Common Ethical Issues When Serving Victims of Crime

Minnesota Victim Assistance Academy
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Presenter

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Agenda

- Why Confidentiality Matters: Your Highest Obligation
- Records Protections and Client Privilege
- Mandated Reporting
- Crime Victim Rights
Public Policy

“Trust is gained in drops and lost in buckets.”

Alicia Aiken, The Confidentiality Institute
Public Policy

- Who wants access to victim/survivor information?
- Who decides whether to share information?
Public Policy

- Sexual violence and domestic abuse are major public health problems
  - Barriers to safety
  - Physical, emotional, economic victimization
  - Violation of sense of privacy and autonomy
  - Isolation
  - Culture of blame
  - Rape myths
Funding

- Federal Law
  - Family Violence Prevention and Services Act (FVPSA)
    - 42 USC Sec 10402(a)(2)(E)
  - Victim Compensation and Assistance Program (VOCA)
    - 42 USC Sec10601
  - Violence Against Women Act (VAWA)
    - 42 USC 13925(b)(2)
  - Housing and Urban Development (HUD)
    - 42 USC 11375(c)(5)
Funding

- State Law
  - Sexual Assault Counselors
    - Minn. Stat. § 595.02, subd. 1(k)
    - Minn. Stat. § 13.822 and § 13.823
    - Minn. Stat. § 611A.211 subd. 4
  - Domestic Abuse Advocate
    - Minn. Stat. § 595.02, subd. 1(l)
    - Minn. Stat. § 611A.32
    - Minn. Stat. § 13.823
  - Crime Victims
    - Minn. Stat. § 611A.46
- Other Requirements
  - State Contract
Public Policy

- Confidentiality challenges
  - Disrupt victim’s recovery
  - Chilling effect on seeking help
  - Damage one-to-one relationship between victim and advocate
  - Damage public trust relationship in advocacy programs
  - Negative impact on reporting and public safety
Record classification
laws that protect certain records
Public Policy

- Who has the record?
  - Third party?
  - The State?
  - Why does it matter?
What is Privilege?

- Held by the survivor/client only
- Different professions
- Third parties
- Why does privilege exist?
- Are some privileges stronger than others?
- Record keeping – keep it minimal!
Record Classification

Four Categories of Records

(1) Absolute Privilege
(2) Qualified Privilege
(3) Private Data
(4) Other (i.e. Facebook, diary, etc.)
Absolute Privilege

- These records are the most protected
- Only time they should be disclosed is with consent of privilege holder
- Legislature decides – 595.02
  - Attorney client
  - Clergy
  - Medical (includes doctors, nurses, psychologists, licensed social worker)
  - Sexual assault counselors
Sexual Assault Counselor
Privilege

- (k) Sexual assault counselors may not be allowed to disclose any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

Sexual assault counselor” for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.
Qualified Privilege

- These records may be released with consent of privilege holder
- There may be other situations when release is warranted
- Examples – 595.02
  - Marital, parent/child
  - Chemical dependency counselors
  - Domestic Abuse Advocates
A domestic abuse advocate may not be compelled to disclose any opinion or information received from or about the victim without the consent of the victim unless ordered by the court. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and domestic abuse advocate, and the services if disclosure occurs. Nothing in this paragraph exempts domestic abuse advocates from compliance with the provisions of sections 626.556 and 626.557.

For the purposes of this section, "domestic abuse advocate" means an employee or supervised volunteer from a community-based battered women's shelter and domestic abuse program eligible to receive grants under section 611A.32; that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, a prosecutor's office, or by a city, county, or state agency.
Private Data

- These records may be released with consent of victim
- Governed by statute
  - Found throughout MN statutes
  - Examples include data related to: medical, sexual assault, domestic abuse, mental health, child protection, etc.
- Some records will be classified as privileged and private
Other Confidential Records

- Some records are not covered by MN statute
- Examples: diary, facebook, etc.
Waiver of Privilege

- Survivor consent = informed consent
- Written
- Time-limited
- Revocable
- Through what mechanism is the information shared and with whom?
- Future protections
Subpoenas

- Subpoenas are not automatic authorized access!
  - They are “the beginning of a conversation”
  - An opportunity to give notice and the opportunity to object – to identify what information is really necessary (if any) and what information must be protected
- Organization subpoena policy
- Privilege
- Data Privacy Protections (state and federal)
- Contractual
- Corporate policies
- Right to Privacy

