal proceedings. If a non-citizen survivor is facing or in removal proceedings, is married to an abusive U.S. citizen or to a lawful permanent resident, and has been in the U.S. for at least three years, the survivor may ask for the removal to be suspended and for lawful permanent residency to be granted, without the abuser's assistance or cooperation. This is called the "special rule suspension of removal and cancellation of removal" and it is also a provision of VAWA.

If an individual is at risk of removal or scheduled for removal proceedings, we recommend that individual discuss legal options with an immigration expert.

2. VAWA Self-Petitions

Is VAWA adjustment of status available only to couples who are or were married? What about same-sex partnerships?

Yes. This form of relief under VAWA is available only to a survivor who is - or within the last 24 months was - married to the abuser. Neither cohabitation nor being engaged to marry are sufficient for VAWA relief. (The non-citizen survivor might qualify for a U-visa, however.)

Are the children of the spouse of an abusive US citizen or lawful permanent resident eligible for relief?

Maybe. Children may be eligible depending on the age of the children, their marital status, whether they were also abused, and other considerations.

What does it mean to "self-petition" for lawful permanent residency under VAWA?

Under VAWA, battered non-citizens who are married to, or recently divorced from, U.S. Citizens or lawful permanent residents can, in certain circumstances, "self-petition" to obtain lawful permanent residence or to remove the condition on a two-year conditional permanent residence card (also known as a "green card"). The term "self-petition" means to apply without the help or knowledge of their abusive spouse, not to complete the forms and process on one's own.

Typically, when a non-citizen marries a U.S. citizen or lawful permanent resident, the non-citizen can only obtain legal status if the U.S. citizen or lawful permanent resident spouse applies on behalf of the non-citizen. In domestic violence relationships, the abusive spouse may use control over the survivor's immigration status as yet another method of abuse. To protect the non-citizen from this dynamic, VAWA allows a battered non-citizen to "self-petition" for lawful permanent residence on behalf of his or herself (and his or her children). The abusive spouse plays no role in the process and does not have to know that the survivor is even applying. USCIS may not inform an applicant's spouse that a survivor has applied for a VAWA self-petition.

Because the law is complicated, a non-citizen survivor should always consult an immigration specialist or lawyer before applying to USCIS for VAWA protections.

If the non-citizen survivor is divorced, widowed, or remarried is the survivor still eligible to self-petition?

It depends. The following changes in legal status do not affect eligibility to self-petition or to obtain cancellation of removal under VAWA:

- The spouse of an abusive U.S. citizen or lawful permanent resident can self-petition up to two years after divorce, if there is a connection between the divorce and the abuse.
- The spouse of an abusive U.S. citizen or lawful permanent resident can self-petition up to two years after the death of his or her spouse.
- The spouse or child of an abusive U.S. citizen or lawful permanent resident can self-petition up to two years after the US citizen or lawful permanent resident loses immigration status, if the loss of status is related to domestic violence.
- The spouse of an abusive U.S. citizen or lawful permanent resident may remarry, but not until after a VAWA self-petition is approved. If the survivor marries before filing the application or while it is still pending, the survivor will lose the opportunity to obtain lawful permanent residence through VAWA.[ccxxxvi]

What should advocates know about the VAWA self-petition process?

VAWA self-petitions must all be filed at the Vermont Service Center (VSC) of the United States Citizenship and Immigration Service, which is part of the Department of Homeland Security. The VSC makes a decision based on the VAWA application and the supporting documentation the applicant submitted. VSC does not interview applicants. VSC has a special group of officers reviewing these applications who regularly receive training in identifying forms of domestic violence.

If the abuser is a U.S. citizen, a non-citizen survivor may apply for a VAWA self-petition, a work permit, and lawful permanent residence all at the same time. Once the VSC receives the applications, they will send the applicant a temporary work permit, which typically takes about four months to receive. The VAWA self-petition can take a year or less to be approved. Once approved, an applicant's file will be sent to a local service center, where the applicant must attend a USCIS interview. An immigration officer will then determine the individual's eligibility for lawful permanent residence.

If the abuser is a lawful permanent resident, the non-citizen survivor can only file the VAWA self-petition, and must wait until it is approved before the survivor may

apply for a work permit. Additionally, the non-citizen survivor must wait for a visa to become available via the visa quota system before s/he can apply for lawful permanent residence.
All approved VAWA self-petitioners may stay in the United States to obtain lawful permanent residence status, regardless of how they entered the United States or whether their visa has expired. Approved VAWA self-petitioners may not travel outside of the United States until they obtain lawful permanent residence or parole via a pending lawful permanent residence application.

What does the non-citizen survivor have to show to be eligible for VAWA self-petition?

To have a successful VAWA self-petition case, an applicant must demonstrate to the United States Citizenship and Immigration Service's VSC that the survivor had:

- A qualifying relationship with an abusive U.S. citizen or lawful permanent resident;
- Been subjected to battery or extreme cruelty;
- A good faith marriage;
- Good moral character; and
- United States residence.

What benefits will a survivor approved for the VAWA self-petition receive?

Approved VAWA petitioners will receive:

- Deferred action status until eligible to adjust status, which means that the applicant will not be returned or ordered to his or her country of origin;
- Employment authorization; and
- Public benefits.

The USCIS takes approximately one year to complete its determination on a VAWA self-petition application.

If a non-citizen survivor applies for a VAWA self-petition, should the survivor also apply for a U-visa?

This decision should be made in consultation with an immigration lawyer or specialist. A victim who appears to qualify for a VAWA self-petition may also qualify for a U-visa. A U-visa often takes a shorter time to process and, as a result, the survivor may qualify sooner for a work visa and other public benefits.

What does it mean to get a "cancellation of removal" under VAWA?

A non-citizen survivor facing or in removal (deportation) proceedings can apply for a VAWA cancellation of removal. If approved, the non-citizen may instead be granted lawful permanent residency.

Because the battered non-citizen must be in removal proceedings before applying for a VAWA cancellation of removal, it is very risky to use this as a strategy to gain legal permanent status. If it is not successful, the victim will likely be deported.

3. Battered Spouse or Child Waivers

What is a battered spouse or child waiver and who qualifies for it?

Battered spouse or child waivers can be granted to a non-citizen who was already issued a green card, but whose status is still "conditional" because it was granted less than two years ago.

What do I need to show to be eligible for a battered spouse or child waiver?
A battered spouse waiver petitioner must establish:

- Good- faith marriage; and
- Qualifying abuse (physical battery or extreme cruelty).[ccxxxvii]

What is unique about the battered spouse or child waiver is that the marriage or parent-child relationship and immigration status of the relative have previously been legally decided. As a result, these issues do not need to be reviewed by USCIS (which is not the case with other VAWA petitions).

C. U-visas for Survivors of Crime

1. What is a U-visa?

The Victims of Trafficking and Violence Protection Act of 2000 created two new nonimmigrant visas for non-citizen survivors of crimes: the T-visa and the U-visa. Both visas are designed to provide immigration status to non-citizens who are assisting or are willing to assist authorities investigating crimes.

The U-visa is designed for non-citizen crime survivors who possess the following characteristics: (1) have suffered substantial physical or mental abuse from criminal activity; (2) have information regarding the criminal activity; (3) assist government officials in the investigation or prosecution of such criminal activity; and (4) the criminal activity violated US law or occurred in the United States, which includes Native American tribal lands, military installations, and the territories and possessions of the United States.

U-visas are distinct from VAWA protections because the perpetrator does not need to be a US citizen or lawful permanent resident and the survivor does not have to have ever been married to the perpetrator to be eligible for relief. In other words, there is no relationship requirement to be eligible for a U-visa. Additionally, an individual does not need to be physically present in the US to qualify and may apply from abroad as long as the criminal activity violated US law or occurred in US territories.

USCIS can only grant U-visa status to 10,000 noncitizens in each fiscal year. This quota does not include persons eligible for U-visa derivatives status, *e.g.*, spouses, children, or parents of applicants. Currently, there is a significant back-log of cases and there is a multi-year wait for the U-visa application to be reviewed.

Once approved, U-visas provide immediate support and U-visa holders automatically qualify for employment authorization. While U-visas last for only four years, U-visa holders may apply for lawful permanent residence after three years.

To apply for permanent residence, an applicant must complete and submit an "application to register permanent residence or adjust status," known as Form I-485, available at the USCIS website.

Should U-visa applicants contact USCIS or Immigration and Customs Enforcement (ICE)?

No. Local USCIS offices and ICE offices do not process U-visas. Like VAWA self-petitions, all U-visas are processed by a specially trained unit in Vermont. (As of this writing, a second office will soon be opened to assist the Vermont Service Center with the significant backlog in processing U-visa applications.) Processing U-visas does not require a victim interview; everything is completed based on the paperwork filed. Advocates should urge non-citizen survivors to avoid going to USCIS or ICE offices in person without a lawyer, as doing so may result in serious consequences, such as detention or removal.

2. Who is Eligible for a U-visa?

Who is eligible to apply for a U-visa?

A broad range of criminal activity listed in the legislation qualifies survivors for U-Visas. Oftentimes, survivors of these crimes are women and children. Advocates may encounter non-citizen survivors of sexual or domestic violence including nannies subjected to abuse from their employers, farmworker victims, restaurant employees, and other survivors of workplace sexual assault. Even non-citizen survivors currently in removal proceedings may still apply for a U-visa.

To qualify for a U-visa, an individual must show the following five elements:

1) The victim suffered "substantial physical or mental abuse" as the result of one of the following forms of criminal activity or "similar activity" conducted in the US:
    - rape;
    - torture;
    - trafficking;

- incest;
- domestic violence;
- sexual assault;
- abusive sexual contact;
- stalking;
- prostitution;
- sexual exploitation;
- female genital mutilation;
- being held hostage;
- peonage;
- involuntary servitude;
- slave trade;
- kidnapping;
- abduction;
- unlawful criminal restraint;
- false imprisonment;
- blackmail;
- extortion;
- manslaughter;
- murder;
- felonious assault;
- witness tampering;
- obstruction of justice;
- perjury; or
- attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

2) The victim possesses information concerning the criminal activity;
3) Law enforcement certification that the victim is, has been or is likely to be helpful to the investigation or prosecution of the criminal activity (this certification must come from a federal, state, or local law enforcement

official, prosecutor, judge, or authority that is investigating the criminal activity);

4) The criminal activity violated US law or occurred in the United States (including Indian country and military installations) or the territories and possessions of the United States; (note: If the crime is one of the crimes listed above, but occurred in another country, it can only be a "qualifying crime" if it violates a federal law that specifically provides for extraterritorial (non-US) jurisdiction (for example, drug trafficking from Mexico to the US); and
5) The victim is not in violation of the immigration law's "inadmissibility" grounds or, if so, that a waiver is filed because it is in the national or public interest for the applicant to stay here, despite those violations.

Note that, to meet the certification requirements, the applicant must provide the law enforcement officer with a form to complete. Prosecutors or law enforcement officers are sometimes reluctant to complete the forms and provide the necessary certification. Sometimes, the refusal is based on the erroneous assumption that there has to be a prosecution and/or conviction before the form may be completed.[ccxxxviii] In some cases, prosecutors are reluctant to provide the letter because they fear the defendant will use it to undermine the victim's credibility before the jury (*i.e.,* that the victim was promised or received an incentive for testifying) or on appeal.

