



U.S. Department of Justice
Office on Violence Against Women

OVW

Legal Assistance
for Victims Grant
Recipients' Policy
Guidebook

Fiscal Year 2005

**U.S. Department of Justice
Office on Violence Against Women**
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INTRODUCTION

The Legal Assistance for Victims Grant Program (LAV), authorized in the Violence Against Women Act of 2000, funds projects that address the legal needs of victims of domestic violence, sexual assault, and stalking. LAV funds 235 projects throughout the United States and territories. Grant recipients include domestic violence victim service agencies, sexual assault victim service agencies, nonprofit legal service organizations, bar associations, law school clinical programs, and *pro bono* attorney programs. The diversity among LAV grantees results in a host of programs providing highly varied legal services. The Office on Violence Against Women (OVW) developed this Guidebook to enhance delivery of quality comprehensive legal services to victims of domestic violence, sexual assault, and stalking.

The following pages contain promising practices for victim service agencies and legal service providers addressing domestic violence, sexual assault, and stalking. This edition of the Guidebook updates the earlier edition in light of new language authorizing the LAV program in VAWA 2000. Every grantee is required to adhere to the LAV statutory language, and OVW strongly encourages grantees to implement, to the extent possible, the additional protocols contained in this Guidebook. Grantees may tailor these protocols to suit local needs.

Our hope is that this Guidebook will be a valuable resource for your office. Please contact the Office on Violence Against Women at (202) 307-6026 for further information.

MINIMUM REQUIREMENTS

By statute,¹ all grant recipients must certify to the Attorney General that:

- any person providing legal assistance through a program funded under (LAV) has completed or will complete training in connection with domestic violence or sexual assault and related legal issues;
- any training program conducted in satisfaction of the requirement of the paragraph above has been or will be developed with input from and in collaboration with a state, local, or tribal domestic violence or sexual assault program or coalition, as well as appropriate state and local law enforcement officials;
- any person or organization providing legal assistance through a program funded under (LAV) has informed and will continue to inform State, local, or tribal domestic violence or sexual assault programs and coalitions, as well as appropriate State and local law enforcement officials of their work; and
- the grantee's organizational policies do not require mediation or counseling involving offenders and victims physically together, in cases where sexual assault, domestic violence, or child sexual abuse is an issue.

In addition, OVW requires grantees to:

- *Provide comprehensive legal services to sexual assault, stalking, and domestic violence victims.*

Services should include representation and/or referral for emergency and nonemergency protective order hearings and other legal matters arising as a consequence of the abuse or violence, including family, immigration, administrative agency, or housing matters, protection or stay away order proceedings and other similar matters.

¹ Pub. L. No. 106-386, Sec. 1201, 114 Stat. 1464, 1503-1505, codified at 42 U.S.C. 3796gg-6. Please note that for FY 2001 grantees a special condition in the grant award package requires grantees to address the certification letter to the Assistant Attorney General and submit it to OVW.

ACTIVITIES THAT MAY COMPROMISE VICTIM SAFETY

Victim-centered, holistic legal services are critical to ensuring safety and stability for sexual assault, stalking, and domestic violence victims. Experience has shown that certain practices compromise victim safety and fail to hold perpetrators accountable for their criminal behavior. To enhance victim safety and hold perpetrators accountable, **applicants are discouraged from proposing any of the activities listed below:**

- ③ *Mediation², alternate dispute resolution, or joint counseling as a response to domestic violence, sexual assault, or stalking.* Mediation implies that both parties are responsible for the perpetrator's violent behavior, a message that blames victims and fails to hold offenders accountable for their crimes. Mediation also presumes that both parties have equal power and can negotiate a mutually agreeable settlement. Where there is domestic violence, sexual assault, or stalking behavior, however, one party has controlled the other through sexual, physical, emotional, and/or economic abuse. Even the most skilled mediator or therapist cannot shift the balance of power when one party has abused or assaulted the other, making mediation and joint counseling dangerous and ineffective in such cases.
- ③ *Policies or practices that discourage accepting cases for victims who do not have physical evidence.* A thoughtful analysis is required when making a determination as to whether a person seeking services is a victim of domestic violence, sexual assault, or stalking. The absence of physical bruises, court records, police reports, and/or medical records does not mean that the applicant seeking services is not a victim. Offenders often threaten and isolate victims to deter them from seeking any outside assistance or cooperating with prosecutors. Consequently, records or other written documentation substantiating the abuse may not exist.

²By statute, mediation is prohibited. See page 5 herein.

