

Enrolled
House Bill 3476

Sponsored by Representative LININGER, Senator GELSER, Representatives SPRENGER, OLSON, Senators WINTERS, PROZANSKI; Representatives BARKER, BOONE, EVANS, FREDERICK, GALLEGOS, GILLIAM, GORSEK, HACK, HUFFMAN, JOHNSON, KENY-GUYER, MCLAIN, NOSSE, PILUSO, POST, RAYFIELD, READ, TAYLOR, VEGA PEDERSON, WEIDNER, WHISNANT, WILLIAMSON, Senators BOQUIST, DEVLIN, HANSELL, JOHNSON, KNOPP, KRUSE, ROBLAN, SHIELDS, THATCHER

CHAPTER

AN ACT

Relating to confidential communications; creating new provisions; amending ORS 40.252; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 40.225 to 40.295.

SECTION 2. (1) As used in this section:

(a) "Certified advocate" means a person who:

- (A) Has completed at least 40 hours of training in advocacy for victims of domestic violence, sexual assault or stalking, approved by the Attorney General by rule; and
- (B) Is an employee or a volunteer of a qualified victim services program.

(b) "Confidential communication" means a written or oral communication that is not intended for further disclosure, except to:

(A) Persons present at the time the communication is made who are present to further the interests of the victim in the course of seeking safety planning, counseling, support or advocacy services;

(B) Persons reasonably necessary for the transmission of the communication; or

(C) Other persons, in the context of group counseling.

(c) "Qualified victim services program" means:

(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.

(d) "Victim" means a person seeking safety planning, counseling, support or advocacy services related to domestic violence, sexual assault or stalking at a qualified victims services program.

15TH NATIONAL INDIAN NATIONS CONFERENCE

At the Scene; Law Enforcement and Community-Based Advocacy

Confederated Tribes of the Umatilla Indian Reservation

Desir e Coyote, Family Violence Services, Program
Manager

Dave Williams, Umatilla Tribal Police, Community Police
Officer

December 8-11, 2016

LEARNING OBJECTIVES

- Understand what community-based Domestic Violence Advocates can and cannot do to assist (i.e.: confidentiality)
- Teamwork and collaboration with Domestic Violence Advocates can help your investigation
- Understand how re-living an incident can re-traumatize a survivor (victim)

BARRIERS



WHY IS THIS COLLABORATION IMPORTANT?



REMEMBER

U.S. Department of Justice indicates that Native American and Alaska Native women are more than 2.5 times as likely to be raped or sexually assaulted than women in the United States in general.

A U.S. Department of Justice study on violence against women concluded that 34.1% of American Indian and Alaska Native women-more than one in three-will be raped during their lifetimes; the comparable figure for women in the United States as a whole is less than one in five.

Problems in law enforcement are exacerbated on many tribal lands due to insufficient funding, inadequate funding, inadequate training, and victims' trust for outside authority.²⁴

