

## Victims' Right to Privacy

Maintaining confidentiality is vital if sexual assault victims<sup>1,2</sup> are to receive the assistance they need and deserve. However, many factors continue to compromise victims' right to privacy. Advocates are crucial in ensuring victim confidentiality, but they need support to effectively, consistently, and successfully protect victims' right to privacy.

The focus of this online guide, developed by Connecticut Sexual Assault Crisis Services, Inc., is sexual assault victims' right to privacy. It reinforces the importance of keeping information confidential and highlights the power of employing consistent practices to create a culture of respect for victims' privacy. This guide contains general recommendations, addresses common challenges, provides core concepts, and offers practical tips to assist advocates in their efforts to maintain victim confidentiality.

While some existing laws, statutes, and regulations establish victims' legal rights regarding privacy and confidential communication, the term "right" is used here in a much broader sense. Laws, statutes, and regulations should be used to support victim service center's and advocate's local policies and practices to promote this culture, rather than serving as the sole basis for maintaining confidentiality. Be aware that laws governing confidentiality for victims vary by state and territory. Be familiar with protections afforded to victims locally.

## Message From the Director

Some victims of sexual assault do not seek services because they are afraid that the information they share with sexual assault victim advocates will not be kept private. They may not be aware that there are laws, statutes, and regulations that establish legal rights regarding privacy and confidential communication for sexual assault victims. The Office for Victims of Crime (OVC) funded the Protecting Victims' Right to Privacy demonstration project to help raise awareness of sexual assault victims' privacy and confidentiality rights. This online guide is a product of the grant, which was in effect from 2005 to 2007.

OVC chose Connecticut Sexual Assault Crisis Services, Inc. (CONNSACS) to implement the project, which supported OVC's goal of ensuring that all crime victims are afforded fundamental rights and receive comprehensive quality services. CONNSACS expanded the capacity of professionals to advance victims' right to privacy and to improve confidential services provided to victims of sexual violence.

Under this project, CONNSACS developed this online guide to provide practical assistance and recommendations to statewide sexual assault coalitions and rape crisis centers, and their board of directors, volunteers, and staff for protecting sexual assault victims' right to privacy. This e-publication also addresses common challenges, discusses core concepts, and offers practical tips to assist advocates in their efforts to maintain victim confidentiality and better serve victims.

**Joye E. Frost**  
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## About This Guide

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## About the Author

Joanne Zannoni, MSW, LICSW, has worked in the field of violence against women in various capacities and settings since 1992. She is currently the associate director of Connecticut Sexual Assault Crisis Services, Inc. (CONNSACS), in East Hartford, Connecticut, where she is responsible for overseeing CONNSACS' confidentiality and violence prevention projects. She has presented on these topics locally and nationally and coauthored *Advocating for Victim/Survivors of Sexual Assault While Protecting Their Privacy*, a confidentiality tips manual for sexual assault victim advocates.

## Acknowledgments

Since 2001, Connecticut Sexual Assault Crisis Services, Inc. (CONNSACS) has worked to strengthen sexual assault victims' right to privacy by developing and providing training opportunities, resources, and technical assistance to sexual assault victim advocates, attorneys, and other professionals at the local, state, and national levels. Products developed by CONNSACS include a curriculum manual for attorneys, two curriculum manuals for sexual assault victim advocates, a brochure for victims (available in English and Spanish), and a webinar series.

CONNSACS' efforts to uphold victims' right to privacy have been strengthened by the involvement of victims, sexual assault victim advocates, and colleagues from around the country. Special thanks go to those individuals who have served with CONNSACS staff members on CONNSACS' confidentiality project team: Jamie L. Mills, attorney, Hartford, Connecticut; Alison L. Johnson, consultant, Middletown, Connecticut; Susan Omilian, attorney, West Hartford, Connecticut; and Helen L. McGonigle, attorney, Brookfield, Connecticut.

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## Notes

[1](#) Individuals who experience sexual violence are both victims and survivors of that experience. Usage of the term "victim" in this document is intended to be inclusive of all individuals who have experienced sexual violence.

[2](#) Sexual assault victims are male and female. Sexual assault advocates are also male and female. Usage of singular pronouns in this document is intended to be inclusive. The principles discussed apply equally.

