

# CCR Toolkit

## A Privacy Toolkit for Coordinated Community Response Teams



### **Victim Rights Law Center**

115 Broad St., 3<sup>rd</sup> Floor  
Boston, Massachusetts 02110

520 SW Yamhill, Suite 200  
Portland, Oregon 97204

[www.victimrights.org](http://www.victimrights.org)

© 2016 by Victim Rights Law Center.

All rights reserved. No part of this document may be transmitted, reproduced, distributed, or adapted without permission. Licensing requests and other copyright questions should be directed to Jessica Mindlin at [jmindlin@victimrights.org](mailto:jmindlin@victimrights.org).

Preparation of this manual was supported by grant number 2013-TA-AX-KO18, awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, and conclusions expressed in this document are those of the authors and do not represent the official position or policies of the U.S. Department of Justice.

## Table of Contents

|   |    |
|---|----|
| Toolkit Overview .....  | 1  |
| A glossary of privacy-related terms .....   | 3  |
| A table of federal laws that affect privacy and information sharing within CCR teams .....                            | 6  |
| A table of state laws that affect privacy and information sharing within CCR teams .....                              | 8  |
| An FAQ that discusses common privacy questions that arise within CCR teams .....                                      | 10 |
| An OVW-approved Spanish-English interlineated release of information .....  | 17 |
| A privacy checklist to help CCR teams identify and discuss privacy laws and policies that affect their partners ..... | 19 |
| Examples of color-coded name tags designating various mandatory reporting obligations ....                            | 21 |
| A list of resources to help CCR teams identify relevant laws in their jurisdiction and research best practices .....  | 22 |

## Privacy Toolkit for Coordinated Community Response Teams: An Overview

Coordinated Community Response (CCR) teams need to protect victim privacy as they engage community service professionals in the work of advocating for survivors and ending sexual and domestic violence. This toolkit offers model policies and highlights key state and federal laws regarding victim privacy for organizations that receive funding through the Office on Violence Against Women (OVW) and are subject to the federal regulations and contractual obligations regarding victim confidentiality. CCR teams typically include law enforcement officers, prosecutors, victim advocates, and child or adult protective services staff. They may also include counselors, civil attorneys, health care providers, educators, faith leaders, and other relevant professionals. CCR teams enhance local response to sexual and domestic violence. A CCR approach facilitates information sharing among team members to monitor cases, create effective policy, and provide comprehensive services. While this information sharing can contribute to the success of a CCR team, it also creates opportunities for inadvertent or unauthorized breaches of victim privacy. For OVW grantees, survivors' personal information may not be disclosed without the survivor's written and informed consent. Care must be taken to keep the survivor's personally identifying information private. Each member of the team needs to understand the legal, ethical, and safety risks of breaching a survivor's privacy and how the CCR team can best safeguard survivor privacy and promote informed consent.

It is almost certain that each member of a CCR team will have different confidentiality requirements; each partner needs to understand their own privacy obligations as well as the obligations of the other team members. For example, while police and prosecutors do not need a release to speak about a case, an advocate from an OVW-funded domestic violence (DV) or sexual assault (SA) program may only discuss a survivor's situation with written and informed consent. A program may not require a survivor to sign a release of information as a condition for receiving services. Keep in mind that a group confidentiality agreement does not suspend any group member's mandatory reporting obligations.

A DV or SA program representative may talk generally about a great many things that are useful to the group, such as DV and SA dynamics, services that are available to survivors, gaps in services, frequency of incidents, law enforcement response time, barriers to accessing help, and general information that does not identify a specific person. In contrast, an OVW-funded victim service provider may only disclose a survivor's personally identifying or confidential information with a written, time-limited, specific release of information executed with the survivor's informed consent. To minimize the risk of inadvertent disclosure, some agencies have a community educator attend CCR team meetings rather than a direct services advocate.

Survivors may allow some, but not all, of their information to be shared. Similarly, a survivor may authorize information to be released to some but not other community partners. If a

survivor wants to share some limited information, advocates should discuss waiver of confidentiality with the survivor. Before signing a release to have personal information shared at a CCR team meeting, survivors should be informed of each agency that is party of the CCR team. This information should be updated when CCR membership changes.

This toolkit is designed to help CCR teams identify and address key privacy issues. Many of the concepts covered by these tools apply to both DV and SA CCR teams. (The SA-specific CCRs are typically referred to as Sexual Assault Response Teams (SARTs)). SARTs and DV-related CCR teams have different functions, missions, purposes and may also have different philosophies. Even with these differences, they all need to keep in mind the importance of victim privacy as they conduct their work. Note: This toolkit does not address coordinated child or elder abuse coordinated response multidisciplinary teams (e.g., CAMIs or MDTs) Confidentiality within these teams is often determined by jurisdiction-specific laws that address information-sharing, access to records, and procedures for investigating reports of abuse.

This toolkit includes:

- A glossary of privacy-related terms.
- A table of state and federal laws that affect privacy and information sharing within CCR teams.
- An FAQ that discusses common privacy questions that arise within CCR teams.
- An OVW-approved Spanish-English interlineated release of information
- A privacy checklist to help CCR teams identify and discuss privacy laws and policies that affect their partners.
- Examples of color-coded name tags designating various mandatory reporting obligations.
- A list of resources to help CCR teams identify relevant laws in their jurisdiction and research best practices.

For more information or to request a privacy-related technical assistance consultation, contact the Victim Rights Law Center at [privacyTA@victimrights.org](mailto:privacyTA@victimrights.org) or 503-274-5477 x1.

## Glossary

**Brady obligations:** *Brady v. Maryland*, 373 U.S. 83 (1963) established a prosecutor’s obligation to share information in the prosecutor’s possession with the defense if the information is material exculpatory evidence for the defense. Exculpatory information is “material” if there is a reasonable probability that a defendant’s conviction or sentence would have been different had the materials been disclosed. That is, it includes evidence that might demonstrate the defendant’s innocence, conflicts with a prosecutor’s witnesses, could be used to impeach a state witness, or it could reduce a defendant’s sentence.