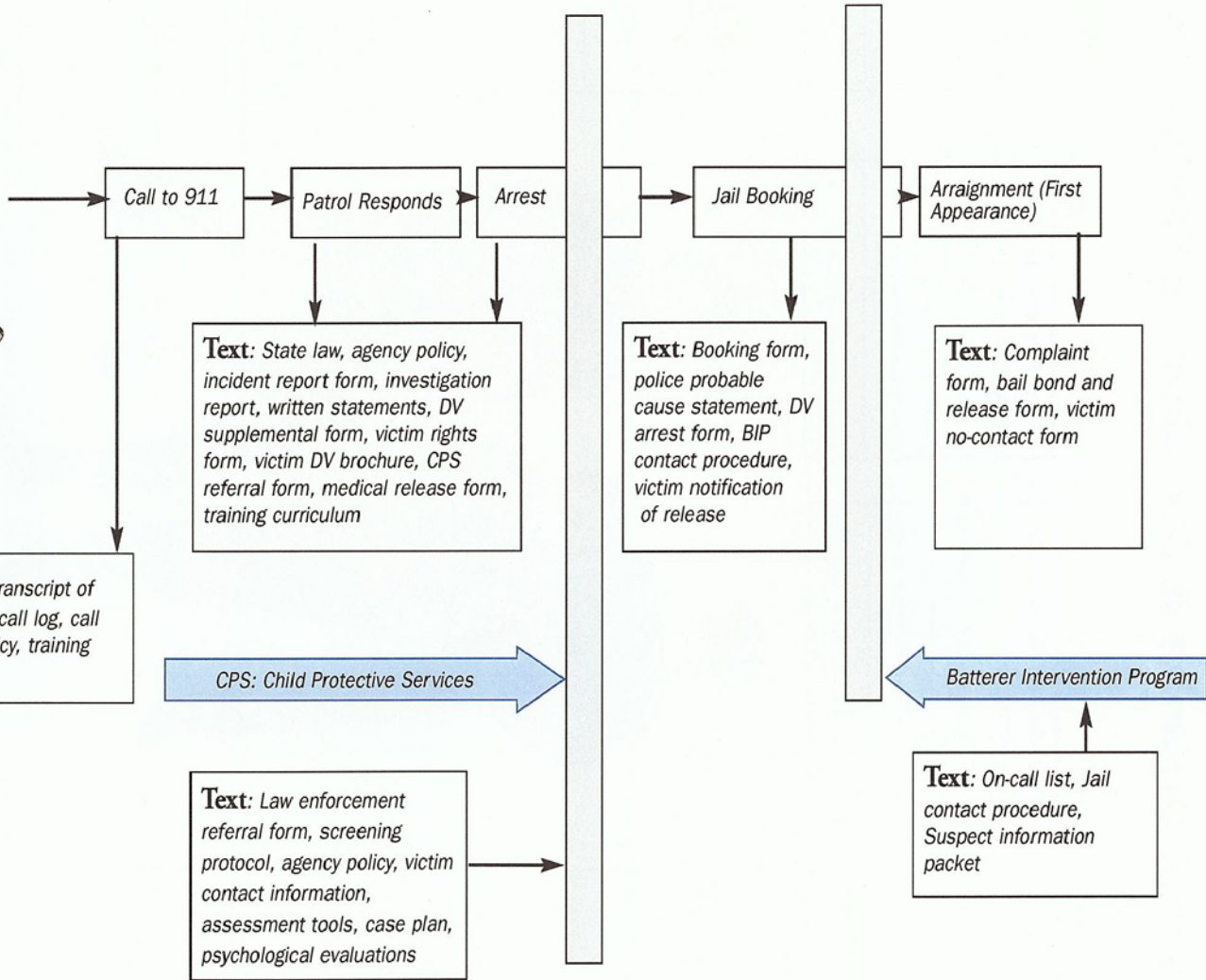
Patricia Tjaden and Nancy Thoennes, U.S. Department of Justice, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women* (2000).

²⁴ U.S. Department of Justice. *Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is known.* 2008:9

