



NATIONAL CRIME VICTIM LAW INSTITUTE

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This resource is supported by Grant No. 15JOVW-21-GK-02231-ICJR awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this resource are those of the contributors(s) and do not necessarily reflect the views of the U.S. Department of Justice.

FOUNDATIONAL PRINCIPLES FOR INFORMATION SHARING IN INTERDISCIPLINARY COLLABORATIONS*

Interdisciplinary collaborative teams focused on strengthening services for crime victims and improving public safety and offender accountability have become increasingly common. This move has resulted, in part, from the recognition that information sharing among otherwise siloed stakeholders can help team members to better monitor cases, improve policies, and provide more comprehensive, trauma-informed, and culturally-relevant services. This type of collaboration can also increase the risk of violating victims' privacy rights and interests.

Interdisciplinary teams may include professionals from a variety of disciplines, including law enforcement, prosecutors, community- and system-based victim advocates, attorneys, faith leaders, health care providers, and others. These team members will have different privacy, confidentiality, and disclosure obligations. To ensure victims' privacy rights are honored at every stage of the justice process, participants in interdisciplinary collaborations need to know their own privacy-related duties as well as know and respect those of their team members. This resource identifies some principles to help members work within collaborative efforts effectively while protecting victims' privacy rights.

Principle 1: Ground Victims' Services in Victims' Self-Determination

- Grounding victims' services in victims' self-determination is a first principle of victim-centered information practices. This requires that victims be given the information necessary to make informed choices about whether, when, and with whom they share their information, and that victim service providers respect victims' choices to the fullest extent possible given the legal and ethical obligations that govern their work.

Principle 2: Be Familiar with the Fundamentals of Privacy, Privilege, and Confidentiality Laws¹

- Familiarity with the fundamentals of privacy, privilege, and confidentiality laws can help participants in interdisciplinary collaborations better understand their own and other team members' privacy-related and disclosure obligations and avoid inadvertent violations of victims' privacy rights.

PRACTICAL TIP

All professionals working with victims need to know and understand victims' privacy-related rights in their jurisdiction. In addition to broad privacy rights, states and the federal government provide for victim privacy through privacy-related constitutional provisions, statutes, and rules, such as: rape shield; evidentiary privileges; protections for victims' identifying information; address confidentiality programs; victims' right to refuse a defense request for an interview and/or discovery request; and limitations on public access to victims' information via public records requests. For more information about some common victims' rights, including privacy-related rights, see Nat'l Crime Victim Law Inst., *10 Common Victims' Rights*, 2023, https://ncvli.org/wp-content/uploads/2024/02/Comm-on-Victims-Rights_final.pdf.

- *Privacy.* Privacy is the broad right that allows a person to control the sharing of personal information, and includes the right to protective measures that prevent or limit access to their personal information. A victim's privacy is implicated when the parties in a criminal case (*i.e.*, the prosecution and the defense) or others (such as media outlets) seek information about or from the victim. Any disclosure of a victim's identifying or locating information in official records, court filings, or proceedings also implicates a victim's privacy rights. Some jurisdictions explicitly afford or recognize a right to privacy in their victims' rights laws; such rights are typically expressed either as a general right to privacy² or as a right to be treated with respect for the victim's privacy.³ Some states explicitly provide all individuals—not just crime victims—with a constitutional right to privacy.⁴ In addition, the United States Constitution affords individuals, including victims, with privacy protections, including the right to be free from unreasonable government intrusions into their person, home, papers, and effects,⁵ and the right to keep personal information private.⁶ The right to privacy is, at times, implicated in victim safety to the extent that disclosure of a victim's identity, locating information, and other personal details can jeopardize the victim's physical, emotional, or psychological well-being.

- *Confidentiality.* Confidentiality is the legal and ethical duty to keep private a victim-client's information that was learned in confidence. As part of accessing services, victims frequently share highly sensitive personal information with professionals. The obligation to hold the victim's information in confidence is governed by the professional's ethical duties, regulatory framework, and/or by other laws.