Does the prosecutor or a law enforcement agency have to sign the U-visa certification?

No, signing the certification is in the law enforcement agency's discretion. They cannot be required to sign it.

Does the survivor have to be in the United States to qualify for a U-visa?

No. As long as the criminal activity has violated United States law or has occurred within a United States territory, U-visa applicants are not required to be physically present in the United States to qualify for a U-visa. For example, a non-citizen survivor who flees the United States after a qualifying crime occurs may still be

eligible to apply for a U-visa. A non-citizen survivor's children who are outside the United States when or after the qualifying crime occurs may still be eligible for derivative U-visas. Practically, however, it may make it more difficult to find and work with a lawyer. If a U-visa applicant and/or his/her children are abroad and are granted a U-visa, the Vermont (or other office processing the application) will then send the paperwork to the consulate where applicants will get their visa.

Must both adult and minor victims cooperate with law enforcement to be eligible for a U-visa?

Adult victims must report to and cooperate with law enforcement to be eligible for a U-visa. U-visa petitioners 16 years old or older may have to comply with this requirement, too. For petitioners who are under the age of 16, incapacitated or incompetent, the details about the crime as well as the assistance required by law enforcement may be provided by the minor's parent, guardian, or "next friend."[ccxxxix] A "next friend" is a person who appears to act for the benefit of a nonimmigrant who is under the age of 16, incapacitated, or incompetent.

3. Benefits of the U-Visa

What are the benefits of a U-visa? How many U-visas are granted each year?

Approved U-visa petitioners will be granted temporary legal status and work authorization. After three years, U-visa holders are eligible to apply for lawful permanent resident status. Up to 10,000 U-visas will be available each year for eligible applicants. This does not include the visas given to close family members of U-visa crime survivors. There is currently a significant backlog of cases, and U-visa applications are taking years to be processed. A second office is opening to help process the applications and hopefully this will reduce the wait time.

May family members benefit from a non-citizen survivor's U-visa?

Certain family members of persons granted U-visa status can also qualify for a U-visa. A petitioner who is 21 years or older (on the date of application) may file for U-visas for a spouse (U-2) and unmarried children under 21 (U-3). A petitioner 20 years of age or younger (on the date of application) may file for U-visas for a spouse

(U-2), unmarried children under 21 (U-3), parents (U-4) and unmarried siblings under 18 (U-5).

May a U-visa holder become a lawful permanent resident?

The U-visa allows an applicant to apply to become a lawful permanent resident if the applicant:

1) Was lawfully admitted to the United States as a U-nonimmigrant;
2) Continues to hold U-nonimmigrant status at the time of application;
3) Has been physically present in the United States for 3 years since the U-visa was issued and has not accrued more than 90 consecutive days outside of the US or more than 180 days total outside of the US;
4) Has not unreasonably refused to provide assistance to an official or law enforcement agency; and
5) Shows that a continued presence in the United States is supported by humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

4. How to Apply for a U-Visa

What must be included in the U-visa application?

It is very important that applicants work with a lawyer familiar with U-visas. The forms and laws can often be confusing, and a mistake or omission can result in USCIS denying the application. The application often requires forms from the applicant, the applicant's family, and the law enforcement officer who signs the certification. The application also includes a requirement that applicants write their own story.

A declaration from a crime survivor advocate on behalf of the non-citizen survivor regarding the harms suffered may also be very helpful. Advocates who draft declarations should consult with the victim's lawyer regarding the content.

To apply, a victim needs to complete an I-918, Petition for U Nonimmigrant Status.

How much does it cost to apply for a U-visa?

There are no fees for the application for the petitioner and any derivative family members. Some of the related forms do have fees (*i.e.*, employment authorization for derivative family members, inadmissibility waiver, etc.) but the fees for all the forms can be waived, with the exception of the biometrics (fingerprinting).

D. T-Visas for Trafficking Victims

1. What is a T-visa?[ccxl]

A T-visa gives temporary non-immigrant status to survivors of "severe forms of human trafficking" (and their immediate family members) on the condition that they help law enforcement officials investigate and prosecute crimes related to human trafficking.[ccxli] (A victim under 18 years of age is not required to cooperate with police to be eligible for a T-visa.)

Human trafficking is the process by which one person (the "trafficker") recruits another person ("the survivor") for the purposes of exploiting that person. The survivor is generally controlled and held captive by the trafficker against the survivor's will. Traffickers use or threaten to use force, coercion, abduction, fraud, or deception to bring their survivors under their control. Traffickers also take advantage of survivors' vulnerable social or economic status to maintain control.

In essence, trafficking is a modern-day form of slavery. Generally, human trafficking survivors are subjected to two forms of trafficking. The first form is *sexual exploitation*— known as *sex trafficking*. Sex trafficking can include acts such as forced pornography, mail-order bride selling, or prostitution. The second form is *forced labor*—known as *labor trafficking*.[ccxlii] Forced labor generally comes in two forms:

- **1) Bonded labor (also known as debt bondage):** This is when the trafficked individual is forced to work indefinitely—without any reasonable limits on services or time—to pay off the person who smuggled him/her into the United States. Generally, the survivor has no way to know when the debt is going to be paid off or by how much the debt has been reduced by the work

already performed.[ccxliii] The value of the work performed is almost always greater than the original amount of money "borrowed."

- **2) Involuntary servitude / slavery:** This is when survivors are forced to work against their will, under the threat of violence or some other form of punishment. Traffickers could threaten to physically harm the survivor or the survivor's family and loved ones, but may also threaten to report the survivor to the police (for immigration violations, prostitution, etc.) if the victim does not continue to work for the trafficker. The threats to report the survivor to the police are known as "abuse of the legal process."[ccxliv] Forms of forced labor can include domestic servitude (*e.g.*, a nanny, housekeeper or groundskeeper); agricultural labor; sweatshop factory labor; janitorial, food and other service industry labor; and begging.[ccxlv]

T-visas allow survivors of severe forms of trafficking to stay in the United States for four years from the date the T-visa application is approved. However, the victim may be allowed additional time if a law enforcement authority certifies with the Vermont Service Center that having the survivor remain in the country for longer is necessary for investigating or prosecuting the crime.[ccxlvi]

If a T-visa is granted, an employment authorization document (EAD) is also granted automatically, which means that the survivor can legally work during his/her stay in the United States. There is no need to apply for separate employment authorization.[ccxlvii] T-visa status may also be available for immediate family members of a T-visa applicant. Immediate family members include spouses, children, and parents of applicants under 18.[ccxlviii]

Note that a T-visa status is also called "T-1 nonimmigrant status."

2. Who is Eligible for a T-Visa?

To qualify for a T-visa, the victim must be: (1) the survivor of sex- or employment-based human trafficking; (2) willing to assist in the investigation or prosecution of the trafficking crime; and (3) likely to suffer extreme hardship if removed (also known as "deported"). Victims who are minors do not need to satisfy this third element.

Trafficking survivors who receive a T-visa are given temporary resident status in the United States for up to four (4) years (with the option to extend year-by-year if law enforcement finds it necessary to assist in a criminal investigation or prosecution). They are also eligible for employment authorization. After three (3) years, T-visa-holders may also be eligible to receive permanent resident status. In some cases, USCIS can reduce the year wait if it receives certification that law enforcement officials do not object.

To apply for permanent residence, the victim must complete and submit an "application to register permanent residence or adjust status," known as Form I-485, which is available at the USCIS website.

What does "a severe form of human trafficking" mean?

To qualify for the T-visa, an individual must be a survivor of a "severe form of trafficking in persons." The Trafficking Victims Protection Act of 2000 defines this as:

> (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
>
> (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.[ccxlix]

For more information about services for trafficked survivors, contact the Trafficking Information and Referral Hotline at 1-888-373-7888.

Are all non-citizen victims of trafficking likely to be successful in obtaining a T-visa?

Not necessarily. T-visas are limited to 5,000 a year nationally, which means that even a non-citizen survivor who satisfies all of the requirements may still be denied

a T-visa. Eligible applicants who are denied because of the quota are placed on a waiting list.[cch]

For more information on how "severe trafficking in persons" is defined by the government, visit the United States Department of Justice Civil Rights Division.

There are a growing number of non-profit organizations in Oregon and across the country with trafficking expertise. In Oregon, the Sexual Assault Resource Center, the YWCA, and Catholic Charities, among others, serve victims of trafficking. The Coalition to Abolish Slavery and Trafficking, the Southern Poverty Law Center, Legal Momentum, ASISTA, and other national organizations and projects can also provide free technical assistance.

Relevant Definitions:

What does it mean to be "present because of human trafficking?"

To be eligible for a T-visa, an applicant must be in the United States (or American Samoa or a port-of-entry into the United States) as a result of a severe form of trafficking. For example, if an individual came to the United States because of force, coercion, or fraud and is now being forced to work or perform sex acts for money, that victim may satisfy this requirement. However, a victim who came to the U.S. alone and then, sometime later, was forced or tricked into labor or prostitution, may not meet this eligibility requirement. (Such a victim may be eligible for a U-visa, however.) For this reason, it is important that non-citizen survivors speak to an immigration lawyer about their specific situation.

Additionally, an applicant may still be considered "present because of human trafficking" even if the applicant is no longer working under force, coercion, or trickery, if the victim recently escaped or was released from a severe form of trafficking. If the survivor escaped from severe trafficking a long time ago, it may be possible to satisfy this requirement but this will have to be determined on a case by case basis.[cci] An immigration lawyer can help determine if the individual still meets this requirement.

What is considered to be "extreme hardship?"

T-visas are only available to trafficked individuals who would face "extreme hardship" if forced to return to their native countries. To show extreme hardship, the applicant must show more than economic harm (*e.g.*, not having enough money to survive) or social harm (*e.g.*, deemed unsuitable for marriage or employment). Simply proving one of these will not be enough. Generally, an applicant will need to show a "likelihood" of serious physical or psychological harm as well.

Note that "likelihood" means more than a possibility; it means that serious physical or psychological harm is probable.[cclii] Federal law sets out the factors to consider in determining whether an individual will suffer extreme hardship if forced to leave the United States. These factors include, among others, a victim's age, medical needs, ability to seek justice in the home country.[ccliii]

What does "cooperating with legal authorities" mean and are there exceptions?

A non-citizen survivor who is 18 years or older must cooperate with law enforcement authorities' "reasonable requests" for assistance in prosecuting the trafficking crime. Whether a request is "reasonable" depends on the particular situation. Determinative factors include:

- General law enforcement practices (what that particular law enforcement office does when apprehending and prosecuting criminals);
- The individual's trafficking-related experiences;
- The victim' fear, physical and mental trauma; and
- The victim's age and maturity.[ccliv]

There are exceptions, however. An applicant who is under 18 may – but does not have to - cooperate with authorities. Additionally, if a survivor of human trafficking has suffered psychological or physical trauma, and is unable to cooperate with law enforcement because of that trauma, the survivor may qualify for the "trauma exception" and be exempt from the cooperation requirement.[cclv]

3. Benefits of a T-Visa

Once the T-visa has been granted, may the applicant legally work in the United States?

