



CONSIDERATIONS WHEN ANALYZING THE LEGAL, ETHICAL AND PROFESSIONAL OBLIGATIONS OF LAW ENFORCEMENT-EMPLOYED VICTIM ADVOCATES WITH SOCIAL WORK/CLINICAL SOCIAL WORK LICENSES¹

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Some law enforcement-employed² victim advocates come to their role at a law enforcement agency with a license to practice social work or clinical social work.³ Whether these advocates have different obligations than advocates who do not hold such licenses depends upon:

- (1) the distinct legal, ethical and professional obligations of a licensed social worker/clinical social worker and a law enforcement-employed victim advocate;
- (2) the ethical limitations on a law enforcement-employed victim advocate's use of their social work/clinical social work license in their present role;
- (3) the legal limitations on a law enforcement-employed victim advocate's ability to protect victim confidentiality and privilege to the same extent as a licensed social worker/clinical social worker; and
- (4) the relationship between the mandatory reporting obligations of licensed social workers/clinical social workers and law enforcement personnel.

Consideration of these factors may reveal that application of certain social work/clinical social work license-related obligations to a law enforcement-employed victim advocate is unlikely, unnecessary or even prohibited. Given the ethical, legal and licensing concerns implicated in this analysis, and the fact that this question has not been specifically answered in most jurisdictions, an advisory option from a state Attorney General's Office may be beneficial to law enforcement agencies facing this issue.⁴

1. Legal and Ethical Obligations of a Licensed Social Worker or Licensed Clinical Social Worker

Licensed social workers/clinical social workers are subject to a variety of specific obligations, including those found under state licensing laws⁵ and regulations⁶; ethical codes of states⁷ and national associations⁸; state laws governing privilege and confidentiality;⁹ state laws governing the maintenance of client records;¹⁰ and state mandatory reporting obligations.¹¹ These license-related obligations are often limited to situations where the license holder is holding themselves out and working in their capacity as a social worker/clinical social worker.¹² Nonetheless, review of these laws, rules and guidelines is necessary to understand the scope of such obligations within a particular state and how, if at all, they conflict with the legal, ethical and professional obligations of a law enforcement-employed victim advocate.

2. Legal, Ethical and Professional Obligations of a Law Enforcement-Employed Victim Advocate

In general, state laws do not directly address the legal and ethical obligations of law enforcement-employed victim advocates. Some states expressly address the obligations of law enforcement-employed victim advocates in limited contexts, such as laws governing the confidentiality of communications with victims;¹³ the types of information and resources that such advocates must provide to victims;¹⁴ the presence of such advocates, upon the victim's request, at certain points during the justice process;¹⁵ and the mandatory reporting by such advocates regarding the abuse and neglect of children and certain vulnerable adults.¹⁶ As discussed in more detail below, a law enforcement-employed victim advocate may also be subject to laws governing the disclosure obligations of law enforcement and/or the prosecution.¹⁷ Certain federal and state privacy and confidentiality laws may impose further obligations on law enforcement-employed victim advocates based on their position in law enforcement or the nature of the private information at stake.¹⁸ Additionally, a law enforcement-employed victim advocate

may have certain obligations based on their funding source(s).¹⁹ Law enforcement agencies also may have policies regarding a victim advocate's role and responsibilities with respect to the law enforcement team, such as policies governing recordkeeping, the flow of information between advocates and prosecutors²⁰ or mandated reports of the abuse or neglect of children or vulnerable adults.²¹ The Office for Victims of Crime's model standards for victim service providers is a resource for understanding the professional and ethical obligations of these advocates.²² Taking all of these obligations into account is necessary when analyzing whether any of a licensed social worker/clinical social worker's legal or ethical obligations apply when that license holder is working as a law enforcement-employed victim advocate.

3. Ethical Limitations on Use of Social Work or Clinical Social Work Licenses

Law enforcement-employed victim advocates have an ethical obligation to accurately represent their professional credentials in their interactions with victims and in written correspondence,²³ unless such credentials are unrelated to their role as a law enforcement advocate.²⁴ When acting in their capacity as a law enforcement advocate, law enforcement-employed victim advocates are not operating in a clinical role; as such, they cannot use their clinical social work license in their work with crime victims.²⁵ Additionally, their outward facing communications and contact with victims should not include their clinical credentials.²⁶

Even where a law enforcement-employed victim advocate's professional responsibilities overlap with the type of non-clinical tasks performed by a licensed social worker/clinical social worker, the advocate's ethical obligations limit their use of these licenses in their work as an advocate. Specifically, law enforcement-employed victim advocates have an ethical obligation to inform victims, at the outset of the nature of the advocate's position, the scope of their services and the advocate-victim relationship, their role within the law enforcement team, and any limitations on their ability to maintain the confidentiality of information shared with the

advocate.²⁷ As discussed more fully below, law enforcement-employed victim advocates likely cannot meet the confidentiality and/or privilege requirements imposed by a social work/clinical social work license due to their role as a member of the law enforcement team.²⁸ For this reason, a law enforcement-employed victim advocate's reliance on their social work/clinical social work credentials in their interactions with a victim could mislead the victim regarding the scope of the protections available to their communications with the advocate, in violation of the advocate's ethical obligation to accurately represent the scope of their services.

Given this ethical limitation, if a law enforcement-employed victim advocate nonetheless discloses to a victim that they have a license in social work or clinical social work or a victim knows this information from another source, the advocate must be clear with the victim that the services they provide will be in their capacity as an advocate, not as a licensed social worker or licensed clinical social worker. Use of the advocate's social work/clinical social work license in their communications with the victim may undermine such efforts to clarify the capacity in which the advocate is providing services.

4. Legal Limitations on Law Enforcement-Employed Victim Advocates' Ability to Protect Victim Confidentiality and/or Privilege

Most states provide confidentiality and/or privilege protections to communications between licensed social workers/clinical social workers and victim-clients.²⁹ In general, the laws imposing such confidentiality and/or privilege obligations do not expressly address whether such obligations apply when the license holder is working in a different professional role; however, the language and purpose(s) of these laws render such an application unlikely. Moreover, even in the absence of such limitations, it is unlikely that social worker/clinical social worker confidentiality and/or privilege could apply to law enforcement-employed victim advocates due to the role of such advocates on the law enforcement team.

