



Eliminating Bars as Barriers: A Tip Sheet for Delivering Confidential Victim Services to Confined Survivors of Sexual Assault, Domestic and Dating Violence, and Stalking

Survivors of sexual assault, dating and domestic violence, and stalking¹ who are incarcerated or detained need access to confidential victim services as much as other survivors. Victim service providers who work with these confined survivors,² however, may face significant challenges to providing confidential assistance. Survivors' isolation and highly controlled living situations; social norms and policies that assert confined people have no right to privacy; and facility staff concerns that confidentiality threatens safety and order, can all promote a lack of privacy. You want to serve confined survivors while fulfilling your VAWA and jurisdiction-specific confidentiality obligations, but that can be challenging. Here are some tips to help you face the challenge.

Provide Services in as Confidential a Manner as Possible. The Prison Rape Elimination Act (PREA) requires facilities to “enable reasonable communication” between confined survivors and victim advocacy, rape crisis, or immigrant service agencies “in as confidential a manner as possible.” As a victim service provider, you are required to protect confidential communications. Confer with the facility and document in writing how you will have confidential communications with survivors. Include how this communication, e.g., phone calls, will be free to survivors and how ROIs will be made available in the facility.

Know Your Protections and Reporting Obligations. You need to protect confined survivors' information and they need to understand any consequences of speaking with you. By giving confined survivors control of their information, you can serve them more effectively.

- *Be careful not to reveal identifying information.* Any privileges and confidentiality requirements that apply to your work generally also apply to your work with confined survivors. At a minimum, VAWA-funded victim service providers may not release any personally identifying information about a confined survivor without their informed, written consent; a statutory mandate; or a court mandate, including case law. Even a small amount of information may reveal a survivor's identity. Calling, corresponding with, or visiting survivors will typically require you to reveal their names to facility staff.
- *Disclose in advance.* Be up front with confined survivors about any reporting obligations you may have. Your obligation to report sexual assault is probably different than staff's obligations, and you may have different child or elder abuse, etc., reporting responsibilities. Survivors, staff, and you need to be clear about different reporting requirements so survivors know when you offer additional privacy protections and so staff know when and why you may not be required to report, even though they may be.

¹Hereinafter “survivors.”

² By “confined survivors,” we mean survivors who are incarcerated, detained, or residing in prisons, jails, immigration detention-related facilities, community confinement, juvenile facilities, and military brig.

Use VAWA-Compliant Releases of Information. A VAWA-compliant release of information (ROI) is written, informed, time limited, and specific about what information will be shared with whom. Remember, though, that OVW-funded victim service providers may not make a signed release of information a condition of services.

- *Include relevant information on a release of information form.* Pre-print, or have available online, blank agency ROIs that a confined survivor could use when they are able to contact you. For example, a survivor could pick up a blank ROI within the facility before calling your organization. During the call, you could discuss the pros and cons of how you might communicate going forward, agree about how you will contact them, e.g., if you will release their name via correspondence or signing in during a visit, and they can complete the ROI to allow you communicate with the them that way.
- *Include a plan for distributing ROIs with any Memoranda of Understanding you have with a Facility.* Ask each facility to have blank ROIs available in libraries, outside a counselor's office, or in other areas that a survivor might access discretely. Work with community partners to bring ROI's to confined survivors on each other's behalf.

Cultivate Relationships with Facilities. Be patient and creative when you develop relationships and set up services with facility staff. Take time to learn about where you will be working and make sure that facility staff are aware of the services you can provide. You will need to follow prison policies and guidelines that don't conflict with your legal obligations, but when it comes to victim services, you are the expert.

- *Learn about the facility's culture, policies, and procedures.* Set up informational meetings with facility staff. Get copies of facility policies, including policies on confidentiality, reporting sexual assault or other abuse, and other information sharing. Learn about their mission, philosophy, vocabulary, etc.
- *Tour the facility.* Learn where inmates, detainees, or residents spend most of their time e.g., sleeping units, cafeteria, and common or recreation areas. Pay attention to where survivors may be talking with you, noting how the areas are configured, the number of people sharing the space, and any recording and security devices. You want to have a sense of surveillance at the facility and how privacy may be limited. Confirm that there is a separate room where you can meet with survivors privately.
- *Consult with others about how best to advance confidentiality given facility monitoring.* Ask facility staff, formerly confined survivors, and others, e.g., clergy, instructors, and medical providers at the facility, about how privacy really works there.