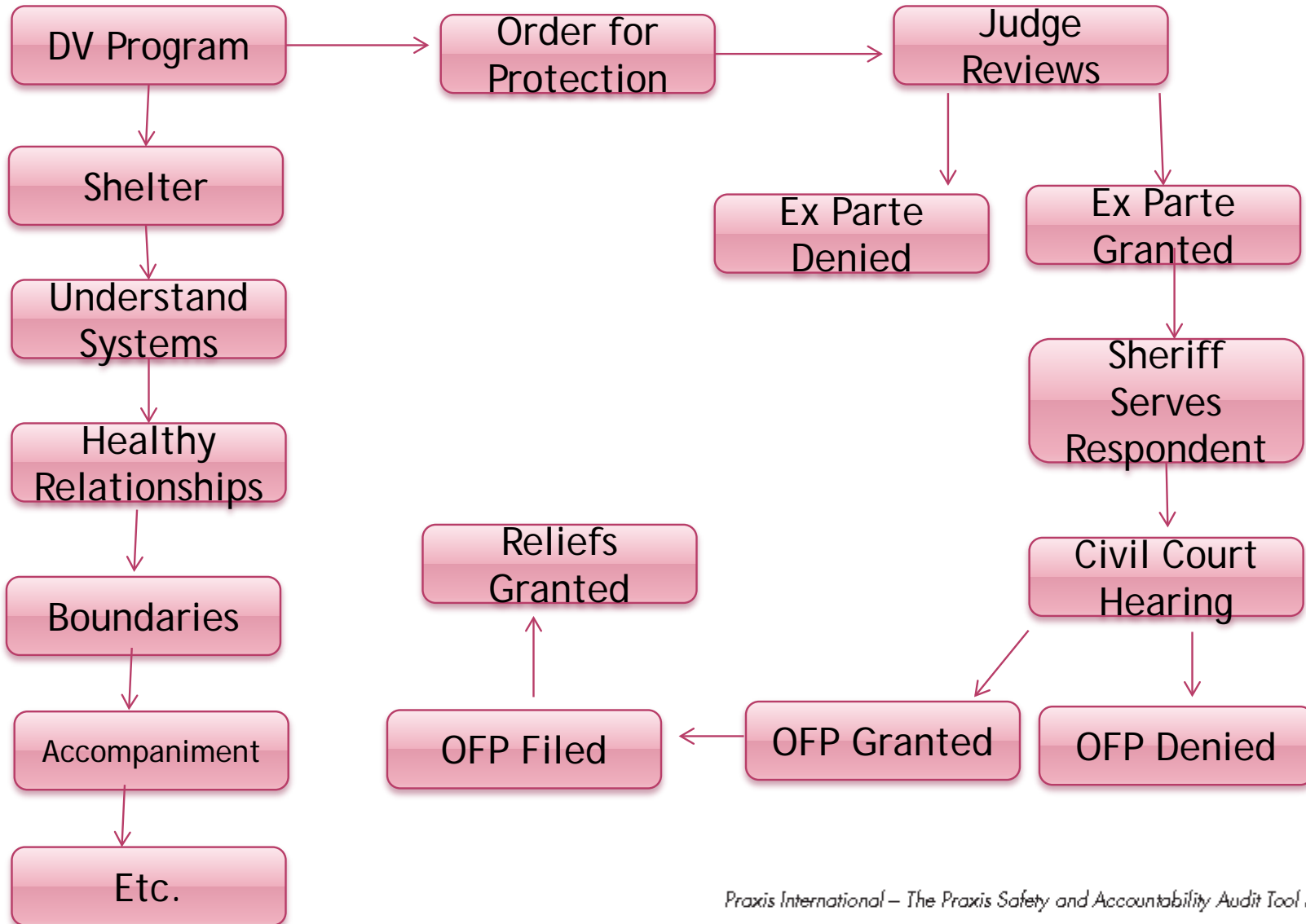
LAW ENFORCEMENT



Text: Recording, transcript of call, dispatch slip, call log, call guides, agency policy, training curriculum



COMMUNITY-BASED ADVOCATE



CONFIDENTIALITY

VAWA

The grantee agrees to comply with the provisions of 42 U.S.C. 13925(b)(2), nondisclosure of confidential or private information, which includes creating and maintaining documentation of compliance, such as policies and procedures for release of victim information. (Adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families receiving services.)

[See Appendix A - Acknowledgement of Notice of Statutory Requirement to Comply with the Confidentiality and Privacy Provision of VAWA]

CONFIDENTIALITY CONTINUED

CTUIR

SECTION 4.91. VICTIM - ADVOCATE PRIVILEGE A. Except as otherwise provided in subsection B., a victim of domestic violence may refuse to disclose, and may prevent an advocate, elder, or medical provider from disclosing confidential oral communications between the victim and that of the advocate, and/or any written records or reports of the advocate concerning the victim, unless the privilege is waived by:

1. the victim; or
2. the death of the victim.



CONFIDENTIALITY CONTINUED

Oregon

2015 Advocate Privilege: HB 3476: Parts of Bill Effective Now
Establishes privilege in civil, criminal, administrative and school proceedings for certain communications between persons seeking services related to domestic violence, sexual assault or stalking and victim services programs and advocates. Prohibits disclosure of communications without consent of person seeking services.

<https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB3476/Enrolled>

GRANT SPECIAL CONDITIONS

The grantee agrees that grant funds will not support activities that compromise victim safety and recovery, such as: procedures or policies that exclude victims from receiving safe shelter, advocacy services, counseling, and other assistance based on their actual or perceived sex, age, immigration status, race, religion, sexual orientation, gender identity, mental health condition, physical health condition, criminal record, work in the sex industry, or the age and/or sex of their children; procedures or policies that compromise the confidentiality of information and privacy of persons receiving OVW-funded services;

GRANT SPECIAL CONDITIONS

CONTINUED

pre-trial diversion programs not approved by OVW or the placement of offenders in such programs; mediation, couples counseling, family counseling or any other manner of joint victim-offender counseling; **mandatory counseling for victims, penalizing victims who refuse to testify, or promoting procedures that would require victims to seek legal sanctions against their abusers (e.g., seek a protection order, file formal complaint)**; the placement of perpetrators in anger management programs; or any other activities outlined in the solicitation under which the approved application was submitted.

