



Confidentiality Considerations When Providing Sexual Assault Advocacy Services to Minors

This publication provides general legal information for informational purposes only and is not intended as legal advice. You should contact your attorney for advice about any particular issue or problem. Laws change both as the result of legislative action and court decisions. The information here is current as of April 2013.

Confidentiality is the cornerstone of advocacy. While the basic principles of maintaining respect and privacy apply to survivors of all ages, consent and confidentiality issues become especially important and a bit more complex when the survivor is under the age of 18. By providing some clarity around these complexities, our hope is to ultimately increase minors' access to and utilization of advocacy services. Some of the issues that must be considered when working with minors are:

- Age of consent for services
- Agency policies and procedures with regard to minors
- Release of the minor's record and advocacy information
- Confidentiality with teens
- Confidentiality with children
- Mandated reporting
- Sexual Assault Protection Orders

Unless otherwise noted, we use the terms parent or nonoffending parent to refer to any nonabusing legal parent or guardian. We have also chosen to use the term client to refer to the person who signs the consent to services form. This could be the parent and/or the minor survivor.

Age of Consent for Services

Although Washington State law does not specifically address the age of consent for sexual assault advocacy services, there are other state statutes that support a minor's right to access the services they need without parental consent. Your agency should serve survivors of all ages and can create a policy that defines when a minor can independently consent to services.

Agency Policies and Procedures with Regard to Minors

Your agency must have a policy about consent to services that specifically addresses minors, and all staff should be familiar with that policy. A policy regarding informed written consent to services and confidentiality is specifically required under the Sexual Assault Accreditation Standards of the Washington Office of Crime Victims Advocacy (OCVA).

When providing services to minors, it is common that an agency will be simultaneously working with a parent or sibling. Be conscientious about your internal case staffing and information sharing practices when two or more advocates are working with multiple members of the same family.

Release of the Minor's Record and Advocacy Information

Remember that a release of information (sometimes referred to as an ROI) is NOT the same thing as consent to receive services. The Violence Against Women Act states that a release of information cannot be required in order for a client to work with your agency. An ROI is used only when a *client* wishes to have information released to another individual or agency, and it must be informed, written, and reasonably time-limited.

It may be helpful to review the following considerations when responding to a request for a release of information or assessing your agency's policies and procedures:

- Remember, it is always the client's information to share; it does not 'belong' to the advocate or the agency. Your agency should always follow the client's wishes after the client has the opportunity to make an *informed* decision about the release of the information.
- If a client waives privilege by signing an ROI, the specific information or record that is released becomes much more accessible to others. Advocates' ability to keep that information private and out of other people's hands is compromised. You cannot guarantee your client that the information will only be used for the intended purpose.
- Releases should always be as limited as possible in scope and time while still meeting the client's needs. A separate release form should be used for each individual or agency. An ROI should generally only be valid for the amount of time needed to share the information for the specified purpose.
- Does the client know what is in his or her record? Has the client specified the type of information the advocate can share? Does the client understand how the information could potentially be used and who may have access to it?

- The Violence Against Women Act provides that if a minor is allowed to receive services without parental consent, the minor has control over the release of information.

Confidentiality with Teens

Your agency's confidentiality policy should be applied to the individual consenting for services, whether a minor or an adult. Thus, if your agency allows a minor to consent to your services independently, the minor's information should be kept confidential except when fulfilling your mandated reporting requirements or in complying with a court order.

The basic principles of confidentiality with teens are:

- Respect and protect the independent client relationship between the teen and the advocate.
- Empower the teen with information.
- Explain the teen's legal rights.
- Explain the limitations that exist due to the client's status as a minor, such as mandated reporting, at the onset of advocacy so the minor can make an informed decision about what to share.
- Because nonoffending parents can provide vital support for teens, discuss the pros and cons of parental involvement, while respecting the teen's wishes.
- If a parent brings his or her teen to your agency and requests services, services should only be provided if the teen desires and consents to them.
- If a teen who is above the age of consent for services, according to agency policy, has independently consented for services and does not want parental involvement in advocacy services, the agency must fully respect the teen's confidentiality and not release information to the teen's parent without the teen's written consent.
- If a nonoffending parent accompanies his or her teen to your agency, but the teen does not want the parent directly involved in his or her advocacy services, offer the parent separate advocacy services as a secondary survivor (preferably with a different advocate). Clearly explain your boundaries, the teen's right to confidentiality in accordance with your agency policy, and the value of confidential services for teens. You can also talk with parents generally about the services your agency provides in an effort to alleviate parents' concerns without disclosing any confidential information about your work with the teen.

