

Victims' Right to Privacy

Maintaining confidentiality is vital if sexual assault victims^{1,2} 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.³ 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*,⁴ 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.⁵ 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.^{6,7} 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