Layers of Protection
Questions?
Mandated Reporting Resources

- Minnesota Department of Human Services (DHS) Child Protection
  - Online interactive training on mandated reporting
    - www.mn.dhs.state.mn.us

- Minnesota Coalition Against Sexual Assault Fact Sheets
  - www.mncasa.org
Minnesota Law

- State: Reporting Maltreatment of Minors
  - Minn. Stat. (MS) § 626.556
    - Response to federal requirements
    - Explains mandated and voluntary reporting, defines abuse and neglect, sets forth procedures
    - “The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse.”
Mandated Reporting of Child Abuse and Neglect

- Understanding the system
  - State oversight provided by Minnesota Department of Human Services
    - Legislation, policies, rules, data gathering
  - County and reservation roles
    - Each county and Leech Lake and White Earth Bands responsible for receiving and responding to reports
    - Different interpretation from jurisdiction to jurisdiction
Mandated Reporting of Child Abuse and Neglect

- Two responses to reports
  - Family Assessment
    - Moderate to low risk
    - Up to 5 days response time
    - Assess safety, risk, family needs and strengths
    - No maltreatment determination
    - Engage family and provide services
  - Investigation (i.e. sexual abuse)
    - Severe harm or safety concerns
    - Immediate response
    - Maltreatment determination
    - Tape recorded interviews
    - Law enforcement involved if criminal offense
    - Child safety and provision of services
Mandated Reporting of Child Abuse and Neglect

- Who must report?
  - Mental health service providers
  - Social services providers (sexual assault advocates)
  - Child care providers
  - Law enforcement, probation, corrections
  - Clergy
  - Healing arts practitioners
  - Education providers
  - Hospital administration
  - Psychiatrists, psychologists, therapists and counselors
  - ALSO voluntary reporters
Mandated Reporting of Child Abuse and Neglect

- What must be reported?
  - Physical abuse
  - Sexual abuse (significant relationship/position of authority)
  - Neglect

... when a reporter knows of an incident or has reason to believe a child has been abused or neglected within the preceding three years (or two or more unrelated children in past 10 years)

Report must be made immediately (orally within 24 hours, written report within 72 hours) by mandated reporter herself.
Mandated Reporting of Child Abuse and Neglect

Who receives report:
- Maltreatment within family: report to local child welfare office or law enforcement (cross-report)
- Maltreatment outside family (i.e. in school or day care): report to licensing agency if applicable or law enforcement
- Emergency/Imminent danger to child: Law enforcement, can remove child without court order
- Not sure? Call local child welfare agency
Mandated Reporting of Child Abuse and Neglect

- What to report:
  - Report in county where child lives
  - Name of offender if known
  - Name of victim
  - Nature and extent of maltreatment
  - Name and address of mandated reporter
    - Note that name of reporter will be confidential in cross-reporting
    - Name may show up in court file
    - Talking about report with victim
    - It’s not your duty to investigate the facts, just report
Mandated Reporting of Child Abuse and Neglect

- After a report is made:
  - Child protection agency will notify mandated reporter within 10 days either orally or in writing about whether report was screened in and if yes, whether recommended for family assessment or investigation; maltreatment determination, referrals
  - A voluntary reporter gets a concise summary unless release of info would compromise best interests of the child
Mandated Reporting of Child Abuse and Neglect

- Failure to Report
  - Misdemeanor if mandated reporter knows or has reason to know neglect or abuse of a child occurred in preceding 3 years
  - Gross misdemeanor if mandated reporter knows or has reason to believe that two or more children not related to the perpetrator have been physically or sexually abused, by same perpetrator within preceding 10 years
Mandated Reporting of Child Abuse and Neglect

- Reporter protection
  - Name is confidential unless disclosed as part of court process
  - Immunity from civil or criminal liability if report made in good faith
  - No employer retaliation against employees required to make a report who do so in good faith
Mandated Reporting of Child Abuse and Neglect

- Neglect includes (but not limited to) . . .
  - Failure to protect a child from conditions or actions that seriously endanger the child’s physical or mental health
  - Leaving child with a person who should not have a responsibility for a child
  - Involving a child in a criminal act that seriously endangers the child
  - Ongoing abuse by a sibling and parent fails to protect
  - Dangerous living conditions
Changes in 2012

- Changes in the Minnesota law in response to interpretation of federal requirements under Child Abuse Prevention and Treatment Act (CAPTA)
(d) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse which includes the status of a parent or household member who has committed a violation which requires registration as an offender under section 243.166, subdivision 1b, paragraph (a) or (b), or required registration under section 243.166, subdivision 1b, paragraph (a) or (b).
**MS 243.166 subd. 1(b), paragraph (a) and (b)**