A. Limitations Arising from the Laws Governing Licensed Social Worker/Clinical Social Worker Confidentiality and/or Privilege

The laws establishing confidentiality and/or privilege protections for communications between a licensed social worker/clinical social worker and their client often limit these protections to communications with the social worker's "client" in the context of a social work practice and/or to information acquired in their "professional capacity" as a social worker.³⁰ As a result, it seems unlikely that such obligations would apply to a law enforcement-employed victim advocate working in their professional capacity as an advocate.³¹ State laws governing discipline for licensed social workers/clinical social workers may also support the conclusion that the confidentiality obligations of these license holders only apply to communications made within the context of a social worker-client relationship and/or social work practice.³²

Further support for this conclusion may be found in the purposes of the laws governing social worker/clinical social worker confidentiality and/or privilege. For example, one of the primary purposes of such laws is to prevent the chilling effect that routine disclosure of social worker-client communications may have in preventing those in need of help from seeking that help from a social worker.³³ Because applying a social worker's confidentiality and/or privilege obligations to a law enforcement-employed victim advocate would not serve the purpose of encouraging people to seek out social work services, it seems unlikely that such obligations were designed to apply when the social worker/clinical social worker is not, in fact, employed as a social worker.³⁴ Additionally, in some states, licensed social worker/clinical social worker's confidentiality and/or privilege obligations are not part of the state's legislatively created body of evidentiary privileges, but are instead contained within a body of law enacted to regulate the practice of social work/clinical social work within the jurisdiction.³⁵ In such instances, social worker/clinical social worker confidentiality and/or privilege are not designed to function only as

evidentiary rules; they are also attributes of the social work profession.³⁶ Under these circumstances, it is unlikely that these obligations are intended to reach professionals who are not working in their capacity as a social worker/clinical social worker.

B. Limitations Arising from a Law Enforcement-Employed Victim Advocate's Role on the Law Enforcement Team

Even if the language and purpose of social worker/clinical social worker confidentiality and/or privilege requirements do not preclude or caution against the application of these requirements to law enforcement-employed victim advocates, such requirements are unlikely to apply in the law enforcement setting due to the advocate's role as part of the law enforcement team.³⁷ As a law enforcement employee, a victim advocate's communications with a victim are likely subject to the prosecution's disclosure obligations under *Brady v. Maryland*, 373 U.S. 83 (1963),³⁸ and state law.^{39, 40} State laws also may separately require law enforcement to disclose to the prosecution any "investigative material" concerning an offense, where such material was generated by or has come into law enforcement's possession;⁴¹ once disclosed to the prosecutor, such material may be subject to further disclosure to the defendant under *Brady* or the state's criminal discovery laws. Where such disclosure requirements apply, they override a law enforcement-employed victim advocate's ability to maintain confidentiality; holding a license to practice social work/clinical social work is unlikely to change the reach of the prosecutor's disclosure obligations.

Additionally, although many states have enacted relationship-based privileges to protect the confidentiality of communications between victims and victim service providers,⁴² there do not appear to be any relationship-based privileges that expressly protect such communications when the service provider is a law enforcement-employed victim advocate, regardless of whether the advocate happens to hold a social work license.⁴³ In fact, a number of the states that protect

victim advocate-victim confidentiality and/or privilege expressly provide that such protections do not apply when the victim advocate is employed by or otherwise affiliated with a law enforcement agency.⁴⁴ At least one court has indicated that the purpose of such an exception to a victim advocate-victim privilege is to avoid concerns related to the prosecution's disclosure obligations.⁴⁵ As a result, a state's confidentiality and/or privilege protections for victim service provider-victim communications may provide further support for the conclusion that a licensed social worker/clinical social worker's confidentiality and/or privilege obligations do not apply when the license holder is working as a law enforcement-based victim advocate.

5. Relationship Between Mandatory Reporting Obligations of Licensed Social Workers/Clinical Social Workers and Law Enforcement Personnel.

In many states, licensed social workers, licensed clinical social workers and law enforcement-employed victim advocates have the same statutory reporting obligations when they know or reasonably suspect the abuse or neglect of certain victim populations, such as children and vulnerable adults. These reporting obligations are identical either because the mandatory reporting law expressly include licensed social workers, licensed clinical social workers and law enforcement personnel within the groups of professionals to whom the law applies⁴⁶ or because the mandatory reporting law applies to any person with such knowledge or suspicion.⁴⁷ In these jurisdictions, a law enforcement-employed victim advocate's reporting obligations are the same whether or not they have a license to practice social work/clinical social work.

In states where mandatory reporting obligations are limited to certain professionals not including law enforcement employees, a law enforcement-employed victim advocate still may be a mandatory reporter because they hold a certification or license in one of the professions specified under the reporting law.⁴⁸ For instance, mandatory reporting laws may limit reporting obligations to information a professional comes to know or suspect in their professional capacity.

Under such laws, a social worker's reporting obligations may be limited to situations where they come to know or suspect abuse or neglect in their capacity as a social worker;⁴⁹ or these obligations may extend beyond a formal social worker-client relationship to a law enforcement-employed victim advocate-victim relationship to the extent that the relationship resembles that which a victim might have with a social worker.⁵⁰ On the other hand, where the reporting law does not limit the reporting obligations of a licensed social worker/clinical social worker to information learned in their capacity as a social worker/clinical social worker, a law enforcement-employed victim advocate who holds such a license may have an obligation to report information they learn in their professional capacity as an advocate. Additionally, even if a law enforcement-employed victim advocate learns of abuse or neglect in their personal life, their mandatory reporting obligations as a licensed social worker/clinical social worker may apply.⁵¹ Given these possible outcomes and complicated analysis, it is critical that law enforcement agencies and law enforcement-employed victim advocates understand the scope of their mandatory reporting obligations both as advocates and social work/clinical social work license holders.⁵²

CONCLUSION

Licensed social workers, licensed clinical social workers and law enforcement-employed victim advocates have some unique and some overlapping professional obligations. When a licensed social worker or licensed clinical social worker is employed by and operating within a law enforcement agency as a victim advocate, it is best practice that they not hold themselves out to victims as working in their capacity as a social worker or clinical social worker. Further, their obligations as a law enforcement-employed victim advocate are likely to control over any social worker obligations.