Yes, once an individual is granted a T-visa, the applicant automatically receives an employment authorization document (EAD). No additional paperwork is required to get employment authorization. The T-visa application also acts as an application for employment authorization.[cclvi]

Note that if the applicant is applying for derivative T-visa status (T-visa status for immediate family members), the survivor must apply separately for their employment authorization by filling out Form I-765.

May an applicant apply for permanent resident status after receiving the T-visa?

Yes. Once the T-visa is granted, the applicant may apply for permanent residence if the survivor:

1) Has been in the United States for a continuous period of at least three years after T-visa status is granted OR a continuous period during the investigation/prosecution of trafficking and once the investigation/prosecution is complete (whichever amount of time is shorter);
2) Has been a person of good moral character since first being granted T-visa status;
3) Has complied with reasonable requests for assistance in the investigation/prosecution of acts of trafficking since first being granted T-visa status OR would suffer extreme hardship involving unusual and severe harm if s/he was removed (also known as "deported") from the United States; and
4) Is otherwise admissible to the United States as a lawful permanent resident (in other words, the applicant is not inadmissible for any reason listed under INA § 212).[cclvii]

"Good moral character" is defined under Section 101(f) of the Immigration and Nationality Act. If trafficking victims have committed any of the acts listed in

section 101(f) they might NOT qualify as a person of good moral character. The list includes, but it not limited to the following:

- criminal possession of narcotics (except simple possession of 30 grams or less of marijuana);
- habitual drunkenness;
- repeated gambling offenses;
- a conviction of an aggravated felony;
- imprisonment for a total of 180 days or more; and
- lying under oath (giving false testimony) to get benefits available through the Immigration and Nationality Act.

It is important to note that the USCIS may make a negative finding based on criteria not listed in Section 101(f); the Section 101(f) list is "non-exhaustive."

After a non-citizen survivor applies for a T-visa, may the survivor include immediate family members on the application?

Yes. T-visa status is available for certain qualifying family members of a T-visa applicant. This is called derivative T-visa status. The following family members could qualify:

Applicants under 21 years old, may apply for T-visa status for their:

- Spouse;
- Unmarried children under 21 years of age;
- Parents; and/or
- Unmarried sisters or brothers under the age of 18.

Applicants 21 years old or over, may apply for T-visa status for their:

- Spouse; and/or
- Unmarried children under the age of 21.[cclviii]

To apply for T-visa status for a family member, the applicant must fill out and submit an "application for immediate family member of T-Visa recipient," known as a Form I-914 Supplement A.

An applicant does not need to wait until the T-visa is granted to apply on behalf family members. The applicant may file the I-914, Supplement A at the same time the T-visa request is filed, or the applicant can file it at a later time.

Employment authorization is not automatic for derivatives. An applicant who needs employment authorization for immediate family members must complete a Form I-765, Application for Employment Authorization, in addition to Form I-914 Supplement A.

Are survivors of human trafficking ever entitled to federal benefits?

Yes. An adult survivor of human trafficking may get "certified" by the United States Department of Health and Human Services (HHS) to be eligible for certain federally-funded benefits.

"Certification" is available to survivors of human trafficking (as defined by the Trafficking Victims Protection Act) who are willing to assist law enforcement in the prosecution of trafficking crimes and either:

1) Have completed a bona fide application for a T-visa; or
2) Have received continued presence status from the Department of Homeland Security.

Note that "continued presence" status is requested by law enforcement officials for survivors of human trafficking who are potential witnesses for trafficking-related prosecution. Only a law enforcement agency can petition the USCIS for continued presence status.

Child survivors are automatically eligible for benefits once HHS receives proof that the child is a survivor of human trafficking. This means that children do not have to prove either of the two requirements above. HHS will then provide the child survivor or the child survivor's representative with a "letter of eligibility," which can be used to prove to social service providers that the child is eligible for benefits.[cclix]

An applicant who has not yet been certified by HHS but has reported the trafficking crime may still be eligible for certain federally-funded services and benefits including crisis counseling and short term shelter or housing assistance. To locate

service providers for uncertified survivors of human trafficking, contact the Trafficking Information and Referral Hotline: (888) 373-7888.[cclx]

In addition to government-funded programs, a variety of non-governmental organizations also provide information and assistance to survivors of human trafficking, whether the survivor is certified or not. Visit humantrafficking.org to view a list of non-governmental organizations by state: http://www.humantrafficking.org/countries/united_states_of_america/ngos

What federally-funded benefits are available to T-visa holders?

An applicant who has obtained certification (or, if under 18, a letter of eligibility) may receive benefits from any federal program or federally-funded state program. The T-visa holder should bring the certification or letter of eligibility when applying for any of these benefits. The T-visa holder should also call the number for Trafficking Victim Verification (TVV) at 1-866-401-5510. A TVV service provider can provide further assistance regarding the certification or eligibility letter.

Additionally, some T-visa holders will be eligible for Refugee Cash and Medical Assistance (RCA & RMA). Even though the individual is not considered a "refugee," the survivor can still qualify for these benefits. An applicant who is ineligible for TANF, SSI, and Medicaid may still be eligible for RCA and RMA, which provide cash and medical assistance for the first eight months following certification or eligibility. For assistance in locating the local agency in Oregon responsible for administering RCA & RMA, visit: http://www.acf.hhs.gov/programs/orr/partners/state_coordina.htm#OR. The link provides contact information for the refugee coordinator in Oregon who can instruct T-visa holders where they can apply for benefits.

Where can non-citizen trafficking survivors obtain health services?

Torture Treatment Program is an HHS-funded social, legal, health, and psychological services program for survivors of torture and is available to trafficking survivors. These services can be found here: http://www.healtorture.org/survivor-resources. More generally, low-cost and free healthcare services are available from

a variety of clinics throughout Oregon. A survivor will also want to know about eligibility for the Oregon Health Plan.

What services are available specifically for minor trafficking victims?

The Unaccompanied Refugees Minor Program provides resettlement and foster care services for unaccompanied minor refugees and trafficking survivors. See http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_refugee_minors.htm.

4. How to Apply for a T Visa

How much does it cost to apply for a T-visa?

The following forms may need to be filed for a T-visa. The list indicates the costs (if any) of filing each form:

- There is no application fee for Form I-914 or Form I-914 Supplements A or B.
- There is no biometric (fingerprint) fee.
- There is a $380 fee for Form I-765, Employment Authorization Document (EAD) for each family member for whom the trafficking survivor is seeking derivative T-visa status. This fee may be waived upon a showing of financial hardship.
- There is a $585 fee for Form I-192 (to waive grounds of inadmissibility). The fee may be waived upon a showing of financial hardship.[cclxi]

Note that these costs are accurate as of August 2016.

How long does a T-visa last and what happens when it expires?

A T-visa lasts for four (4) years. Applicants are required to leave the United States at the end of the four years unless either:

- A law enforcement authority certifies that an extended stay is necessary for an ongoing investigation; or
- Between the third and fourth year, the T-visa holder applied to become a legal permanent resident and is granted permanent resident status. (A T-visa

holder who has lived in the US for three years with T-visa status may apply to be a lawful permanent resident (LPR) after between the third and fourth years; the LPR application must be submitted before the end of the fourth year as a T-visa holder.[cclxii]

To apply for permanent residence, an applicant must complete and submit an "application to register permanent residence or adjust status," known as Form I-485, available at the USCIS website. A T-visa holder also needs to complete Supplement E to Form I-485. A T-visa holder who applies for permanent residence may also be described as "applying for adjustment of status."

What kind of helpful handouts regarding services can I provide to non-citizen trafficking survivors?

HHS's Administration for Children and Families Victim Assistance Fact Sheet is helpful. It is available online at: http://www.acf.hhs.gov/trafficking/about/victim_assist.html.

The fact sheet is also available in Spanish, Polish, Russian, and Mandarin:

- Materials in Spanish: http://www.acf.hhs.gov/trafficking/about/June9_helpforvictims.html
- Materials in Polish: http://www.acf.hhs.gov/trafficking/about/victim_assistance_pl.html
- Materials in Russian: http://www.acf.hhs.gov/trafficking/about/victim_assist_ru.html
- Materials in Mandarin: http://www.acf.hhs.gov/trafficking/about/victim_assist_tzh.html

Where can I find additional services and help for survivors of trafficking?

Some additional resources include:

- The Office for Victims of Crime (OVC) website provides an extensive list of resources for survivors of human trafficking. Visit the OVC website and see those resources here: http://www.ojp.usdoj.gov/ovc/. To see a list of OVC resources for Oregon, visit: http://ovc.ncjrs.gov/ResourceByState.aspx?state=or. OVC also provides a brochure about human trafficking available in English, Mandarin, Korean, Spanish, Thai, and Vietnamese.
- The HHS Office of Refugee Resettlement provides information and links to federal resources for survivors of human trafficking and can be found here: http://www.acf.hhs.gov/trafficking/.
- The National Human Trafficking Resource Center is a non-government organization providing assistance to survivors of human trafficking. Trafficking survivors who are not ready to contact government authorities, but would like more information about resources available can call the hotline at: 1-888-373-7888.

Where can non-citizen trafficking survivors obtain health services?

The Torture Treatment Program is an HHS-funded social, legal, health, and psychological services program for survivors of torture and is available to trafficking survivors. These services can be found here: http://www.healtorture.org/survivor-resources. More generally, low-cost and free healthcare services are available from a variety of clinic throughout Oregon. A survivor should also be informed regarding eligibility for the Oregon Health Plan.

What services are available specifically for minors?

The Unaccompanied Refugees Minor Program provides resettlement and foster care services for unaccompanied minor refugees and trafficking survivors. For more information, visit: http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_refugee_minors.htm.

E. Asylum Status

1. What is Asylum?

Asylum is a form of refugee status. It applies to individuals who have entered into the United States and then proven to either the asylum office or the immigration court that they cannot return to their home country due to a reasonable fear of being persecuted for one of the following five reasons:

(1) Race;
(2) Nationality;
(3) Religion;
(4) Political opinion; or
(5) Membership in a particular social group.[cclxiii]

Examples of social groups include a wide range of groups such as membership in a merchant class or being a homosexual, a member of a certain tribe, or a battered spouse.[cclxiv] Such persecution can come from either the government or a group or individual the government cannot or refuses to control. Usually, asylum seekers must apply for asylum status within one year of their entry into the United States.[cclxv]

Survivors of severe domestic violence or sexual abuse may qualify for asylum status as part of the "membership in a particular social group" category.

2. Who is Eligible for Asylum?

May non-citizen survivors apply for asylum if they are undocumented?

Yes. Non-citizen survivors may apply for asylum with USCIS regardless of their immigration status, whether they are undocumented or came here legally on a nonimmigrant visa.

Does an applicant for asylum need to be present in the US to apply for asylum?

