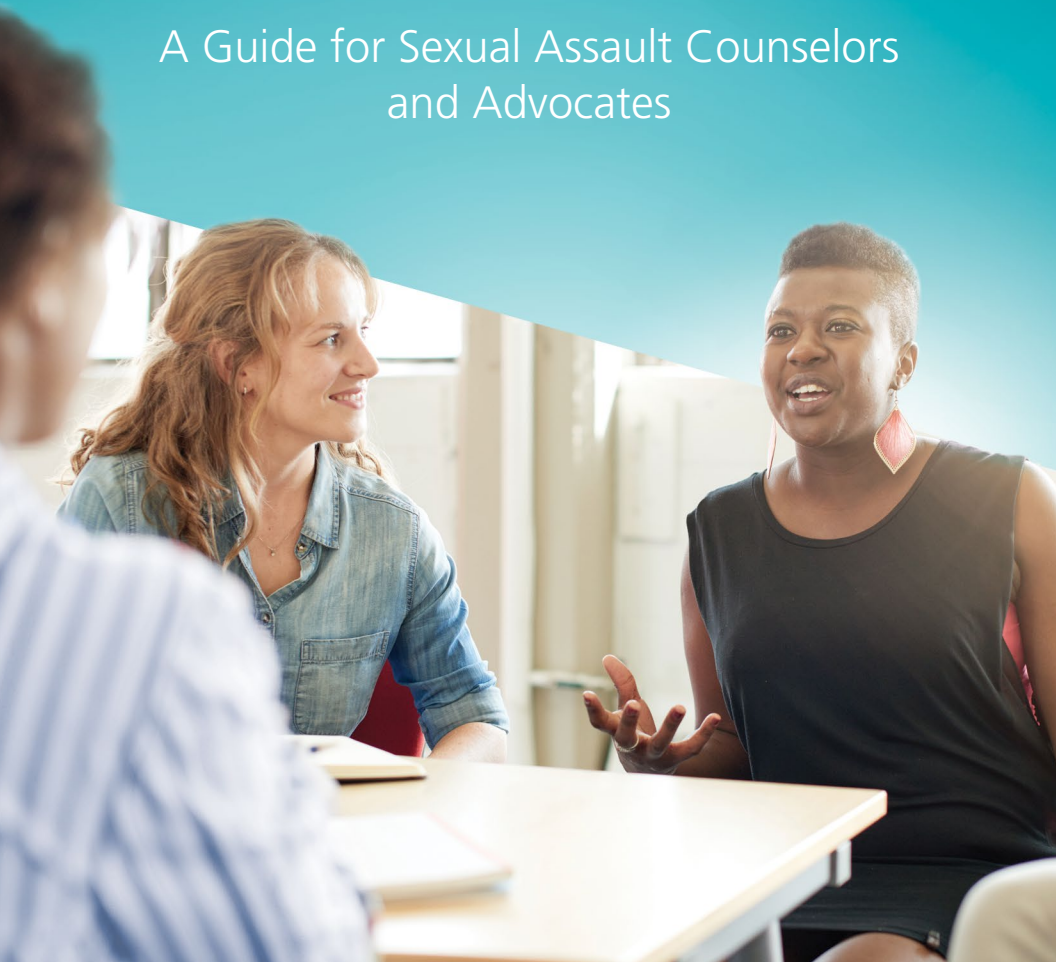


Parameters of Privilege and Confidentiality when Collaborating with Community Partners

A Guide for Sexual Assault Counselors
and Advocates





Introduction

The complexity and far-reaching effects of sexual assault warrant the efforts of multiple disciplines. Survivors are not adequately served in silos. Collaboration is essential to promoting a path of healing and wholeness. This resource guide will assist sexual assault counselor/advocates and members of multidisciplinary teams in working together to meet the needs of survivors of sexual abuse, harassment, and assault across Pennsylvania.

A key component of survivor-centered, trauma-informed advocacy involves returning power back to the survivor.

Client-centered, Trauma-informed Advocacy

At the core of advocacy is the survivor's safety, needs, wishes, and well-being. A key component of survivor-centered, trauma-informed advocacy involves returning power back to the survivor. The survivor is respected as the ultimate expert in their life and with that expertise directs the course of services and makes choices in their best interest.

The Sexual Assault Advocate's Role

The primary goal of the sexual assault counselor/advocate is to promote the well-being of survivors, promote their right to self-determination, and assist survivors to identify and pursue their goals (Pennsylvania Coalition Against Rape [PCAR], 2016, p. 166). The counselor/advocate is a source of support and information to the survivor. Counselor/advocates may provide multiple services including confidential counseling, crisis intervention, individual and systems advocacy, information and referrals and accompaniments to legal, medical and other appointments to support a survivor in their healing process.