- ③ *Refusal to represent victims who are also respondents/defendants.*
Domestic violence, sexual assault, and stalking victims are sometimes named as respondents or defendants in civil or criminal cases, as a result of improper dual arrests, mutual protection orders, or retaliatory law suits. Screening procedures should be based on an evaluation of the applicant's entire history rather than solely on the existence of pending criminal charges or civil protection orders.
- ③ *Representation on the condition that victims seek protection orders, counseling, or some other course of action with which they disagree.*
Victims are in the best position to know what actions could increase or jeopardize their safety. Legal service providers should offer options to clients and information about possible legal remedies and available social services. Imposing uniform remedies might compromise victim safety or recovery.
- ③ *Failure to conduct safety planning with clients.* Attorney and non-attorney project personnel must routinely review safety planning options with clients. All project personnel must be aware of the risk of future harm that many victims seeking help experience. In addition to helping the victim assess options, the development of comprehensive safety plans with clients is critical.

SCREENING FOR DOMESTIC VIOLENCE, SEXUAL ASSAULT AND/OR STALKING

- ③ Establish eligibility for services first by checking for conflict of interest.
- ③ Inquire as to what kind of help the prospective client is seeking.
- ③ Do not expect prospective clients to self-identify as victims of domestic violence, sexual assault, and/or stalking. Victims often state that they need assistance with child support or some other economic issue. Sometimes they state that they want information related to divorce and custody.
- ③ An intake counselor/legal advocate/attorney must gently ask questions to learn about a prospective client's experience with domestic violence, sexual assault, and/or stalking.
- ③ When evaluating a prospective client's case, do not rule out the possibility of domestic violence, sexual assault, or stalking because the victim lacks proof of physical injury, did not call the police, declined medical attention or never initiated court action previously. Although the existence of these factors corroborates domestic violence, sexual assault and/or stalking, their absence does not necessarily indicate that a client's claims lack credibility.
- ③ Victims of domestic violence, sexual assault, and stalking often try to forget the violence that was perpetrated against them. Victims may need help to recall the nature of the violence, the chronology, or the number of incidents of violence perpetrated against them. To gain the fullest understanding of the victim's situation, identify legal issues and determine eligibility for services, allow the victim to describe the incident(s) and then ask for details. The more details that a victim can remember and relate consistently, the more likely the victim will be deemed credible by the court.
- ③ The fact that a person seeking services was arrested and/or is named as a respondent or a defendant is not dispositive on the issue of whether the person is a victim of domestic violence, sexual assault, and/or stalking. (See *Activities That May Compromise Victim Safety*, p. 6).

PRACTICES WHICH ENHANCE THE SAFETY OF THE VICTIM, ASSIST THE VICTIM TO ESCAPE AN ABUSIVE RELATIONSHIP, OR ENHANCE THE VICTIM'S ABILITY TO REMAIN INDEPENDENT FROM AN ABUSIVE FORMER PARTNER

Medical Needs

- ⦿ Assess a prospective client's need for immediate medical attention where a violent incident has recently occurred.

Safety Planning

- ⦿ Always assist the client with developing a safety plan, regardless of whether the client seeks a protection order.
- ⦿ As part of safety planning, consider with your client other parties who should be notified about the existence of a protection order and/or the possibility of further violence. Possible people or places requiring notification are: children's school, babysitter/daycare, victim's workplace, victim's school, embassies, US Passport Agency, local police station, domestic violence shelter, and other family members.

Criminal Justice System

- ⦿ Assess with a prospective client the potential benefit of reporting an incident (or incidents) to the police.
- ⦿ Where there is a companion criminal prosecution, discuss the victim's reluctance or willingness to participate in the prosecution. In some cases, cooperation with the prosecution may endanger the victim's life or the lives of the victim's children. In other cases, a victim's safety plan may be adjusted to support participation in a criminal prosecution.
- ⦿ Discuss with your client the possible consequences of returning to an abuser prior to completion of any sentencing requirements (including conditions of probation such as completing a batterer intervention program, a community service component, a parenting class program, a drug/alcohol program, and payment of restitution).

Representation

- ③ You may represent a victim of domestic violence, sexual assault, and/or stalking in economic cases if the legal matters arise as a consequence of that abuse or violence. Often these matters are related to the victim's experience of violence and if left unresolved would result in the deterioration of the client's economic viability. These types of cases may include bankruptcy, tax, landlord/tenant, and/or small claims matters.
- ③ If you are unable to represent a client in one of the cases enumerated above, you are strongly encouraged to seek *pro bono* counsel on behalf of the client and closely mentor the *pro bono* counsel.

PERSONALIZED SAFETY PLAN

SAMPLE

Barbara Hart and Jane Stuehling, PCADV, 6400 Flank Drive, Suite 1300, Harrisburg, PA 17112, 1992

Adapted from "Personalized Safety Plan," Office of the City Attorney, San Diego, California, April, 1990

Adapted and used with permission.

Name: _____

Date: _____

Review dates: _____

The following steps represent my plan for increasing my safety and preparing in advance for the possibility for further violence. Although I do not have control over my partner's violence, I do have a choice about how to respond to him/her and how to best get myself and my children to safety.

Step 1: Safety during a violent incident.