¹ Although this resource focuses on law enforcement-employed victim advocates who hold licenses to practice social work or clinical social work, many of the same considerations may be relevant to the analysis of the legal, ethical and professional responsibilities of law enforcement-employed victim advocates who hold other professional certifications or licenses.

² Throughout this resource, the term “law enforcement-employed victim advocate” is used to denote advocates who are employed by and work within a law enforcement department, as opposed to advocates who are employed by community nonprofits or advocates who are paid through a law enforcement budget but are separated from the department in other ways, such as being physically housed in another government office or as part of collaborative programs (e.g., programs providing one-stop services to victims of domestic violence).

³ Some jurisdictions have a licensing process for social workers and clinical social workers. *See, e.g.*, 225 Ill. Comp. Stat. Ann. § 20/9 (qualifications for clinical social work license); *id.* § 20/9A (qualifications for social work license). Other jurisdictions only have a licensing process for clinical social workers. *See, e.g.*, Fla. Stat. Ann. § 491.005(1) (governing clinical social work licensure). This resource addresses both types of social work licenses.

⁴ Background information regarding the issuance of advisory opinions and details regarding the process for requesting an advisory opinion can generally be found on the relevant Attorney General’s website.

⁵ *See e.g.*, Fla. Stat. Ann. §§ 491.002 through 491.016 (governing licenses for certain clinical, counseling and psychotherapy services, including clinical social work); Clinical Social Work and Social Work Practice Act, 225 Ill. Comp. Stat. Ann. §§ 20/1 through 20/37 (governing social work licenses and clinical social work licenses).

⁶ *See, e.g.*, Fla. Admin. Code R. 64B4-3.001 through 64B4-3.010 (regulating clinical social work licensing requirements); Ill. Admin. Code tit. 68, §§ 1470.10 through 1470.100 (implementing licensing requirements of Illinois Clinical Social Work and Social Work Practice Act).

⁷ *See, e.g.*, Ill. Admin. Code tit. 68, § 1470.96(a) (detailing unethical, unauthorized or unprofessional conduct that may subject licensed social workers and licensed clinical social workers to disciplinary action); 258 Mass. Code Regs. 20.01 through 20.15 (Code of Ethical Practice for licensed social workers); N.M. Admin. Code § 16.63.16.8 (Social Workers’ Ethical Responsibilities).

⁸ Regardless of whether a jurisdiction expressly addresses such ethical obligations, social workers/clinical social workers may look to national associations for ethics codes to guide professional conduct. *See, e.g.*, Nat’l Ass’n of Social Workers (NASW), *Code of Ethic*, <https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English> (providing code of ethics to guide the professional conduct of social workers); Clinical Social Workers Ass’n (CSWA), *Code of Ethics*, <https://www.clinicalsocialworkassociation.org/CSWA-Ethics> (providing code of ethics to guide the professional conduct of clinical social workers); *see also* Ill. Admin. Code tit. 68, § 1470.96(b) (incorporating by reference earlier versions of NASW’s and CSWA’s ethical codes into the regulations governing social work/clinical social work licenses); 258 Mass. Code Regs. 20.01(10) (providing that a licensed social worker engages in unethical or unprofessional conduct when they engage in any course of conduct that is expressly prohibited by or that fails to conform to “any provisions of the Code of Ethics of the National Association of Social Workers, as adopted by the 1979 NASW Delegate Assembly and amended from time to time hereafter, to the extent that said provision is not inconsistent with federal or state law” or “any other generally accepted standard(s) of professional conduct”).

⁹ *See, e.g.*, Fla. Stat. Ann. § 491.0147 (clinical social worker-client confidentiality and privilege); Ill. Comp. Stat. Ann. § 20/16 (licensed social worker-client and licensed clinical social worker-client privilege); *see also Jaffee v. Redmond*, 518 U.S. 1, 17 n. 17 (1996) (listing state laws extending testimonial privileges to licensed social workers/clinical social workers).

¹⁰ *See, e.g.*, Fla. Admin Code R. 64B4-9.001 (establishing confidentiality-related requirements for clinical social worker’s maintenance of records); N.M. Admin. Code § 16.63.16.8(H)(12)–(14) (same).

¹¹ *See, e.g.*, Fla. Stat. Ann. § 39.201(1)(b)(e) (mandatory reporting obligations of social workers regarding suspected child abuse, abandonment or neglect); *id.* at § 415.1034(1)(a)(4) (mandatory reporting obligations of social workers regarding suspected abuse, neglect or exploitation of vulnerable adults); 325 Ill. Comp. Stat. Ann. § 5/4(a)(2) (mandatory reporting obligations of licensed social workers and licensed clinical social workers under the Abused and Neglected Child Reporting Act); 320 Ill. Comp. Stat. Ann. § 20/4(a-5) (mandatory reporting requirements of certain licensed social workers and licensed clinical social workers regarding suspected abuse, abandonment, neglect or financial exploitation of eligible adults).

¹² *See, e.g.*, Fla. Admin Code R. 64B4-9.001(7)(c) (emphasis added) (protecting the confidentiality of information disclosed to licensed clinical social worker “by a patient in *the course of the care and treatment of such patient*”); 225 Ill. Comp. Stat. Ann. § 20/16(1) (emphasis added) (“No licensed clinical social worker or licensed social worker shall disclose any information acquired from persons *consulting the social worker in a professional capacity*, except

that which may be voluntarily disclosed under the following circumstances [listing circumstances.]”); *see Marriage of Troy S. & Rachel S.*, 745 N.E.2d 109, 111 (Ill. Ct. App. 2001) (recognizing that different privilege and confidentiality laws would apply to a counselor testifying at trial, depending on whether the counselor was testifying in her capacity as a clinical social worker or as a licensed psychotherapist); *In re DelGatto*, 98 A.D.3d 975, 950 (N.Y. App. Div. 2012) (finding that the testimony of a social worker who witnessed the decedent’s execution of a trust instrument was properly admitted pursuant to CPLR 4508 [the social worker worker-client privilege], since her testimony did not relate to confidential communications with the decedent in her professional capacity as a social worker”); *see also Brunton v. Kruger*, 32 N.E.3d 567, 574 (Ill. 2015) (recognizing that where a professional’s privilege obligations are part of the state code enacted to regulate the practice of that profession, as opposed to a body of law governing testimonial privileges within a justice system, the professional privilege is “not intended to function purely as an evidentiary rule, but also as an attribute of the [specific] profession”).