[3](#) Survey questions included the following: (1) How important is/was it to you that what you said or shared with your counselor at a sexual assault crisis center be kept confidential? (2) Did you consider not coming to a sexual assault crisis center because you were afraid that anything you told a counselor might not be kept confidential and would be shared with others? If yes, what convinced you to come to the center? (3) What information were/are you most concerned about being shared with others? (4) Do you know of anyone who didn't go get help at a crisis center after a sexual assault because he or she was afraid that information given to the counselor might be shared?

[4](#) Kilpatrick, D.G., C. Edmunds, and A. Seymour, 1992, *Rape in America: A Report to the Nation*, Charleston, SC: National Victim Center and the Crime Victims Research and Treatment Center, Medical University of South Carolina, p. 4.

[5](#) Herman, J., 1997, *Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror*. New York, NY; Basic Books.

[6](#) National Center for Victims of Crime, November 2002, *Privacy of Victims' Counseling Communications*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime.

[7](#) U.S. Department of Defense, April 2004, *Task Force Report on Care for Victims of Sexual Assault*, Washington, DC: U.S. Department of Defense.

[8](#) Some publicized examples include the Duke University lacrosse case; the Kobe Bryant case; and a recent case involving a Portland, Oregon, ambulance paramedic who posted information about a victim and her assault on MySpace.

[9](#) Formerly referred to as a "rape kit," and sometimes referred to as a biological forensic examination kit (Bio Kit) or Physical Evidence Recovery Kit (PERK Kit). Because medical forensic evidence is collected from victims of other sex crimes in addition to rape, and because the evidence collected may include items such as clothing

and bedding, the term "sexual assault evidence collection kit" is used in this document. Additionally, the term "rape kit" may be misconstrued to refer to the items a perpetrator uses against the victim.

## Resources

- [Resources for Laws and Statutes](#)
- [Resources for Model Confidentiality Policies and Practices](#)

### Resources for Laws and Statutes

[National Center for the Prosecution of Violence Against Women](#) (See [State Statutes](#))

44 Canal Center Plaza, Suite 110  
Alexandria, VA 22314  
703-549-4253

[National Crime Victim Law Institute](#) (See [NCVLI Library](#))

10015 SW Terwilliger Boulevard  
Portland, OR 97219  
503-768-6819

[VictimLaw](#)

[Victim Rights Law Center](#)

18 Tremont Street, Suite 220  
Boston, MA 02108  
617-399-6720

### Resources for Model Confidentiality Policies and Practices

Connecticut Sexual Assault Crisis Services, Inc. *Advocating for Victim/Survivors of Sexual Assault While Protecting Their Privacy*. East Hartford, CT: Connecticut Sexual Assault Crisis Services, Inc., 2006.

Connecticut Sexual Assault Crisis Services, Inc. *Confidentiality: The Foundation of Healing*. East Hartford, CT: Connecticut Sexual Assault Crisis Services, Inc., 2004.

[FAQs on Survivor Confidentiality Releases](#) (National Network to End Domestic Violence)

[Privacy of Victims' Counseling Communications](#) (National Center for Victims of Crime)

[Safety Net: National Safe and Strategic Technology Project](#) (National Network to End Domestic Violence)

[Survivor Confidentiality and Privacy: Releases and Waivers At-A-Glance](#) (National Network to End Domestic Violence)

## What Is Confidentiality?

### Confidentiality Is Vital

In 2002, Connecticut Sexual Assault Crisis Services, Inc., surveyed sexual assault victims residing in the state of Connecticut.<sup>3</sup> All victims surveyed said that it was "important" or "very important" that what they said or shared with a sexual assault crisis advocate be kept confidential. The victims did not want the details of their assaults, their feelings, or their situations shared. However, initial fears about going to a sexual assault crisis center subsided when they understood that services were confidential.

This feedback is consistent with findings reported in *Rape in America*,<sup>4</sup> which states that "victims are extremely concerned about people finding out and finding reasons to blame them for the rape." Thus, victims are often reluctant to report a rape because they are afraid that others will blame them, their families and other people will find out, details of their lives will be disclosed, and their names will be made public by the news media. When services are not confidential, victims are clearly hesitant to seek the help they need and deserve.