Victims cannot always avoid violent incidents. In order to increase safety, victims may use a variety of strategies. I can use some or all of the following strategies:

- A. If I decide to leave, I will _____.
(Practice how to get out safely. What doors, windows, elevators, stairwells or fire escapes would you use?)
- B. I can keep my purse and car keys ready and put them (place) _____ in order to leave quickly.
- C. I can tell _____ about the violence and request that they call the police if they hear suspicious noises coming from my house.

I can also tell _____ about the violence and request that they call the police if they hear suspicious noises coming from my house.

- D. I can teach my children how to use the telephone to contact the police and the fire department.
- E. I will use _____ as my code word with my children or my friends so they can call for help.
- F. If I have to leave my home, I will go _____. (Decide this even if you don't think there will be a next time.)

If I cannot go to the location above, then I can go to _____ or _____.

- G. I can also teach some of these strategies to some/all of my children.
- H. When I expect we are going to have an argument, I will try to move to a space that is lowest risk, such as _____. (Try to avoid arguments in the bathroom, garage, kitchens, near weapons or in rooms without access to an outside door.)
- I. I will use my judgment and intuition. If the situation is very serious, I can give my partner what he/she wants to calm him/her down. I have to protect myself until I/we are out of danger.

Step 2: Safety when preparing to leave.

Victims frequently leave the residence they share with the battering partner. Leaving must be done with a careful plan in order to increase safety. Batterers often strike back when they believe that a victim is leaving a relationship. I can use some or all of the following safety strategies:

- A. I will leave money and an extra set of keys with _____ so I can leave quickly.
- B. I will keep copies of important documents or keys at _____.
- C. I will open a savings account by _____, to increase my independence.
- E. The domestic violence program's hotline number

is _____. I can seek shelter by calling this hotline.

- F. I can keep change for phone calls on me at all times or I can purchase a telephone calling card. I understand that if I use my telephone **credit** card, the following month the telephone bill will tell my batterer those numbers that I called after I left. To keep my telephone communications confidential, I must either use coins or a telephone **calling** card. I may also get a friend to permit me to use his/her telephone credit card for a limited time when I first leave.
- G. I will check with _____ and _____ to see who would be able to let me stay with them or lend me some money.
- H. I can leave extra clothes with _____.
- I. I will sit down and review my safety plan every _____ in order to plan the safest way to leave the residence.
_____ (domestic violence advocate or friend) has agreed to help me review this plan.
- J. I will rehearse my escape plan and, as appropriate, practice it with my children.

Step 3: Safety in my own residence. There are many things that victims can do to increase safety at home. It may be impossible to do everything at once, but safety measures can be added step by step. Safety measures I can use include:

- A. I can change the locks on my doors and windows as soon as possible.
- B. I can replace wooden doors with steel/metal doors.
- C. I can install security systems including additional locks, window bars, poles to wedge against doors, an electronic system, etc.
- D. I can purchase rope ladders to be used for escape from second floor windows.
- E. I can install smoke detectors and purchase fire extinguishers for each floor in my house/apartment.
- F. I can install an outside lighting system that lights up when a person is coming close to my house.

- G. I will teach my children how to use the telephone to make a collect call to me and to _____(friend/clergy/other) in the event that my partner takes the children.
- H. I will tell people who take care of my children which people have permission to pick up my children and that my partner is not permitted to do so. The people I will inform about pick-up permission include:
_____(school), _____(day care staff), _____(babysitter), _____(religious school teacher), _____(teacher), _____ and _____(others).
- I. I can inform _____(neighbor), _____(clergy), and _____(friend) that my partner no longer resides with me and they should call the police if my partner is observed near my residence.

Step 4: Safety with a protection order. Many batterers obey protection orders, but some do not. I recognize that I may need to ask the police and the courts to enforce my protection order. The following are some steps that I can take to help the enforcement of my protection order:

- A. I will keep my protection order _____(location). (Always keep it on or near your person. If you change purses, that's the first thing that should go in.)
- B. I will give my protection order to police departments in the community where I work, in those communities where I usually visit family or friends, and in the community where I live.
- C. There should be a county registry of protection orders that all police departments can call to confirm a protection order. I can check to make sure that my order is in the registry.

The telephone number for the county registry of protection orders is _____.

- D. For further safety, if I often visit other counties in _____, I might file my protection order with the court in those counties. I will register my protection order in the following counties: _____, _____, and _____.
- E. I can call the local domestic violence program if I am not sure about B., C., or D. above or if I have some problem with my protection order.
- F. I will inform my employer, my religious leader, my closest friend and _____ and _____ that I have a protection order in effect.
- G. If my partner destroys my protection order, I can get another copy from the courthouse by going to the Office of the _____ located at _____.
- H. If my partner violates the protection order, I can call the police and report a violation, contact my attorney, call my advocate, and/or advise the court of the violation.
- I. If the police do not help, I can contact my advocate or attorney and will file a complaint with the chief of the police department.
- J. I can also file a private criminal complaint with the _____ in the jurisdiction where the violation occurred or with the district attorney. I can charge my battering partner with a violation of the protection order and all the crimes that he commits in violating the order. I can call the domestic violence advocate to help me with this.

