

# You Report? Everyone Reports? Mandated Reporting Obligations When a Survivor Has a Disability

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# Goals of the Webinar

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Participants will be better able to:

- Explain the history and rationale behind mandatory reporting requirements.
- Define the relationship between privacy, confidentiality, and mandatory reporting for adults with disabilities.
- Develop policies and practices to address mandatory reporting that minimize any unintended consequences to victims with disabilities and promote both autonomy and safety.

# The Development of Mandatory Reporting of Abuse of People with Disabilities

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# Setting the Stage

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- Every state in the US has enacted laws that require certain professionals or others to report incidents of abuse of people with disabilities – referred to as “vulnerable adults” or “dependent adults.”
- These are often laws that are distinct from other mandatory reporting requirements for older people, children, etc. (but not always).
- Every state’s laws are different!

# History of Mandatory Reporting

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- Began exclusively for adults who are aged 60 or older
- A handful of horrific cases of abuse of people with disabilities living in institutional settings were identified through media exposes
- One example, was Geraldo Rivera's 1972 'expose' on Willowbrook State School in Staten Island, New York
- Led to dozens of lawsuits being filed in the 1970s regarding the abusive conditions in the nation's institutions
- Three significant cases
  - *New York State Association for Retarded Citizens et.al. v. Carey et.al.* 706 F.2d 956 (dealing with the Willowbrook Developmental Center, in Staten Island, New York)
  - *Wyatt v. Stickney*, 325 F.Supp. 781 (dealing with three Alabama state institutions for people with mental illness and developmental disabilities: Bryce Hospital, Searcy Hospital, and Partlow State School and Hospital)
  - *Welsch v. Likins*, 550 F.2d 1122 and *Jensen v. Minnesota Department of Human Services*, Civil No. 09-1775 (D.C. Minn. 2013) (dealing with the Cambridge facility in Cambridge, Minnesota)

# History of Mandatory Reporting, continued

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- These lawsuits led to a recognition of the constitutional rights of people with disabilities living in institutional settings to protection and treatment.
- Prompted mandatory reporting legislation to include people with disabilities.
- Unlike legislation for elder abuse, there is no clear line of demarcation for adults with disabilities (definition).
- Results in wide-ranging state laws and expansive definitions of who is included in mandated reporting.
- Leads to variations in how the laws are interpreted and applied from organization to organization and individual to individual.

# The Tensions Within Mandatory Reporting: Safety Versus Autonomy

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# What Mandated Reporting is Supposed to Do

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- Promote early identification of vulnerable adults
- Break isolation
- Provide victims with information about safety planning, legal and community services
- Provide victims with local/state advocacy services
- Provide a 'continuum of care' for victims in coordination with other agencies and enhances effectiveness of interventions
- Create documentation of the maltreatment that may be critical to criminal or civil legal action

# A Question for the Audience

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In your experience, is this what is happening when you report?

# Common Challenges of Mandatory Reporting

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- People with disabilities say:
  - They want to reach out for help
  - They are afraid of what happens if a report is made
  - Negative stories travel through the grapevine
- If a report is made, people with disabilities:
  - Want the report to go to as few people as possible
  - Expect action
  - Want to know the outcome of a report

# Common Challenges, continued

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- Mandatory reporting often conflicts with core values that shape victims services...
  - Being able to narrate your own experience and have control over who hears your story is fundamental to healing
  - Victims of abuse know their abuser and how the abuser will react to a report and they may be choosing not to report as a strategy for safety
  - Certain types of crimes involve dynamics that make straight forward interventions dangerous