## Confidentiality Is the Foundation of Healing

If the effects of trauma are disempowerment and disconnection from others, then the objective of recovery is to empower the victim and establish new connections.<sup>5</sup> Confidentiality plays a vital role in the recovery process because it helps establish an environment in which victims feel more comfortable seeking assistance, making connections, and exercising their power within their right to choose what information to share, with whom, when, and how. Thus, confidentiality is a fundamental component of the relationship between a victim service center, a sexual assault victim advocate, and a victim.<sup>6,7</sup> The victim agrees to full self-disclosure and truth-telling, and the sexual assault victim advocate agrees to maintain the victim's confidence. Essentially, a social contract is formed between the center, advocate, and victim.

A victim services center and its advocates, staff, and volunteers fill a unique and critical role. Their purpose is to ensure that victims know about their rights and options and the resources available to them so that the victim can make well-informed decisions. The more the victim learns to trust and find support in the relationship, the more the victim will have the capacity and strength to work through the assault and move forward. The advocate must offer a relationship—free of judgment, coercion, and betrayal—to each victim. The relationship must be based on the discussion and limitation of confidentiality, the promise that the advocate will do their best to uphold confidentiality, and the promise of immediate notification if confidentiality has been breached.

## Recommendations for Coalitions, Programs, Victim Service Centers, and Advocates

- Develop, implement, and consistently enforce comprehensive confidentiality policies and procedures.
- Identify local, state, and federal laws, policies, and procedures that support victims' right to privacy.
- Identify systems' policies and procedures that diminish victims' right to privacy, and develop appropriate responses.
- Train sexual assault victim advocates (including staff and volunteers), board members, and other agency and program staff on confidentiality practices, including program policies and procedures; local, state, and federal privacy protections; systems advocacy needs; and tips for protecting victims' right to privacy.

## Exceptions to Confidentiality

Mandated reporting is often considered the classic statutory requirement related to confidential information, and training for sexual assault victim advocates frequently emphasizes the exceptions to confidentiality. While it is important for the advocate to know the mandated reporting requirements, understanding the ways that advocates and victims can prevent the unnecessary sharing of victims' private information is equally important. The focus of this guide is on strengthening sexual assault victims' right to privacy. Therefore, the fact that exceptions to confidentiality are only mentioned in this document rather than thoroughly explored is intentional.

## Key Confidentiality Principles

Protecting privacy is difficult. To succeed, an advocate should remember to uphold these principles and immediately contact the victim service director and victim if confidentiality has been breached.

- **All information about the victim, stated or inferred, belongs to the victim.** With few exceptions, written notes and materials, and the fact that a victim has sought or received services are confidential.
- **The role of a sexual assault victim advocate is unique.** An advocate must treat the victim's privacy with the utmost respect by upholding that right. The advocate should inform victims that they have the

right to refuse to provide any personal, confidential information about themselves to police, hospital staff, prosecutors, other counselors, coworkers, family members, and friends. Personal information includes sexual orientation, past sexual history, HIV status, medical and mental health history, and conversations with a spouse, attorney, religious counselor, or health care provider. Also, an advocate must discuss with the victim the possible consequences of sharing or not sharing information (for example, how this could be used in court proceedings) so that the victim can make informed decisions.

- **The victim service center's policies and practices are the fundamental support for maintaining victims' privacy.** Privileged communication laws are not enough to protect confidential information. Program policies can address the full range of privacy rights and expectations for all clients. Furthermore, community stakeholders need to be informed that advocates do not share information because advocates believe that victims' right to privacy and ability to control personal information is central to their healing and recovery.
- **A victim's decision to disclose information must be voluntary and free from pressure.** A victim has the right to explore options and to make decisions related to private information. The advocate's role is to provide and discuss options that will help the victim decide if, when, how, and with whom confidential information will be disclosed. Any decision made by the victim must be respected and honored. The advocate must refuse to disclose the victim's confidential information. However, an advocate and center should understand that their ability to protect a victim's right to privacy to the full extent of the law may vary depending on the law of that jurisdiction. These decisions and actions should be made with the assistance and advice of legal counsel. This may mean incurring attorneys' fees, that the media becomes involved, or that the advocate or center risk contempt of court penalties. Upon hiring of staff and volunteers, the victim services center should provide a confidentiality agreement that fully informs staff and volunteers of this obligation, the risks, their responsibility, and best practices for protecting the security of a victim's information.
- **Advocates can release information only with the informed consent and authorization of the**

means that the victim has been fully informed of the potential benefits and risks of releasing confidential information and the victim fully and freely consents to do so. The victim's authorization to release information should be made in writing. The authorization should be time-limited and specific regarding the information to be shared and with whom that information will be shared.