¹³ *See, e.g.*, Colo. Rev. Stat. Ann. § 13-90-107(1)(k)(II) (providing that privilege governing domestic violence victim advocate-victim and sexual assault victim advocate-victim communications do not apply when the victim advocate is employed by a law enforcement agency); Utah R. Evid. 512(d)(5)–(7) (providing exceptions to the victim advocate-victim privilege for confidential communications between a victim and a “criminal justice system victim advocate,” which Utah. Code Ann. § 77-38-403(4), defines as including individuals who are “employed . . . by a government agency that possesses a role or responsibility within the criminal justice system”).

¹⁴ *See, e.g.*, Utah Code Ann. § 77-38-405(3) (requiring “criminal justice system victim advocates” to notify victims when confidential communications will be disclosed to the prosecutor and/or defense counsel and to provide them with referral information).

¹⁵ *See, e.g.*, Fla. Stat. Ann. § 960.001(1)(q) (“At the request of the victim or the victim’s parent, guardian, or lawful representative, the victim advocate designated by the state attorney’s office, sheriff’s office, or municipal police department, or one representative from a not-for-profit victim services organization . . . shall be permitted to attend and be present during any deposition of the victim.”).

¹⁶ *See, e.g.*, Colo. Rev. Stat. Ann. § 18-6.5-108(1)(b)(III) (requiring victim advocates employed by any law enforcement agency to report mistreatment or self-neglect of an at-risk adult).

¹⁷ *See infra* Part IV.B.

¹⁸ *See, e.g.*, Fla. Const. art. I, § 16(b)(5) (affording victims “[t]he right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim’s family, or which could disclose confidential or privileged information of the victim”); Fla. Stat. Ann. § 914.27(1) (confidentiality of certain victim identifying and locating information held by, *inter alia*, any state or local law enforcement agency where victim is part of victim and witness protection program); 725 Ill. Comp. Stat. Ann. § 190/3 (restricting, *inter alia*, the inspection and copying of law enforcement records maintained by any law enforcement agency regarding a sexual offense to exclude disclosure of a child-victim’s identity); *id.* § 120/7(d) (requiring law enforcement authorities to maintain the confidentiality of any changes to the victim’s contact information); Kan. Stat. Ann. § 45-221(a)(10) (exempting criminal investigation records from disclosure pursuant to a public records request); Minn. Stat. Ann. § 13.82, subd. 17(b) (requiring law enforcement agencies to withhold public access to data that would reveal the identity of a victim of criminal sexual conduct, sexual extortion or sex trafficking); *see generally Law Enforcement-Based Victim Services in Illinois: Privacy, Privilege and Confidentiality* 6, (Nat’l Crime Victim Law Inst., Portland, Or.), Oct. 2020, <https://law.lclark.edu/live/files/32013-privacy-confidentiality-and-privilege-guide> (hereinafter *Law Enforcement-Based Victim Services*) (describing federal laws that impose professional confidentiality requirements on system-based and community-based victim services providers based on the type of victim information at issue).

¹⁹ For example, agencies that receive funding under the Victims of Crime Act of 1984 (VOCA) or the Violence Against Women Act (VAWA) are mandated to protect crime victims’ confidentiality and privacy subject to limited exceptions, such as mandatory reporting or statutory or court mandates. Specifically, state administering agencies and subrecipients of VOCA funding, are mandated “to the extent permitted by law, [to] reasonably protect the confidentiality and privacy of [victims] receiving services . . . and shall not disclose, reveal, or release, except . . . [in limited circumstances:] (1) [a]ny personally identifying information or individual information collected in connection with VOCA-funded services requested, utilized, or denied, regardless of whether such information has been encoded, encrypted, hashed, or otherwise protected; or (2) [i]ndividual client information, without the informed, written, reasonably time-limited consent of the person about whom information is sought . . .” 28 C.F.R. § 94.115(a)(1)–(2). Agencies that receive VAWA funding are subject to nearly identical duties to protect crime victims’ confidentiality and privacy subject to limited exceptions. *See* 34 U.S.C. § 12291(b)(2).

²⁰ *See, e.g.*, 725 Ill. Comp. Stat. Ann. § 5/114-13(b) (requiring every investigative and law enforcement agency in Illinois to adopt policies to ensure compliance with law enforcement’s criminal discovery-related obligations).