# Common Challenges, continued

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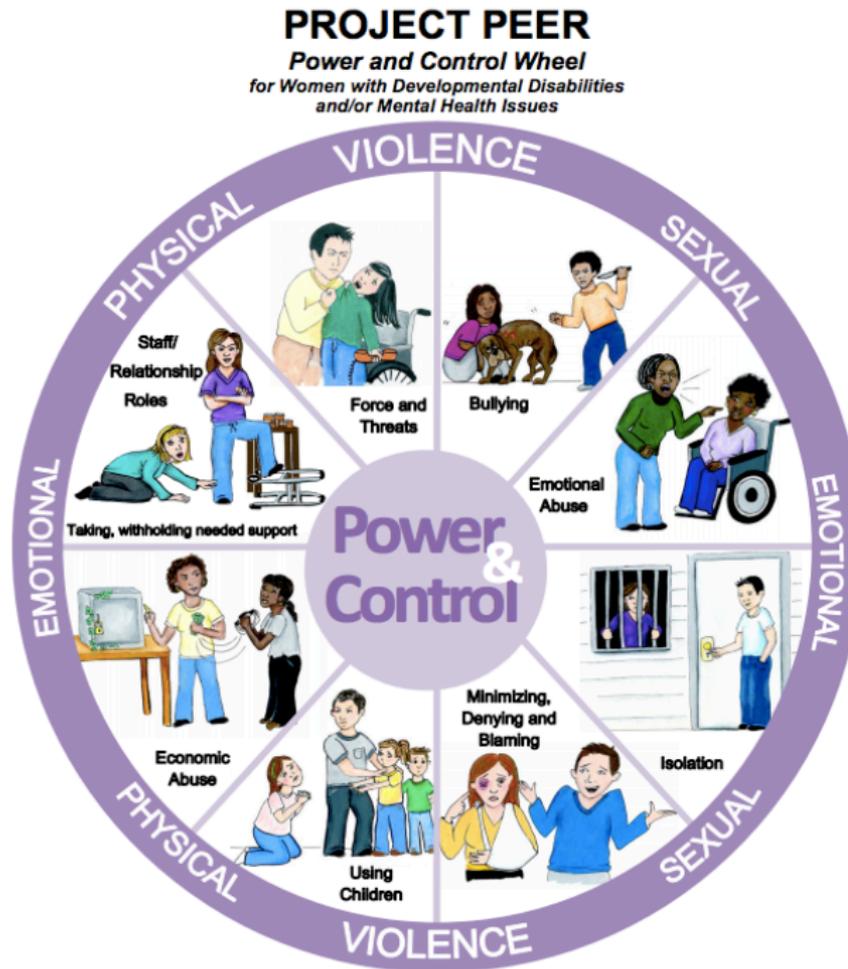
- Mandatory reporters often don't know the legal requirements
- They often don't understand their responsibilities
  - They don't know who is subject to mandatory reporting
  - They don't know whether they are mandatory reporters
  - They don't know who to report to
- Legal definition of "vulnerable" may be too broad to account for the range of competency that providers observe
- Can undermine the basis for the organization's supports for people with disabilities
- Internal protocols may determine what gets reported outside of the agency
- When reports are made...
  - Reports are made independent of the survivor
  - Providers want to know the outcome of the report but don't know how to get that information

# Mandatory Reporting in the Context of Domestic Violence

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- Often, there are dynamics at play that make reporting dangerous for survivors – coercive power and control.
- A pattern of behavior used by a person that is used to control and dominate the person's partner.
- Coercive control refers to abuse as a “strategic course of oppressive behavior,” meaning that battering is:
  - rational, instrumental behavior and not a loss of control
  - “ongoing” rather than episodic
  - based on multiple tactics

# The Power and Control Wheel



# Mandatory Reporting in the Context of Domestic Violence

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- Tactics of coercive power and control can intensify following a report.
- When the behavior of an abuser is questioned, criticized, and potentially investigated, then this can create a dangerous environment for the victim/survivor.
- Alienation of the victim.

# Mandatory Reporting in the Context of Sexual Violence

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- All trauma informed practices restore the ability to make decisions to the survivor of sexual assault as a way for the person to heal.
- Taking this decision-making ability away takes away an important avenue for healing.

# Unintended Consequences

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# Balancing Safety with Legal Requirements

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# Mandatory Reporting is a Reality... The Goal is to Do It Safely

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- Why?
  - There is a historical impulse to do internal investigations and keep issues in the administrative systems rather than legal or criminal justice systems.
  - There is a desire to protect people with disabilities that is reflected in policies.
- The goal should be to ensure that necessary reports are made with safety and autonomy in mind.

# Disclose Reporting Requirements

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- Before anything, tell the survivor that you are a mandatory reporter – clearly explain what that means
- A survivor with a disability might need:
  - Info on the process in writing
  - A pictorial guide
  - Repeated explanations
  - Use of smart (simple) language or plain language
  - An ASL interpreter

# Stay Survivor Centered

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- Service providers should always be survivor centered, even when they have to make a mandatory report
- Once you inform the survivor that you are a mandatory reporter, allow the survivor to decide whether he or she wants to:
  - Disclose anyway & give informed consent
  - Not disclose
  - Try to find another person to disclose to who is not a mandatory reporter (consideration: does your organization have employees who are not mandatory reporters? If so, who?)

# Stay Survivor Centered, continued

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- Provide option of making the report themselves or co-reporting with the agency staff
- Provide follow-up support & safety planning

# Best Practices for Mandated Reporting

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- Determine who is a mandatory reporter in your agency.
- Identify the type of abuse that triggers a report.
- Identify the type of disability a person must have to trigger a report.
- Determine who the staff person must report allegations of abuse to, both inside and outside the agency.