**Confidentiality:** A confidential communication is one made with the expectation that it will not be repeated to, shared with, or otherwise released without the survivor’s consent. Disclosure of confidential information may be, but is not necessarily, legally prohibited. With a few exceptions (such as mandatory reporting obligations), it may also be unethical. Confidentiality is a cornerstone of effective advocacy. Survivors rely on advocacy programs to protect their private information. Indeed, confidentiality is needed to enhance their safety and autonomy. Confidentiality is also needed to build a program’s trust within their community and to be a resource for future participants.

**CCR team:** A Coordinated Community Response (CCR) team comprises representatives from a variety of disciplines or community agencies who develop strategies and procedures for addressing violence, often on a citywide or regional basis. Some examples of CCR teams include domestic violence response teams, sexual assault response teams (also called SARTs), child abuse multidisciplinary teams, and elder abuse multidisciplinary teams. Some, but not all, states have statutes that require the creation of one or more CCR teams, outline who may or must participate in the team, and address confidentiality within the team. The composition of CCR teams varies depending upon the team’s purpose, but they often include representatives from local law enforcement, the prosecutor’s office, government agencies, community-based victim advocates, and other social service providers.

**Court order:** A court order is a formal instruction or mandate from a judge that you do — or not do — something.

**FVPSA:** The Family Violence Prevention and Services Act, or FVPSA, is a federal law codified at 42 U.S.C. § 10406 that establishes federal funds for domestic violence shelters and related services for victims of domestic violence and their children. FVSPA regulations require grantees to provide confidential services and help protect survivor privacy.

**HIPAA:** The Health Insurance Portability and Accountability Act, or HIPAA, is a federal law that includes specific protections of patients’ private health information.

**Informed consent:** Informed consent occurs when those receiving services authorize the release of their personally identifying information while fully understanding the consequences

of that release. For consent to be informed, the survivor must understand the risks, benefits of, and alternatives to sharing the information. In other words, informed consent is achieved when the victim knows exactly what information will be released and for what purpose; how, when, and with whom the information will be shared; and the potential consequences of releasing the information. Typically, a victim or survivor consents to disclosure by signing a release form (see “release of information”).

**Personally identifying information:** The Violence Against Women Act (VAWA) defines personally identifying information as information that is “likely to disclose the location of a victim ... including a victim’s first and last name, a home or other physical address, contact information (including a postal address, e-mail address, telephone or fax number), social security number, or any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any of the above information, would serve to identify any individual.”

**PREA: The Prison Rape Elimination Act (PREA):** The purpose of PREA is to “provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape” (Prison Rape Elimination Act, 2003). The national PREA standards include inmate access to outside confidential support services and other privacy-related protections. Keep in mind that the PREA standards do not change the principles that guide SA advocacy and work with CCRs.

**Privilege:** Privilege is a rule of evidence created by statute or court decisions to protect the privacy of conversations and documents. Privilege exists to promote trust and confidentiality between two people. For example, conversations between attorneys and clients are typically protected so that clients feel free to fully tell their attorney about their circumstances. Privileged information must be kept private as a matter of law. The scope of, and exceptions to, privilege laws vary from jurisdiction to jurisdiction. In most jurisdictions, communications between a victim and a lawyer, medical provider, member of the clergy, or psychotherapist are protected by privilege laws. Not all privileges are the same, however. Some are “absolute,” which means that there are no exceptions to the privilege. Others are “qualified,” which means that otherwise privileged information may have to be produced. Sometimes, the privileged information must be released to the party requesting it. At other times it must be turned over to the judge to be reviewed in chambers. This is referred to as “in camera” review.

**Release of information:** A release of information gives a person or agency permission to share documents or have a conversation with a third party. Under VAWA and FVPSA, personally identifying information may be released only with the informed, written, and reasonably time-limited consent of the victim unless disclosure is required by a statutory or court mandate, or the information was generated for law enforcement purposes. Releases of information are best used on an as-needed basis, not in anticipation of a non-specific, general expectation that information will need to be shared at some point in the future. Depending on the jurisdiction,

signing a release of information may be a “waiver” of a privilege (see below for a discussion of waiver). To be VAWA-compliant, a release of information must be in writing, specific, and time-limited.

**Sexual Assault Nurse Examiner:** Sexual Assault Nurse Examiners (SANEs) are registered nurses with specialized education and clinical training in the medical forensic care of sexual assault victims. SANEs should be mindful of what information is released to law enforcement with survivor consent and what information shall remain private in the survivor-patient’s medical record.

**Subpoena:** A subpoena is a legal document that requires a person to appear in court or at a deposition and provide testimony and/or documents.

**Title IX:** Title IX refers to a federal statute codified at 20 U.S.C. § 1681 that prohibits discrimination based on sex at all educational institutions that receive any amount of federal funding. Title IX requires all schools to address gender-based violence as a form of sex discrimination.

**VAWA:** The Violence Against Women Act, or VAWA, is a federal law codified at 42 U.S.C. § 13925 that addresses and funds services for survivors of domestic violence, sexual assault, dating violence, stalking and trafficking. VAWA established the Office on Violence Against Women (OVW), which administers funding for many different grant programs, such as grants for culturally specific providers, law enforcement, prosecutors, state coalitions, victim service agencies, civil legal assistance and youth services.

**VOCA:** The Victims of Crime Act, or VOCA, provides federal funding for the Office on Victims of Crime which in turn administers the Crime Victims Fund and provides funding to the states for a broad array of programs focused on services for victims of crime. See 42 U.S.C. § 10603 et. seq. and 28 C.F.R. § 94.115 (confidentiality provisions).

**Waiver of privilege:** Someone whose communications are protected by privilege can choose to give up, or waive, that protection. Depending on a jurisdiction’s laws, waiver may occur when privileged information is shared with third parties outside of a privileged relationship. In some jurisdictions, privilege may be waived if a non-essential third party is present during a confidential communication or if an individual discusses the privileged information with a non-privileged third party. For example, if a victim discloses to a third person what they told their therapist, doctor, or lawyer (or vice versa) they may have waived their privilege and the provider could be required to release records or to testify to specific communications. This is because the person with the privilege cannot claim the importance of keeping the communications private while simultaneously sharing them with other people. The disclosure will likely have to have been significant for waiver to occur. However, waiver laws vary from jurisdiction to jurisdiction.