VAWA & TLOA

- Non Tribal Offenders
- Sentencing



INTERGOVERNMENTAL COLLABORATION

- MOU, Agreements:
- State of Oregon
- Intertribal
- Sex Offender Registry & Notification Act



RESPONSE EXAMPLE

J.TRAMNER CASE

Law Enforcement

- Victim Recall of Incident (Traumatic memory)

Advocate

- Victim Recall of Incident (Traumatic memory)

Prosecution

- Grand Jury Indictment for Felony
- Plead - 13 month in prison

LIMITATIONS

- Products produced by groups that have political and social power (usually does not include victim, UMOC, Tribal Nation)
- The “universal” or “perfect” person/victim created and is set as standard
- Social status
- Cultural imposition is obscure
- Primary vs Predominant
- Accountability or lack thereof to those we serve – this is their life, their experience
- Time is very different from the eyes of the victim and their family to the various systems procedures/processes
- Coercion
- Historical context of systems and community

WHAT IS SUCCESS?

Offender held accountable

Victim understands process (LEO, Hospital, etc.)

Victim is aware of all options available

Safe community

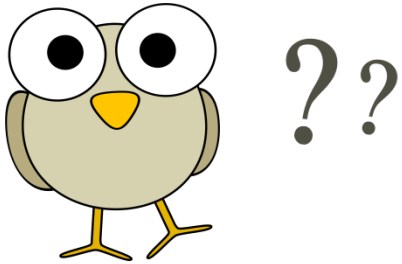
Victim safety (free from repercussion and further abuse)

Victim left with support or an Advocate (contact info or person)

Future generations

Victim is aware that Advocates are always available at no cost

QUESTIONS



CONTACT INFORMATION

Confederated Tribes of the Umatilla Indian Reservation

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Pendleton, Oregon 97801
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Desireé Coyote, Family Violence Services Program Manager

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Police Officer

541-278-0551
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Acknowledgement of Notice of Statutory Requirement to Comply with the Confidentiality and Privacy Provisions of the Violence Against Women Act, as Amended

Under section 40002(b)(2) of the Violence Against Women Act, as amended (42 U.S.C. 13925(b)(2)), grantees and subgrantees with funding from the Office on Violence Against Women (OVW) are required to meet the following terms with regard to nondisclosure of confidential or private information and to document their compliance. By signature on this form, applicants for grants from OVW are acknowledging that they have notice that, if awarded funds, they will be required to comply with this provision, and will mandate that subgrantees, if any, comply with this provision, and will create and maintain documentation of compliance, such as policies and procedures for release of victim information, and will mandate that subgrantees, if any, will do so as well.

(A) In general

In 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 under this subchapter shall protect the confidentiality and privacy of persons receiving services.

(B) Nondisclosure

Subject to subparagraphs (C) and (D), grantees and subgrantees shall not—

(i) 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 the information has been encoded, encrypted, hashed, or otherwise protected; or

(ii) disclose, reveal, or release individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of legal incapacity, a court-appointed guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, incapacitated person, or the abuser of the other parent of the minor.

If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may release information without additional consent.

(C) Release

If release of information described in subparagraph (B) is compelled by statutory or court mandate—

- (i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and
- (ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

(D) Information sharing

(i) Grantees and subgrantees may share—

- (I) nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements;
- (II) court-generated information and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes; and
- (III) law enforcement-generated and prosecution-generated information necessary for law enforcement and prosecution purposes.

(ii) In no circumstances may—

- (I) an adult, youth, or child victim of domestic violence, dating violence, sexual assault, or stalking be required to provide a consent to release his or her personally identifying information as a condition of eligibility for the services provided by the grantee or subgrantee;
- (II) any personally identifying information be shared in order to comply with Federal, tribal, or State reporting, evaluation, or data collection requirements, whether for this program or any other Federal, tribal, or State grant program.

(E) Statutorily mandated reports of abuse or neglect

Nothing in this section prohibits a grantee or subgrantee from reporting suspected abuse or neglect, as those terms are defined and specifically mandated by the State or tribe involved.

(F) Oversight

Nothing in this paragraph shall prevent the Attorney General from disclosing grant activities authorized in this Act to the chairman and ranking members of the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate exercising Congressional oversight authority. All disclosures shall protect confidentiality and omit personally identifying information, including location information about individuals.

