

POLICY BRIEF

October 7, 2020

Protecting the confidentiality of survivors with intellectual or cognitive disabilities according to VAWA and New Mexico state statutes

VAWA: Informed Consent

Programs have a responsibility to obtain informed consent from survivors.

Are there exceptions for victims with an intellectual or cognitive disabilities? Yes but ONLY if a guardian has been appointed for someone who “lacks legal capacity to consent”*. Ask to see the court order! Some victims have guardians but should still sign their own consent.

*A guardian who has abused the victim should not be asked to sign consent.

The different types of guardianship in NM are: Kinship-Parenting of minor children by a family member, relative or friend of the family; Treatment Guardian – May make decisions in mental health cases to make decisions on medications and/or treatment; Adult Guardianship-incapacitated adult that requires assistance in managing personal and/or financial affairs; Guardian of Minor-Insurance, settlements.

At Issue:

- People with disabilities are often abused by people they know and trust
- Caregivers have positions of power
- People with disabilities are abused at much higher rates—up to seven times higher—than people without disabilities
- Society is not accessible

Intellectual/Cognitive Disabilities are defined as:

- * Intellectual disability
- * Some developmental disability (originates at birth; expected to continue indefinitely includes cerebral palsy, autism)

Includes other disabilities that affect physiology of the brain or cognition

- * Traumatic brain injury
- * Alzheimer’s disease

Guardianship is Limited

A “protected person” keeps all legal rights except those limited by court order or specifically granted to the guardian.



Unless a court document is provided, that specifies otherwise, the assumption is that people are presumed to be able to make legal decisions for themselves.

There may need to be some adaptations when working with survivors who have intellectual or cognitive disabilities. Speaking clearly without jargon or acronyms and giving examples of what is meant by the consent and what exactly is being consented to is always a good practice with any survivor but even more important to someone with a disability.

VAWA requirements for informed consent:

- *What information can be shared and specifically with whom*
- *No blanket releases are allowed*
- *Reasonably time-limited*
- *Revocable at any time by survivor*
- *Not a condition of service*
- *Consent must be in writing, signed by survivor*

There may have to be an accommodation made for a survivor with a disability that prevents them signing with a physical signature. The survivor may be asked to make a mark on the signature line that the advocate signs next to affirming that it serves as the signature for this person. In rare instances a verbal consent may be all that can be obtained. The advocate notes that as a verbal consent on the form. If another advocate can also be a witness, they can sign as well that verbal consent was made.

What must be reported? Who is REQUIRED to report?

Mandatory reporting of:

Child abuse ✓ N.M. Stat. Ann. § 32A-4-3

Incapacitated adult abuse ✓ N.M. Stat. Ann. § 27-7-30

What courts use to define incapacitated person

“Incapacitated Person” by reason of • mental illness, • mental deficiency, • physical illness or disability, • chronic use of drugs, • chronic intoxication or • other cause

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