Step 5: Safety on the job and in public. Victims must decide if and when to tell others about their experience as a victim of domestic violence and that they may be at continued risk. Friends, family, and co-workers can help to protect victims. Victims should consider carefully which people to invite to help secure safety. I might do any or all of the following:

- A. I can inform my boss, the security supervisor and _____ at work of my situation.
- B. I can ask _____ to help screen my telephone calls at work.
- C. When leaving work, I can _____.

- D. When driving home if problems occur, I can _____.
- E. If I use public transit, I can _____.
- F. I can use different grocery stores and shopping malls to conduct my business and shop at hours that are different than those that I used when residing with my battering partner.
- G. I can use a different bank and take care of my banking at hours different from those I used when residing with my battering partner.
- H. I can also _____.

Step 6: Safety and my emotional health. The experience of being battered and verbally degraded by partners is usually exhausting and emotionally draining. The process of building a new life for myself takes much courage and incredible energy. To conserve my emotional energy and resources and to avoid hard emotional times, I can do some of the following:

- A. If I feel down and ready to return to a potentially abusive situation, I can _____.
- B. When I have to communicate with my partner in person or by telephone, I can _____.
- C. I can try to use "I can . . ." statements with myself and to be assertive with others.
- D. I can tell myself - "_____ - whenever I feel others are trying to control or abuse me.
- E. I can read _____ to help me feel stronger.
- F. I can call _____, _____ and _____ as other resources to be of support to me.
- G. Other things I can do to help me feel stronger are _____, _____ and _____.

- H. I can attend workshops and support groups at the domestic violence program or _____, _____ or _____ to gain support and strengthen my relationships with other people.

Step 7: Items to take when leaving. When victims leave partners, it is important to take certain items with them. Beyond this, victims sometimes give extra copies of papers and an extra set of clothing to a friend just in case they have to leave quickly.

Items with asterisks on the following list are the most important to take. If there is time, the other items might be taken, or stored outside the home.

These items might best be placed in one location, so that if we have to leave in a hurry, I can grab them quickly.

When I leave, I should take:

- * Identification for myself
- * Children's birth certificates
- * My birth certificate
- * Social Security cards
- * School and vaccination records
- * Money
- * Checkbook, ATM (Automatic Teller Machine) card
- * Credit cards
- * Keys - house/car/office
- * Driver's license and registration
- * Medications
- *Welfare identification
- *Work permits
- *Green card
- *Passport(s)
- *Divorce papers
- *Medical records - for all family members
- *Lease/rental agreement, house deed, mortgage payment book
- *Bank books
- *Insurance papers
- *Small saleable objects
- *Address book
- *Pictures
- *Jewelry
- *Children's favorite toys and/or blankets

*Items of special sentimental value

Telephone numbers I need to know:

Police department - home _____

Police department - school _____

Police department - work _____

Domestic Violence Victims' Services Program _____

County registry of protection orders _____

Work number _____

Supervisor's home number _____

Clergy _____

Other _____

National Domestic Violence Hotline 1-800-799-SAFE (7233)

National Domestic Violence Hotline (TTY) 1-800-787-3224

Sexual Assault Issue-Spotting

*Adapted from materials developed by Susan Vickers, Esq., Executive Director Victim Rights Law Center
18 Tremont Street, Suite 902, Boston, MA 02108, (617) 399-6720.*

Used with permission.

The following questions are intended as a general guide for attorneys and advocates to use in order to determine what sexual assault-related civil legal issues a victim may have. Please note: these questions are not intended to be a script. Client interviews generally proceed with the victim telling her/his story in a narrative fashion while an attorney or advocate asks clarifying questions or detailed questions when necessary.

Before Starting an Intake Session

Before starting an intake session, it can be helpful for the attorney to take adequate time to reassure the client that anything s/he says to the attorney will be kept confidential and to establish a setting in which the client feels comfortable relating intimate and difficult information at her/his own pace.

Some victims may even fabricate elements of a story. Addressing this phenomenon at the start of your relationship with the client can help. The client needs to understand that her/his veracity will be the focal point of her/his case. While a small falsehood may have no direct bearing on the existence or occurrence of sexual assault, it can give the decision-maker just enough reason to distrust the victim. Remind the client that everything s/he says to you is strictly confidential unless s/he wants you to share it with others.

A standard forewarning can sound something like:

“It is normal for someone who has been sexually assaulted to want to keep things very secret. Sexual assault is something that most people want to keep as private as possible. But, the attorney-client relationship that we are going to have is a very special one. Anything you say to me will be kept absolutely private unless you decide to release the information.