Confidentiality with Children

For children, the nonoffending parent stands "in their shoes" as the one who ultimately makes decisions about consent to services and release of information.

Here are some principles of confidentiality to consider when working with children:

- In this situation, both the nonoffending parent and the child are the agency's clients, but the parent is the ultimate decision maker. Thus, advocates need to talk with parents about the potential impacts on the child of their decision to sign a release of information or seek a protection order on their child's behalf.
- While the nonoffending parent is the one who must provide consent to services, it is important to respect the child by providing age-appropriate explanations and involving the child in decision-making when this is reasonable. Children should be invited to sign consent-for-service forms along with their parent if they are able to do so. If they are unable to sign, this should be documented along with a statement that their rights were explained to them.
- Only the presenting, nonoffending parent needs to sign for consent to services or release of information, even if both parents have custody. The Violence Against Women Act explicitly states that a parent who is abusive to the child or the other parent cannot release the child's information.
- If your agency is concerned about navigating parenting plans or court orders that may restrict a parent's rights, it may be helpful to add a question on your consent-to-services form that asks the presenting parent to confirm that they have decision-making authority over the child. That way your agency is not in the position of interpreting legal documents; this responsibility lies with the parent.
- The presenting parent must sign a release of information if they wish for anyone else, including extended family members, to be involved with the child's services and/or have access to information.
- Information about mandated reporting should be given both to the parent and to any child who is old enough to understand this information.
- There may be situations in which a child wishes to speak to the advocate confidentially. The advocate should clarify the limitations to confidentiality with both the parent and the child.
- It may be beneficial to explain to parents the value of allowing children to have a "safe space" to talk privately with an advocate. Be sure that parents understand this is not a criticism of their parenting abilities; children may want to spare parents' feelings or simply be embarrassed to talk about certain things in front of parents.
- Advocates should always keep the child's best interests in mind before sharing information with the parent, and should view confidentiality concerns from the child's perspective.
- Advocates should still advocate for the child by asking them questions such as what they want or how they feel, even if the child is not the ultimate decision-maker.

- Never make promises you cannot keep, about confidentiality or anything else.

Mandated Reporting

Advocates are mandated reporters if they suspect a child (anyone under the age of 18) or vulnerable adult is being abused or neglected. Advocates should be well-acquainted with Washington law and procedures for reporting suspected abuse or neglect, including CPS and law enforcement access to records following a mandatory report (RCW 26.44.030 discussed below).

All clients, regardless of age, should be informed of the possibility of mandated reporting prior to receiving services. A victim-centered approach to mandated reporting includes:

- Explaining your obligation in a developmentally appropriate way
- Discussing this obligation beyond your initial meeting or conversation
- Telling clients what information you need in order to make a report so they can make informed decisions about what they choose to share
- Consulting with a supervisor before making a mandatory report
- Informing the client if a report needs to be made, offering the client the opportunity to be involved in the reporting process, and explaining what may happen following the report.
- Processing the implications of the report with the client. For example, how might it affect peer or family relationships? Could the report and subsequent investigation reveal the client's sexual or gender identity? Is a safety plan needed?

Sexual Assault Protection Orders

Sexual Assault Protection Orders (SAPOs) for young people raise a number of confidentiality considerations.

- Individuals 16 and older can self-petition ([RCW 7.90.040](#)), but it is important for victims to know that SAPOs are public records that could be viewed by parents, friends, or others even if those people are not part of the petition process.
- Full names are typically used on SAPOs instead of initials because the respondent needs to know who is petitioning. Furthermore, if SAPOs are to be enforced, other people need to be aware of them (such as police, school, neighbors, or employers), so there are privacy tradeoffs.
- If the victim is 15 and younger, parents can petition on the child's behalf without telling the child.
- If the respondent is 15 and younger, the respondent's parents must be served with notice of the petition and the hearing. If the respondent is 16

- or 17, it is still a good idea to serve the respondent's parents when possible but it is not required.
- Be aware of your local court's practices that may have implications for minor confidentiality. For example, some judges may ask that the courtroom be cleared prior to a SAPO hearing while others may proceed with a full courtroom. In some counties, judges may require a child victim to testify in a sexual assault protection order hearing due to evidentiary rules.