Yes. The applicant needs to be physically present in the United States when filing for asylum.[cclxvi]

May an applicant already in removal proceedings still apply for asylum?

Yes. A victim in removal proceedings who might qualify for asylum may request asylum as a defense against removal from the United States. Individuals are placed into what is known as "defensive asylum processing" in one of these two ways:

1) They are referred to an immigration judge, after their affirmative asylum case was not approved; or
2) They are placed in removal proceedings because they were caught:
    - In the United States or at a United States port of entry without proper legal documentation or in violation of their immigration status; or
    - By the Immigration and Customs Enforcement (ICE) without proper legal documentation, and were found to have a well-founded fear of persecution or torture.

3. Benefits of Asylum

What are the benefits of asylum status?

If the asylum application is approved, an asylee will be:

- Granted legal status in the United States;
- Granted work authorization (Employment Authorization Document (EAD));[cclxvii]
- Eligible for adjustment of status (eligible for legal permanent residency/green card) after one year of being granted the asylum;[cclxviii] and
- Able to sponsor his/her spouse and unmarried minor children within the first two years of being granted asylum.[cclxix]

Information on the EAD can be found on the USCIS website at: http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=820a0a5659083210VgnVCM100000082ca60aRCRD&vgnextchannel=820a0a5659083210VgnVCM100000082ca60aRCRD.

For a more complete list of benefits, see the USCIS website's "Benefits and Responsibilities of Asylees" page at:

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextchannel=f39d3e4d77d73210VgnVCM100000082ca60aRCRD&vgnextoid=2d2e4b5bbfb73210VgnVCM100000082ca60aRCRD.

May family members benefit from the victim's asylum status?

Yes. Once an applicant is granted asylum, the asylee may apply for derivative asylum benefits for his/her spouse and/or unmarried minor children (under age 21). This means that a spouse and/or children may be granted asylum status based on the applicant's own asylum status.[cclxx]

To meet the definition of "spouse," the asylee applicant needs to be legally married according to the laws of their home country. However, the United States does not recognize certain marriages even if they are legal where they arose (*e.g.*, polygamous marriages). Unmarried minor children (under the age of 21) may include an adopted child (if the adoption meets certain requirements) or a step-child so long as they became a step-child before age 18.[cclxxi]

To sponsor family, an applicant must file form I-730 within the first two years of being granted asylum status.[cclxxii]

What financial benefits are available to asylees?

Some asylees will be eligible for Refugee Cash and Medical Assistance (RCA & RMA). An applicant who is ineligible for TANF, SSI, and Medicaid may be eligible for RCA and RMA, which provide cash and medical assistance for the first eight months following certification or eligibility. For assistance in locating the local agency in Oregon responsible for administering RCA & RMA, visit http://www.acf.hhs.gov/programs/orr/partners/state_coordina.htm#OR. The link provides contact information for the refugee coordinator in Oregon who can instruct T-visa holders where they can apply for benefits.

4. How to Apply for Asylum

How does a victim apply for asylum?

To apply for asylum, an individual needs to meet all of the following conditions describe below:

- Physically present in the United States;
- Cannot be in removal proceedings;
- Has filed his/her application within a year of his/her last arrival in the United States, or can prove that s/he qualifies for an exception to the one-year deadline; and
- Has or will soon file Form I-589, Application for Asylum and for Withholding of Removal.

Typically, an individual seeking asylum enters the United States in one of two ways: (1) on a tourist visa; or (2) without inspection (undocumented entry). Unlike a refugee, a person seeking asylum does not receive any assistance from the United States government before arriving.

What forms need to be filed and what is the fee to apply for asylum?

There are no fees to apply for asylum. Applicants need to file an I-589.

How long does the asylum process take?

Usually, a decision should be made on an asylum application within 180 days after the application filing date.

How much time does a non-citizen survivor have to apply for asylum?

An application for asylum must be filed within the first year of arrival.[cclxxiii] It can still be helpful to consult with an immigration lawyer even if the victim has missed the one-year deadline.

Are interpreters provided for non-English speaking survivors at the asylum interview?

It depends. Applicants applying for asylum who are not yet in removal proceedings are required to bring their own interpreter to the asylum interview. The government will not provide one. Immigration lawyers providing *pro bono* (free) services may be able to help arrange appropriate interpreter services for the asylum interview. For applicants requesting asylum as a defense to a removal proceeding, the government provides an interpreter for the asylum hearing and all court proceedings.

May an asylee become a lawful permanent resident and if so what are the requirements?

Yes, an asylee may apply for lawful permanent residency one year after being granted asylum if the individual:

1) Has been physically present in the United States for at least one year after being granted asylum;
2) Continues to meet the definition of a refugee (or to be the spouse or child of such a refugee);
3) Has not abandoned status (in other words, still lives in the United States);
4) Is or has not firmly resettled in any foreign country; and
5) Continues to be admissible to the United States (although a waiver may be available to him/her if the survivor is deemed inadmissible).[cclxxiv]

F. Appendix: Summary of Relevant Forms for Non-Citizen Victims

I-485—Application to Register Permanent Resident or Adjust Status. This form is to apply to adjust one's status to that of a permanent resident of the United States. For more information and to find a copy of this form and related forms, see: http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3faf2c1a6855d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD.

I-751—Petition to Remove the Conditions of Residence. This form is for a conditional resident who obtained status through marriage to apply to remove the

conditions on his or her residence. For more information and to find a copy of this form and related forms, see: http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f858d59cb7a5d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD.

G-28—Notice of Representation by an attorney or accredited representative. It is authorization for the attorney to represent someone before USCIS. An attorney must submit this form before USCIS will recognize an attorney-client relationship. For more information and to find a copy of this form and related forms, see: http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=44bd4154d7b3d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD.

I-360—Application for an Amerasian, Widow(er), or Special Immigrant. This petition also is used by special juvenile immigrants and VAWA self-petitioners. USCIS often waives the filing fee. For more information and to find a copy of this form and related forms, see: http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=95be2c1a6855d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=dd346d26d17df110VgnVCM1000004718190aRCRD.

I-765—Application for Employment Authorization. The work authorization issued by USCIS is referred to as an Employment Authorization Document (EAD). For more information and to find a copy of this form and related forms, see: http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=73ddd59cb7a5d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=7d316c0b4c3bf110VgnVCM1000004718190aRCRD.

G-325—Biographic Information. A fairly detailed form, which asks for basic information about parents, current and former spouses, work history and each address where the intending immigrant has lived. For more information and to find a copy of this form and related forms, see: http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f

6d1a/?vgnextoid=a0e747a55773d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD.

I-918— Petition for U Nonimmigrant Status. This form is to provide temporary immigration benefits to non-citizens who are not in legal status and who are victims of qualifying criminal activity, and to their qualifying family members, as appropriate. For more information and to find a copy of this form and related forms, see:
http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=c70ab2036b0f4110VgnVCM1000004718190aRCRD&vgnextchannel=6ca66d26d17df110VgnVCM1000004718190aRCRD.

I-914—Application for T-Nonimmigrant Status. This form is used to provide temporary immigration benefits to non-citizens who are not in legal status and who are victims of severe forms of trafficking in persons, and to their immediate family members, as appropriate. For more information and to find a copy of this form and related forms, see:
http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3f7f3796f8a5d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=6ca66d26d17df110VgnVCM1000004718190aRCRD.

I-192— Application for Advance Permission to Enter as Nonimmigrant. This form allows inadmissible nonimmigrant non-citizens to apply for advance permission to temporarily enter the United States. For more information and to find a copy of this form and related forms, see:
http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=68db2c1a6855d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD.

I-730— Refugee/Asylee Relative Petition. An individual admitted to the United States as a refugee or granted status in the United States as an asylee within the previous two years may request follow-to-join benefits for a spouse and/or unmarried children under 21 years of age. For more information and to find a copy of this form and related forms, see:
http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f

6d1a/?vgnextoid=59cf8875d714d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=6ca66d26d17df110VgnVCM1000004718190aRCRD.

I-589—Application for Asylum and Withholding of Removal. This form is to apply for asylum in the United States and for withholding of removal (formerly called "withholding of deportation"). For more information and to find a copy of this form and related forms, see: http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=de9814836a14d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=6ca66d26d17df110VgnVCM1000004718190aRCRD

CHAPTER VIII. Overview of State and Federal Domestic Violence, Sexual Assault & Stalking Laws

This chapter contains a list of the Oregon and federal laws that pertain to domestic violence, sexual assault, and stalking. Many of these laws are discussed in greater detail throughout the manual. If you have a question or would like more information about any of these laws, please contact OCADSV.

A. Oregon Civil Protections for Survivors

Family Abuse Prevention Act information distribution

Under the Family Abuse Prevention Act (FAPA), a family abuse victim has the right to receive an instruction brochure, a petition, order and related forms from the clerk of the circuit court explaining the rights set forth in FAPA. These rights include mandatory relief for up to one year and allowing a petitioner to provide a mailing or contact address instead of a residential address.[cclxxv]

Address confidentiality

When any court enters a decree, order, or modification of a decree or order under certain family and assistance payment law, the court shall allow any party to the decree or order to include in the decree or order a waiver of personal service in a subsequent contempt proceeding in order to maintain the confidentiality of a residential address.[cclxxvi]

Termination of rental agreements

A victim of domestic violence, sexual assault, or stalking may terminate a rental agreement with a 14 day notice within 90 days of the crime.[cclxxvii]

Right to change locks

A victim of stalking or sexual or domestic violence has the right to have the locks changed by the rental property owner or to change them independently if the

landlord does not respond promptly to the request.[cclxxviii] A victim may be required to pay the cost of the lock change.

Public housing protections

The Violence Against Women Act protects qualified public housing and Section 8 tenants and family members of tenants who are victims of domestic violence, dating violence, sexual assault or stalking from being evicted or terminated from housing assistance based on acts of such violence against them.[cclxxix] (Sexual violence is a recent addition to this list.)