- *Laws Tying Confidentiality to Professional Ethical*

Rules - Professional confidentiality obligations may be imposed by one's profession, *e.g.*, victim advocate ethics; social worker ethics; attorney ethics; medical provider ethics; and mental health counselor ethics.

- *Laws Tying Confidentiality to Funding* - Certain laws have confidentiality provisions that are tied to funding. If an entity receives such funds, then it is bound by confidentiality requirements. Examples of laws that impose confidentiality requirements include the: (1) Violence Against Women Act (VAWA), 34 U.S.C. § 12291(b)(2)(A)–(B);⁷ (2) Victims of Crime Act (VOCA), 28 C.F.R. § 94.115; and (3) Family Violence Prevention and

Services Act (FVPSA), 42 U.S.C. § 10406 (c)(5)(B).

- *Laws Protecting Certain Categories of Records* - Depending on the types of victim information and records at issue, statutes may impose restrictions on disclosure, including the Federal Educational Rights & Privacy Act (FERPA), 20 U.S.C. § 1232g (protections governing the handling of records defined by statute as “education records”); the Health Insurance Portability & Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq. (protections governing the handling of “medical records” and other “individually identifiable health information” as defined by statute); and the Stored Communications Act (SCA), 18 U.S.C. § 2701 et seq. (protections governing electronic communications and transactions records).
- *Privilege*: Privilege is a legal right of a person not to disclose—or to prevent the disclosure of—certain information in connection with court and other proceedings. Legislatures throughout the country have recognized that the effective practice of some professions requires even stronger legal protection of confidential communications between the professional and the client. This recognition has resulted in the passage of privilege laws that prevent courts from forcing these professionals to break the promise of confidentiality no matter how relevant the information is to the issues in the legal proceeding. Key aspects of privileged communications are that: (1) they are specially protected, often by statute; (2) disclosure without permission of the privilege holder (*e.g.*, the victim) is prohibited; (3) they are protected from disclosure in court and other proceedings; (4) the protections may be waived only by the holder of the privilege (*e.g.*, the victim); and (5) some exceptions may apply. Examples of communications that may be protected by privilege depending on jurisdiction include: spousal; attorney-client; psychotherapist/counselor-patient; clergy-penitent; doctor-patient; and advocate-victim.

Principle 3: *Limitations on the Ability to Keep Information Confidential Should Be Clearly Communicated with Victims*

- When providing services—and ideally before any victim information is communicated from the victim to a service provider—service providers should discuss with victims the contours of the confidentiality protections that they can afford.
- It is important that victims understand that courts may have the authority to require a professional to break the promise of confidentiality when certain conditions are met, such as when a court decides that the rights of an accused person outweigh the privacy protections afforded to the victim by law.
- Other circumstances that may compel disclosure of victims’ otherwise confidential information include if the information falls within the prosecution’s required disclosures to defendants pursuant to the United States Supreme Court case *Brady v. Maryland*, 373 U.S. 83 (1963),⁸ or if information shared with a mandatory reporter compels the reporting of child abuse or abuse of a vulnerable adult.

Principle 4: *Know and Respect Partners' Roles and Information-Sharing Norms*

- Interdisciplinary collaborations can take a variety of forms but commonly include: task forces, multi-disciplinary teams (MDTs), coordinated community response teams (CCRTs), domestic violence response teams (DVRTs), and sexual assault response teams (SARTs). Conflicts within interdisciplinary collaborations can arise over different norms for information-sharing. Such conflicts can happen for a number of reasons, including because a team member has the expectation that information-sharing should be reciprocal (*e.g.*, “I shared information with you, so now you must share information with me”), or because of a lack of understanding of or respect for different ethical or legal privacy-related and disclosure obligations.
- One approach that can help reduce the occurrence of such conflicts is to encourage clear and frequent communication between and among team members about their professional role(s) (*e.g.*, prosecutor, law enforcement-based victim advocate, community-based victim advocate) and their information-sharing norms (*e.g.*, what information they can and cannot share with the team, and whether they are subject to mandatory disclosure obligations that would require them to disclose information shared by another team member). The goal of interdisciplinary collaboration is not for everyone to share the same roles and norms, the goal is for the team to respect rights while abiding by their own legal and ethical obligations.