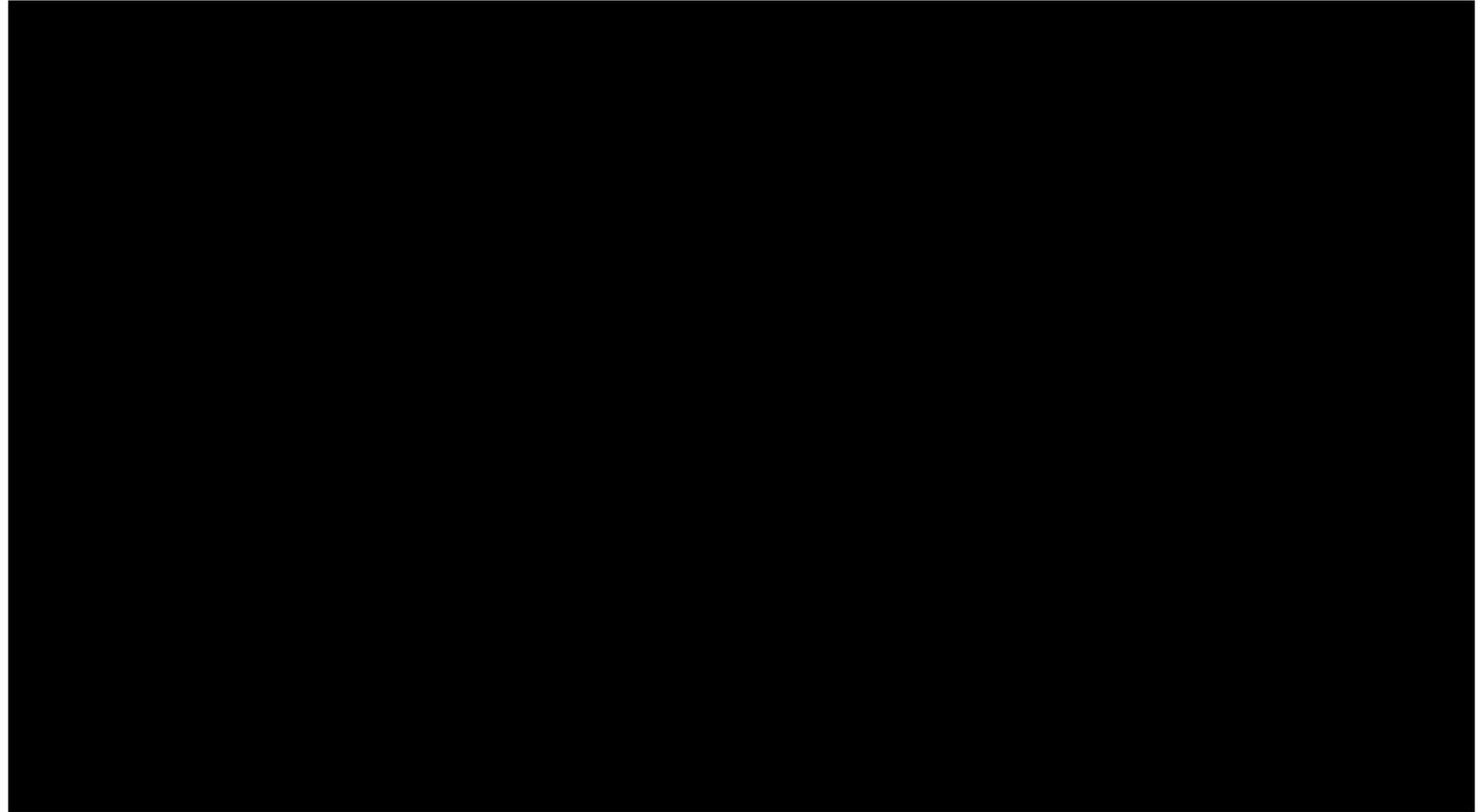
# Best Practices, continued

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- Collect data
  - Number of internal reports of domestic and/or sexual violence made to supervisors or other agency staff named in the agency's mandatory reporting policy
- Educate your agency's staff on mandatory reporting requirements
  - Engage Adult Protective Services or other regulatory agency
  - Have a written policies and procedures around mandatory reporting and how mandatory reports are made
- Inform the people who use your services about mandatory reporting requirements of agency employees!

# Develop Policies That Reflect Best Practices

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# Questions or Comments?

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# Thank you!

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Please take a moment to complete our online [survey](#) about this webinar.

Please don't forget to tune into the next *End Abuse of People with Disabilities* webinar, "One Size Does Not Fit All: Serving Culturally Diverse Survivors with Disabilities" on November 14, 2017 at 2 pm ET. Click here to [register](#).