- Murder: 609.185(a)(2)
- Kidnapping: 609.25
- Criminal Sexual Conduct: 609.341, 609.342, 609.343, 609.344, 609.345, 609.3451 subd. 3, 609.3453
- Indecent Exposure: 617.23 subd. 3
- Criminal Abuse: 609.2325 subd. 1(b)
- False Imprisonment: 609.255, subd. 2
MS 243.166 subd. 1(b), paragraph (a) and (b)

- Soliciting a Minor to Engage in Prostitution: 609.322 or 609.324
- Soliciting a Minor to Engage in Sexual Conduct: 609.352
- Using a Minor in a Sexual Performance: 617.246
- Possessing a Pornographic Work Involving a Minor: 617.247
**MS 243.166 subd. 1(b), paragraph (a) and (b)**

- Person convicted as patterned sex offender: 609.3455 subd. 3a
- Similar convictions under Uniform Code of Military Justice
- Similar convictions in other states
- Civil commitments in MN or other states
- Not guilty by reason of mental illness after a trial or found guilty by mentally ill after a trial in MN or other states
Result of Change

- Created a reported issue of threatened sexual abuse if someone is required to register as a predatory offender
- Based on **STATUS** of the parent or household member
- Nothing to do with contact with the child
- No look back period
- Increased reporting
- Triggers investigative response
Additional Related Changes

- MS 260.012: Duty to Ensure Placement Prevention and Family Reunification; Reasonable Efforts . . . includes
  - Not required when parent has committed sexual abuse under MS 626.556 subd. 2 against the child or another child of the parent
  - Parent convicted of an offense under MS 243.166 subd. 1(b), paragraph (a) or (b) (STATUS)
Additional Related Changes

- **MS 260C.503: Permanency Proceedings**
  - Termination of Parental Rights includes:
    - Sexual abuse under MS 626.556 subd. 2
    - The parent has committed an offense that requires registration as a predatory offender under MS 243.166 subd. 1b, paragraph (a) or (b) (STATUS)
How is Your County Responding?

- Investigation only, not assessment?
- Allowing assessment in some cases?
- TPR petitions? What is the process?
Legislative Fixes?

- Technical change submitted to the legislature but no change has been approved
- What is happening now?
Know Your County!

- There are distinctions in interpretations from county to county.
- Talk with your county child protection and county attorney offices about their processes and interpretations.
Prostitution, Trafficking and Youth

- Minnesota’s New Safe Harbors Law
  - Changed conflict in state law
  - Children found to be “engaging in prostitution” were simultaneously considered:
    - Victims of sex trafficking
    - Children in need of protection or services
    - Maltreated minors
    - Juvenile delinquents
Prostitution, Trafficking and Youth

- Overview of Changes in Safe Harbors Law
  - Excludes sexually exploited youth under 18 from the definition of delinquent child
  - Includes the definition of sexually exploited youth in Minnesota’s child protection code
Prostitution, Trafficking and Youth

- Continued changes . . .
  - Increases penalties against offender “johns”
  - Directs the Commissioner of Public Safety to work with stakeholders to create a victim centered response to sexually exploited youth
  - Safe Harbor Statewide Director
  - Effective this year
Different Interpretations

- Are prostituted/exploited youth subject to mandated reporting when the offender is not in a caregiver or position of authority role?
Parting Thoughts on Mandated Reporting

- When in doubt:
  - Recognize obligation to confidentiality and when it must be breached according to the law
  - Talk with local child welfare agency about hypothetical situations
  - If you’re not sure incident was already reported, report it – it’s okay to have multiple reports
Parting Thoughts on Mandated Reporting

- As a general rule, explain limits to confidentiality early in conversation with person you are serving.
- Educate the people you serve about this change in the law.
- Review agency policy on reporting, remember it is up to the mandated reporter and not a supervisor to report.
- Still provide services after a report is made – prepare client for what will happen next.
- Offer services; coordinate with law enforcement and/or child protection.
- Watch for potential changes in the law.
Questions?
Crime Victim Rights 611A

- Your ethical duties to ensure that victim is aware of her rights (rights to participate in prosecution, sentencing, restitution, etc.)
- Working with other parts of the system to ensure victim is aware of her rights
- Working with OJP Crime Victim Rights Department to report problems with the system response
Thank You!

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