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- ²¹ See International Association of Chiefs of Police (IACP), *Law Enforcement-Based Victim Services—Advocacy Parameters & Documentation* 25 (2020), [https://www.theiacp.org/sites/default/files/LEV/Advocacy%20Parameters%20%26%20Documentation%20\(FINAL\).pdf](https://www.theiacp.org/sites/default/files/LEV/Advocacy%20Parameters%20%26%20Documentation%20(FINAL).pdf) (hereinafter *IACP Advocacy Parameters & Documentation*) (noting the importance of law enforcement agencies having policies in place related to the mandatory reporting obligations of victim services personnel).
- ²² See generally *Achieving Excellence: Model Standards for Serving Victims and Survivors of Crime, Purpose & Scope of Standards*, Office of Victims of Crime (OVC), https://ovc.ojp.gov/sites/g/files/xyckuh226/files/model-standards/6/purpose_and_scope.html (providing model program, competency and ethical standards for victim services providers).
- ²³ See *Model Standards for Serving Victims and Survivors of Crime: Ethical Standards*, Office of Victims of Crime (OVC), Ethical Standard 1.2, https://ovc.ojp.gov/sites/g/files/xyckuh226/files/model-standards/6/ethical_standards.html (hereinafter *Model Ethical Standards*) (“Ethical Standard 1.2: The victim assistance provider accurately represents his/her professional title, qualifications, and/or credentials interactions with the people served and public advertising.”).
- ²⁴ *Id.* at Ethical Standard 1.2 Commentary (“Victim assistance providers should disclose their job titles and professional credentials to everyone they serve, as well as in all written professional communications, to avoid misunderstandings and misconceptions about their credentials, role, and responsibilities. Exception may be made if credentials are unrelated to the job or role being performed (e.g., a provider who has a counseling degree but will not be providing counseling services).”).
- ²⁵ See International Association of Chiefs of Police (IACP), *Law Enforcement-Based Victim Services—Template Package I: Getting Started* 32 (2021), https://www.theiacp.org/sites/default/files/LEV/Publications/Template%20Package%20I_04.2021.pdf (hereinafter *IACP Template Package I*) (providing, within template for law enforcement-based advocate personnel standards, that “[v]ictim services personnel who hold licensure are prohibited from utilizing that licensure in a clinical or medical capacity during contact with crime victims, witnesses, survivors or co-victims”).
- ²⁶ See *IACP Advocacy Parameters & Documentation*, *supra* note 21, at 14 (“As law enforcement-based victim services is not a clinical role, including clinical credentials on outward facing communication (e.g., business cards, email signature, website) and introductions in verbal communication is discouraged. Ongoing oversight to ensure a distinction between the roles of clinical work and law enforcement-based victim services is essential.”); *see id.* (providing that when a “Victim Services Specialist who is also a licensed social worker and provides therapy services through a private practice outside of routine business hours,” they should not reference their social work licensure “in any communication with victims, colleagues, and community agencies” when they are “performing assigned responsibilities as a Victims Services Specialist.”).
- ²⁷ See *Model Ethical Standards*, *supra* note 23, Ethical Standard 1.2 Commentary (“Victim assistance providers are obligated to inform victims/survivors of the nature of services to be provided and any purposes, goals, procedures, or limitations that may affect the professional relationship.”); *id.* at Ethical Standard 1.4 Commentary (“Victim assistance providers should be aware of and abide by program policy and legal authority governing confidential information in the jurisdiction. Persons being served should be provided with information regarding limits of confidentiality; preferably, this information should be provided during the first meeting (unless crisis circumstances preclude this).”); *see also IACP Advocacy Parameters & Documentation*, *supra* note 21, at 24 (stating that law enforcement-based victim services providers “must all clearly explain communication parameters and associated consequences to victims at the earliest point of contact” and that it is “necessary” to “[p]rovid[e] written material on this subject and be[] prepared to repeatedly reaffirm parameters for victims”).
- ²⁸ See *infra* Part IV.B.
- ²⁹ See *Jaffee*, 518 U.S. at 16–17 (recognizing that “the vast majority of States explicitly extend a testimonial privilege to licensed social workers” and citing state statutes governing confidentiality and privilege for licensed social workers).
- ³⁰ See, e.g., Fla. Stat. Ann. § 491.0147 (emphasis added) (“Any communication between any person licensed or certified under this chapter [including clinical social workers] and *her or his patient or client* is confidential.”); 225 Ill. Comp. Stat. Ann. § 20/16(1) (emphasis added) (“No licensed clinical social worker or licensed social worker shall disclose any information acquired from persons *consulting the social worker in a professional capacity*, except that which may be voluntarily disclosed under the following circumstances [listing circumstances].”); Mass. Gen. Laws Ann. ch. 112, § 135A (emphasis added) (providing that a licensed social worker must not “disclose *any information acquired or revealed in the course of or in connection with the performance of the social worker’s professional services*, including the fact, circumstances, findings or records of such services, except under the following circumstances: [listing circumstances].”); Or. Rev. Stat. Ann. § 40.250 (emphasis added) (“A regulated

social worker under ORS 675.510 to 675.600 may not be examined in a civil or criminal court proceeding as to any communication given the regulated social worker by a client in the course of noninvestigatory professional activity when the communication was given to enable the regulated social worker to aid the client, except when: [listing exceptions.]”); Wash. Code Ann. § 5.60.060(9) (emphasis added) (providing that an independent clinical social worker may not disclose or be compelled to testify about “any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except: [listing exceptions]”).

³¹ See *In re Marriage of Troy S. & Rachel S.*, 745 N.E.2d at 111 (recognizing that different privilege and confidentiality laws would apply to a counselor testifying at trial, depending on whether the counselor was testifying in her capacity as a clinical social worker or as a licensed psychotherapist).

³² See, e.g., Fla. Stat. Ann. § 491.009(1)(u) (emphasis added) (providing that a licensed social worker is subject to discipline if they fail to maintain “in confidence a communication made by a patient or client in the context of such services,” except by written permission or in the face of imminent bodily harm to the patient or client or others).

³³ See Fla. Stat. Ann. § 491.002 (stating that the purpose of laws creating communication privileges for professionals licensed in clinical, counseling and psychiatry services is “to encourage needed or desired counseling, clinical and psychotherapy services, or certain other services of a psychological nature to be sought out” for members of the public or those acting on their behalf); *Com. v. Collett*, 439 N.E.2d 1223, 1226 (Mass. 1982) (“The purpose of enacting a social worker-client privilege is to prevent the chilling effect which routine disclosures may have in preventing those in need of help from seeking that help.”); *In re Application to Quash a Subpoena Duces Tecum in Grand Jury Proc.*, 437 N.E.2d 1118, 1120 (N.Y. 1982) (stating that the “manifest purpose of [the social worker-client privilege] is to encourage uninhibited disclosure by the individual for the purposes of securing necessary assistance”).

³⁴ See *Collett*, 439 N.E.2d at 1226 (considering the legislature’s purpose in enacting the social worker-client privilege when determining the scope and meaning of exceptions to the privilege).