Principle 5: *Understand the Scope of Laws Governing Certain Interdisciplinary Collaborations*

- In some jurisdictions, laws that provide for the creation of interdisciplinary teams—such as MDTs, task forces, DVRTs, and SARTs—also describe confidentiality or other privacy protections that attach to information learned or records reviewed as part of a team member’s participation on the team.⁹
- Generally, statutes governing the creation or operation of interdisciplinary collaborations—whether they purport to require that all information learned as part of participation in the

PRACTICAL TIP

To help team members learn about and understand each other’s roles and information-sharing norms, consider devoting a team meeting (or meetings) to exploring hypothetical scenarios that raise questions about information-sharing. For each scenario, participants can take turns explaining whether and why they would or would not share the information at issue with other team members or with people outside of the team. This can allow team members to explore roles and information-sharing norms with the goal of helping them navigate differences when working with actual victims.

NCVLI can provide technical assistance to enhance team meetings, including creating collaborative agendas, developing scenarios, facilitating, and more.

PRACTICAL TIP

All participants in interdisciplinary collaborations should review closely any laws that mandate participation in or otherwise govern the scope of the collaboration. While some laws may require or encourage participation on a team, they do not alter existing privileges, confidentiality duties, or disclosure obligations that are imposed by other laws and rules. When reading the law, a key question to ask is: “Does this law clearly require that I share confidential information or does it just require that I be a member of the team?”

NCVLI can provide technical assistance to help teams understand the privacy, confidentiality, and privilege laws of their jurisdiction.

shared values, principles, and goals—should reflect the team’s consensus regarding how participants will work together, including expectations around information sharing and whether and how team members will share accountability for abiding by privacy-related obligations.

- Interdisciplinary collaborations should consider participants’ professional roles and information-sharing norms when deciding whether or in what form to incorporate case review into team meetings. Case review generally involves participants’ discussions of specific cases. Regardless of how strongly team members feel about the benefits of this type of information sharing, certain team member’s

team be kept confidential or not—do not alter team members’ other confidentiality and privilege duties or mandatory disclosure obligations (including *Brady* disclosures). Victims should be informed of the potential that their information could be subject to further disclosure when deciding whether to consent to the sharing of their information with each member of the team.

Principle 6: *The Interdisciplinary Collaboration’s MOU, Practices, Principles, Goals, and Mission and Values Statements Should Reflect Team Members’ Differing Privacy-Related Obligations and Address Accountability for Abiding by Obligations*

- Memoranda of Understanding (MOUs) are formal agreements between participants in interdisciplinary collaborations that outline the roles, responsibilities, and expectations of each participant, and generally describe the scope and boundaries of their relationship to one another. MOUs—along with the team’s mission statement and other expressions of

PRACTICAL TIP

Even when team members do not have confidentiality obligations that would bar them from sharing information about a victim or case with other members of the team, the team should consider adopting practices to decrease the likelihood of inadvertent violations of victims’ privacy rights and interests. Examples of protective practices could include: prohibit attendees from taking notes during case review meetings; collect and shred duplicate documents after meetings; ensure all files are kept confidential and safe; and provide reminders not to use victims’ names or other personally identifying information or share *Brady* or other “discoverable” information.

confidentiality obligations may prevent them from sharing any information about a victim or case without the victim’s informed consent.

- MOUs and other statements of shared values, principles, and goals, should address how team members can hold one another accountable to their agreements on information sharing. Accountability could look like team members committing to being able to give and receive constructive criticism regarding privacy concerns. Accountability could also look like identifying as a team the encouraged and discouraged information-sharing practices that will best protect victims’ rights and are consistent with the legal and ethical rules that govern their professional roles and information-sharing norms.