It might be particularly hard for you to tell me certain especially difficult or personal details about the assault. For example, some victims are hesitant to talk about graphic details of their assault, obscene or threatening things said by the assailant, or sexual acts in which they were forced to engage. Some victims may

feel guilty about certain things they may have done voluntarily, such as using drugs and/or alcohol before the assault or consenting to some sexual activity with the assailant prior to the assault. In order for me to help you the best I can, it is better for me to know these things. If you can tolerate telling me, I will keep it totally private unless you decide to reveal it in order to get some sort of remedy that will help you. And know that you don't have to tell me everything today; we can talk many times over the next few weeks and you should feel free to tell me things at a time and pace with which you feel comfortable.”

Addressing “Gate Keeping Issues” First

There are two issues we feel must be addressed with a client before a sound attorney-client relationship can develop, privacy and immigration. Unless these two issues are addressed in a meaningful way at the start of representation, a client is likely to withhold critical information. If s/he feels that seeking civil remedies will expose private facts about the victim with which s/he is uncomfortable, or if the victim feels that her/his immigration status will be harmed, the victim may not seek help.

Critical Basic Issue-Spotting Details

Where and when did the assault occur?

- How long ago did the assault occur?

If the assault happened longer than a week or two ago, try to ascertain why the victim is choosing to come forward now. Often a specific threat to a victim's economic or social welfare will trigger disclosure and a decision to seek help.

- Where did the assault occur and which law enforcement, educational, employment, and other administrative entities have jurisdiction?
Which of these entities has the victim been in contact with regarding the assault?

Discovering the location(s) of the assault(s) will not only direct you to which law enforcement or other entity is responsible for the

investigation, but will help you identify the victim's immediate needs. For example, if the victim was assaulted in her/his home or apartment, s/he may have housing or relocation issues. If a victim was assaulted at an educational institution or at work, s/he may have education or employment concerns.

Notes:

Who is the assailant?

- Does the victim have any prior relationship with the assailant?

If the assailant is a close enough acquaintance to know where the victim lives and works, issues of privacy and safety will be central to representation.

- Is the assailant a co-worker, classmate, neighbor or current or former intimate partner?

If the assailant is part of the victim's work, school or home environment, s/he may need assistance in removing the assailant from that environment or leaving the environment her/himself. If the assailant is a current or former intimate partner, the victim may have additional remedies available under the domestic violence laws.

Notes:

Critical Issue-Spotting Questions

* Privacy

- Does the victim have any concerns that information will be made public?
- What type of information is the victim afraid of revealing?

Knowing what privacy issues exist early on in representation is essential to proactively preventing unwanted disclosures and ensuring the victim's confidence in seeking justice. For example, is the victim particularly afraid of people finding out that s/he used illicit drugs before the assault? Is the victim particularly afraid that people will find out s/he takes anti-depressant medication? Is the victim particularly afraid people will find out s/he was raped as a child?

- Who has the victim already told about the assault?

Identifying those people/institutions who already know private information is important to assess your ability to help the victim in limiting community gossip and rumors. Also, it is important to find out if the victim's statements to various people have been consistent. If they have not been consistent in some material way, it is important to clarify the reasons for the inconsistency.

Notes: _____

* Immigration

- What is the victim's legal status in the United States?

Even if the victim does not have legal status, s/he may still seek remedies without putting her/himself at risk for removal. Discovering this information early in your representation will help you to encourage the victim to seek remedies and proactively protect her/his presence in the country.

- What is the assailant's status and his/her relationship to the victim?
Is he/she aware of the victim's immigration status (or lack of status)?

These questions will help you predict if the assailant will use immigration status in retaliating against the victim for coming forward following the sexual assault. Retaliation of this sort is extremely common.

Notes: _____

* Safety

- Does the victim have any fear or belief that the assailant will attempt to harm the victim again or that the assailant poses an ongoing threat to the victim's safety?
- How long has the victim known the assailant?
- Does the victim think the assailant will retaliate if s/he reports the assault to law enforcement or other authorities?
- How violent was the assault, and were explicit verbal threats made by the assailant?

An attorney cannot appropriately advise a victim unless the attorney knows what safety risks the victim is facing from the assailant or his/her friends and family. These kinds of questions are vital to determining what risks exists to the victim's safety.

Notes: _____

* Financial Compensation

- Did the victim incur expenses as a direct result of the sexual assault?

- Does the victim anticipate future expenses from the assault, such as counseling or medical costs?
- Has the victim reported the assault to law enforcement or filed for a criminal- based restraining order?

Most victim compensation covers future medical and mental health costs up to a capped amount. Cooperation with law enforcement officials is a typical threshold requirement for funding, but this requirement varies from state to state. Restitution is also available from civil and criminal courts.

Notes: _____

* Housing

- Did the assault happen at or near the victim's home?
- Does the victim want to move as a result of the assault? Is s/he safe at home?
- Is the assailant a neighbor, tenant, or landlord?

The decision to leave current housing should be entirely the victim's choice. If the victim feels that there is an ongoing threat or that s/he simply will not be able to recover if s/he lives in the same location where the assault took place, then legal representation can assist the victim by advocating for a change in housing through a public housing authority or a private landlord.

