Common Ethical Issues When Serving Victims of Crime

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Agenda

• Privacy/Confidentiality
• Informed Consent
• Mandated Reporting
• Scenarios
Why is the right to privacy so important?
Why is the VICTIM’S right to privacy so important?
What happens when there’s a breach?

• Disrupts victim/survivor’s recovery
• Chilling effect on seeking help
• Damage one-to-one relationship between victim and advocate
• Damage public trust in advocacy programs
• Negative impact on reporting and public safety
• Negative impact on public health
• Jeopardizes case information
Privacy, Confidentiality, & Privilege: What’s the Difference?
<table>
<thead>
<tr>
<th>PRIVACY</th>
<th>CONFIDENTIALITY</th>
<th>PRIVILEGE</th>
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<tbody>
<tr>
<td><strong>What is it?</strong></td>
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<tr>
<td>A Right</td>
<td>Legal/ethical duty</td>
<td>State laws protecting communications with certain professionals</td>
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<tr>
<td><strong>Who holds?</strong></td>
<td><strong>Who holds?</strong></td>
<td><strong>Who holds?</strong></td>
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<tr>
<td>VICTIM</td>
<td>PROFESSIONAL</td>
<td>VICTIM</td>
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<td>“I decide who knows my information.”</td>
<td>“I have a legal or ethical duty to protect your information.”</td>
<td>“No one can make you share my information.”</td>
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Layers of Protection

- The Constitution
- Funding Sources (VAWA, VOCA, HUD, FVPSA, etc.)
- Data Practices
- State Privilege Statutes
- HIPPA
- Professional Licensure Requirements
Which hat are you wearing?

- Sexual Assault Counselor
- Domestic Abuse Advocate
- Victim-Witness Advocates
- General Crime Victim Advocate
- Other professional/ethical obligations
Sexual Assault Counselor Privilege

“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...”

“Nothing in this clause exempts sexual assault counselors from compliance with [mandated reporting].”

“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.”
Domestic Abuse Advocate Privilege

“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**…”

“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.”

*Minn Stat 595.02 (l)*
Victim Witness Advocates

• Working for county attorney and/or law enforcement
• No privilege protections under Minnesota statutes
• Have other confidentiality obligations
• However, information obtained while working for county attorney and/or law enforcement may be discoverable or required to share as part of *Brady* requirements
General Crime Advocates

- No privilege under Minnesota Statutes
- Confidentiality obligations under state and federal law including contracts
VAWA/VOCA

• Grantee programs are prohibited from sharing personally identifying information about victims without informed, written, reasonably time-limited consent unless there is a statutory or court mandate for release of the information.

• No program can share personally identifying information to comply with Federal, Tribal, or State reporting, evaluation, or data collection requirements.
Personally Identifying Information:

*Information that might allow someone to know who a specific victim is. Includes:*

• Victim’s name,
• Address/contact information,
• Social Security number,
• or any combination of information such as date of birth, racial or ethnic background, or religious affiliation *that, in combination, could identify a victim.*
Examples:

• Revealing that a victim is Ethiopian may be identifying information if there is a limited number of Ethiopian people within the community, or if this is the only case involving an Ethiopian victim.

• Revealing that the victim was the perpetrator's niece may identify the victim in some circumstances.

• Revealing the date and location of where an assault took place, for example, a sexual assault that occurred at a particular dorm on a university campus following that year’s Homecoming game.
Informed Consent/Releases of Information

• Survivor consent = informed consent
• Written vs. Verbal release
• Time-limited
• Revocable
• Through what mechanism is the information shared and with whom?
• Future protections
• Never tied to service provision
When Privilege is Waived:

• Release of Information (*with informed consent*)
• Third party present
• Uh-oh Moments: Unintentional Waiver by Advocate
• Mandated Reporting
SUBPOENA

To (name) ............................................................
of (address) ..........................................................

YOU ARE ORDERED TO: (select one box)

☐ Attend court to give evidence (see Part A of order)
☐ Attend court to give evidence and produce documents (see Part A of order)
☐ Produce documents to the Court (see Part C for details)

TAKE NOTICE: IF YOU FAIL TO OBEY THIS SUBPOENA, a warrant may issue for your arrest and you may be liable to

State: ...................................................... Postcode: ........................................
Subpoenas:
An Invitation to a Conversation

- Subpoenas are not automatic authorized access!
  - Organization’s confidentiality obligations
  - 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
- Internal policies and attorney consultation
- Motions to quash
- In camera review invades victim privacy
Mandated Reporting
Minors: Who Must Report?

• Social services providers (sexual assault advocates)
• Mental health service providers
• Child care providers
• Law enforcement, probation, corrections
• Clergy
• Healing arts practitioners
• Education providers
• Hospital administration
• Psychiatrists, psychologists, therapists and counselors
• ALSO voluntary reporters
Minors: What Must Be Reported?

• What must be reported?
  o Physical abuse
  o Sexual abuse
  o 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.
What is “Abuse”?
What is “Abuse”? 