## Federal Laws: Information Sharing within Coordinated Community Response Teams

Several federal laws affect information sharing and confidentiality within coordinated community response (CCR) teams. Each team member's obligation to either withhold or disclose information under these laws will depend on factors such as their profession, state licensing, and funding. Some laws may prohibit certain team members from sharing information within the team without the victim's consent, while other laws may mandate disclosure of information that the team would otherwise keep confidential. The table is intended to provide a starting point for CCR team members to discuss what information they may and may not share with one another, and the situations in which they may be required to share information with third parties outside the team.

| Law   | What Is It?   | Why Is It Relevant to CCR Teams?  | What Are Some of the Questions We Should Discuss?  |
|---|---|---|--|
| <p><b>Confidentiality obligations for federal funding recipients</b></p> <p>Family Violence Prevention and Services Act (FVPSA), 42 U.S.C. § 10406</p> <p>Victims of Crime Act (VOCA), 28 C.F.R. § 94.115</p> <p>Violence Against Women Act (VAWA), 42 U.S.C. § 13925</p> | <p>Recipients of FVPSA, VOCA, and VAWA funds (such as community-based advocates) are prohibited from disclosing victims' personally identifying information, unless the victim consents or disclosure is mandated by law or a court order. There are exceptions for law enforcement- and prosecution-generated information.</p> | <p>Victim service providers receiving FVPSA, VOCA, and VAWA funds may not share victims' confidential information with a CCR unless the victim provides written, informed, and time-limited consent. Victim service providers still may share general, non-identifying information regarding the services they are providing to all victims, areas of need, perpetrator tactics, etc. Providers may not require victims to sign a release as a condition of receiving services.</p> | <p>Which team members receive FVPSA, VOCA, and VAWA funds?</p> <p>What types of non-identifying information may FVPSA, VOCA, and VAWA funded advocates share with the CCR?</p> <p>In what situations (such as mandatory reporting or a court order) would advocates be mandated to disclose victims' personally identifying information to third parties?</p>  |
| <p><b>Health Insurance Portability and Accountability Act (HIPAA)</b></p> <p>45 C.F.R. Parts 160 and 164</p>  | <p>HIPAA prohibits health care providers from sharing individually identifiable health information with third parties without a patient's written authorization. There are some exceptions, including disclosures that are mandated by law or a court order.</p>  | <p>CCR team members who are covered by HIPAA (such as sexual assault nurse examiners, physicians, or some hospital-based advocacy program staff) may not share victims' protected health information with other team members unless the victim provides written authorization.</p>  | <p>Which team members are covered by HIPAA?</p> <p>What types of information may health care providers share with the CCR team without violating HIPAA?</p> <p>In what situations (such as mandatory reporting of abuse or injuries, or a court order) would health care providers disclose patients' personally identifying information to third parties?</p> |

| Law   | What Is It?  | Why Is It Relevant to CCR Teams?  | What Are Some of the Questions We Should Discuss?  |
|---|--|---|--|
| <p><b>Brady obligations – Exculpatory evidence</b></p> <p><i>Brady v. Maryland</i>, 373 U.S. 83 (1963)</p>  | <p>Exculpatory evidence is information that tends to prove the defendant’s innocence. The 1963 U.S. Supreme Court decision <i>Brady v. Maryland</i>, established the rule that exculpatory evidence received by law enforcement or a prosecutor’s office (including victim-witness advocates employed by these government entities) must be turned over to the defense.</p>  | <p>CCR team members should be able to explain the <i>Brady</i> obligations to victims before referring them to prosecution-based or law enforcement-based advocates. CCR team members should also understand how their prosecutor’s office interprets <i>Brady</i> so that they understand what types of information could be disclosed to the defense before that information is shared at a CCR team meeting.</p> | <p>Which CCR team members have <i>Brady</i> obligations? How does their office interpret those obligations?</p> <p>What are some examples of information that could trigger the prosecution’s duty to disclose information to the defense?</p> |
| <p><b>Title IX</b></p> <p>20 U.S.C. § 1681</p> <p>Questions and Answers on Title IX and Sexual Violence,<br/> <a href="http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf">http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf</a></p> | <p>The U.S. Department of Education has issued guidance stating that certain school employees—known as “responsible employees”—must report incidents of gender-based violence to the school’s Title IX coordinator. Title IX exempts professionals whose communications are protected by privilege as well as pastoral and mental health counselors from this reporting requirement. Confidential employees must report certain non-identifying information.</p> | <p>CCR team members should be able to explain Title IX reporting obligations to victims before referring them to school- or campus-based resources. CCR team members should also identify which of their school- and campus-based members can offer privileged or confidential services to victims.</p>   | <p>Which CCR team members have obligations to report incidents of gender-based violence to a Title IX coordinator?</p> <p>Which CCR team members offer privileged and which offer confidential services to students?</p>                       |

©2016 by Victim Rights Law Center. All rights reserved. No part of this document may be reproduced, distributed, or adapted without permission. Preparation of this material was supported by grant number 2013-TA-AX-KO18 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, and conclusions expressed are those of the author(s) and do not necessarily represent the views of the U.S. Department of Justice.