Notes: _____

* Employment

- Did the assault happen at work?

- Is the assailant a co-worker?
- What kind of employment does the victim have?
- Has the victim been unable to maintain her/his employment since the assault?
- What kinds of disability, vacation and health benefits are provided by the victim's employer?
- Do other people at work know about the assault? If so does this make the work environment uncomfortable for the victim?

Legal counsel can help a victim access many kinds of employment-related relief. For example, worker's compensation, disability accommodations, and medical leave may all be available to the victim due to the psychological and physical trauma from the sexual assault. Similarly, there may be many protections available under sexual harassment laws for work-related sexual assaults.

Notes: _____

* Education

- Did the assault happen at school?
- What kind of school is it? Private or public?
- How old is the victim? The assailant?
- If either the victim or the assailant is in high school, does either participate in an Individualized Educational Program or have a special education classification?
- Has the victim been able to maintain her/his performance at school since the assault?
- Does the victim need to change her/his class schedule as a result of the assault?
- Is the assailant on campus, in the victim's dorm, or in her/his classes?

Decline in school performance and/or increased absenteeism may be attributable to assault-related problems like Post Traumatic Stress Disorder

or depression. Legal counsel can assist victims in mitigating the impact of these conditions on their education rights. Title IX and sexual harassment laws provide some protection for victims who are victimized at school. Legal counsel can bring claims under those laws and can also assist with administrative remedies sought through the Department of Education.

Notes: _____

ATTORNEY WORK PRODUCT
CONFIDENTIAL AND PRIVILEGED

Client #: _____

ADDITIONAL NOTES

Please include dates of all conversations.

_____page _____

CONFIDENTIALITY

Adapted from materials developed by Susan G. McGee, Executive Director, SAFE House, Ann Arbor, Michigan.

Used with permission.

The paragraphs below provide suggestions as to how to implement a confidentiality protocol to protect victims better. OVW recognizes that grant recipients must first follow the rules of their jurisdiction and may not be able to implement some portions of the protocol due to other limitations.

Any information that a client discloses to project personnel is confidential. Seemingly inconsequential information may have greater significance within the context of a battering relationship. Therefore information about a client should only be released with the client's permission except as detailed below.

Training

- ⦿ The grantee should provide confidentiality training to the entire staff, including volunteers and interns. Training should include sessions on the jurisdiction's statutes and rules of professional conduct regarding confidentiality and a review of this protocol.
- ⦿ After receiving the confidentiality training, paid and unpaid staff should sign an instrument stating that they understand the policy and agree to comply.

Discussion of Clients

- ⦿ After obtaining an authorization for release of information, volunteers, staff and supervisors of grantee organizations and project partner staff may routinely share information with each other about clients only upon a need to know basis. Clients should be aware that information will be shared among staff as necessary to provide appropriate services.
- ⦿ Project staff should not publicly confirm or deny an attorney's representation of a client without the client's express permission even if the attorney's representation is a matter of public record.
- ⦿ Staff should not discuss clients in public spaces to avoid public recognition of a client's identity.

Obtaining Written Authorization of Release

- ⦿ Authorization to obtain or release information regarding a client shall be in writing. (Exceptions may be made to the writing requirement. See below). The written release should state that: a) it pertains only to information which currently exists; b) the information is relevant to representation and will only be used for that purpose; and c) the release is revocable at any time. Relevant state statutes should be cited in the release.
- ⦿ To ensure that a client is knowingly and voluntarily authorizing a release of information, the grantee should provide a written translation in the client's native language to any client who is not fluent in English. When a client cannot read, a staff member should read aloud to the client the authorization of release in English or in the client's native language.

Exceptions to Obtaining Written Authorization of Release

- ⦿ Staff may disclose confidential information when there is a clear and imminent life threatening danger to an individual. The Executive Director, or staff acting on the Executive Director's behalf should make this determination. This confidential information may be disclosed without written authorization from the client.
- ⦿ Staff may rely on a verbal authorization of release if there is an emergency. If authorization is given over the telephone, whenever possible, another staff person should "witness" the verbal authorization of release. A note, signed by both staff people, should be made in the client's file stating the circumstances of the verbal authorization. A written authorization of release should be executed as soon as possible.
- ⦿ If a client is deceased or missing, the grantee should only release information in accordance with the statutes and professional rules of conduct in the grantee's jurisdiction.
- ⦿ Staff may disclose confidential information in compliance with a

valid court order. Where possible, the Executive Director, or staff acting on the Executive Director's behalf should make this determination.

Revocation of Authorization of Release

- ⦿ Revocation of authorization shall be in writing where possible. Where revocation is originally communicated verbally, staff must act in accordance with the revocation and make a notation in the client's file. Written revocation signed by the client should be obtained as soon as possible after the issuance of the verbal revocation.