What Makes the Sexual Assault Advocate Unique

Sexual assault counselor/advocates are mandated by law to keep communications with survivors confidential. This is called a statutory privilege.



Privileged Communication

42 Pa. Cons. Stat. Ann. § 5945.1. Confidential communications with sexual assault counselors

No sexual assault counselor or an interpreter translating the communication between a sexual assault counselor and a victim may, without the written consent of the victim, disclose the victim's confidential oral or written communications to the counselor nor consent to be examined in any court or criminal proceeding. (42 Pa. Cons. Stat. Ann. § 5945.1(b)1)

The sexual assault advocate should always be aware of the surroundings when interacting with clients. Ideally, to maintain privacy, communications should take place behind closed doors. When providing advocacy in a public place, if the conversation is overheard, the privilege may be jeopardized; this could include cell phone calls in a public hallway, and conversations in a hospital room or at the court house. At all times, an advocate must proactively protect confidential communications.

The statute includes definitions for the relevant terms that govern the work that sexual assault counselor/advocates do. Those terms and definitions are listed below:

Confidential communication

All information, oral or written, transmitted between a victim of sexual assault and a sexual assault counselor in the course of their relationship, including, but not limited to, any advice, reports, statistical data, memoranda, working papers, records or the like, given or made during that relationship, including matters transmitted between the sexual assault counselor and the victim through the use of an interpreter.

Coparticipant

A victim participating in group counseling.

Interpreter

A person who translates communications between a sexual assault counselor and a victim through the use of sign language, visual, oral, or written translation.

Rape crisis center

Any office, institution or center offering assistance to victims of sexual assault and their families through crisis intervention, medical and legal accompaniment and follow-up counseling.

Sexual assault counselor

A person who is engaged in any office, institution or center defined as a rape crisis center under this section, who has undergone 40 hours of sexual assault training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.

Victim

A person who consults a sexual assault counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused or reasonably believed to be caused by a sexual assault. The term shall also include those persons who have a significant relationship with a victim of sexual assault and who seek advice, counseling or assistance from a sexual assault counselor concerning a mental, physical or emotional condition caused or reasonably believed to be caused by a sexual assault of a victim.

What makes the Sexual Assault Counselor/ Advocate Different From Other Advocates and Service Providers?

Critical to the relationship between the sexual assault counselor/advocate and the survivors served is the counselor's commitment to respect and protect the survivor's privacy. Society, through the legislative governing body, has determined that the relationship between the sexual assault counselor/advocate and a survivor of sexual assault must be protected, and therefore created an absolute privilege to protect the privacy of the sexual assault survivor. This is the same privilege a person would receive who consulted a psychotherapist for treatment. The right to privacy and protected communication is essential to the success of the treatment and supersedes any other right (A. Aiken, personal communication, May 9, 2018).

Sexual assault counselor/advocates are increasingly involved in community collaborations, and collaboration is welcomed. Counselor/advocates commonly serve on Sexual Assault Response Teams (SARTs), Children's Advocacy Centers (CACs), Campus Response Teams, and Multidisciplinary Teams (MDTs). While these teams are united by common goals, members often come to the table with distinct philosophies, legal responsibilities, roles, and standards of conduct. Sometimes, these differences can hinder a team's progress especially when individual team members perceive each other as threats or adversaries rather than partners. It takes time, dedication, and effort for individual team members to work together, see their differences as strengths, and acknowledge that not all advocates have the same confidential privilege.

For example, advocates or service providers in other community agencies who are not sexual assault counselor/advocates, but provide advocacy services to older adults or people with disabilities are subject to different standards and may be required to file mandated reports. A sexual assault counselor/advocate

working with an older adult or an adult with a disability is still required to keep communications confidential and is not subject to adult and older adult protective service mandatory reporting laws in Pennsylvania. However, it is important for sexual assault counselor/advocates to understand these systems and reporting requirements that other professionals may have to abide by.

It is essential for positive collaboration that sexual assault counselor/advocates respect the roles and responsibilities of collaborative team partners, even when their participation in the team process may appear to be limited. For example, traditionally, the role of a law enforcement officer will involve investigating a crime. Officers will work diligently to uncover details and complete thorough investigations. This goal may appear to be in conflict with the role of a sexual assault counselor/advocate to protect the client's privacy because the sexual assault counselor/advocate is prohibited from revealing known details about a crime provided by the client without the client's written consent. Understanding and respecting the role of a law enforcement officer (even when a counselor/advocate can neither admit nor deny any knowledge of the facts in question), will be helpful in maintaining a positive approach to the collaborative process. To best meet the needs of the survivor, it is important that the team's focus remain on common goals and how each member can contribute expertise and skills to the process.