PRACTICAL TIP

When drafting a Release of Information form (which is sometimes called an “ROI form” or “Release form”) for use with victims, it is important to keep in mind the VAWA/VOCA/FVPSA requirements, along with victims’ rights generally, and the goal of enhancing victim empowerment through the use of the form. To review considerations to keep in mind when creating an ROI form and/or revising existing forms, see Nat’l Crime Victim Law Inst., *Release of Information Form Considerations*, 2022, https://ncvli.org/wp-content/uploads/2023/01/Release-of-Information-Form-Considerations_accessible.pdf; to review a template form see Nat’l Crime Victim Law Inst., *Sample Release of Information (ROI) Template*, 2022, https://ncvli.org/wp-content/uploads/2023/01/Sample-Release-of-Information-Template_accessible.pdf.

* NCVLI acknowledges Alicia Aiken, J.D., Director of the Danu Center’s Confidentiality Institute, and Lewis & Clark Law School student Jules Kaempf (’24), who assisted in the creation of this resource.

¹ For more information about privacy, privilege, and confidentiality, see Nat’l Crime Victim Law Inst., *Protecting Victims’ Privacy: Confidentiality and Privilege Primer*, 2017, <https://law.lclark.edu/live/files/25187-ncvli-newsletter---protecting-victims>.

² See, e.g., N.D. Const. art. I, § 25(1)(f) (affording victims “[t]he right to privacy, which includes the right to refuse an interview, deposition, or other discovery request made by the defendant, the defendant’s attorney, or any person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interaction to which the victim consents”); S.D. Const. art. VI, § 29(6) (affording victims “[t]he right, upon request, to privacy, which includes the right to refuse an interview, deposition or other discovery request, and to set reasonable conditions on the conduct of any such interaction to which the victim consents”); Wis. Const. art. I, § 9m(2)(b) (affording victims the right “[t]o privacy”); see also Va. Code Ann. § 19.2-11.01(A) (stating that one of the primary purposes of the state’s victims’ rights laws is to ensure that victims’ “privacy is protected to the extent permissible under law”).

³ See, e.g., Cal. Const. art. I, § 28(b)(1) (affording victims the right “[t]o be treated with fairness and respect for [the victim’s] privacy and dignity . . . throughout the criminal or juvenile justice process”); Idaho Const. art. I, § 22(1) (affording victims the right “[t]o be treated with fairness, respect, dignity and privacy throughout the criminal justice process”); Ill. Const. art. I, § 8.1(a)(1) (affording victims “[t]he right to be treated with fairness and respect for their dignity and privacy . . . throughout the criminal justice process”); Ky. Const. § 26A (affording victims “the right to fairness and due consideration of the crime victim’s safety, dignity, and privacy”); Mich. Const. art. I, § 24(1) (affording victims “[t]he right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process”); N.H. Rev. Stat. Ann. § 21-M:8-k(II)(a) (affording victims “[t]he right to be treated with fairness and respect for the victim’s safety, dignity, and privacy throughout the criminal justice process”); N.M. Stat. Ann. § 31-26-4(A) (affording victims the right to “be treated with fairness and respect for the victim’s dignity and privacy throughout the criminal justice process”); Nev. Const. art. I, § 8A(1)(a) (affording victims the right “[t]o be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process”); N.M. Const. art. II, § 24(A)(1) (affording victims of enumerated crimes “the right to be treated with fairness and respect for the victim’s dignity and privacy throughout the criminal justice process”); Ohio Const. art. I, § 10a(A)(1) (affording victims the right “to be treated with fairness and respect for the victim’s safety, dignity and privacy”); Okla. Const. art. II, § 34(A) (affording victims the right “to be treated with fairness and respect for the victim’s safety, dignity and privacy”); Tex. Const. art. I, § 30(1) (affording victims “the right to be treated with fairness and with respect for the victim’s dignity and privacy throughout the criminal justice process”); Okla. Stat. Ann. tit. 21, § 142A-2(A)(2) (affording victims the right to “be treated with fairness and respect for the safety, dignity and privacy of the victim”).