## State Laws: Information Sharing within Coordinated Community Response Teams

Several state laws affect information sharing and confidentiality within coordinated community response (CCR) teams. Each team member’s obligation to either withhold or disclose information under these laws will depend on factors such as their profession, state licensing, funding, and evidentiary privilege and waiver laws. In addition to federal regulations, state laws may also prohibit certain team members from sharing information within the team without the victim’s written consent. Other state laws may mandate disclosure of information that the team would otherwise keep confidential. The table is intended to provide a starting point for CCR team members to discuss what information they may and may not share with one another, and the situations in which they may be required to share information with third parties outside the team.

| Law or policy  | What Is It?   | Why Is It Relevant to CCR Teams?   | What Are Some of the Questions We Should Discuss?  |
|--|---|--|--|
| <b>Confidentiality obligations for state-funded victim service providers</b> | In many states, victim service providers must agree to certain confidentiality obligations as a condition of receiving state funding for their services. Depending on a state’s procedures, these confidentiality obligations may be found in a statute, funding contract, or state guidelines regulating victim service providers.   | Depending on a state’s rules, victim service providers may be prohibited from sharing victims’ confidential information with third parties, including CCR team members, without the victim’s written, informed and time limited consent. Victim service providers may still share general, non-identifying information without a release of information. | Do recipients of state victim services funding have confidentiality obligations? If so, what types of information may victim service providers share with third parties (such as CCR team members) without a release of information?   |
| <b>Privilege and ethical duties of confidentiality</b>                       | Every state has privilege laws providing that certain professionals (such as attorneys, therapists, victim advocates, or health care providers) may not be subpoenaed or forced to testify as to confidential communications with a client or patient. Additionally, many state licensing boards have adopted ethical duties of confidentiality that professionals must follow as a condition of maintaining licensure. | CCR team members who are covered by privilege laws or ethical duties of confidentiality may be in violation of those laws or duties if they disclose confidential communications to the team without victim consent.   | Which team members are covered by state law privileges? Are there any exceptions to the privilege?<br><br>Which team members are not covered by privilege?<br><br>What types of information may privileged professionals share with the CCR team without waiving the victim’s rights to keep the information confidential? |

| Law or policy  | What Is It?   | Why Is It Relevant to CCR Teams?   | What Are Some of the Questions We Should Discuss?  |
|--|---|--|--|
| <b>Health information privacy laws</b>                 | Many states have adopted laws regarding the privacy and confidentiality of health care information. For example, state laws may regulate when a health care provider may disclose health information, to whom the information may be disclosed, and for what purpose.   | CCR team members who are covered by state health information laws (such as nurses and physicians) may be prohibited from sharing victims' protected health information with other team members unless the victim provides written authorization.   | Which team members are covered by state health information privacy laws?<br><br>What types of information may health care providers share with the CCR team without violating state law?   |
| <b>Mandatory reporting laws</b>                        | Every state has mandatory reporting laws requiring certain individuals to report abuse or injury to law enforcement or social services agencies. Common examples of conduct that must be reported include child abuse; elder abuse; vulnerable adult abuse; a patient or client who is a danger to themselves or others; and non-accidental injuries, such as gunshot and stab wounds (typically required only of health care providers).     | CCR teams should be aware of who is—and who isn't—a mandatory reporter, and what types of information trigger a mandatory report. Understanding these distinctions can prevent misunderstandings within a team, such as cases where a team member declines to make a report because it is not mandated by law, and to do so would violate confidentiality obligations. | Which team members are mandatory reporters, and what types of abuse must they report?<br><br>What type of information, if shared within a CCR team, would trigger a mandatory report?<br><br>Which team members are not mandatory reporters?   |
| <b>Authorization of multidisciplinary teams (MDTs)</b> | Many states have laws authorizing the creation of multidisciplinary teams (MDTs) to address child abuse, elder abuse, domestic violence fatalities, etc. These statutes often contain provisions protecting the confidentiality of the MDT's communications and authorizing the MDT to access certain records and information. This is not the same as privilege, but it may help protect victims' privacy if the MDT members are subpoenaed. | MDT authorization statutes may help protect the confidentiality of a team's conversations. These laws also may help clarify the types of records that the MDT is permitted to access, and the MDT's confidentiality obligations regarding those records.   | Is our team covered by a state law authorizing MDTs? If so, what does the law say about confidentiality protections for information shared within the MDT? Does it authorize the MDT to access specific records or information? Does it impose any confidentiality obligations on the MDT members? |

## Frequently Asked Questions:

### Confidentiality and Coordinated Community Response Teams

Victim privacy presents complex issues for coordinated community response (CCR) teams. This document summarizes some of the frequently asked questions (FAQs) that arise for community-based advocates who are participating in a CCR team or who are serving survivors whose cases have been referred to a CCR team. In this context, “community-based advocates” refers to advocates who work for non-governmental agencies (and not those who work for law enforcement or prosecution based agencies). This document contains general information only, and not legal advice. It is intended to help CCR teams identify the privacy issues that they should research and address before providing a coordinated response to domestic violence, dating violence, sexual assault, and stalking. In most instances, CCR team members will need to gather additional information to fully understand the laws and policies that are specific to their state, profession, agency, and funding sources.

#### 1. What are some of the common privacy issues that arise within coordinated community response (CCR) teams?

CCR teams typically include professionals from a variety of disciplines with different confidentiality obligations. Teams often have questions regarding whether state laws, federal laws, ethical guidelines, funder policies, or institutional policies allow or prohibit a particular team member from sharing victim information with the rest of the group. Conversely, teams frequently have questions regarding the circumstances in which they may be mandated to disclose information pursuant to state laws, constitutional obligations, professional licensing requirements, subpoenas, or other legal authorities. Another common issue is whether there are laws that protect the confidentiality of the team’s conversations, notes, or records, and the extent to which information may be protected. To answer these questions, teams need to consult a variety of documents and authorities, including federal and state laws; state protocols regarding the operation of sexual assault response teams (SARTs), domestic violence response teams (DVRTs), and other CCR teams; funding contracts; ethical guidelines or opinions issued by state licensing boards; and individual agency policies regarding confidentiality and mandatory reporting.

#### 2. What are some of the laws and policies that may affect confidentiality within CCR teams?

Examples of federal laws that may affect confidentiality within CCR teams include, but are not limited to, the Violence Against Women Act (VAWA),<sup>1</sup> the Family Violence Prevention and Services Act (FVPSA),<sup>2</sup> the Health Insurance Portability and Accountability Act (HIPAA),<sup>3</sup> Victims

---

<sup>1</sup> 42 U.S.C. § 13925.

<sup>2</sup> 42 U.S.C. § 10401.