General Laws Regarding Confidentiality of Advocacy Services and Records

[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."

[RCW 70.125.065](#)—"Records maintained by a community sexual assault program and underserved populations provider shall not be made available to any defense attorney as part of discovery in a sexual assault case unless..."

- The defense attorney follows a specific procedure to request the records be released; AND
- The judge finds that the records are relevant and conducts an in camera review; AND
- The judge finds that the right of the defendant to have the program's records as evidence outweighs the victim's privacy interest in keeping the records confidential.

Since the release of records is ultimately determined by judges, the confidentiality of those records cannot be understood or explained to clients as an *absolute*. Thus, advocates should be conscientious in their record keeping—is what I am recording serving my client and/or necessary for my work with them? Is it more useful or damaging?

[RCW 26.44.030\(12\)\(b\)](#)—"In conducting an investigation of alleged abuse or neglect, the department (Child Protective Services) or law enforcement agency...shall have access to all relevant records of the child in the possession of mandated reporters and their employees."

Note: The following tips are taken from the resource, *Responding to Information Requests from DCFs*, by the Washington State Coalition Against Domestic Violence. This resource is linked below.

- Records can only be accessed *during* the investigation. If the case has progressed to voluntary services or a determination has been made, the investigation period is over and CPS must go through the courts to obtain access (unless your client has signed a written release).

- “Relevant”—this statute only applies to the records of the *child, not the parents*. If your agency is providing services to both the child and the parent, they should have separate files. Ask yourself, what information in the child’s file would help a person determine the risk of child abuse or neglect? If called into question, would you be able to defend your reasoning for what you perceived as relevant to the investigation?
- CPS and law enforcement only have the right to ask for *written* records. Without a release from your client, you cannot share the content of any privileged communications.
- Following a request for information from CPS or law enforcement, the advocate should notify the client and explain what information will be provided and why.

Remember, it is always best practice for advocates to speak with their supervisors when questions arise about the meaning and application of agency consent and confidentiality policies within the context of a specific advocacy situation.

This document contains best practice recommendations, some of which were informed by a review of Washington State laws and The Violence Against Women Act. The majority of Community Sexual Assault Programs in Washington State are VAWA-funded and must therefore comply with these funding requirements. All programs providing sexual assault advocacy services in the state should comply with VAWA funding requirements to ensure eligibility for VAWA funding. Before implementing or modifying agency policies, each agency should also review additional funding requirements to ensure compliance.

Reading, Resources & Tools

FAQ's on Survivor Confidentiality Releases

National Network to End Domestic Violence

<http://nnedv.org/resources/safetynetdocs/208--faqs-on-survivors-confidentiality-releases.html>

Strengthening Sexual Assault Victims' Right to Privacy

Online Guides from OVC

<http://www.ojp.usdoj.gov/ovc/publications/infores/VictimsRightToPrivacy/aboutguide.html>

Mandated Reporter Toolkit

Washington State Department of Social and Health Services

<http://www.dshs.wa.gov/ca/safety/abuseReq.asp??>

From Hurt to Hope

WCSAP's Child Advocacy Guide

<http://www.wcsap.org/hurt-hope-child-sexual-abuseassault-advocacy-guide>

Responding to Information Requests from DCFS

Washington State Coalition Against Domestic Violence

http://www.wscadv.org/docs/Responding_to_DCFS_info_requests.pdf

Teen Sexual Assault Survivors: Legal Impacts and Considerations

WCSAP Connections, Winter 2009

<http://www.wcsap.org/teen-sexual-assault-survivors-legal-impacts>

Technology and Confidentiality Resources Toolkit

A project of the National Network to End Domestic Violence, The Confidentiality Institute, and The Office Of Violence Against Women

<http://www.nnedv.org/tools/>

Rights of Child Victims and Witnesses

[RCW 7.69A.030](#)

S. 47 Violence Against Women Reauthorization Act of 2013

<http://www.gpo.gov/fdsys/pkg/BILLS-113s47enr/pdf/BILLS-113s47enr.pdf>

Child Advocacy: Setting National Standards

Department of Health, United Kingdom [While this is from another country, the philosophical principles about serving child advocacy clients are well worth reading.] http://www2.essex.ac.uk/clc/hi/childright/article/193/cR193_4.pdf