Public housing preferences

A victim of domestic violence may have a right, in some Oregon Housing Authorities, to a housing preference.[cclxxx]

Unemployment benefits

A victim of domestic violence, sexual assault or stalking may not be disqualified from receiving unemployment benefits if the victim has no reasonably available alternatives to leaving work to protect the victim or minor child from further domestic violence, sexual assault or stalking at a workplace or elsewhere.[cclxxxi]

Payment plan for phone service

An individual at risk for family, elder, or disabled person abuse has the right to go on a payment plan so that basic phone service is not disconnected for unpaid bills.[cclxxxii]

Temporary Assistance to Domestic Violence Survivors (TA/DVS)

Oregon residents who are victims of domestic violence or are at risk of becoming victims may be eligible for Temporary Assistance to Domestic Violence Survivors (TA/DVS) emergency monetary grants through the Oregon Department of Human Services. Applicants must have children or be pregnant to qualify. An emergency

monetary relief order under the Family Abuse Prevention Act does not affect eligibility for TA/DVS grants.[cclxxxiii]

B. Oregon Criminal Laws Related to DV, SA, and Stalking

I. Domestic Violence

Mandatory Arrest Law

When a peace officer responds to an incident of domestic disturbance and has probable cause to believe that an assault has occurred between family or household members, as defined by law and outlined below, or to believe that one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest and take into custody the alleged assailant or potential assailant.[cclxxxiv]

- "Family or household members" means any of the following:
  (a) Spouse;
  (b) Former spouse;
  (c) Adult persons related by blood, marriage or adoption;
  (d) Persons who are cohabiting or who have cohabited with each other;
  (e) Persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding; and
  (f) Unmarried parents of a child.[cclxxxv]

- Considerations by law enforcement
  When a peace officer makes an arrest, the peace officer shall make every effort to determine who is the assailant or potential assailant by considering, among other factors:
  (a) The comparative extent of the injuries inflicted or the seriousness of threats creating a fear of physical injury;
  (b) If reasonably ascertainable, the history of domestic violence between the persons involved;
  (c) Whether any alleged crime was committed in self-defense; and
  (d) The potential for future assaults.[cclxxxvi]

How criminal charges are filed

Victims can request the district attorney's office file charges against the abuser. Charges are filed commonly as "assault," "disorderly conduct," etc. and are labeled with a domestic abuse enhancer.[cclxxxvii] Just because the victim requests that charges be filed is not a guarantee they will be; the district attorney has discretion whether to prosecute. For an overview of the criminal justice system generally, see D. Beloof, J. Mindlin and L. Reeves, *A Criminal Justice Guide: Legal Remedies for Adult Victims of Sexual Violence*.[cclxxxviii] Oregon's sex crime laws are as follows:

2. Sexual Assault

Incapacity to consent to a sexual act

A person is considered unable to consent to a sexual act if they are under age 18, "mentally defective," mentally incapacitated, or physically helpless. A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence.[cclxxxix]

Rape

First degree: A person who has sexual intercourse with another person commits the crime of rape in the first degree if: (a) The victim is subjected to forcible compulsion by the person; (b) The victim is under 12 years of age;
(c) The victim is under 16 years of age and is the person's sibling, of the whole or half blood, the person's child or the person's spouse's child; or (d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.[ccxc]

Second degree: A person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age.[ccxci]

Third degree: A person commits the crime of rape in the third degree if the person has sexual intercourse with another person under 16 years of age.[ccxcii]

Sodomy

First degree: A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the first degree if:

(a) The victim is subjected to forcible compulsion by the actor;
(b) The victim is under 12 years of age;
(c) The victim is under 16 years of age and is the actor's brother or sister, of the whole or half blood, the son or daughter of the actor or the son or daughter of the actor's spouse; or
(d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.[ccxciii]

Second degree: A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the second degree if the victim is under 14 years of age.[ccxciv]

Third degree: A person commits the crime of sodomy in the third degree if the person engages in deviate sexual intercourse with another person under 16 years of age or causes that person to engage in deviate sexual intercourse.[ccxcv]

Unlawful sexual penetration

First degree: A person commits the crime of unlawful sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and:

(a) The victim is subjected to forcible compulsion;
(b) The victim is under 12 years of age; or
(c) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.[ccxcvi]

Second degree: A person commits the crime of unlawful sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and the victim is under 14 years of age.[ccxcvii]

Sexual abuse

First degree: A person commits the crime of sexual abuse in the first degree when that person:

(a) Subjects another person to sexual contact and:

(A) The victim is less than 14 years of age;

(B) The victim is subjected to forcible compulsion by the actor; or

(C) The victim is incapable of consent by reason of being mentally defective, mentally incapacitated or physically helpless; or

(b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.[ccxcviii]

Second degree: (1) A person commits the crime of sexual abuse in the second degree when:

(a) The person subjects another person to sexual intercourse, deviate sexual intercourse or, except as provided in ORS 163.412, penetration of the vagina, anus or penis with any object other than the penis or mouth of the actor and the victim does not consent thereto; or

(b) The person violates ORS 163.415 (1)(a)(B); the person is 21 years of age or older; and at any time before the commission of the offense, the person was the victim's coach.[ccxcix]

Third degree: A person commits the crime of sexual abuse in the third degree if:

(a) The person subjects another person to sexual contact and:

(A) The victim does not consent to the sexual contact; or

(B) The victim is incapable of consent by reason of being under 18 years of age; or

(b) For the purpose of arousing or gratifying the sexual desire of the person or another person, the person intentionally propels any dangerous substance at a victim without the consent of the victim.

(c) As used in this section, "dangerous substance" means blood, urine, semen or feces.[ccc]

Online sexual corruption of a child

First degree: A person commits the crime of online sexual corruption of a child in the first degree if a person commits the Online Sexual Corruption of a Child, Second Degree and intentionally takes a substantial step toward physically meeting with or encountering the child.[ccci]

Second degree: A person commits the crime of online sexual corruption of a child in the second degree if the person is 18 years of age or older and:

(a) For the purpose of arousing or gratifying the sexual desire of the person or another person, knowingly uses an online communication to solicit a child to engage in sexual contact or sexually explicit conduct; and
(b) Offers or agrees to physically meet with the child.[cccii]

Contribution to the sexual delinquency of a minor

A person 18 years of age or older commits the crime of contributing to the sexual delinquency of a minor if:

(a) Being a male, he engages in sexual intercourse with a female under 18 years of age; or
(b) Being a female, she engages in sexual intercourse with a male under 18 years of age; or
(c) The person engages in deviate sexual intercourse with another person under 18 years of age or causes that person to engage in deviate sexual intercourse.[ccciii]

3. Stalking

Stalking is defined as a person knowingly alarming or coercing another person or a person's immediately family by engaging in repeated and unwanted contact. There must be an objective reason as to why a person is alarmed or coerced. Additionally the repeated and unwanted contact must cause the victim to have apprehension regarding their safety or their family's safety.[ccciv]

4. Unlawful Dissemination of an Intimate Image

A person commits the crime of unlawful dissemination of an intimate image if:
(a) The person, with the intent to harass, humiliate or injure another person, knowingly causes to be disclosed through an Internet website an identifiable image of the other person whose intimate parts are visible or who is engaged in sexual conduct;
(b) The person knows or reasonably should have known that the other person does not consent to the disclosure;
(c) The other person is harassed, humiliated or injured by the disclosure; and
(d) A reasonable person would be harassed, humiliated or injured by the disclosure.[cccv]

The term "disclose" includes "but is not limited to, transfer, publish, distribute, exhibit, advertise and offer."[cccvi] "Image" includes "but is not limited to, a photograph, film, videotape, recording, digital picture and other visual reproduction . . . ."[cccvii]

C. Crime Victims' Rights in Oregon

Personal representatives for victims over the age of 15

The victim of a person-crime who was at least 15 years old when the crime was committed may select a personal representative to accompany the victim to phases of the investigation and prosecution of the crime except for grand jury proceedings and certain child abuse assessments.[cccviii]

Costs of medical assessments

Victims of sexual assault may have the costs of certain medical assessments (such as a forensic medical exam post sexual assault) paid by the Oregon Department of Justice.[cccix] A victim may not be charged for the cost of a medical forensic exam, nor may the exam be conditioned upon a victim's willingness to report the assault to or cooperate with law enforcement.

Distribution of evidence

A crime victim may have, upon request and prior to trial, a court order prohibiting distribution of evidence in a proceeding involving a sexual offense.[cccx]

HIV testing

When a criminal act involves the transmission of body fluids, a crime victim may request HIV testing of the person charged or convicted of the offense, which, under certain circumstances, the court must order. If any such HIV test is positive, a victim shall be provided with counseling and referral, for appropriate healthcare, testing and support services. The costs of this testing and counseling shall be paid through the Crime Victims' Compensation Program.[cccxi]

Plea agreement consultation

If a victim of a violent felony makes a timely request, the district attorney shall consult the victim regarding plea discussions before making a final plea agreement. If a victim asks to be consulted, the judge shall ask the district attorney if the victim agrees or disagrees with the plea discussions and agreement and the reasons for the agreement or disagreement.[cccxii]

Public access coverage at court proceedings

At a victim's request, there shall be no public access coverage of sex offense proceedings in court.[cccxiii]

Victim Information and Notification Everyday (VINE)

The State Police has a toll-free telephone number, known as VINE, to give victims updates on prison status, release information, parole status and any other information authorized for release about the person who committed the crime against the victim.[cccxiv] 1-877-OR-4-VINE.

No contact when on post-prison supervision

If a person is on post-prison supervision following conviction of a sex crime, the board or supervisory authority shall include a prohibition against any contact with the victim, directly or indirectly, unless approved by the victim, the person's treatment provider and the board supervisory authority or supervising officer.[cccxv]

Officers shall use reasonable means to prevent further abuse

Whenever any peace officer has reason to believe that a family or household member has been abused, or that an elderly person or person with disabilities has been abused, that officer shall use all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community and giving each person immediate notice of legal rights and remedies available.[cccxvi] Note that this provision does not extend to victims of non-intimate partner sexual violence or petitioners in a SAPO case.

D. Federal Civil Protections for Survivors

Full faith and credit for protection orders

Protection orders issued by a state, Indian tribe, United States territory, or the District of Columbia are generally to be fully implemented ("accorded full faith and credit") by other states, Indian tribes, United States territories or the District of Columbia under 18 USC§ 2265.[cccxvii] The issuing court must have proper jurisdiction over the parties and the due process rights of the person against whom the order is entered must be protected for the order to be subject to full faith and credit.[cccxviii] Any "mutual protection" order, that is, an order entered against both the person requesting the order (the petitioner) and the person to be restrained (the respondent) at the same proceeding when only one petition was filed and there is no stipulation to a mutual order, is not subject to full faith and credit under this section.[cccxix] In addition, the person protected by the order cannot be required to register the order upon arriving in the foreign jurisdiction to have it accorded full faith and credit by the authorities in that jurisdiction.[cccxx] Instead, the order is fully enforceable upon the petitioner's arrival. Orders entitled to full faith and credit

from another jurisdiction must be enforced as if they were the order of the enforcing state or tribe.

Insurance discrimination

A life or health insurance company may not consider an applicant's status as a victim of domestic abuse or an abuse service provider with regard to underwriting, pricing, renewal, or scope of coverage of insurance policies, or claim payment, except as allowed by state law.[cccxxi] Note that this protection extends only to domestic violence survivors and domestic violence service providers. It does not apply more broadly to all victims of non-intimate partner sexual assault. For purposes of the statute, domestic violence is defined as "the occurrence of one or more of the [proscribed] acts by a current or former family member, household member, intimate partner, or caretaker."[cccxxii]

Driver's Privacy Act

The federal Driver's Privacy Act, although applicable to all residents of the United States, can be helpful to victims of domestic violence, sexual assault, stalking and/or human trafficking. The Driver's Privacy Act prevents any state employee from knowingly disclosing any information contained in a motor vehicle record, except to specific authorities, such as police officers.[cccxxiii] This provision prevents abusers, stalkers and traffickers from easily finding out the whereabouts of their victims. However, the statute also allows disclosure of the records for use in any court proceeding.[cccxxiv] If a victim is trying to avoid his or her abuser, the abuser might use court proceedings to find the victim's whereabouts under this law.