³⁵ See, e.g., Fla. Stat. Ann. § 491.002 (stating that the body of law regulating clinical, counseling and psychotherapy services, is designed “to further secure the health, safety, and welfare of the public and also to encourage professional cooperation among all qualified professionals, [by assisting] the public in making informed choices of such services by establishing minimum qualifications for entering into and remaining in the respective professions”); 225 Ill. Comp. Stat. Ann. § 20/1 (stating that the purpose of the Clinical Social Work and Social Work Practice Act, which contains the statutory provision governing social worker/clinical social worker confidentiality and privilege, “is to protect and to benefit the public by setting standards of qualifications, education, training and experience for those who seek to engage in the independent practice of clinical social work and in the practice of social work and to promote high standards of professional performance for those engaged in the independent practice of clinical social work and in the practice of social work in the State of Illinois”).

³⁶ Cf. *Brunton*, 32 N.E.3d at 574 (“The Public Accounting Act is not part of the legislatively created body of evidentiary privileges [contained in the Illinois Code of Civil Procedure]. Rather, it is expressly tied to the legislative scheme enacted to regulate the practice of the profession of public accounting in the state. This context suggests that the accountant privilege was not intended to function purely as an evidentiary rule, but also as an attribute of the accounting profession.”).

³⁷ Cf. 225 Ill. Comp. Stat. Ann. § 20/16(1)(f) (providing that the social worker/clinical social worker-client privileges do not apply to information acquired by a designated adult protective services agency in the course of investigating a report or working on a case of abuse, neglect, financial exploitation, or self-neglect of an eligible adult); Mass. Gen. Laws Ann. ch. 112, § 135B(f) (providing that social worker-client privilege does not extend to information the social worker acquired while conducting an investigation into child abuse or neglect); *In re Pitts*, 357 N.E.2d 872, 874 (Ill. Ct. App. 1976) (finding that the social worker privilege does not apply to social workers at DCFS “when they are investigating cases of child abuse and attempting to protect the child from such abuses”).

³⁸ The government’s disclosure obligations under *Brady* extend to “any favorable evidence known to others acting on the government’s behalf in the case, including the police.” *Kyles v. Whitley*, 514 U.S. 419, 437–38 (1995). When members of the “team” investigating or prosecuting a case possess knowledge of favorable and material information, such knowledge may be imputed to the prosecutor for the purposes of *Brady*. See, e.g., *United States v. Wilson*, 237 F.3d 827, 832 (7th Cir. 2001) (finding that U.S. Marshal Service’s knowledge that a government informant failed a drug test was imputed to prosecutors because the Marshals were members of the “team” participating in the prosecution, even though the Marshal Service’s role “was to keep the defendants in custody rather than to go out on the streets and collect evidence”); see generally *Law Enforcement-Associated Victim Advocates and Brady Disclosures: Legal Background and Considerations* (Nat’l Crime Victim Law Inst., Portland, Or.), June 2021, 1–2, <https://law.lclark.edu/live/files/32286-law-enforcement-associated-victim-advocates-and>

(hereinafter, *Law Enforcement-Associated Victim Advocates and Brady*) (describing the prosecution’s disclosure obligations under *Brady v. Maryland*, 373 U.S. 83, 87 (1963), and how these disclosure obligations apply to information in the possessions of others acting on behalf of the prosecution in connection with a criminal case). Although courts have not expressly addressed whether a prosecutor’s disclosure obligations under *Brady* encompass favorable and material evidence in the possession or control of a law enforcement-employed victim advocate, case law from across the country regarding prosecution-associated victim advocates suggests that a law enforcement-employed advocate’s knowledge of such evidence can be imputed to the prosecutor. *See id.* at 2 & n.8, (noting that federal and state courts addressing the issue of whether information in an advocate’s possession is subject to disclosure under *Brady* “generally conclude[] that prosecution-based advocates are part of the prosecution team for purposes of the *Brady* rule and its required disclosures” and citing cases). This conclusion also finds support in case law from other jurisdictions regarding the imputation of a social worker’s knowledge to prosecutors for the purposes of *Brady* when police have hired or otherwise engaged the social worker to participate in an investigation. *See, e.g., Cleary v. Cty. of Macomb*, No. 06-15505, 2007 WL 2669102, at *17 (E.D. Mich. Sept. 6, 2007), *aff’d*, 409 F. App’x 890 (6th Cir. 2011) (stating the court’s belief that “a social worker who was not retained by the police or prosecution (and thus not a ‘police investigator’) [cannot] be held liable for a *Brady* violation”); *People v. Lewis*, 167 A.D.3d 158, 161 (N.Y. App. Div. 2018) (citation omitted) (noting that a social worker’s knowledge could be imputed to the prosecution for *Brady* purposes in situations where they “engage in a ‘joint venture’ with the police to collaborate on child abuse or sexual abuse investigations, share information and a common purpose, and have a ‘cooperative working arrangement’ with police”).

³⁹ *See, e.g., Fla. R. Crim. P. Rule 3.220(b)(1)(B)* (requiring the state to produce during discovery “all police and investigative reports of any kind prepared for or in connection with the case” that are “within the state’s possession and control”); *Ill. R. S. Ct. 412(f)–(g)* (extending the prosecution’s criminal discovery obligations to include disclosure of certain information in the possession or control of law enforcement agencies and legal officers, as well as other governmental personnel); *N.Y. Crim. Proc. Law § 245.20(1)(e)* (emphases added) (requiring the prosecution to automatically disclose to the defendant “[a]ll statements, written or recorded or summarized in any writing or recording, made by persons who have evidence or information relevant to any offense charged or to any potential defense thereto, including all police reports, notes of police and other investigators, and law enforcement agency reports” and stating that “[t]his provision also includes statements, written or recorded or summarized in any writing or recording, by persons to be called as witnesses at pre-trial hearings.”); *see also State v. Miranda*, 777 So.2d 1173, 1174 (Fla. Ct. App. 2001) (recognizing that Florida courts interpret Rule 3.220(b)(1) to include evidence in the prosecution’s actual or constructive possession, including evidence obtainable from another government entity based on a pre-existing agreement with that entity); *People v. Sutton*, 763 N.E.2d 890, 897 (Ill. Ct. App. 2002) (recognizing that the prosecutor’s rule-based discovery obligations apply to information in the possession and control of crime lab personnel).