<sup>3</sup> 45 C.F.R. Parts 160 and 164.

of Crime Act (VOCA)<sup>4</sup>, Title IX,<sup>5</sup> and Brady obligations<sup>6</sup> (discussed in more detail in Question 7). Examples of state, territorial, and tribal laws that may affect confidentiality within CCR teams include privilege statutes (such as advocate, therapist, health care provider, and social worker privileges), health information privacy laws, mandatory reporting laws, and statutes authorizing the creation of multidisciplinary teams. Because the prosecutor represents the government and not the victim, there is no attorney-client privilege between a victim and the prosecutor. (This includes prosecution-based advocates.) In addition to these statutes, confidentiality and mandatory reporting policies imposed by funders, state or territorial licensing boards, and institutions (such as hospitals, corrections facilities, and college campuses) may affect confidentiality within CCR teams. These laws and policies are explained in more detail throughout these FAQs and in the federal and state law charts included in this toolkit.

### 3. What types of information may community-based advocates share at CCR meetings?

The types of information community-based advocates may share at CCR meetings depend on the type of funding that the community-based advocacy agency receives and the corresponding confidentiality obligations, whether advocacy program staff are covered by a privilege statute or confidentiality rules, and what information, if any, the victim authorized the advocate to release. Community-based advocates who are VAWA or FVPSA grantees or sub-grantees are prohibited from disclosing personally identifying information regarding a client to third parties (including CCR team members) unless the victim consents, or they are mandated to do so by statute or court order. There are two exceptions to the rule of non-disclosure of personally-identifiable information in VAWA and FVPSA. These exceptions are for court- and law enforcement-generated information contained in secure, governmental registries for protective order enforcement purposes<sup>7</sup>; and law enforcement and prosecution generated information necessary for law enforcement and prosecution purposes<sup>8</sup>. Many states also impose confidentiality restrictions on advocacy programs as a condition of receiving state funds.

Many jurisdictions have advocate privilege laws that protect community-based advocates from having victim records subpoenaed or being forced to testify about confidential communications with victims. Typically, these protections apply only to communications that were confidential from the outset and whose confidentiality has been maintained. In some jurisdictions, the privilege will no longer apply to victim communications or records that the victim gave the advocate permission to disclose to third parties (such as CCR team members). It is critical that advocates understand the consequences of a survivor signing a release of information, so that advocates in turn can ensure survivors are providing **informed** consent. This requires discussing with the survivor in advance what information will be released and the effect of that release,

<sup>4</sup> 42 U.S.C. § 10601.

<sup>5</sup> 20 U.S.C. § 1681.

<sup>6</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

<sup>7</sup> 42 U.S.C. § 13925(b)(2)(D)(ii) (VAWA); 42 U.S.C. § 10406(c)(5)(D)(ii) (FVPSA).

<sup>8</sup> 42 U.S.C. § 13925(b)(2)(D)(iii) (VAWA); 42 U.S.C. § 10406(c)(5)(D)(iii) (FVPSA).

including a discussion of how “waiver” operates in their jurisdiction. For example, if waiver occurs when a “significant part” of the privileged matter is disclosed, survivors must understand whether the information they are considering authorizing the advocate to share with the CCR team meets this definition of “significant” — and thus may result in a waiver of the victim-advocate privilege. (Safety considerations should also factor into the discussion of what information the victim is deciding to release.) The need to protect the victim’s right to assert the privilege and to avoid the risk of a subpoena may limit a community-based advocate’s ability to share victim information with a CCR team. It is the victim’s legal (and ethical) right to make this determination. As noted above, a victim may not be required to sign a release as a condition of receiving services.

Additionally, advocates with state licensure (such as licensed counselors or social workers) may have ethical duties of confidentiality that prohibit them from disclosing information about counseling or other services provided to clients, unless the client consents. Licensed professionals must comply with these confidentiality obligations as a condition of maintaining their licensure.

Although community-based advocates may be prohibited from disclosing individual client information at CCR meetings without client consent, there are other types of relevant information that advocates may share with the CCR team without violating confidentiality obligations. For example, VAWA and FVPSA allow programs to share non-personally identifying aggregate data regarding services to their clients.<sup>9</sup> Some examples of non-identifying information that advocates may share include trends in perpetrator tactics (such as forms of technology that are being used to stalk or harass victims), gaps in services (such as the need for interpretation in a particular language<sup>10</sup>), and obstacles victims face in accessing services (such as lack of transportation to the sheriff’s office, hospital, or social services agencies). Advocates can also provide information in the aggregate, such as the number of victims served who decline to report to law enforcement, or the percentage of victims requesting help with pro se forms. Advocates may also share information about sexual violence, such as common reactions to trauma and how to provide trauma-informed care.

#### **4. May a community-based advocate share information about a victim at a CCR meeting if the victim consents in writing?**

Yes, but only if the advocate ensures that the victim fully understands the impact of sharing the information, and the victim signs a specific, time-limited release of information that authorizes the release to every participating agency and complies with the advocacy program’s confidentiality policies and obligations. This includes the obligations set forth in funding

<sup>9</sup> 42 U.S.C. § 13925(b)(2)(D)(i) (VAWA); 42 U.S.C. § 10406(c)(5)(D)(i) (FVPSA).

<sup>10</sup> In rural and insular communities, advocates should use care to ensure that the information they disclose to the CCR team would not have the effect of revealing a victim’s identity. For example, disclosing to the team that Hmong victims are having difficulty accessing law enforcement services due to language barriers may have the effect of revealing the victims’ identities if there are few Hmong families in the community.

contracts and in state, territorial, tribal, and federal laws. The advocate should explain to the victim which agencies and individuals are part of the CCR team, how the team will use the information, whether the information will remain confidential within the team, whether disclosure to the team will waive the victim’s right to assert the advocate-victim or any other privilege (if applicable), and whether team members may be obligated to re-disclose the information under *Brady*, mandatory reporting or other laws. CCR teams should analyze the context and function of information sharing and ensure that it benefits survivors. General, non-specific releases can often undermine informed consent. For example, authorizing an advocate to “discuss my case with law enforcement” may be overly broad and inclusive. *What information will be disclosed? Is the victim giving permission to request information from law enforcement? To provide information to them?*<sup>11</sup> The victim may already have signed a release of information provided by another agency that authorizes the CCR team to discuss the victim’s case. However, a best practice is for the advocacy program to obtain its own written and informed release of information from the victim before discussing any identifying information with the team. This practice ensures that the victim fully understands the potential impact of disclosing information regarding the services the victim received from the advocacy agency, especially if disclosing this information will waive the advocate-victim privilege. It also gives the advocacy agency an opportunity to ensure that the release signed by the victim is specific and time-limited, as required by VAWA. Releases should only be requested when the victim concludes that sharing the specific information is in the victim’s best interest. In other words, the purpose of the release must be to advance the individual victim’s interests — however the victim defines that — rather than to facilitate the operation of the CCR as a whole.