New Social Security number

The Social Security Administration allows victims of abuse and children in their custody to obtain a new Social Security Number. The SSA's website (http://www.ssa.gov/) says it will give new numbers to abuse victims provided they apply at the local office, present proper identification, and document their abuse. The SSA recommends using third parties, such as doctors and police officers, to offer proof, as well as any relevant court documents and correspondence with

shelters. OCADSV recommends a victim consult with an expert before initiating this process, as the timing, sequencing and components are critically important.

Another website with useful information regarding both the procedure for changing a Social Security number and the potential impact upon a victim can be found at www.ncadv.org/publicpolicy/ssnumber.htm/, the site for the National Coalition Against Domestic Violence.

E. Federal Crimes Related to DV, SA, and Stalking

The Violence Against Women Act (VAWA), passed in 1994 and modified in 2000, 2005 and again in 2013, created a number of new federal crimes related to domestic violence and firearm possession, as well as several civil and immigration provisions to assist victims of domestic violence, sexual assault, stalking and human trafficking.

Interstate travel to commit domestic violence

VAWA makes it a crime for a person to cross state lines or to enter or leave Indian country or within maritime and territorial jurisdiction of the United States with the intent to injure, harass, or intimidate that person's spouse, intimate partner or dating partner, if in the course of that travel, the person intentionally commits a violent crime and causes bodily injury as a result. Under this law, "spouse or intimate partner" includes a spouse, a former spouse, a person who has a child in common with the abuser, a person who cohabits or has cohabited with the abuser as a spouse; or a person who has been in a social relationship of a romantic or intimate nature with the abuser as determined by the length and type of the relationship and the frequency of interaction between the persons involved in the relationship. It also includes any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or Tribal jurisdiction in which the injury occurred or where the victim resides.[cccxxv]

The same statute makes it a crime to coerce a spouse or intimate partner to cross state lines or to enter or leave Indian country by force, duress or fraud during the course of which there is bodily harm to the victim.[cccxxvi] For both sections (a)(1) and (a)(2), the penalty depends on the extent of the injury suffered by the victim.[cccxxvii]

(See, *e.g.,* United States v. Christopher Bailey, United States v. Christopher Bailey, 112 F.3d 758 (4th Cir. 1997); Bailey severely beat his wife in their home in West Virginia, locked her inside the trunk of his car and drove to Kentucky. Several days later Bailey brought her to a hospital in Kentucky. Bailey was convicted of kidnapping and interstate domestic violence and is now serving a life sentence.

Interstate stalking

VAWA makes it a federal crime to travel across a state line or within the maritime or territorial jurisdictions of the United States or enter or leave Indian country with the intent to kill, injure, harass or place under surveillance with intent to kill, injure, harass or intimidate another person, if in the course of, or as a result of such travel, the actions place that person or a member of their immediate family in reasonable fear of serious bodily injury or death, or causes substantial emotional distress to that person or a member of the immediate family of that person or the spouse or intimate partner of that person.[cccxxviii] Stalking also includes the use of the mail, any interactive computer service, or any facility. "Immediate family" for this statute means a spouse, parent, sibling, child or any other person living in the same household and related by blood or marriage.[cccxxix] Spouse or intimate partner includes a spouse, a former spouse, a person who has a child in common with the abuser, a person who cohabits or has cohabited with the abuser as a spouse; or a person who has been in a social relationship of a romantic or intimate nature with the abuser as determined by the length and type of the relationship and the frequency of interaction between the persons involved in the relationship. It also includes any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the state or Tribal jurisdiction in which the injury occurred or where the victim resides.[cccxxx]

Interstate violation of a protection order

VAWA makes it a federal crime to travel interstate or in and out of Indian country with the intent to engage in conduct that: would violate a portion of a protection order that forbids credible threats of violence, repeated harassment, or bodily injury; or other actions that would violate the order if the conduct occurred in the jurisdiction in which it was issued; and that person engages in that conduct. There is no requirement for an intimate relationship. This section of VAWA also makes it

a crime to cause a spouse or intimate partner to cross state lines or enter or leave Indian country by force, coercion, duress, or fraud during which or as a result of, that person intentionally commits an act which injures the spouse or intimate partner in violation of a protection order.[cccxxxi]

Possession of a firearm while subject to a protection order

Under this section, a person may not possess a firearm while subject to a restraining order preventing the harassment, stalking, or threatening of a spouse, intimate partner or the child or spouse or intimate partner.[cccxxxii] The law only applies to final orders of protection that find the person represents a credible threat to the safety of the victim and enjoins the use of force against the victim. The person subject to the order must have had notice and an opportunity to appear before the order was entered.[cccxxxiii] This section of VAWA also makes it a crime to transfer a firearm to a person subject to a protection order.[cccxxxiv] Law enforcement officials and military personnel on duty are exempt from this ban. This exemption only applies to firearms issued by the government as part of the person's official duties.[cccxxxv]

Possession of a firearm after conviction for a misdemeanor crime of domestic violence

This provision makes it a crime for a person to possess a firearm after September 30, 1996 if that person has been convicted of a qualifying crime of domestic violence on any date.[cccxxxvi] For the crime to qualify under this section, the defendant must have had the rights to counsel and a jury trial, and the crime's elements must include attempted use or use of force or a deadly weapon.[cccxxxvii] It is also a crime to transfer a weapon to a person convicted of a qualifying misdemeanor crime of domestic violence.[cccxxxviii]

The "official use exemption" does not apply to this section, which suggests law enforcement officers and military personnel convicted of a misdemeanor crime of domestic violence would not be able to possess weapons even in the line of duty.[cccxxxix]

F. Federal Crime Victims' Rights

Victim's right to speak at bail hearing

This statute gives the alleged victims of VAWA crimes the right to speak at bail hearings to inform the court of dangers they believe the defendant poses.[cccxl]

Restitution for VAWA crimes

In any VAWA criminal case, the court is required to order restitution for the victim. The court is allowed to award losses for medical care, psychological treatment, physical therapy, transportation, housing, childcare, lost income, attorney's fees, court costs, and any other losses the victim has suffered as a result of the crime.[cccxli]

Federal crime victims' rights

All victims of federal crimes, including domestic violence crimes, have rights. These include the right to be: treated with fairness and with respect to the victim's dignity and privacy; reasonably protected from the accused; notified of all court proceedings; present at all public proceedings related to the offense; and the right to: confer with the government attorney in the case; restitution; and information about the defendant's conviction, sentencing, imprisonment, and release.[cccxlii]

ENDNOTES

[i] OCADSV thanks NNEDV and Judge Julie Field for their permission to adapt and distribute the template. [Delete or revise footnote if you're using the VRLC release of info and not NNEDV's.

[ii] OR. REV. STAT. § 40.265, Rule 507-1.

[iii] OR. REV. STAT. § 40.225, Rule 503.

[iv] OR. REV. STAT. § 40.230, Rule 504.

[v] OR. REV. STAT. § 40.235, Rule 504-1.

[vi] OR. REV. STAT. § 40.240, Rule 504-2.

[vii] OR. REV. STAT. §4 0.245, Rule 504-3.

[viii] OR. REV. STAT. § 40.255, Rule 505.

[ix] OR. REV. STAT. § 40.260, Rule 506.

[x] OR. REV. STAT. § 40.262, Rule 507.and OR. REV. STAT. § 40.250, Rule 504-4.

[xi] OAR 137-085-0080 (3).

[xii] OAR 137-085-0080 (4).

[xiii] OAR 137-085-0080 (5).

[xiv] OAR 137-085-0070(6).

[xv]OR. REV. STAT. § 40.264 (1)(c) and Rule 507-1.

[xvi]OR. REV. STAT. § 40.264 (1)(d) and OR. REV. STAT. § 147.600(1)(d).

[xvii]OR. REV. STAT. § 40.264 (2)(a).

[xviii] OR. REV. STAT. § 40.264 (2)(b).

[xix] OR. REV. STAT. § 147.600(2)(a).

[xx] OR. REV. STAT. § 147.600(2)(b)

[xxi]OR. REV. STAT. § 40.264(1)(b)(C) and OR. REV. STAT. § 147.600(1)(b)(C).

[xxii]OR. REV. STAT. § 40.280.

[xxiii] OR. REV. STAT. § 40.280 provides, in relevant part, that the rule of waiver "does not apply if the disclosure is itself a privileged communication."

[xxiv] 42 U.S.C. § 10406.

[xxv] 42 U.S.C. § 13925.

[xxvi] See 42 U.S.C. § 10603 et. seq. and 28 C.F.R. § 94.115.

[xxvii] 42 U.S.C. § 13925(b)(2)(B).

[xxviii] *Id.* at § 13925 (b)(2)(D).

[xxix] *Id.* at § 13925(b)(2)(B).

[xxx] *Id.* at (a)(20).

[xxxi] Oregon Department of Human Services Subpoena and Court Order Manual (June 2009) (DHS Subpoena Manual), at http://www.dhs.state.or.us/spd/tools/cm/aps/privacy/subpoena_crt_ord_manual.pdf (accessed October 1, 2016).

[xxxii] See OR. REV. STAT. § 147.600 (3) and OR. REV. STAT. § 40.264(3). A confidential or privileged communication may be disclosed to the extent the disclosure is "necessary for defense in any civil, criminal or administrative action that is brought against the certified advocate, or against the qualified victim services program, by or on behalf of the victim."

[xxxiii] Adapted from defined terms in the Oregon DHS Subpoena Manual at http://www.dhs.state.or.us/spd/tools/cm/aps/privacy/subpoena_crt_ord_manual.pdf.

[xxxiv] Oregon Rules of Civil Procedure (ORCP) 55 in state court and Federal Rules of Civil Procedure (FRCP) 45 in federal court govern how nonparties to a legal action may discover documents and other tangible things of a nonparty in a civil action.

[xxxv] ORCP 55C(1).

[xxxvi] ORCP 55C(2).

[xxxvii] ORCP 55F(2).

[xxxviii] ORCP 55A.

[xxxix] ORCP 55G.

[xl] ORCP 55D(4).

[xli] ORCP 55D(3).

[xlii] Adapted from the Oregon the Oregon DHS Subpoena Manual at http://www.dhs.state.or.us/spd/tools/cm/aps/privacy/subpoena_crt_ord_manual.pdf.

[xliii] 42 USC 13925 (b)(2)(C)(ii).

[xliv] OR. REV. STAT. § 419B.023(5)(bb).

[xlv] Contact the Victim Rights Law Center at 503-274-5477 or via email at TA@victimrights.org for a copy of the flow charts for OVW-funded advocates on mandatory reporting of child abuse and elder abuse.

[xlvi] The Department of Human Services, http://www.oregon.gov/DHS/abuse/mandatory_report.shtml

[xlvii] OR. REV. STAT. § 124.050 (9).

[xlviii] OR. REV. STAT. § 124.050.

[xlix] OR. REV. STAT. § 124.050(7).

[l] From *FAQ's on Survivor Confidentiality Releases,* The Confidentiality Institute & The Safety Net Project at the National Network to End Domestic Violence. Answer provided by Julie Field, Esq. and reprinted here with permission. February 7, 2008.