• Sexual Abuse
  • Significant relationship (family or household member)
  • Person who is a caregiver or in position of authority
  • Sexually exploited youth***
  • Related situations such as involving a child in a sexual performance, unsupervised exposure to an untreated sex offender
    • Contact with a registered predatory offender

• Physical Abuse
What is “Neglect”?  

Includes, but is 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
Minors: Content of 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
  o Note that name of reporter will be confidential in cross-reporting
  o Name may show up in court file
  o Talking about report with victim
    o It’s not your duty to investigate the facts, just report
Mandated Reporting: Two Responses

**INVESTIGATION**
- Severe harm or safety concerns
- Immediate response
- Maltreatment determination
- Law enforcement involvement

**FAMILY ASSESSMENT**
- Moderate to low risk
- Up to 5 days for response
- Assess risks, family needs, strengths
- No maltreatment determination, offer services
Minors: 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
Vulnerable Adults: Who Must Report?

Minnesota Statute 626.5572 – A professional or professional’s delegate engaged in:

• Social services
• Law enforcement
• Education
• The care of vulnerable adults
• Occupations regulated under a health related licensing board
• An employee of a rehabilitation facility
• An employee of or a person providing services in a licensed facility
• A person performing duties of the medical examiner or coroner
Who is a **Vulnerable Adult**?

- 18 years or older
- Resident or inpatient of a facility
- Receives services from a facility (but not receiving outpatient services for chemical dependency or mental illness and not civilly committed sex offenders unless meets last requirement below)
- Receives services from a licensed home care provider or personal care assistant
- Regardless of receiving services, is impaired in ability to provide for own care without assistance AND has an impaired ability to protect self from maltreatment
Vulnerable Adults: What to Report

Abuse, which includes:

- Assault
- Use of drugs to injure or facilitate crime
- Solicitation/inducement/promotion of prostitution
- Criminal sexual conduct (first through fifth degree)
- Hitting, slapping, kicking, pinching, biting, corporal punishment
- Repeated, malicious, harassing oral, written or gestured language
- Use of unauthorized aversive or deprivation procedures
- Sexual contact/penetration involving facility staff and a client/resident/patient
- Forced/coerced performance of services against vulnerable adult’s will for another’s advantage
Conduct that is NOT abuse: Vulnerable Adults

Consensual sexual contact between a vulnerable adult “not impaired in judgment or capacity by mental or emotional dysfunction or undue influence” AND

• person (including a facility staff person) when the consensual personal relationship existed PRIOR to care giving,

OR

• A personal care attendant, regardless of when consensual personal relationship began
Vulnerable Adults: What to Report

Neglect, which includes:

- Failure or omission of caregiver to provide services or care which is not the result of an accident or therapeutic conduct

- Absence or likely absence of care or services which a reasonable person would deem essential to obtain or maintain the vulnerable adult’s health, safety or comfort
Vulnerable Adults: Conduct that is NOT Neglect

• Refusal for care based on health care decision making authority so long as consistent with vulnerable adult’s expressed wishes

• Error by caregiver that either does not result in harm or does result in harm but is immediately addressed and vulnerable adult is able to recover
What to Report: Vulnerable Adults

Financial exploitation, which includes:

• Breach of fiduciary obligation
• Unauthorized expenditure of funds
• Failure to use vulnerable adult’s financial resources to provide necessities where failure is likely to result in detriment
• In the absence of legal authority:
  • Using, withholding or disposing of funds or property
  • Obtaining services to the vulnerable adult’s detriment and the benefit of another
  • Acquiring possession, control or interest in funds or property through undue influence, harassment, fraud, deception or duress
  • Forced/coerced performance of services against vulnerable adult’s will for the profit or advantage of another
Scenarios
You receive a subpoena from a defense attorney for the records of a survivor staying in your shelter. How do you respond?
Chris is seeking your assistance at the sexual assault crisis center. Chris is 16 years old and says his partner forced him into sexual intercourse. He is not sure what he wants to do but knows he wants someone to talk to. A couple of days later you get a phone call from the local police department saying that Chris’s parents have reported the sexual assault and they want to know if Chris came to see you for help.

QUESTIONS:

• How do you assist Chris? What do you tell Chris about confidentiality? Is this a mandated report?
• What do you say to the police department?
You are providing assistance to Jen, who has a six year old son. While you are talking she mentions that her son told her that his grandfather touched his penis during their last visit. She doesn’t know what to do.

QUESTIONS:

• What steps have you taken to inform Jen about your confidentiality protections and when you must make a mandated report?
• Is this a mandated report and if yes, how will you handle telling Jen and making the report?
You work as a victim witness advocate and are working with a victim who will soon testify in trial.

QUESTIONS:
What steps do you take to inform the victim about your confidentiality obligations and limitations? What do you do to ensure that the victim has someone with whom they can have complete confidentiality in communications?
• Explain limits to confidentiality early on
• Educate the people you serve – and work with - about the law
• Review agency policy on mandated reporting
• It is up to the mandated reporter and not a supervisor to report
• It’s okay to make multiple reports – if it is a mandated report, make the report
• Still provide services after a report is made – prepare client for what will happen next
• Watch for potential changes in the law.
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QUESTIONS?