### **5. What are some of the steps CCR teams may take to protect victim privacy and confidentiality during case review?**

Case review is the process of discussing the details of an individual case of domestic violence, dating violence, sexual assault, or stalking. Teams should develop a list of objectives they hope to achieve through case review and assess whether discussing the details of individual cases will help advance those objectives.<sup>12</sup> By setting objectives, teams can identify the types of information that should be shared in order to advance the team’s goals, and whether case review or some other discussion format is the best way to process this information.

CCR teams should discuss confidentiality procedures and victim privacy protections when discussing whether it makes sense to incorporate case review into their team meetings. Before

---

<sup>11</sup> In the medical context, a victim who signs a consent form may not be told (or understand) that anyone who tests positive for “reportable diseases” will subsequently be contacted by the health department. The follow-up contact may compromise a victim’s privacy; for victims of commercial sexual exploitation or human trafficking, for example, the subsequent contact may prove dangerous or even fatal.

<sup>12</sup> For a detailed list of factors that CCR teams should consider before they institute case review, see Sexual Violence Justice Institute, *What Can We Talk About? A Guidebook for How Sexual Assault Response Teams Discuss Sexual Assault Cases* (2012), <http://mncasa.org/assets/PDFs/SVJI-Case%20Conversations%20Guidebook.pdf>

discussing cases, team members must obtain a written release of information from the victim that meets their individual obligations under federal, territorial, tribal and state laws and funding streams, even if the information will be shared among community partners and allies.<sup>13</sup> For example, health care providers seeking to discuss patient cases must ensure that releases of information comply with the Health Insurance Portability and Accountability Act, as well as the jurisdiction's laws regarding health information privacy and health care provider-patient privilege. To protect victim safety, team members must ensure that victims fully understand the purpose for which the information is being used, the benefits and drawbacks of disclosing the information, which agencies will be discussing the victim's case, and any circumstances in which information must be disclosed outside of the team, such as under mandatory reporting laws or Brady obligations (discussed further in Question 7). Team members must ensure that information discussed during case review remains within the parameters authorized by the victim.

CCR teams should decide which team members will participate in case review based on the objectives they hope to attain through the case review process. For example, if the goal is to improve coordination among first responders, then it will be more protective of victim privacy to limit case review to a subgroup of first responders. Information may be de-identified before it is shared, provided in the aggregate over a specific time period, or otherwise shared within the team in a format that protects victims' individual identities. If community-based advocates will participate in case review, the advocacy program should consider whether privacy risks may be reduced by sending a staff member (such as a community educator) who has not assisted the victims whose cases will be discussed. This strategy helps ensure that advocates do not unintentionally disclose identifying information, while reducing the pressure on advocates to share individualized victim information.

Victims' names and identifying information should not be disclosed during case reviews, even in cases where every CCR member knows the victim's identity.<sup>14</sup> Although it may be difficult to protect victims' identities in rural, tribal, and other insular communities, CCR team members should still strive to keep comments as general as possible and avoid discussing specific details that are not necessary to advancing the CCR team's case review goals.<sup>15</sup> Examples of other steps that CCR teams have taken to protect victim confidentiality include requiring all team members to read, discuss, and sign confidentiality agreements before each meeting (discussed in more detail in Question 6); avoiding taking notes regarding individual cases, except for notes

---

<sup>13</sup> See Office of Justice Programs, SART Toolkit, Develop a SART: Conduct Case Reviews (2011), <http://ovc.ncjrs.gov/sartkit/develop/meeting-case-c.html>.

<sup>14</sup> See U.S. Department of Justice, Office on Violence Against Women, A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents (2d ed. 2013), at 133, n. 323, <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>.

<sup>15</sup> See *id.*; Tribal Law and Policy Institute, Sexual Assault Response Teams: Resource Guide for the Development of a Sexual Assault Response Team (SART) in Tribal Communities (2008), at 67, [http://www.tribal-institute.org/download/SART\\_Manual\\_09\\_08.pdf](http://www.tribal-institute.org/download/SART_Manual_09_08.pdf).

regarding policy, protocol, or other systems changes; limiting case review to closed cases; discussing publicly available documents only; and ensuring that case review materials are distributed at the meeting only (rather than by email or in advance), that individual team members return the materials at the end of the meeting, and that case review materials are destroyed or stored in a secure place after the meeting.

## **6. What legal effect does a CCR's confidentiality agreement have?**

Many CCR teams require participants to sign confidentiality agreements as a condition of attending team meetings. These agreements typically prohibit participants from disclosing confidential information or documents that they gained access to as part of team meetings. While these agreements serve as an important reminder to team members that they should not disclose information regarding the team's conversations, they are not a guarantee that these conversations will remain confidential. Depending on a jurisdiction's laws, certain CCR team members still may be required to disclose information in response to a subpoena, mandatory reporting laws, or Brady obligations (discussed further in Question 7). Ultimately, the legal effect of a CCR confidentiality agreement will depend on the language of the agreement and the laws of the jurisdiction. CCR teams should consult with an attorney when drafting the agreement and assessing the extent to which the agreement will protect the confidentiality of the team's conversations and records.