⁴⁰ The application of *Brady* or state criminal discovery laws to information held by victim advocates who are co-located or otherwise work with law enforcement, but who are not employed by or embedded within a law enforcement agency, requires additional fact-specific analysis. For more information regarding law enforcement-associated advocates and *Brady* disclosures, *see Law Enforcement-Associated Victim Advocates and Brady, supra* note 38, at 3–4.

⁴¹ *See, e.g., 725 Ill. Comp. Stat. Ann. § 5/114-13(b)* (outlining law enforcement’s obligation to provide the prosecution, in homicide and non-homicide felony cases, with “all investigative material” generated by or otherwise in law enforcement’s possession, as well as “material or information” within law enforcement’s possession or control that would tend to negate the guilt of the accused of the offense charged or reduce their punishment.”). Law enforcement agencies may be required to adopt policies to ensure compliance with such disclosure requirements. *725 Ill. Comp. Stat. Ann. § 5/114-13(b)*. Review of these policies may provide law enforcement-employed victim advocates with additional guidance regarding disclosure of their communications with victims.

⁴² State evidentiary privileges often protect the confidentiality of communications between victims and certain service providers, such as sexual assault advocates and counselors, counselors at a victim aid organization, and domestic violence advocates and counselors. *See, e.g., Cal. Evid. Code § 1035.8* (sexual assault counselor-victim privilege); *id.* at § 1037.5 (domestic violence counselor-victim privilege); *id.* § 1038.1 (human trafficking caseworker-victim privilege); *Fla. Stat. Ann. § 90.5035* (sexual assault counselor-victim privilege); *id.* at § 90.5036 (domestic violence advocate-victim privilege); *id.* at § 90.5037 (human trafficking victim advocates-victim privilege); *735 Ill. Comp. Stat. Ann. § 5/8-802.1* (rape crisis counselor-victim privilege); *id.* § 5/8-802.2 (victim aid organization counselor-victim of violent crimes privilege); *740 Ill. Comp. Stat. Ann. § 110/10* (therapist-client privilege); *750 Ill. Comp. Stat. Ann. § 60/227* (domestic violence advocate- or counselor-victim privilege). These victim-specific privileges may apply to licensed social workers who work for the types of programs covered by

these privileges. *See, e.g.*, 735 Ill. Comp. Stat. Ann. § 5/8-802.1(b)(2) (defining “rape crisis counselor,” for the purposes of the rape crisis counselor-victim privilege as including social workers who work for a rape crisis organization and have undergone 40 hours of training); 740 Ill. Comp. Stat. Ann. § 110/2 (defining “therapist,” for the purposes of the therapist-client privilege, to include social workers); *Pinnell v. State*, 838 So. 2d 596, 597 (Fla. Dist. Ct. App. 2003) (holding that communications between victim and social worker at school-based program fell within the sexual assault counselor-victim privilege).

⁴³ In the absence of such relationship-based confidentiality and privilege protections, it is especially important for advocates to become familiar with their confidentiality and privacy obligations to victims under other provisions of state and federal law, including laws related to record-keeping, the release of victim information, public record requests, address confidentiality, and identity protection. *See supra* note 18 (providing examples of state privacy and confidentiality protections that limit the disclosure of certain victim records and information and referencing federal laws that impose confidentiality requirements and limit the disclosure of victim certain records and information); *see also, e.g., Law Enforcement-Based Victim Services, supra* note 18, at 18–22 (describing the types of state privacy and confidentiality laws in Illinois that might impact law enforcement-based victim services). It is also critical for advocates to become familiar with any confidentiality and privacy obligations that they have to victims based on their funding. *See supra* note 19 (detailing some of the funding-related confidentiality and privacy requirements that law enforcement-employed victim advocates may be subject to).

⁴⁴ *See, e.g.*, Ala. Code § 15-23-41(8) (stating that, for the purposes of victim counselor-victim confidentiality and privilege under Ala. Code § 15-23-42, the term “victim counselor,” does not include counselors affiliated with a law enforcement agency); Colo. Rev. Stat. Ann. § 13-90-107(1)(k)(II) (stating that the domestic violence advocate-victim and sexual assault victim advocate-victim privileges do not extend to “advocate[s] employed by any law enforcement agency”); Ind. Code Ann. § 35-37-6-3.5(b)(2) (stating that, for the purposes of victim advocate-victim confidentiality and privilege under Ind. Code Ann. § 35-37-6-9, the term “victim advocate” does not include “an employee or agent of a law enforcement officer”); *id.* § 35-37-6-5(2) (stating that for the purposes of victim services provider-victim confidentiality and privilege under Ind. Code Ann. § 35-37-6-9, the term “victim service provider” does not include a public agency, unit of a public agency, or a nonprofit organization that is “affiliated with a law enforcement agency”); Ga. Code Ann. § 24-5-509(a)(1), (3), (8) (stating that the family violence shelter agent-victim and rape crisis center agent-victim privileges under Ga. Code Ann. § 24-5-509(b) do not apply to agents for programs that are “under the direct supervision of a law enforcement agency”); Minn. Stat. Ann. § 595.02(1) (stating that the domestic abuse victim advocate-victim privilege does not apply to advocates “employed by or under the direct supervision of a law enforcement agency”); Neb. Rev. Stat. Ann. §§ 29-4302(1) (stating that the domestic violence victim advocate-victim and sexual assault victim advocate-victim confidentiality and privilege protections under Neb. Rev. Stat. Ann. § 29-4303 do not apply employees or supervised volunteers of programs, agencies, businesses or organizations that are “affiliated with a law enforcement . . . office”); N.M. Stat. Ann. § 31-25-2(E) (stating that, for the purposes of the Victim Counselor Confidentiality Act, the term “victim counselor” does not apply to employees or supervised volunteers of programs, agencies, businesses or organizations that are “affiliated with a law enforcement agency”); Utah Code Ann. § 77-38-405(1) (providing that victim advocate-victim confidentiality protections do not apply to communications between a victim and a “criminal justice system victim advocates,” which Utah. Code Ann. § 77-38-403(4), defines as including individuals who are “employed . . . by a government agency that possesses a role or responsibility within the criminal justice system”); Utah R. Evid. 512(d)(5)–(7) (providing exceptions to the victim advocate-victim privilege for confidential communications between a victim and a “criminal justice system victim advocate”); Wash. Rev. Code Ann. § 5.60.060(8)(a) (stating that the domestic violence advocate-victim privilege does not apply to advocates “employed by, or under the direct supervision of, a law enforcement agency”).