- **A victim can withdraw the authorization to release information at any time** and the advocate should inform the victim of this option. Also, the advocate should explain that withdrawing the authorization does not affect the release of any information already disclosed, and that the victim does not have control of or the ability to retract information previously released.

## Challenges

Understanding the advocate's role as wholly distinct from those of other service providers is one of the greatest challenges to supporting victims' right to privacy. Advocates come from disciplines with different and sometimes looser standards regarding confidentiality. New advocates may assume that, when working with people who "have the best interest of the victim" at heart, sharing information is okay. Advocates may also perceive the ultimate mission to end sexual violence as a rationale for sharing information.

Furthermore, we live in a world in which we are increasingly asked to provide information (e.g., contact information, e-mail addresses, Social Security numbers, birth dates) to receive some type of service or benefit (e.g., shopping discounts, newsletters). Providing information has become a rather routine occurrence, and sexual assault victim advocates and victims may not necessarily think to question whether the information being requested is necessary and in the best interest of the victim.

[Confidentiality Breaches](#)

[Pressures To Violate Confidentiality](#)

[Mandated Services](#)

[Advocates as Interpreters](#)

[Risk Management Issues](#)

[Crimes Against Advocates and Centers](#)

## Confidentiality Breaches

Confidentiality breaches are violations of the obligation to keep information private. Nevertheless, people—including victims' family members, service providers, and other professionals—frequently believe that sharing information is necessary to help the victim and to keep the community safe. However, they generally fail to understand the effects that sharing information may have on the victim in her community, home, school, and work environment. When information is shared, victims can and often do experience at least one of the following: discrimination, eviction, job loss, harassment, threats, injury, or death.<sup>8</sup> Thus, with the exception of legally mandated information, make every effort to ensure that information is shared only with the victim's fully informed consent and at the victim's request.

The subpoena (a court order that demands records or testimony be produced in a civil or criminal proceeding) is probably the most commonly identified threat to confidential communications between victim and advocate. However, everyday actions (such as a slip of the tongue or careless remark) can unintentionally disclose privileged information. Confidentiality breaches are more likely to occur when the sexual assault victim advocate and victim are not fully aware of the privacy rights of sexual assault victims and the steps that can be taken to protect those rights. Training can help advocates to recognize the importance of victim confidentiality and to identify means of protecting victim information.

### **Pressures To Violate Confidentiality**

Sexual assault victim advocates often face pressure to violate victims' confidential communications. Individuals acting in a different capacity than a sexual assault victim advocate may be unaware or may not fully understand the complex nature of the confidentiality restrictions placed on advocates by law, center policies, and the wishes of victims. For example—

- Parents or guardians of an offending or non-offending minor may feel that they have a right to information about their child.
- Residential facility staff and school personnel may seek information for a variety of reasons (e.g., regarding the case specifically or campus needs in general).
- Defense attorneys are interested in confidential information for obvious reasons (i.e., to distort victims' accounts, to discredit victims, to effectively defend their clients in cases where damages are being sought, etc.).

In spite of these pressures, it is the advocate's responsibility to be informed about the state/territory victim's rights laws and to uphold the privacy rights of sexual assault victims.

In addition, many individuals play a role in assisting victims, including sexual assault nurse examiners (SANEs), sexual assault forensic examiners (SAFEs), and other health care providers; professionals responding to situations involving the survivor's personal safety (possible threats of homicide or suicide); multidisciplinary teams, such as sexual assault response teams (SARTs); police investigators; prosecutors; and state agency representatives from child protective services and other mandated reporting agencies. These professionals routinely gather information as part of their jobs in an effort to help the victim and are likely to seek information from the victim's advocate.

Because the advocate works in the interests of the victim, the advocate may feel that sharing information with other professionals may be appropriate. Nevertheless, the advocate works at the direction of the victim and should share information only at the victim's request and with the victim's informed consent, except when release of information is required by law. In such cases, the advocate should immediately notify the victim that the advocate will be making a mandatory report and the extent of information that will be covered by the report.