(G) Confidentiality assessment and assurances

Grantees and subgrantees must document their compliance with the confidentiality and privacy provisions required under this section.

As the duly authorized representative of the applicant, I hereby acknowledge that the applicant has received notice that if awarded funding they will comply with the above statutory requirements. This acknowledgement shall be treated as a material representation of fact upon which the Department of Justice will rely if it determines to award the covered transaction, grant, or cooperative agreement.

Typed Name of Authorized Representative

Title

Telephone Number _____

Signature of Authorized Representative

Date Signed

Agency Name

(2) Except as provided in subsection (3) of this section, 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.

(b) Records that are created or maintained in the course of providing services regarding the victim.

(3) The privilege established by this section does not apply to the disclosure of confidential communications, only to the extent 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.

(4) The privilege established in this section is not waived by disclosure of the communications by the certified advocate to another person if the disclosure is reasonably necessary to accomplish the purpose for which the certified advocate is consulted.

(5) This section does not prohibit the disclosure of aggregate, non-personally identifying data.

(6) This section applies to civil, criminal and administrative proceedings and to institutional disciplinary proceedings at a two-year or four-year post-secondary institution that enrolls one or more students who receive an Oregon Opportunity Grant.

SECTION 3. ORS 40.252 is amended to read:

40.252. (1) In addition to any other limitations on privilege that may be imposed by law, there is no privilege under ORS 40.225, 40.230 or 40.250 or section 2 of this 2015 Act for communications if:

(a) In the professional judgment of the person receiving the communications, the communications reveal that the declarant has a clear and serious intent at the time the communications are made to subsequently commit a crime involving physical injury, a threat to the physical safety of any person, sexual abuse or death or involving an act described in ORS 167.322;

(b) In the professional judgment of the person receiving the communications, the declarant poses a danger of committing the crime; and

(c) The person receiving the communications makes a report to another person based on the communications.

(2) The provisions of this section do not create a duty to report any communication to any person.

(3) A person who discloses a communication described in subsection (1) of this section, or fails to disclose a communication described in subsection (1) of this section, is not liable to any other person in a civil action for any damage or injury arising out of the disclosure or failure to disclose.

SECTION 4. (1) As used in this section:

(a) "Certified advocate" means a person who:

(A) Has completed at least 40 hours of training in advocacy for victims of domestic violence, sexual assault or stalking, approved by the Attorney General by rule; and

(B) Is an employee or a volunteer of a qualified victim services program.

(b) "Confidential communication" means a written or oral communication that is not intended for further disclosure to third persons except to:

(A) Persons present at the time the communication is made who are present to further the interests of the victim in the course of seeking safety planning, counseling, support or advocacy services;

(B) Persons reasonably necessary for the transmission of the communication; or

(C) Other persons, in the context of group counseling.

(c) "Qualified victim services program" means:

(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-year or four-year post-secondary institution that enrolls one or more students who receive an Oregon Opportunity Grant.

(d) "Victim" means a person seeking safety planning, counseling, support or advocacy services related to domestic violence, sexual assault or stalking at a qualified victims services program.

(2) Except as provided in ORS 40.252 and section 2 of this 2015 Act, 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.

(b) Records that are created or maintained in the course of providing services regarding the victim.

(3) Notwithstanding subsection (2) of this section, a certified advocate or a qualified victim services program may disclose confidential communications or records without the victim's consent only:

(a) To the extent 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; and

(b) As otherwise required by law.

(4) This section does not prohibit the disclosure of aggregate, non-personally identifying data.

SECTION 5. (1) Sections 2 and 4 of this 2015 Act and the amendments to ORS 40.252 by section 3 of this 2015 Act become operative on October 1, 2015.

(2) The Attorney General may take any action before the operative date specified in subsection (1) of this section to enable the Attorney General, on or after the operative date specified in subsection (1) of this section, to exercise all the duties, powers and functions conferred on the Attorney General by sections 2 and 4 of this 2015 Act.

(3) Section 2 of this 2015 Act applies only to proceedings occurring on or after the operative date specified in subsection (1) of this section.

(4) Sections 2 and 4 of this 2015 Act and the amendments to ORS 40.252 by section 3 of this 2015 Act apply to communications and records made before, on or after the operative date specified in subsection (1) of this section, unless the communications were disclosed to a third party before the operative date specified in subsection (1) of this section.

SECTION 6. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.