Best practice would be for CCR teams to agree about the mission, vision, scope of their team and intended outcomes before drafting a confidentiality policy or agreement. If CCR teams first agree on the scope and how they will function as a team then they can decide if, how and what type of confidentiality agreements need to be in place. This can serve as a 'check' and 'balance' for team members to align their practice with team goals – which may not include any type of specific victim information sharing and that when it does include sharing such information, a separate agreement and process needs to be established for each case. Team members should not sign blanket confidentiality agreements that set the conditions to freely discuss details of each individual case. Again, the team must be cognizant of each individual member's confidentiality and reporting obligations. For example, law enforcement may share information without victim consent. Therefore a sub-committee of prosecutors and law enforcement officers may set up a process to discuss their open cases. However if victim advocates, medical professionals, or other providers whose communications are protected by privilege or confidentiality are going to discuss an open case, each needs to secure a special time-limited release of information.

## **7. Under what circumstances may a prosecutor be obligated to disclose information that was discussed at a CCR meeting?**

Under a constitutional obligation known as the *Brady* Rule,<sup>16</sup> if a prosecutor learns of exculpatory information (i.e., information that tends to prove the defendant's innocence), the prosecutor has a duty to turn that information over to the defendant. This obligation applies even if the prosecutor learned of the information during confidential conversations within a CCR team. As a result, if a CCR team member shares information with a prosecutor that could negate the defendant's guilt or impeach the credibility of a person the prosecutor plans to call as a witness at trial, the prosecutor must share this exculpatory information with the defendant's attorney. Before victims agree to release information to a CCR team, they should receive an explanation of a prosecutor's duty to turn over exculpatory information and be given examples of the types of information that trigger this duty.

---

<sup>16</sup> *Brady v. Maryland*, 373 U.S. 83 (1963). For more information regarding the duty of prosecutors to disclose certain information to the defense, see AEquitas, *Walking A Tightrope: Balancing Victim Privacy and Offender Accountability in Domestic Violence and Sexual Assault Prosecutions* (May 2013), [http://www.aequitasresource.org/Issue\\_9\\_Walking\\_A\\_Tightrope\\_Balancing\\_Victim\\_Privacy\\_and\\_Offender\\_Accountability\\_in\\_Domestic\\_Violence\\_and\\_Sexual\\_Assault\\_Prosecutions\\_Part\\_I\\_May\\_2013.pdf](http://www.aequitasresource.org/Issue_9_Walking_A_Tightrope_Balancing_Victim_Privacy_and_Offender_Accountability_in_Domestic_Violence_and_Sexual_Assault_Prosecutions_Part_I_May_2013.pdf).

## Authorization and Release of Information Form / Formulario de autorización para divulgar información

I understand that \_\_\_\_\_ has an obligation to keep confidential our conversations, my records, and my personal and identifying information. I also understand that I can choose to allow \_\_\_\_\_ to share this information with specific people or agencies, and to request information from them on my behalf.

Entiendo que \_\_\_\_\_ tiene una obligación de mantener confidencial nuestras conversaciones, mi información personal, información que me identifica, y mis expedientes. También entiendo que puedo permitir que \_\_\_\_\_ comparta esta información con ciertos individuos o agencias y solicita información de estos individuos o agencias de parte de mí.

I (Yo), \_\_\_\_\_, give \_\_\_\_\_ permission to  give the following information to and/or to  get information from the following (doy permiso a \_\_\_\_\_ para  dar información a y/o  recibir información de lo siguiente):

|  |   |
|--|---|
| <b>Who I want my information to be shared with:</b><br>Quien deseo que tenga mi información: | <b>Name/ Nombre:</b><br><br><b>Title or Agency/ Título o Agencia:</b><br><br><b>Telephone number/ Número de teléfono:</b> |
| <b>What information will be shared:</b><br>Qué información será compartida:                  |   |

**The information may be shared / La información se puede divulgar:**

in person / en persona    
  by phone / por teléfono    
  by fax / por fax    
  by mail / por correo    
 \* by email / por correo electrónico

**\* I understand that electronic mail is not confidential and can be intercepted and read by other people.**

**\* Entiendo que el correo electrónico (E-mail) no es confidencial y puede ser interceptado y leído por otras.**

**I understand that / Entiendo que:**

\_\_\_\_\_ I do not have to sign a release form. It is my choice to allow \_\_\_\_\_ to share my information or request information on my behalf.

No tengo que firmar un formulario de autorización de divulgar información. Es mi decisión dar permiso al \_\_\_\_\_ para compartir o solicitar información de parte de mí.





## Victim Rights Law Center: Privacy Checklist for Coordinated Community Response (CCR) Teams

**Our CCR's Goals/Mission:**

**CCR Members:**

Indicate below if you know the privacy laws and policies that apply to each CCR member. Record next steps you plan to take on the back of this sheet. Consider doing this exercise as a CCR team. If you complete the checklist on your own, be sure to include yourself with your answers.

|    | <b>Law or policy affecting privacy</b>  | <b>I know the answer for these team members:</b> | <b>I don't know the answer for these team members:</b> |
|----|---|--|--|
| 1. | Which team members are mandated reporters of <i>child abuse</i> ?   | A. Mandated<br>B. Not mandated                   |  |
| 2. | Which team members are mandated reporters of <i>elder abuse</i> ?   | A. Mandated<br>B. Not mandated                   |  |
| 3. | Which team members are mandated reporters of <i>abuse of an adult with a disability</i> (include which disabilities apply)? | A. Mandated<br>B. Not mandated                   |  |
| 4. | Which team members are mandated to report any <i>non-accidental injuries</i> or <i>injuries related to crimes</i> ?         | A. Mandated<br>B. Not mandated                   |  |
| 5. | Which team members are mandated to report instances where <i>clients are a threat to themselves or others</i> ?             | A. Mandated<br>B. Not mandated                   |  |
| 6. | Which team members have privilege (attorney-client; advocate-victim;  | A. Privileged                                    |  |

|     |   |   |  |
|-----|---|---|--|
|     | nurse-patient; counselor-client, etc.)?   | B. Not privileged   |  |
| 7.  | Which team members are “responsible employees” at their school (and required to report DV, SA, stalking or dating violence they learn about at a CCR meeting to their school’s Title IX coordinator)? | A. Responsible employees  |  |
| 8.  | Which team members have a duty to turn exculpatory evidence over to criminal defense counsel?   | A. Required to disclose<br>B. Not required  |  |
| 9.  | Which team members can provide privileged or confidential services to minors?   | A. May serve minors confidentially<br>B. May not serve minors confidentially  |  |
| 10. | Which team members are prohibited from disclosing victims’ personally identifying information without victim consent due to funding obligations?  | A. Prohibited per funder<br>B. Not funder prohibited  |  |
| 11. | Which team members have their own privacy policies affecting victim confidentiality, and I can explain those policies to victims?   | A. Have privacy polices I can explain<br>B. Have privacy policies I cannot explain<br>C. Do not have privacy policies |  |

