

# WHO IS MANDATED?

## 1. "Social services counselor"

anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs

## 2. Professional school personnel

including, but not limited to, teachers, counselors, administrators, child care facility personnel and school nurses

## 3. Any supervisor with a nonprofit or for-profit organization

which has a reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom they regularly exercise supervisory authority. This is provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service

\* **WCSAP is not a legal agency- we recommend you consult with an attorney when thinking about your agency liability. If your agency has general liability insurance, there could also be things in your policy that direct you where a law might be permissive.**



**WCSAP**  
Washington Coalition of  
Sexual Assault Programs

## CONTACT FOR MORE INFO



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**MANDATED REPORTING  
FOR SEXUAL ASSAULT  
ADVOCATES**

[www.wcsap.org](http://www.wcsap.org)





# For those considered advocates, Privileged Communication applies:

RCW 5.60.060

(7) "A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made between the victim and the sexual assault advocate."

## Privileged Communication & Duty to Warn (harm to self / others):

RCW 5.60.060(b) says "A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person."

- Note that this provision is permissive – uses the word "may." Washington law permits – but does not require (mandate) – disclosure. This is something your agency will need to decide for themselves.

## For programs who receive (ANY) VAWA funding-this applies to Duty to Warn:

VAWA states that VAWA-funded grantees and subgrantees may not disclose a victim's confidential or personally identifying information unless they have (1) a victim's written, informed consent; or (2) a statutory or court mandate.

### Confidentiality protections provided by VAWA

The U.S. federal Violence Against Women Act (VAWA) VAWA 2005 Section 3, 42 USC §13925(b)(2)(2008)1 became effective in 2006, and provides for a universal grant condition that requires VAWA grantees and subgrantees to maintain the confidentiality of personally identifying victim information.

Failure to follow those universal grant conditions regarding victim privacy could result in a loss of funding. It prohibits disclosure of personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs without the informed, written, reasonably time-limited consent of the person. For more information about releases and VAWA, please see the FAQ's on Survivor Confidentiality Releases.

## VAWA HAS AN EXCEPTION FOR STATUTORY MANDATES OR COURT MANDATES. WHAT DOES THAT MEAN?

Statutory mandates or court mandates can be exceptions to VAWA confidentiality. They must be specifically addressed to confidentiality in order to constitute an exception, and are specifically created by each state's laws. These exceptions can be different in every state. The most common statutory mandate is the exception for mandatory reporting of suspected child abuse or neglect, which may be found in many states' laws. Court mandates are specific court orders (for example, an order made by a court after denying a domestic violence program's motion to quash a subpoena in states where confidentiality is not absolute).

## New important information related to Mandatory Reporting (child abuse) from the April 19th, 2021 WA Supreme Court ruling:

State v James-Buhl holds that the mandatory reporting duty must have some connection with the individual's professional identity and the abuse.

"We hold that failure to comply with the mandatory reporting duty in RCW 26.44.030(l)(a) requires some connection between the individual's professional identity and the criminal offense. We reverse the Court of Appeals and reinstate the trial court's dismissal of the charges against James-Buhl because the alleged child abuse occurred in her home, and was perpetrated by another family member, with no connection to her professional identity as a teacher. The mandatory reporting law does not impose an unlimited, ever present duty because it refers to people by means of their occupation, not simply as adults or persons." (Page 10)

Find the entire opinion here:

<http://www.courts.wa.gov/opinions/pdf/944091.pdf>