If the advocate does not comply with a third party's request for confidential information, the advocate runs the risk of alienating or angering that person. The advocate may be accused of "obstructing justice," not being a team player, or not helping the victim. Even though saying "no" can be difficult in such situations, the advocate must maintain their role as an advocate for the victim and respect the victim's confidentiality. When declining to share information with other professionals, the advocate should explain that sexual assault victim advocates have a responsibility to maintain victims' confidentiality and cannot share information without the victims'

informed consent. Providing this explanation to a third party can help to clarify limitations and maintain working relationships.

The advocate's role is to respect victims' confidentiality while advocating for victims. In response to requests for information, advocates must continue to maintain victims' confidentiality and to educate others about their unique roles. Cross-discipline training, interagency coordination, and protocol development regarding confidentiality can help alleviate many of the confidentiality issues that arise when attempting to provide comprehensive, collaborative services for victims of sexual assault.

## **Mandated Services**

Forcing a victim to accept sexual assault crisis services is inconsistent with the survivor-centered empowerment model. The model assumes that a survivor freely chooses to seek such assistance and is motivated to do so by a genuine and strong interest in getting help to address and resolve sexual assault issues. For example, a victim who is mandated by child protective services or under a court order to receive assistance is not doing so of her own free will. Under such conditions, the victim may believe that anything she says or shares with the sexual assault victim advocate will be reported to the mandating agency or official.

In these cases, the advocate must work with the victim to establish trust and set boundaries as to what will and will not be reported back to those who must know that services have indeed been received. At best, that information should be limited to the fact that the victim has received certain services on certain dates and has fulfilled the mandate imposed. Developing interagency agreements to specify what information will be shared and how that information will be shared—on an overall agency basis versus case-by-case—can help to promote respect for victims' confidentiality and support the advocate in establishing trust with mandated clients. For example, one solution is to develop a sheet that the victim can carry with her and turn into the ordering agency that is signed by the advocate for each service. This puts the victim in charge of the information and prevents any unauthorized release of information.

## **Advocates as Interpreters**

Only qualified individuals should serve as interpreters. Nevertheless, sexual assault victim advocates who are fluent in languages other than English are sometimes asked by police, prosecutors, and other professionals to provide interpretive services for victims. In these cases, even if the advocate is a qualified interpreter, it can be difficult to maintain the boundary between the interpreter's role and the sexual assault victim advocate's confidential role. For example, just as a sexual assault victim advocate is accountable to the victim, a court interpreter is accountable to the court. However, if an advocate serves as an interpreter, the advocate becomes a part of the investigative process and may end up having to testify against the best interest of the victim. Thus, an advocate must not serve as both sexual assault victim advocate and interpreter, and must explain the possible consequences to the victim before ever serving as both advocate and interpreter.

## **Risk Management Issues**

Sexual assault crisis centers may be required to file incident reports or to complete insurance forms that could contain confidential information about a victim. These forms may need to be filed with individuals who are not required to keep such information confidential. An advocate should discuss this with a victim who is injured or is a witness to another's injury. If the victim decides to give informed consent to include the required personally identifiable information on the forms, the advocate should request the release in writing. If the victim does not give informed consent, the advocate can file the form but must note that certain confidential information cannot be included at that point in time.

## **Crimes Against Advocates and Centers**

Some of the most difficult cases may occur when a victim is involved in a crime committed on a sexual assault crisis advocate or center property. Because the identity of a person receiving services at a center is confidential, the center may struggle with how to report the crime to police, apprehend the perpetrator, or seek the return of stolen property. The argument can be made that a victim who commits a crime against a staff



member or on center property waives the right to confidentiality regarding identification as a person who has received services at the center. The center can include this in its confidentiality policy, which all advocates should review with each victim at initial contact.

Not all individuals who contact sexual assault crisis centers as victims are entitled to confidential services. Take into consideration whether the individual is (1) a victim, (2) seeking and using services, and (3) abiding by established standards of conduct (e.g., laws). Sometimes individuals pose as victims and make threatening or sexually harassing telephone calls to sexual assault crisis centers and advocates. A victim service center staff member or volunteer should inform the caller that a report of the call will be made to the proper authorities, including police. Also, the staff member or volunteer should immediately notify a supervisor upon receiving threatening or harassing communication.