Maintenance of Records

- ⦿ Where a client gives authorization for release of records, her attorney or her attorney's supervisor must review those records prior to release.
- ⦿ Disposal of client files should comport with the statutes and rules of the jurisdiction.
- ⦿ Funders who must audit service records should sign a confidentiality agreement before reviewing the records.

EMPLOYEE CONFIDENTIALITY AGREEMENT

SAMPLE

Adapted from materials developed by Susan G. McGee, Executive Director, SAFE House, Ann Arbor, Michigan.

Used with permission

I, (name and position), have read and understand the confidentiality policy of XYZ Legal Services, Inc. and have attended XYZ's training on confidentiality.

I understand that maintaining a client's confidentiality is paramount to a client's safety.

I am required to keep clients' confidences and may not disclose (including to other project personnel) any information regarding a client without express permission, preferably in writing.

I will not discuss client matters in public spaces.

I will not publicly acknowledge a client without her express permission.

I will direct my questions regarding confidentiality to my immediate supervisor, (name and title). If s/he is unavailable, I will direct my questions to the Executive Director.

I understand that a knowing and voluntary violation of the confidentiality policy can result in disciplinary action taken against me, including but not limited to, suspension or termination of employment.

Date

Signature of Employee

Date

Signature of Witness

AUTHORIZATION FOR RELEASE OF INFORMATION

SAMPLE

I, (client's name), hereby authorize and request (name of organization or service provider) to send/release the following: any and all records, information, evaluations, and clinical opinions regarding (myself) (my children), (DOB), to my attorney, Betty Jones, or her authorized agent, XYZ Legal Services, Inc, 123 Main Street, Anytown, Anyplace 12345.

In authorizing this release, I understand this information will be used solely for the purpose of representing me in proceedings in (name court or administrative agency) both now and in the future, and that this authorization for release of information is limited to information that is now in existence. In addition, I understand that I have the right to inspect any (name type of record, progress notes, or case notes). I further understand that this information cannot be redisclosed without my authorization.

(Cite any relevant Statute)

This consent is subject to revocation either orally or in writing at any time.

Date

Signature

FUNDERS' CONFIDENTIALITY AGREEMENT

SAMPLE

Adapted from materials developed by Susan G. McGee, Executive Director, SAFE House, Ann Arbor, Michigan.

Used with permission.

I, (name) am a reviewer/auditor for (name of Program).

I am reviewing all of (name of legal services provider)'s client files regardless of the funding source for (state purpose).

I understand that I am reviewing files of victims of domestic violence, sexual assault, and/or stalking whose representation was funded by the OVW Legal Assistance for Victims Grant Program.

I further understand that maintaining clients' confidences is crucial to their safety and well-being.

I affirm that I will not redisclose any of the information I have learned by my review of the file under any circumstances except by court order.

Date

Name, Title and Organization
Affiliation

CONFLICT OF INTEREST

The paragraphs below are a suggestion as to how to implement a conflict of interest protocol to serve victims of domestic violence, sexual assault, and/or stalking better. OVW recognizes that grant recipients must first follow the rules of their jurisdiction and may not be able to implement some portions of the protocol due to other limitations.

- ⦿ The grantee's conflict check system may be either maintained manually or in a database. The grantee should update the conflict check system daily.
- ⦿ All identifying information should be used to detect a conflict. A grantee should maintain information regarding the parties including, but not limited to, name, address, telephone number, names and dates of birth of children in common, and/or the victim's maiden name. A grantee should not rely on a social security number alone.
- ⦿ At the initial intake, staff should perform the conflict check prior to conducting any portion of the interview, including determining eligibility based on income. Grantees should not conduct the initial intake or ask income information prior to checking for conflicts because of the risk of obtaining information improperly about the opposing party or obtaining material information from a party whom the grantee subsequently declines to represent.
- ⦿ State law relating to the rules of professional conduct govern. However, batterers and victims are presumed to have interests that are materially adverse for the purposes of this grant program.

- ③ Where a grantee has not formally represented an individual, but has conducted an interview, the grantee should enter that individual's information in the conflict check system and decline to represent the prospective opposing party.
- ③ If a victim seeks assistance and the abuser is already represented by the grantee in any type of case or the grantee has conducted a lengthy intake with the abuser where material information was provided to the grantee, the grantee should decline to represent the victim prior to conducting any kind of interview. Additionally, the grantee should refer the victim immediately to other services including other legal agencies that assist clients to develop safety plans.

INTAKE FORM SAMPLE

Discuss confidentiality policy prior to beginning the Intake.

Every state recognizes that information discussed between a client and an attorney is protected by attorney-client privilege. However, client intake information may not be privileged where shelter workers or other personnel conduct the intake interview. Please review your state's rules prior to determining which project personnel will conduct intake interviews.

Use * items to form the foundation of your conflicts check database.