⁴⁵ *See In re Crisis Connection, Inc.*, 949 N.E.2D 789, 800 (Ind. 2011) (finding that “Indiana’s victim advocate privilege avoids *Brady* issues by excluding from its protection persons affiliated with the State,” such as victim service providers affiliated with law enforcement and victim advocates who are employees or agents of law enforcement officers).

⁴⁶ *See, e.g.*, Cal. Penal Code § 11165.7(a)(15), (21), (34) (including among the professionals mandated to report child abuse and neglect, social workers, clinical social workers and “employee[s] of any police department, county sheriff’s department, county probation department, or county welfare department”); Colo. Rev. Stat. Ann. § 18-6.5-108(1)(b)(III), (VII) (identifying “persons employed by, contracting with, or volunteering with any law enforcement agency, including victim advocates” and “social workers” as among the professionals who must report an observation or reasonable belief that certain vulnerable adults have been mistreated or at imminent risk of mistreatment); Fla. Stat. Ann § 415.1034(1)(a)(4), (5) (mandating that social workers and “[s]tate, county or municipal criminal justice employee[s] or law enforcement officer[s]” report knowledge or suspicion of abuse,

neglect or exploitation of vulnerable adults to central abuse hotline); 325 Ill. Comp. Stat. Ann. § 5/4(a)(2), (7) (identifying licensed social workers, licensed clinical social workers and law enforcement personnel as among the professionals required to report child abuse and neglect); 320 Ill. Comp. Stat. Ann. § 20/2(f-5)(1), (7) (defining “mandated reporter,” for the purposes of the Adult Protective Services Act, which requires mandated reporters to report suspicion of the abuse, abandonment, neglect or financial exploitation of eligible adults, as including “a professional or a professional’s delegate while engaged in: (i) social services, (ii) law enforcement . . . or (v) any of the occupations required to be licensed under . . . the Clinical Social Work and Social Work Practice Act . . .”, and “any employee of the State of Illinois not otherwise specified herein who is involved in providing services to eligible adults, including professionals providing medical or rehabilitation services and all other persons having direct contact with eligible adults”); Minn. Stat. Ann. § 260E.06(a)(1) (mandating reports of child maltreatment by “a professional or professional’s delegate who is engaged in the practice of the healing arts, social services, . . . law enforcement”).

⁴⁷ See, e.g., Del. Code Ann. § 903(a) (mandating reporting by “[a]ny person, agency, organization or entity who knows or in good faith suspects child abuse or neglect”); Fla. Stat. Ann. § 39.201(1) (mandating that any person report knowledge or reasonable suspicion that a child is the victim of abuse, abandonment, neglect or sexual abuse); Ind. Code Ann. § 31-33-5-1 (mandating reports of child abuse or neglect by “an individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report as required by this article”).

⁴⁸ See *IACP Advocacy Parameters & Documentation*, *supra* note 21, at 25 (recognizing that law enforcement-based victim services personnel may have mandatory reporting obligations in their capacity as victim services personnel, as well as with respect to “any personnel’s professional certification or licensure [that] mandates reporting (e.g., social workers)”).

⁴⁹ See, e.g., Alaska Stat. Ann. § 47.17.020(a)(1) (mandating reports of child abuse or neglect by certain persons who, “in the performance of their occupational duties, appointed duties . . . or volunteer duties” have reasonable cause to suspect such abuse or neglect); Ill. Comp. Stat. Ann. § 5/4(c)(1) (emphases added) (defining, for the purposes of a law mandating certain professionals report neglect and abuse “a child known to them in their professional or official capacities,” the phrase “a child known to them in their professional or official capacities” to mean, *inter alia*, “the mandated reporter comes into contact with the child *in the course of the reporter’s employment or practice of profession*, or through a regularly schedule program, activity, or service . . . or a person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse or child neglect, and the disclosure happens *while the mandated reporter is engaged in his or her employment or practice of a profession or in a regularly scheduled program, activity, or service*”).

⁵⁰ See *People v. Burnidge*, 687 N.E.2d 813, 815–16 (Ill. 1997) (recounting pretrial testimony of a pastor who was also a clinical psychologist, that, after learning of child abuse while counseling defendant in his capacity as a clergyman, he contacted the Department of Children and Family Services for advice and was informed that, under the mandatory reporting law in effect at the time, he was not required to report child abuse as a pastor, but that he was required to report it as a psychologist).

⁵¹ Compare *State v. James-Buhl*, 415 P.3d 234, 238–39 (Wash. 2018) (finding that statute imposing a mandatory duty on professional school personnel to report suspected child abuse did not require public school teacher to report the suspected sexual abuse of her own daughters because in referring to people by means of their occupation, not their status as adults or persons, the statute required some connection between an individual’s professional identity and the criminal offense) with *Heotis v. Colorado State Board of Educ.*, 457 P.3d 691, 698 (Colo. 2019) (holding that a public school teacher “had a statutory and moral duty to report the abuse of her daughter even though she learned of the abuse in her personal family life and not while working in her professional capacity”).

⁵² See *IACP Template Package I*, *supra* note 25, at 38 n.2 (including, within template for a Mandated Reporting Protocol for law enforcement-based victim services personnel, a recommendation that the victim services personnel review state laws and law enforcement agency policies on mandated reporting and that “[a]dditional consideration is given to victim services personnel with a professional license (e.g., social work, counseling, or nursing license) or other affiliation (e.g., volunteer EMS, soccer coach) that may have mandated reporting requirements”).

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