**Next steps I plan to take:**

## Selected Resources:

### Coordinated Community Response Teams and Privacy

\*\*\*Privacy is an evolving area of law. Check your jurisdiction's laws to confirm the continued accuracy of the information discussed in the resources listed below\*\*\*

#### State Law Compilations

American Bar Association, Domestic Violence/Sexual Assault Advocate Confidentiality Laws, [http://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/Resources/statutorysummarycharts/2014%20Advocate%20Confidentiality%20Chart.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Resources/statutorysummarycharts/2014%20Advocate%20Confidentiality%20Chart.authcheckdam.pdf)

Note: This list is from 2014 and is out of date for some jurisdictions. Additional states have enacted advocate privilege laws since 2014.

American Bar Association, Reporting Requirements: Provisions and Citations in Adult Protective Services Laws, by State,

<http://www.americanbar.org/content/dam/aba/migrated/aging/docs/MandatoryReportingProvisionsChart.authcheckdam.pdf>

American Bar Association, Multidisciplinary Teams Authorizations or Mandates: Provisions and Citations in Adult Protective Services Laws, by State,

[http://www.americanbar.org/content/dam/aba/migrated/aging/about/pdfs/Multidisciplinary\\_Teams\\_Authorization\\_or\\_Mandates\\_Provisions\\_and\\_Citations\\_Chart.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/about/pdfs/Multidisciplinary_Teams_Authorization_or_Mandates_Provisions_and_Citations_Chart.authcheckdam.pdf)

Children's Bureau, State Statutes: Mandatory Reports of Child Abuse and Neglect,

<https://www.childwelfare.gov/pubPDFs/manda.pdf>

National Conference of State Legislatures, Mental Health Professionals' Duty to Warn,

<http://www.ncsl.org/research/health/mental-health-professionals-duty-to-warn.aspx>

National District Attorneys Association, Child Abuse Multidisciplinary Teams,

[http://www.ndaa.org/pdf/MDT%20draft%20for%20MAB\\_%2001052015-last.pdf](http://www.ndaa.org/pdf/MDT%20draft%20for%20MAB_%2001052015-last.pdf)

National Domestic Violence Fatality Review Initiative, State Statutes,

<http://www.ndvfri.org/documents.php>

Reporters Committee for Freedom of the Press, Open Government Guide,

<http://www.rcfp.org/open-government-guide>

Victim Rights Law Center, Mandatory Reporting of Non-Accidental Injuries: A State-by-State Guide. Contact [privacyTA@victimrights.org](mailto:privacyTA@victimrights.org)

Victim Rights Law Center, Set of jurisdiction-specific privacy cards (12 FAQs) for all 50 states and the U.S. territories. Contact [privacyTA@victimrights.org](mailto:privacyTA@victimrights.org)

## Reports and Tools

Battered Women’s Justice Project, Advocacy Challenges in a CCR: Protecting Confidentiality While Promoting a Coordinated Response, [http://www.bwip.org/assets/documents/pdfs/advocacy\\_challenges\\_protecting\\_confidentiality\\_while\\_promoting\\_coordination.pdf](http://www.bwip.org/assets/documents/pdfs/advocacy_challenges_protecting_confidentiality_while_promoting_coordination.pdf)

Cole, Jennifer. “Victim Confidentiality on Sexual Assault Response Teams (SART).” *Journal of Interpersonal Violence* 26, no. 2 (2011): 360-376, <http://jiv.sagepub.com/content/26/2/360.short>

Minnesota Coalition Against Sexual Violence (MNCASA) Sexual Violence Justice Institute, What Can We Talk About? A Guidebook for How Sexual Assault Response Teams Discuss Sexual Assault Cases, <http://mncasa.org/assets/PDFs/SVJI-Case%20Conversations%20Guidebook.pdf>

MNCASA, What Can We Talk About? Common Rules and Regulations, <http://www.mncasa.org/assets/PDFs/SVJI-What%20Can%20We%20Talk%20About%20Handout-Common%20Rules%20and%20Regulations.pdf>

MNCASA, What Can We Talk About? Considerations for how SART Teams Discuss Sexual Assault Cases- Assessment Tool, [file:///C:/Users/user/Downloads/Case%20Conversation%20Assessment%20Tool\(1\).pdf](file:///C:/Users/user/Downloads/Case%20Conversation%20Assessment%20Tool(1).pdf)

National Network to End Domestic Violence, Technology and Confidentiality Resources Toolkit, <http://tools.nnedv.org>

NCCASA/NCCADV, Enhancing Local Collaboration in the Criminal Justice Response to Domestic Violence and Sexual Assault: A CCR/SART Development Toolkit, <http://www.nccasa.org/cms/wpcontent/uploads/2013/11/ERS-CCR-SART-Toolkit.pdf>

Office of Justice Programs, SART Toolkit, Develop a SART: Confidentiality, <http://ovc.ncjrs.gov/sartkit/develop/comm-confidentiality.html>

Tribal Law and Policy Institute, Resource Guide for the Development of a Sexual Assault Response Team (SART) in Tribal Communities, [http://www.tribal-institute.org/download/SART\\_Manual\\_09\\_08.pdf](http://www.tribal-institute.org/download/SART_Manual_09_08.pdf)

U.S. Department of Justice Office on Violence Against Women, A National Protocol for Sexual Abuse Medical Forensic Examinations- *Pediatric*, <https://www.justice.gov/ovw/file/846856/download>

Victim Rights Law Center, <http://www.victimrights.org/>