The Privilege Belongs To The Victim

Essential to the mission of rape crisis centers to provide survivor centered, trauma-informed advocacy is the understanding that the victim is the holder of the confidential privilege. The victim has a legal right to waive the privilege. Only when a survivor waives the privilege can a counselor/advocate share the information specified by the client.

Pennsylvania law requires that the waiver be in writing.

No sexual assault counselor or an interpreter translating the communication between a sexual assault counselor and a victim may, without the written consent of the victim, disclose the victim's confidential oral or written communications to the counselor nor consent to be examined in any court or criminal proceeding. (42 Pa. Cons. Stat. Ann. § 5945.1(b)1.)

Other best practices to consider for a written waiver to release confidential information.

- Specific time period
- Specific purpose
- Specific recipient

A helpful acronym of what to consider in written waivers for release of information is **WITS**.

W – Written

A release should be written and not verbal.

I – Informed

Informed means that the survivor has information to determine if releasing information is in their best interest and consistent with their goals. (This should involve a discussion of both pros and cons of releasing information.) The survivor should have an opportunity to actually read the release.

T – Time-limited

Time-limited means that the consent was given with a scheduled end date after which, the survivor can determine if continued sharing of information is necessary.

S – Survivor-centered & Specific

Survivor-centered and specific to ensure the survivor is controlling exactly what information is being released, and that the survivor has been informed that they may revoke their consent at any time, for any reason.

(National Network to End Domestic Violence, 2014)

Confidentiality and Technology

While privacy may be one of the primary concerns of survivors, the threat that social media presents to privacy issues may not always be apparent. Survivors should be advised that any comment, image, or information shared on social media is no longer confidential information. It is highly likely that information intended for a particular person or purpose may be discovered by others once the information is posted on a social media platform.

Sexual assault counselor/advocates should work diligently to ensure that safety protocols and proper procedures are in place to protect client information. When using technology to communicate with survivors, counselor/advocates should specifically address privacy and safety concerns with the survivor prior to leaving messages or sending any information via the internet.

Group Counseling

The presence of co-participants in a group counseling session does not endanger the privilege that exists between a sexual assault counselor/advocate and individual group members. The law specifically prohibits co-participants in a group counseling session from disclosing confidential information.

No co-participant who is present during counseling may disclose a victim's confidential communication made during the counseling session nor consent to be examined in any civil or criminal proceeding without the written consent of the victim. 42 Pa Cons. Stat. § 5945.1(b)(2). Counselor/advocates should clearly discuss privacy issues with group members.

Working with Interpreters

Providing exceptional services to all communities requires intentional practices involving inclusivity for survivors who

Sexual assault counselor/advocates should work diligently to ensure that safety protocols and proper procedures are in place to protect client information.

speak languages other than English and survivors with other communication needs. The law extends the confidential sexual assault counselor privilege to an interpreter who is providing translation services for a victim of sexual assault.

Interpreter

A person who translates communications between a sexual assault counselor and a victim through the use of sign language, visual, oral, or written translation. (42 Pa. Cons. Stat. Ann. § 5945.1)

No sexual assault counselor or an interpreter translating the communication between a sexual assault counselor and a victim may, without the written consent of the victim, disclose the victim's confidential oral or written communications to the counselor nor consent to be examined in any court or criminal proceeding. (42 Pa. Cons. Stat. Ann. § 5945.1(b) 1)

As a best practice, children or other family members of the survivor should not be used as interpreters for the survivor even in immediate crisis situations or in collaboration with a community service, such as the hospital during an exam.

For information on interpretation services in your area, please contact PCAR at 717-728-9740 or email us using the contact form at <http://www.pcar.org/contact-us>.

Subpoenas

By definition, a subpoena is a notice to appear in court and give testimony or a notice to produce documents and/or information. Generally, an initial subpoena is not a court order issued by a judge. Most often, it is a tool used in a legal matter to get information to help build a case or provide evidence in a civil or criminal case.

What should a rape crisis center do if it receives a subpoena

requesting records or testimony from one of its employees?

- Contact the Center's attorney to review the subpoena and provide legal advice.
- Contact and inform the survivor who is the subject of the subpoena.
- Meet with the survivor to determine the survivor's desired response.
- Respond to the subpoena as directed by the survivor.