## Protections for Victims' Right to Privacy

### Policies and Procedures

The best way that a sexual assault crisis and victim services center can ensure that confidentiality is maintained is by establishing comprehensive written policies and procedures that are distributed to, discussed with, and understood by staff, volunteers, and board members; given and explained to victims; and annually reviewed and updated by board members and executive staff.

A **comprehensive confidentiality policy** should include the following:

- Confidentiality policy statement.
- Exceptions to the policy.
- Procedures for notifying victims of the policy.
- Procedures for ensuring compliance with the policy.
- Procedures for collecting, storing, and disposing of records.
- Procedures for ensuring that victims have given informed consent, preferably in writing, when waiving their right to confidentiality.
- Confidentiality for support groups.
- Procedures for providing confidential services to minors.
- Procedures for internal communications and supervision.
- Procedures for responding to subpoenas.

The center should have clear and comprehensive written procedures and protocols on file to ensure the consistent application of its confidentiality policy.

A **confidentiality agreement** should be signed by all staff, volunteers, student interns, and board members. The confidentiality agreement should include the printed name of the individual, the date, and the individual's signature, which should be witnessed by at least one other person. The confidentiality agreement also should state, minimally: the center's confidentiality policy; exceptions to that policy; the consequences of violating confidentiality policies (such as serious disciplinary action or termination); and, for dual sexual assault and domestic violence shelter programs, an assurance that the individual will not disclose the location of the shelter. The confidentiality agreement should be signed prior to beginning work with the center (for example, as part of orientation). The original signed agreement should be kept in the employee's or volunteer's personnel file or a similar file, and the individual who has signed the agreement should receive a copy.

Sexual assault crisis and victim service centers should also have a policy for recordkeeping and security of program records. **Victim records should be minimal**, containing only information that is necessary to provide the services being sought by the victim.

Victim files should **not** include the following:

- A victim's verbatim statements.
- Clinical diagnoses, speculations, or any medical information.
- Notes, memos, or internal communications from volunteers or other staff regarding the victim.
- Diaries or personal notes kept by the victim.
- Information from other sources (such as medical records or police reports).

A center can further protect the security of victim information by keeping records in locked file cabinets or drawers that are only accessible to certified sexual assault counselors. Access to victim records by auditors, funders, or government oversight agencies should be limited to aggregate data and nonidentifying victim information; personally identifiable information can be redacted from copies of records if needed. A center should destroy old records in a timely manner to ensure that no confidential information is disclosed and should establish a means for the proper destruction of victim-related material on computer backup media.

[Resources for Model Confidentiality Policies and Practices](#)

### **Consistent Advocacy Practices**

When a center and advocate consistently uphold victims' right to privacy, others will be more likely to respect that right. Enforcing clear, comprehensive center policies and procedures helps consistently maintain confidential communications. Advocates who are aware of victims' local, state, and federal privacy rights have additional tools to use to protect victims' privacy and to help victims protect their own privacy.

[Resources for Model Confidentiality Policies and Practices](#)

### **Laws, Statutes, and Regulations**

Laws, statutes, and regulations create victims' right to privacy. For example, protections for client confidentiality are included as conditions of funding from the Victims of Crime Act (VOCA) and Violence Against Women Act (VAWA). Both sources of federal funding are commonly used to serve sexual assault victims. In today's data-rich society, a growing number of state and federal laws protect data privacy and the confidentiality of information obtained in certain professional relationships (the Health Insurance Portability and Accountability Act [HIPAA], for example).

Victim service centers and advocates should be well versed in the protections afforded to victims in local state/territory statutes. Furthermore, keep in mind that consistent use and enforcement of clear, comprehensive center confidentiality policies and procedures will maintain victims' confidential communications most effectively.

[Resources for Laws and Statutes](#)

### **Tips**

Ensure that victims are fully informed of their rights; the options, benefits, and resources available to them; and the possible risks involved. After discussing their options, many sexual assault victims decide to seek assistance, including health care and legal remedies, and willingly provide information about the assault. An advocate can support victims in these decisions by providing information, referrals, accompaniment, advocacy, and other services.

The greater challenge typically exists when victims do not wish to disclose details of an assault. As always, an advocate should ensure that victims are aware of the available options and the potential benefits and risks of

those options so that they can make well-informed choices that are in their own best interest. For example, an advocate should ensure that victims understand how the criminal justice system works and how a delay in reporting the crime can have a negative impact on other evidence collection and the ability to prosecute the crime later.