[li] You can reach the VRLC at TA@victimrights.org or 503-274-5477.

[lii] 18 U.S.C. § 2265(d)(3) (2013).

[liii] OR. REV. STAT. § 107.700 (2009).

[liv] Definitions provided here are those crafted by the Oregon State Legislature as set forth in OR. REV. STAT. § 107.705 (2009).

[lv] OR. REV. STAT. § 133.005(3) (2009).

[lvi] OR. REV. STAT. §107.710(6) (2009).

[lvii] OR. REV. STAT. §107.726 (2009).

[lviii] OR. REV. STAT. § 107.728 (2009).

[lix] OR. REV. STAT. § 107.718(1) (2009).

[lx] See A Family Abuse Prevention Act (FAPA) Benchbook at 9, online at: http://courts.oregon.gov/OJD/reference/Documents/FAPA_Benchguide.pdf (accessed October 1, 2016).

[lxi] OR. REV. STAT. § 107.725 (2009).

[lxii] The definitions can be found in and are adapted from OR. REV. STAT. § 163.730 (2009), except as noted.

[lxiii] See OR. REV. STAT. § 163.732(1) (2009).

[lxiv] OR. REV. STAT. § 131.005 (2009).

[lxv] OR. REV. STAT. § 30.866(5) (2009).

[lxvi] OR. REV. STAT. § 163.744(2) (2009).

[lxvii] OR. REV. STAT. § 163.735(1) (2009).

[lxviii] OR. REV. STAT. § 163.78(2)(a) (2009).

[lxix] OR. REV. STAT. § 163.738(1)(a)(G) (2009).

[lxx] OR. REV. STAT. § 30.866(10) (2009).

[lxxi] OR. REV. STAT. § 163.738(5) (2009).

[lxxii] OR. REV. STAT. § 30.866(4) (2009).

[lxxiii] OR. REV. STAT § 163.738(3).

[lxxiv] *See*, OR. REV. STAT. § 124.005-124.040 (2009).

[lxxv] OR. REV. STAT. § 124.050 (2009), except as noted.

[lxxvi] OR. REV. STAT. § 442.015 (2009).

[lxxvii] OR. REV. STAT. § 443.400 (2009).

[lxxviii] OR. REV. STAT. § 443.705 (2009).

[lxxix] OR. REV. STAT. § 410.040(7)(b) (2009).

[lxxx] OR. REV. STAT. § 410.715 (2009).

[lxxxi] OR. REV. STAT. § 163.305 (2009).

[lxxxii] OR. REV. STAT. § 124.010(1)(a) (2009).

[lxxxiii] OR. REV. STAT. § 124.020 (2009).

[lxxxiv] OR. REV. STAT. § 124.020 (9)(a) (2009).

[lxxxv] OR. REV. STAT. § 124.020 (9)(d) (2009).

[lxxxvi] OR. REV. STAT. § 163.760 et. seq. (2013).

[lxxxvii] OR. REV. STAT. §63.760 (2013).

[lxxxviii] OR. REV. STAT. §163.763 (2013) (1).

[lxxxix] OR. REV. STAT. § 163.760(2) (2013).

[xc] OR. REV. STAT. §163.315(1).

[xci] OR. REV. STAT. § 163.763 (2)(a).

[xcii] OR. REV. STAT. §163.763(2)(b).

[xciii] OR. REV. STAT. §163.763(3).

[xciv] OR. REV. STAT. § 163.763 (2)(a).

[xcv] OR. REV. STAT. §163.763(2)(b).

[xcvi] OR. REV. STAT. §163.763(3).

[xcvii] OR. REV. STAT. § 163.765.

[xcviii] OR. REV. STAT. § 163.765(1)(b)(E).

[xcix] OR. REV. STAT. § 163.765(6)(a).

[c] OR. REV. STAT. § 163.765(8).

[ci] OR. REV. STAT. § 163.767(2).

[cii] OR. REV. STAT. § 163.767(4).

[ciii] OR. REV. STAT. § 163.775.

[civ] OR. REV. STAT. § 163.775(1).

[cv] OR. REV. STAT. §133.005(3) (2009).

[cvi] See 18 U.S.C. § 2265 (2013).

[cvii] 18 U.S.C. § 2265(b) (2013).

[cviii] 28 C.F.R. § 36.201 (2011).

[cix] 42 U.S.C.S. § 3601 (LexisNexis 2011).

[cx] 45 C.F.R. § 84.1 (2011).

[cxi] 24 C.F.R. § 8.3 (2011).

[cxii] 28 C.F.R. § 36.104 (2011).

[cxiii] 28 C.F.R. § 36.104 (2011).

[cxiv] 24 C.F.R. 100.204 (2011).

[cxv] For additional information about service animals, housing accommodations and people with disabilities, see E. Harlow and K. Wilde, Service and Assistance Animals in Oregon, Disability Rights Oregon, https://droregon.org/wp-content/uploads/DRO-Service-Animals.pdf (accessed October 1, 2016).

[cxvi] 28 C.F.R. § 36.302 (2011).

[cxvii] See definition of "Service Animal," 28 C.F.R. § 36.104 (2011).

[cxviii] *Id.*

[cxix] *Id.*

[cxx] 28 C.F.R. § 36.104 (2011).

[cxxi] 28 C.F.R. § 36.302 (2011).

[cxxii] 28 C.F.R. § 36.302 (2011).

[cxxiii] *Id.*

[cxxiv] 24 C.F.R. § 8.3 (2011).

[cxxv] OR. REV. STAT. § 475.316.

[cxxvi] OR. REV. STAT. § 161.015.

[cxxvii] See, Jan. 20, 2011 Memorandum from Helen R. Kanovsky, to John Trasvina, Assistant Secretary for Fair Housing and Equal Opportunity, David Stevens, Assistant Secretary for Housing/Federal Housing Commissioner, and Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing, on "Medical use of Marijuana in public housing"; February 10, 2011 memorandum at http://portal.hud.gov/hudportal/documents/huddoc?id=med-marijuana.pdf (accessed October 1, 2016) and at http://portal.hud.gov/hudportal/documents/huddoc?id=useofmarijinmfassistpropty.pdf. *See also*, 42 U.S.C. § 13662(a)(1).

[cxxviii] All definitions are contained in OR. REV. STAT. § 107.169(1) (2009).

[cxxix]OR. REV. STAT. § 107.137 (1) (2009).

[cxxx] OR. REV. STAT. § 107.102 (2) (2009).

[cxxxi] OR. REV. STAT. § 107.102 (3) (2009).

[cxxxii] OR. REV. STAT. § 107.102 (4) (a) (2009).

[cxxxiii] OR. REV. STAT. § 107.102 (4) (b) (2009).

[cxxxiv] OR. REV. STAT. § 107.102(1) (2009).

[cxxxv] OR. REV. STAT. § 109.103(1) (2009).

[cxxxvi] OR. REV. STAT. § 109.070(1) (e) (2009).

[cxxxvii] OR. REV. STAT. § 109.070(1) (f) (2009).

[cxxxviii] OR. REV. STAT. § 109.070 (1) (a) (2009).

[cxxxix] OR. REV. STAT. § 107.137 (2)-(4) (2009).

[cxl] OR. REV. STAT. § 107.137 (2) (2009).

[cxli] ORS § 163.257.

[cxlii] ORS § 30.868. (Note that generally an action under this section must be commenced within six years after the violation. However, an action under this section accruing while the person who is entitled to bring the action is under 18 years of age must be commenced not more than six years after that person attains 18 years of age.).

[cxliii] OR REV STAT § 107.097.

[cxliv] OR. REV. STAT. 107.139.

[cxlv] Sharon A. Williams, "Mediation of Family Law Cases," December 2015. Available at: https://www.osbar.org/public/legalinfo/1218_MediationFamLaw.htm

[cxlvi] OR. REV. STAT. § 107.755(1)(b).

[cxlvii] OR. REV. STAT. § 107.755(1)(a).

[cxlviii] OR. REV. STAT. § 107.755(1)(d)(C)(2).

[cxlix] OR. REV. STAT. § 107.755(1)(d).

[cl] OR. REV. STAT. § 107.755(1)(a).

[cli] OR. REV. STAT. § 107.755(1)(d).

[clii] OR. REV. STAT. § 107.755(2) and OR. REV. STAT. § 30.866.

[cliii] OR. REV. STAT. § 107.755(1)(d)(C) i, ii.

[cliv] OR. REV. STAT. § 107.755(1)(d)(C) iii.

[clv] OR. REV. STAT. § 107.755(1)(e).

[clvi] OR. REV. STAT. § 107.755(4).

[clvii] OR. REV. STAT. § 107.755 (1)(d)(C)(iii).

[clviii] Emancipation information adapted with permission from materials developed by *Youth, Rights & Justice, Attorneys at Law,* www.youthrightsjustice.org.

[clix] OR. REV. STAT. § 419B.550(3).

[clx] OR. REV. STAT. § 109.640, § 109.610.

[clxi] OR. REV. STAT. §109.640.

[clxii] OR. REV. STAT. § 109.650, § 109.690.

[clxiii] OR. REV. STAT. § 109.675, §109.680.

[clxiv] OR. REV. STAT. § 109.697.

[clxv] 18 U.S.C. § 3771.

[clxvi] 18 U.S.C. §§ 3771(a)(2), (3).

[clxvii] 18 USC § 3771(a)(4).

[clxviii] Oregon Constitution Article 1, § 42.

[clxix] *Id.*

[clxx] *Id.*

[clxxi] OR. REV. STAT. § 135.139.

clxxii *Id.*

clxxiii Or Const Art 1 § 42.

clxxiv *Id*.

clxxv See Oregon Crime Victims' Rights Practitioners Guide (Practitioners Guide), Oregon Dep't of Justice Crime Victims' Services Division (August 2015) online at: http://www.doj.state.or.us/victims/pdf/oregon_crime_victims_rights_practioners_guide.pdf (accessed October 1, 2016).

clxxvi OR. REV. STAT. § 135.20.

clxxvii OR. REV. STAT. § 135.970.

clxxviii Or Const Art 1 § 42 and OR. REV. STAT. § 135.970.

clxxix *See* Practitioners Guide at http://www.doj.state.or.us/victims/pdf/oregon_crime_victims_rights_practioners_guide.pdf (accessed October 1, 2016).

clxxx *Id*.

clxxxi Or Const Art 1 § 42.

clxxxii OR. REV. STAT. § 136.145.

clxxxiii OR. REV. STAT. § 40.210.

clxxxiv *Id*.

clxxxv OR. REV. STAT. § 40.210.

clxxxvi *Id*.

clxxxvii OR. REV. STAT. § 137.503(2).

clxxxviii *See* Practitioners Guide at http://www.doj.state.or.us/victims/pdf/oregon_crime_victims_rights_practioners_guide.pdf (accessed October 1, 2016).

clxxxix *Id*.

cxc *Id.*

cxci *Id*.

cxcii *See* Practitioners Guide at http://www.doj.state.or.us/victims/pdf/oregon_crime_victims_rights_practioners_guide.pdf (accessed October 1, 2016).

cxciii OR. REV. STAT. § 144.120.

cxciv *Id*.

cxcv 18 U.S.C. § 3771.

cxcvi OR. REV. STAT. § 137.103(2).