Date: _____

I. About Your Client

Name:* _____ Telephone#:* _____

Date of Birth: _____ Safe times to call: _____

Home Address: _____ Caller ID: _____ yes _____ no

Work
Address: _____ Telephone#:* _____

Okay to call? times? _____

School Address: _____ Telephone #:_____

Okay to call? times? _____

Other safe contact information:

S.S. #:^{*} _____

Place of Birth: _____

Immigration Status(for safety planning and referral): _____

Native language: _____ English: None/Some/Fluent

Criminal History: (You need to ask this in the event that the case goes to trial.)

Type of Offense	Date of Offense	Jurisdiction	Disposition

Weapons: _____

Alcohol/drug abuse: _____

II. About the Opposing Party

Name:^{*}(including nicknames and aliases)

Date of Birth:^{*} _____

Home Address: _____ Telephone #:^{*} _____

Caller ID _____ yes _____ no

Work Address: _____ Telephone #:^{*} _____

School Address: _____ Telephone #: _____

S.S. #:^{*} _____

Place of Birth: _____

Immigration Status: _____

Native Language: _____ English: None/Some/Fluent

Criminal History:

Type of Offense	Date of Offense	Jurisdiction	Disposition

Weapons: _____

Alcohol/drug abuse: _____

Participation in drug/alcohol rehabilitation program and/or domestic violence intervention program:

Dates of Participation	Type of Program	Name and Location	Successful Completion?

History of parental kidnapping or threats of kidnapping:

_____.

III. About the Parties' Relationship

Has your spouse/partner ever put his/her hands on you against your will?

Has your spouse /partner forced you to do something by threatening you?

When was the most recent incident?

When was the last incident before that?

What was the worst incident ever?

When is the first time you can remember the use of force or threats against you?

Has your child/children been abused by your spouse/partner?

Overall History:

Police Reports:_____

Hospital Records:_____

Has anyone ever seen or heard your spouse/partner threaten or hurt you?

Name:_____

Contact Information:_____

Prior Protection Orders:

Date	Jurisdiction	Disposition

Other prior court action:

Date	Jurisdiction	Disposition

Children in common:*

Name	Date of Birth	Place of Birth	Sex	Immigration Status

Residence of the children for the past 5 years:

Name	Location of Residence	Dates lived at Residence	Other Occupants of Residence

Other Children (specify child of client or of opposing party)

Name	Date of Birth	Place of Birth	Sex	Immigration Status	Parents

Parties married to each other: _____ Yes _____ No

If so, date and place of marriage: _____

Parties previously married to other partners: _____ Yes _____ No

If so, date of dissolution: _____

Place of dissolution: _____

IV. INCOME

Client employed: _____ Yes _____ No. Approximate Gross Income _____

Other household member employed: _____ Yes _____ No. Approximate Gross Income _____

Opposing Party employed: _____ Yes _____ No. Approximate Gross Income _____

Health Insurance for client: _____ Yes _____ No

Health Insurance for children: _____ Yes _____ No

Childcare costs: _____

Any extraordinary expenses: _____

See Safety Plan Sample for additional questions.

SERVING BATTERED IMMIGRANTS

- ⦿ Fiscal Year (FY) 2001 grant recipients may use grant funds to represent clients in immigration cases pursuant to the Violence Against Women Act of 2000.
- ⦿ Grantees should represent immigrants victims, like other clients, in any cases for which they are eligible under the LAV grant program.
- ⦿ Grantees are not required to ask about the immigration status of any client seeking services. Grant recipients may inquire as to the status of an immigrant victim where the individual's immigration status could affect the victim's safety and safety planning.
- ⦿ Grantees should refer an immigrant victim to an immigration attorney who has experience representing victims of domestic violence, sexual assault and/or trafficking for immigration-related assistance.
- ⦿ Grantees should consult with an immigration attorney with experience representing victims of domestic violence, sexual assault, and/or trafficking prior to commencing any action on behalf of an immigrant victim.
- ⦿ Grantees should consult with an immigration attorney familiar with the immigration relief available under the Violence Against Women Act prior to commencing a divorce action on behalf of a battered immigrant.
- ⦿ Grantees are encouraged to make their services culturally and linguistically appropriate and accessible to all community members.

INCOME GUIDELINES

- ③ To maximize the legal services available to victims of domestic violence, sexual assault and/or stalking, there are no specific income guidelines associated with the LAV grant program. However, the prospective clients must demonstrate that they cannot afford to hire a lawyer.
- ③ Grantees, as recipients of other sources of funding, may be required to impose income guidelines for prospective clients associated with those funds. However, grantees should not automatically impose the same income guidelines for those funds on prospective clients to be served under the LAV grant program.
- ③ Grantees may impose an income guideline as a factor to be considered when prioritizing case acceptance.
- ③ Many domestic victims cannot afford legal services despite having an income in excess of 150% of the poverty line.
- ③ Many domestic violence victims do not have access to the assets of their marriage (or relationship) as a result of their abusers' control over finances.
- ③ The grantee shall obtain OVW's approval prior to implementing an income guideline which was not part of the grantees original or continuation application.