A subpoena should never be ignored. A written response is always appropriate, and the center's attorney should be able to help assist in preparing a written response. If the survivor wishes to keep their information confidential, the attorney should be able to assist in filing a motion to quash the subpoena. If the center is unable to determine the survivor's desired response to the subpoena; (for example, if the survivor fails to contact the center regarding the subpoena), a motion to quash the subpoena should be filed. Confidential information can only be released if the center has a written waiver authorizing the release of confidential information.

As previously discussed, the absolute privilege belongs to the survivor. If the survivor wants to release the information, the center should proceed with drafting a written release for the survivor to review and sign prior to releasing any information. It is important to note, that if one client decides to waive their confidential privilege, this does not affect the confidential privilege of any other client or any other confidential records of the center.

The Role of Sexual Assault Advocates on Multi-Disciplinary Teams

Successful collaboration requires understanding of the roles and goals of each of the team members. Sexual assault counselor/



advocates should be prepared to clearly define their role and purpose on any team. Even when goals and roles differ, sexual assault counselor/advocates can make positive contributions to collaborative teams. In order to clearly understand the role of a sexual assault counselor/advocate on a multi-disciplinary team, review the example scenario given below:

J. Doe is receiving counseling services at the community rape crisis center. J. Doe was raped by someone they met at a bar and shared a ride home with after the bar closed. J. Doe reported to the police two weeks later after seeing the assailant again at a local restaurant, a fact not disclosed to law enforcement. J. Doe gave a statement to police that the assailant was a stranger prior to the rape and gave a detailed timeline of the events on the evening of the assault.

J. Doe's counselor/advocate serves on a task force with law enforcement, the DA's office and a representative from the mayor's office tasked with improving the response of the criminal justice system with regard to sexual assault crimes. J. Doe has not authorized the advocate to release any information.

At the meeting a heated discussion takes place regarding apparent discrepancies involving the time-line in J. Doe's story, coupled with the delay in reporting causing the DA's office to not prosecute the case.

Given the counselor/advocate does not have a signed, written release from J. Doe, how can the counselor/advocate contribute to this collaborative team?

- The counselor/advocate may provide information on trauma and how it affects memory and the brain.
- The counselor/advocate may provide tips for conducting a trauma-informed interview.
- The counselor/advocate may provide information/resources/studies on why victims commonly delay reporting.

The counselor/advocate should give no indication that they know J. Doe or that J. Doe is receiving services at the center, even if the counselor/advocate is aware that members of the team already know that J. Doe is receiving services at the center. It is crucial to the goal of protecting survivor privacy rights for counselor/advocates to resist the urge to substitute their own judgment of what is best for the survivor in place of the survivor's wishes. Counselor/advocates should become comfortable explaining to collaborative team members that the law requires the sexual assault counselor/advocate to protect the survivor's privacy.

Mandated Reporting

Child Protective Services Law is an exception to the absolute privilege between a client and a sexual assault advocate. 23 Pa. Cons. Stat. Ann. § 6311, requires a report to ChildLine if a sexual assault advocate has reasonable cause to suspect child abuse or if the advocate has received information regarding an identifiable child being the victim of abuse. The law provides specific guidelines for making a report in 23 Pa. Cons. Stat. Ann. § §6311 and 6313. Those guidelines are summarized below:

Immediately call ChildLine at 1-800-932-0313 or report electronically at www.compass.state.pa.us/cwis/public/home

- Immediately after making the report, notify the person in charge of the organization or the designee (unless they are the person allegedly committing the abuse).
- If an oral report to ChildLine is made, complete a written CY-47 form and send to the local Child Protective Services agency within 48 hours.

Counselor/advocates should not try to substantiate or investigate the information they have been provided. Counselor/advocates are only reporting the information that is known to them.

Ethical Exceptions

When a counselor/advocate has information that would prevent a serious, foreseeable, imminent harm to the client or other identifiable person, disclosure may be warranted (PCAR, 2016, p. 168).

Resources

Philosophy of Confidentiality Position Statement

www.pcar.org/resource/philosophy-confidentiality-position-statement

PCAR Online Course - Confidentiality: Sexual Assault Counselor Training

This is a one hour interactive course with resources, including a sample consent to waive confidential communication form.

<https://campus.nsvrc.org/course/index.php?categoryid=27>

References

- National Network to End Domestic Violence. (2014, October 15). Confidentiality & survivors with guardians [Video podcast]. Washington, DC: Author.
- Pennsylvania Coalition Against Rape. (2016). Center manual. Enola, PA: Author.



1-888-772-PCAR



www.pcar.org

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