[cxcvii] Or Const Art § 42.

[cxcviii] The form to apply for crime victim compensation is available for download on the Oregon Department of Justice website at: https://justice.oregon.gov/victims/compensation/ (accessed October 1, 2016).

[cxcix] Eligibility information is available from the Oregon DOJ website here: http://www.doj.state.or.us/victims/compensation.shtml (accessed October 1, 2016).

[cc] OR. REV. STAT. § 137.103(4)(a).

[cci] OR. REV. STAT. § 137.103(4)(c).

[ccii] OR. REV. STAT. § 137.103(4)(b),(d).

[cciii] OR. REV. STAT. § 137.106(4).

[cciv] OR. REV. STAT. § 161.675(1).

[ccv] *Id*.

[ccvi] Or Const Art 1 § 42.

[ccvii] *Id*.

[ccviii] OR. REV. STAT. § 135.139.

[ccix] Or Const Art 1 § 42.

[ccx] *Id.* at § 43.

[ccxi] Or Const Art 1 § 42 (2009).

[ccxii] *Id.*

[ccxiii] *Id*.

[ccxiv] OR. REV. STAT. §§ 90.453(4), (5) (2009).

[ccxv] OR. REV. STAT. § 90.453(6) (2010).

[ccxvi] OR. REV. STAT. § 90.449(3) (2009).

[ccxvii] OR. REV. STAT. § 90.445 (2009).

[ccxviii] OR. REV. STAT. § 90.445(4) (2009).

[ccxix] OR. REV. STAT. § 90.445(3) (2009).

[ccxx] OR. REV. STAT. § 90.445(1)(a) (2009).

[ccxxi] OR. REV. STAT. § 90.445(1)(b) (2009).

[ccxxii] OR. REV. STAT. § 90.445(3) (2009).

[ccxxiii] OR. REV. STAT. § 90.449(1) (2009).

[ccxxiv] OR. REV. STAT. § 90.459 (2009).

[ccxxv] OR. REV. STAT. § 90.459 (1) (2009).

[ccxxvi] OR. REV. STAT. § 90.459 (3) (2009).

[ccxxvii] OR. REV. STAT. § 90.459 (2009).

[ccxxviii] OR. REV. STAT. § 90.453.

[ccxxix] OR. REV. STAT. § 659A.805, Oregon Laws, 2007, Chapter 180.

[ccxxx] Consistent with OR. REV. STAT. § 659A.306, the covered employer must pay the cost of any medical verification related to 839-009-0345 (1)(b) and (c) not covered by insurance or other benefit plan. Emphasis added.

[ccxxxi] OR. REV. STAT. § 657.155.

[ccxxxii] The materials in this section are adapted from the brochure, *Confidentiality (Privacy) Protections for Survivors of Sexual Assault, Domestic Violence, and Stalking.* A publication of the Oregon Law Center and the Domestic Violence Subcommittee, State Family Law Advisory Committee. June 2007.

[ccxxxiii] OR. REV. STAT. § 192.445.

[ccxxxiv] The Victim Rights Law Center (www.victimrights.org, 503-274-5477) has additional information on safety planning with farmworker victims of sexual violence, as well as other farmworker-specific legal and advocacy resources.

[ccxxxv] INA § 208(2)(b)(B)(ii).

[ccxxxvi] INA § 204(a)(1)(A)(iii), INA § 204(a)(1)(D)(v).

[ccxxxvii] INA 216(c)(4)(C).

[ccxxxviii] A sample letter to law enforcement requesting certification is available from the Victim Rights Law Center. Email TA@victimrights.org or call them at 503-274-5477.

[ccxxxix] 8 CFR § 214. 14(b).

[ccxl] "Trafficking in Persons: A Guide for Non-governmental Organizations (Brochure)." Available through the National Sexual Violence Resource Center: http://www.nsvrc.org.

[ccxli] 8 U.S.C. § 1101(a)(15)(T)(i).

[ccxlii] "Coalition to Abolish Slavery and Trafficking," Available: http://www.castla.org/.

[ccxliii] 22 USC § 7102(8).

[ccxliv] *Id*.

[ccxlv] National Human Trafficking Resource Center Fact Sheet, available: http://www.acf.hhs.gov/endtrafficking/resource-library/search?type[6122]=6122

[ccxlvi] 8 C.F.R. § 214.11(p)(1).

[ccxlvii] 8 C.F.R. § 214.11(l)(4).

[ccxlviii] 8 C.F.R. § 214.11(o).

[ccxlix] 22 U.S.C.A. § 7102.

[ccl] 8 C.F.R. § 214.11(m).

[ccli] 8 C.F.R. § 214.11(g).

[cclii] 8 C.F.R. § 214.11(i).

[ccliii] *Id*.

[ccliv] 8 C.F.R. § 214.11(a).

[cclv] 8 U.S.C. §1101(a)(15)(T)(iii)(bb).

[cclvi] 8 C.F.R. § 214.11(o)(10).

[cclvii] 8 C.F.R. § 245.23. See https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2011AnnualReport/FY11AnnualReport-Table%20XX.pdf

[cclviii] 8 C.F.R. § 214.11(o).

[cclix] Department of Health and Human Services, Administration for Children and Families, Victim Assistance Fact Sheet, available: http://archive.acf.hhs.gov/trafficking/about/victim_assist.html

[cclx] Guide for Legal Advocates Providing Services to Victims of Human Trafficking, available: http://www.rescueandrestoreky.org/wp-content/uploads/2010/03/Guide-for-Legal-Advocates-Providing-Services-to-Victims-of-Human-Trafficking-CLINIC1.pdf

[cclxi] USCIS website, available: https://www.uscis.gov/i-912

[cclxii] 8 C.F.R. § 214.11(p).

[cclxiii] INA § 101(a)(42), 8 C.F.R. § 208.13.

[cclxiv] INA § 101(a)(42)(A) and 8 U.S.C. § 1186(a).

[cclxv] INA § 208(a)(2)(B) and 8 U.S.C. § 1158(a)(2)(B).

[cclxvi] 8 U.S.C. § 1158(a)(1).

[cclxvii] 8 U.S.C. § 1158(c)(1)(B).

[cclxviii] 8 C.F.R. 209.2(a).

[cclxix] 8 C.F.R. § 209.2, INA § 208.

[cclxx] 8 C.F.R. § 208.21.

[cclxxi] 8 C.F.R. § 208.21(a); INA §101(b)(1).

[cclxxii] 8 C.F.R. § 208.21(c) & (d).

[cclxxiii] 8 C.F.R. § 208.4.

[cclxxiv] 8 C.F.R. § 209.2.

[cclxxv] OR. REV. STAT. § 107.718.

[cclxxvi] OR. REV. STAT. § 107.835.

[cclxxvii] OR. REV. STAT. § 90.453.

[cclxxviii] OR. REV. STAT. § 90.459.

[cclxxix] 42 U.S.C. § 143d (2005); 42 U.S.C. § 1437f (2006).

[cclxxx] See specific housing authority documentation.

[cclxxxi] OR. REV. STAT. § 657.176(12).

[cclxxxii] OR. REV. STAT. § 759.690 - Note Following; Chapter 204, Oregon Laws 2005.

[cclxxxiii] See OAR § 461-135-1210 et seq.

[cclxxxiv] OR. REV. STAT. § 133.055.

[cclxxxv] OR. REV. STAT. § 107.705.

[cclxxxvi] OR. REV. STAT. § 133.055.

[cclxxxvii] OR. REV. STAT. § 133.055'

[cclxxxviii] A copy of the guide is available from the Victim Rights Law Center (Email: TA@victimrights.org; Tel: 503-274-5477).

[cclxxxix] OR. REV. STAT. § 163.315.

[ccxc] OR. REV. STAT. § 163.375.

[ccxci] OR. REV. STAT. § 163.365.

[ccxcii] OR. REV. STAT. § 163.355.

[ccxciii] OR. REV. STAT. § 163.405.

[ccxciv] OR. REV. STAT. § 163.395.

[ccxcv] OR. REV. STAT. § 163.385.

[ccxcvi] OR. REV. STAT. § 163.411.

[ccxcvii] OR. REV. STAT. § 163.408.

[ccxcviii] OR. REV. STAT. § 163.427.

[ccxcix] OR. REV. STAT. § 163.425.

[ccc] OR. REV. STAT. § 153.415.

[ccci] OR. REV. STAT. § 163.433.

[cccii] OR. REV. STAT. § 163.432.

[ccciii] OR. REV. STAT. § 153.435.

[ccciv] OR. REV. STAT. § 163.732.

[cccv] OR. REV. STAT § 163.472(1).

[cccvi] OR. REV. STAT § 163.472(3)(a).

[cccvii] OR. REV. STAT § 163.472(3)(b).

[cccviii] OR. REV. STAT. § 147.425.

[cccix] Compensable losses are listed in OR. REV. STAT. § 147.035. Emergency awards are described in OR. REV. STAT. § 147.055.

[cccx] OR. REV. STAT. § 137.873. Applies in the juvenile system through OR. REV. STAT. § 419C.270.

[cccxi] OR. REV. STAT. § 135.139.

[cccxii] OR Const Art 1, Sec. 42. OR. REV. STAT. § 135.406.

[cccxiii] UTCR § 3.180(2)(d).

[cccxiv] OR. REV. STAT. § 181.601.

[cccxv] OR. REV. STAT. § 144.102(3)(b).

[cccxvi] OR. REV. STAT. § 133.055(3).

[cccxvii] *See* 18 U.S.C. § § 2265(a).

[cccxviii] *See id.* at § 2265(b).

[cccxix] *See id.* at § 2265(c).

[cccxx] *See id.* at § 2265(d).

[cccxxi] *See* 12 U.S.C. §§ 1831x(e)(1), (2).

[cccxxii] *Id.* at 1831x(e)(3).

[cccxxiii] *See* 18 U.S.C. § 2721(a).

[cccxxiv] *See id.* at § 2721(b).

[cccxxv] *See id.* at. § 2261 (2005).

[cccxxvi] *See id.* at § 2261(a)(2).

[cccxxvii] *See* 18 U.S.C. § 2261(b).

[cccxxviii] *See id.* at § 2261A.

[cccxxix] 18 U.S.C. § 2261A(1).

[cccxxx] *See* 18 U.S.C. § 2266 (2005).

[cccxxxi] *See id.* at § 2262(a)(2).

[cccxxxii] *See id.* at § 992(g)(8).

[cccxxxiii] *Id*.

[cccxxxiv] *Id*.

[cccxxxv] 18 U.S.C. § 925.

[cccxxxvi] *See id.* at § 922(g)(9).

[cccxxxvii] *See id.* at § 921(a)(33).

[cccxxxviii] *Id*.

[cccxxxix] *See id.* at § 925.

[cccxl] 18 USC § 2263.

[cccxli] *Id.* at § 2264.

[cccxlii] *See* 18 U.S.C. § 3771(a).