⁴ See, e.g., Ariz. Const. art. II, § 8 (“No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”); Cal. Const. art. I, § 1 (“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”); Fla. Const. art. I, § 23 (“Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein...”); Ill. Const. art. I, § 6 (“The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means...”); La. Const. Ann. art. I, § 5 (“Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy.”); Mont. Const. art. II, § 10 (“The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.”).

⁵ See U.S. Const. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”).

⁶ See *Whalen v. Roe*, 429 U.S. 589, 598–600 (1977) (recognizing a federal constitutional right to informational privacy that includes the individual interest in avoiding disclosure of personal matters); see also *Florida Star v. B.J.F.*, 491 U.S. 524, 536 (1989) (finding that “it is undeniable” that protecting privacy of victims of sexual offenses is a “highly significant” state interest and that such an interest, under certain circumstances, may warrant imposition of civil sanctions for publication of rape victim’s name); *Eastwood v. Dep’t of Corrections*, 846 F.2d 627, 630–31 (10th Cir. 1988) (stating that the right to informational privacy is implicated when an individual is forced to disclose information regarding personal sexual matters).

⁷ For more information about VAWA and confidentiality, see U.S. Dept. of Just., Off. on Violence Against Women, *Frequently Asked Questions (FAQs) on the VAWA Confidentiality Provision* (34 U.S.C. § 12291(b)(2)), [https://www.justice.gov/ovw/page/file/1006896/dl#:~:text=12291\(b\)\(2\)%2C,and%20subgrantees%20are%20providing%20services](https://www.justice.gov/ovw/page/file/1006896/dl#:~:text=12291(b)(2)%2C,and%20subgrantees%20are%20providing%20services).

⁸ For more information on *Brady* disclosure obligations generally and their application to system-based victim advocates, see Nat’l Crime Victim Law Inst., *What are Brady Disclosure Obligations*, 2023, https://ncvli.org/wp-content/uploads/2023/03/What-are-Brady-Disclosure-Obligations_accessible-PDF.pdf; Nat’l Crime Victim Law Inst., *Law Enforcement-Associated Victim Service Providers and the Brady Rule: Legal Background and Considerations*, 2023, https://ncvli.org/wp-content/uploads/2023/02/Law-Enforcement-Associated-Victim-Service-Provider-Brady-Considerations_final-accessible.pdf; *An Overview of Brady Obligations*, <https://www.youtube.com/watch?v=Q19VCiV2nj0>.

⁹ See, e.g., Alaska Stat. Ann. § 47.14.300(a), (d) (“[e]xcept for a public report issued by a team that does not contain confidential information, records or other information collected by the team or a member of the team related to duties under this section are confidential and not subject to public disclosure under [statutes governing public records requests]”); Cal. Welf. & Inst. Code § 15754(a) (providing that participants on multidisciplinary personnel teams may share “information and records regarding the prevention, identification, or treatment of abuse of elderly or dependent persons[.]” that everyone on the team “shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information[.]” and that “[t]he information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights”); Ga. Code Ann. § 30-5-11(a) (providing that “records and information acquired by an Adult Abuse, Neglect, and Exploitation Multidisciplinary Team pertaining to the abuse, neglect, or exploitation of disabled adults or elder persons shall be confidential” subject to exceptions and shall not be accessible under the state’s open records laws); Okla. Stat. Ann. tit. 10A, § 1-9-102(A)(1), (C)(1)(b), (H) (providing that all “member[s] of the [multidisciplinary child abuse] team shall be responsible for protecting the confidentiality of the child and any information made available to such person as a member of the team”); Wash. Rev. Code Ann. § 26.44.175(2)(b) (noting that participants in multidisciplinary child protection teams may share child abuse investigation and case planning information with others on the team “to the extent necessary to protect a child from abuse or neglect[.]” however, this “is not intended to permit, direct, or compel team members to share information if sharing would constitute a violation of their professional ethical obligations or disclose privileged communications as described in RCW 5.60.060 [describing legal privileges], or if sharing is otherwise impermissible under chapter 13.50 RCW [protections associated with records held by juvenile justice or care agencies] or other applicable statutes”).