Nevertheless, in this tell-all society, victims typically face strong encouragement, expectations, and pressure to share confidential information. The tips that follow take this into consideration and are intended to support victim service centers' and advocates' work with all victims (regardless of the victims' decisions about reporting the crime). Furthermore, in discussing the options with victims, advocates should present the options as considerations rather than directives.

[Decrease the Spread of Information](#)  
[Create Less Information](#)  
[Know What Information Is Kept and Used](#)  
[Inform Victims of Court Protections](#)

## **Decrease the Spread of Information**

You can support victims' right to privacy by telling victims how to decrease the spread of their information. For example, the victim can—

- Refrain from sharing details about injuries sustained or causes of conditions with anyone—including doctors, nurses, police, prosecutors, friends, family, coworkers, social workers, or counselors—unless absolutely necessary for a specific purpose (e.g., obtaining vital services, such as emergency medical care, and assisting law enforcement in their investigation of the crime). Once an advocate has discussed service options with the victim and the victim has decided which services she desires, an advocate should help the victim identify information that is essential to those services. For example, a victim experiencing posttraumatic stress disorder (PTSD) may wish to seek leave from employment under the Family Medical Leave Act. Her employer may ask for a medical certification, which must include a description of the serious health condition; however, the cause of the condition is not required.
- Keep in mind that having evidence collected does not necessarily mean that the victim must report the

VAWA (Violence Against Women Act) formula grants, victims can receive a forensic medical exam<sup>9</sup> and have it paid for by the state/governmental entity, regardless of whether the victim cooperates with the criminal justice system or law enforcement. If a health care provider reports to law enforcement that they have treated a victim of sexual assault, the victim does not have to talk to law enforcement. The victim's advocate should discuss the available options and the potential consequences of those options with the victim. For example, any delay in the investigative process may affect the outcome of the case. In addition, because of the legislative and state changes, it is vital that advocates have the most up-to-date information about how their state or territory is adhering to their respective reporting laws.

- Refrain from sharing information about seeing a therapist with police, medical care providers, and others.
- Ensure that any medical information that will be shared is necessary, specific, and limited (if the victim decides to sign a waiver).
- Tell the victim's providers (e.g., physician, therapist, insurance company, pharmacist) not to release the victim's information without the individual's explicit consent.
- Ask the victim's providers to notify the victim if her medical records are ever subpoenaed and by whom they are subpoenaed. Ask the prosecutor to immediately notify the victim if the prosecutor is aware of any subpoenas for the victim's records.
- Write to the victim's providers to request that they communicate with the victim in a way that maintains the victim's right to anonymity. For example, the victim can request that mailings be sent in a closed envelope instead of by postcard, that mail be sent to a post office box instead of a street address, or that calls be placed to her home instead of her work (or vice versa).

- Ask the victim's providers to restrict how her information is used or disclosed to others in the health care business.

## **Create Less Information**

An advocate can also remind victims to consider service and payment options that create less documentation of privileged information. For example, a victim can—

- Withhold their insurance information from the hospital when consenting to a post-assault exam and evidence collection. (For example, in Connecticut, insurance information does not have to be provided to the hospital because the state is required to pay for both of these services for all victims of sexual assault. However, this is not the case in every state.)
- Protect the victim's anonymity through the use of a control number, if possible, should she choose to undergo the exam and evidence collection. (For example, in Connecticut, the hospital can assign a number to the victim and use this number in lieu of the victim's name on the evidence collection kit. An alternative from a control number, used in the District of Columbia (D.C.), is to have the hospitals, in partnership with the D.C. SANE program, mark the victim's medical record as "assault one" instead of "sexual assault.")
- Ask that treatment be provided in as private an area as possible and that voices be kept low so that others cannot overhear what is being said.
- If the victim is a patient in a hospital, an advocate should request that the victim's location (room number) and general condition not be disclosed to people and that this information, along with her religious affiliation, should not be listed in the hospital directory.
- Request a free, anonymous HIV test and/or confidential STI test at a designated site and keep the test results confidential. (For example, in Connecticut, specific sites are funded by the Department of Public Health to provide free, anonymous testing and confidential counseling.)
- Seek therapy from a licensed mental health care provider. If the provider is unlicensed or is a hypnotherapist, the victim's private information may not be protected by law. A victim's advocate should check state or territory laws regarding privilege to help the victim make this determination.
- Apply for victim compensation benefits to cover the cost of certain medical and mental health services. This option is available to victims who meet eligibility criteria. However, advocates should be prepared to discuss the possible implications of this option, including the potential waiver of privilege, with victims.
- Consider paying for certain medical services out-of-pocket, if possible, to minimize records (for example, insurance information) kept regarding treatment.
- Refrain from paying for health care and prescriptions with a credit card. Privacy laws do not apply to financial institutions. Theoretically, writing a check poses a similar privacy risk. Victims may want to pay with cash if possible.
- Consider who might have access to the victim's health information if she pays for treatment using a credit card, health insurance, and so forth, and how that information might be used (for example, to affect the victim's ability to get insurance in the future).

## **Know What Information Is Kept and Used**

Encourage victims to think about the information kept about them and how that information may be used. For example, a victim can—

- If seeing a therapist, ask for the diagnosis, what information is kept in writing, and with whom that information is shared. Keep in mind that HIPAA (the Health Insurance Portability and Accountability Act) contains a law enforcement exception that may affect some medical records.
- Write to providers (e.g., physician, therapist, insurance company, pharmacist) to request a copy of records.
- Request from the providers a list of the people and organizations to whom her personal information has been disclosed.
- Write to providers to ask that her records be corrected or deleted.

- Talk to providers' privacy officers about concerns.
- Become familiar with providers' privacy practices. This can be achieved by talking with providers' privacy officers or by reading the notice of privacy practices distributed by providers. Request privacy policies from social service providers, including the rape crisis center, as well.

## **Inform Victims of Court Protections**

The best way for a victim to protect her privacy during court proceedings is to be proactive about ensuring confidentiality when seeking other services. An advocate should discuss these strategies with the victim and let the victim know that these efforts can be enhanced by options through her attorneys. The following actions can be shared with a victim:

### **Criminal Justice**

- The victim can talk with the prosecutor about what evidence is turned over to the defense and request that photos from a sexual assault forensic exam, medical records, mental health records, and other records be protected, if possible. Although the defense will generally have a right to view these items during discovery, they may not have a right to copies.
- Should the defendant or defense lawyer (or prosecutor) attempt to ascertain confidential information in a criminal case, the victim can seek a protective order from the court, ask that private information be shared only under seal, or request in-camera review.
- Additional protections also may be available to limit media recordation and broadcast, to file under seal, to close courtrooms, to allow victims to testify via alternative methods, to address pro se defendants (defendants representing themselves without an attorney), and to limit examination and cross-examination.
- The police or prosecutor might be able to conceal the victim's identity by listing her name as a Jane Doe.

### **Civil Justice**

- In some states, a civil suit may be filed using a fictitious name (e.g., Jane Doe or John Doe) to redact the victim's identity from court filings, materials offered into evidence, and in open court.
- If the defense seeks information that is irrelevant or unlikely to lead to the discovery of admissible evidence in a civil case, the victim can file an objection, a motion for protective order, or a motion to quash an overly broad subpoena to limit the scope of inquiry.
- The victim can file a motion to seal sensitive records with a request for limitations on dissemination and copying.
- In a civil case, the victim can request destruction or return of any sensitive documents after the case has been closed, file a motion for a protective order and temporary restraining order to limit disclosures of sensitive materials, or request in-camera review of information.

In addition, rape shield statutes offer some protection for victims involved in court proceedings. If the victim fears that a sensitive past history of sexual conduct or abuse (that is irrelevant to the offenses charged) may be raised, the advocate may encourage the victim to contact an attorney to protect her interests. The prosecutor also has the ability to enforce the rape shield law, but the victim may have to reveal details about past sexual experiences to the prosecutor.

## **Conclusion**

CONNSACS developed this online guide to be of practical assistance to statewide sexual assault victim advocates, sexual assault coalitions, rape crisis centers, their boards of directors, volunteers, and staff through consideration of federal and state laws and policies regarding protections for sexual assault victims' right to privacy. CONNSACS' efforts have enhanced the capacity of sexual assault coalitions, programs, and advocates to uphold and raise awareness of sexual assault victims' right to privacy.