Use a Memorandum of Understanding (MOU) to Record Agreement about Your Role and the Confidentiality of Services. A written MOU about the confidentiality and scope of your services will help ensure that facility staff and you agree about your respective roles.

- *Include your confidentiality and reporting obligations.* The MOU should include a description of your legal and ethical obligations to maintain confidentiality and privilege.

Note if you are not mandated to report sexual assault or threats of harm to self or others, especially if agency staff, contractors, or volunteers have different requirements.

- *Make your role clear.* Be clear in the agreement that you are an outside victim services provider rather than a facility volunteer or contractor. This distinction may help avoid misunderstandings with the confined survivor and facility staff about the confidentiality of services you provide and certain reporting expectations.

Consider Common Forms of Communication. Become familiar with how the facility arranges and monitors communication, including phone calls, written and electronic correspondence, and in-person meetings. Assume all communication is monitored unless a specific policy says otherwise. Encourage confined survivors to use the modes of communication that offer them the most safety and confidentiality.

Mail. When you correspond with confined survivors through the U.S. postal service:

- *Seek confidential status for mail sent by and to your agency.* All mail to and from facilities is screened. However, different levels of scrutiny attach to correspondence. Work to arrange with facility leadership for written correspondence between confined survivors and your agency to qualify for and be marked as “confidential.” Mail that is “confidential,” e.g., “legal mail,” goes through an alternate screening process and has additional privacy protections. Make sure that a facility will allow you to include self-addressed stamp envelopes before you use them for ROIs or other correspondence. If you do use return pre-addressed envelopes, be sure they don’t compromise confidentiality. For example, it’s best not to use pre-addressed envelopes that have your organization’s name and tag line on them.
- *Avoid sending anything in the mail that risks the correspondence being confiscated.* For example, staples and paperclips may not be allowed to enter the facility.

Calls. Confined survivors may initially contact your agency through a hotline or office phone line. You should ask about the confidentiality of the facility’s phone systems before taking such calls. Some questions you may want to ask the facility or pay attention to on a tour:

- Where are phones located? Can phone conversations be overheard?
- When are phones available? Are the calls time-limited? If so, how long may they last?
- How are calls monitored? Are they recorded? If so, how are the recordings accessed and archived?
- Does the facility allow calls to toll-free numbers? If not, how much do survivors pay to make the calls?
- Are there designated phones, or confidential/toll-free numbers to press on the phone, e.g., #2, for accessing confidential services?

In Person. When meeting with a confined survivor, follow safety protocols while still ensuring that your meeting remains confidential. These protocols will vary by facility.

- *Discuss with the facility how to avoid identifying agency staff as victim services providers working with a particular survivor.* Can advocates sign in to the facility without naming the confined survivor? Can advocates enter the facility without writing the name of their agency on the sign-in sheet? Can you or the survivor use a code name?
- *Find a safe and private place to meet.* Work with the facility to evaluate which spaces will best accommodate the survivor's security and privacy. Ask about using facility chapels, classrooms, libraries, visitor areas, cafeterias, counselor/staff offices, and rooms allocated for attorney-client meetings.
- *Learn if the agency will monitor conversations between confined survivors and victim service providers.* If a facility policy requires monitoring of your conversations with survivors for safety reasons, you might propose the following options: security officer visual observation through a non-recording camera or glass door; or placement of an officer in the hallway outside where you are meeting with the survivor. Identify the options, know what choice you have about any of them, and if you need to decide about them before you arrive.

Additional Tips to Protect Privacy

- Educational sessions, therapy, and general support groups might provide opportunities for you to share information and resources without participants having to identify as survivors.
- Your state domestic violence and sexual assault coalition(s) may have state-specific practice guidelines for working with confined survivors.
- Lawyers familiar with confined survivors' rights might help you develop policies that meet facility and victim services practice standards.
- All your staff should be able to explain their confidentiality, privilege, and mandatory reporting obligations. Make sure at least one staff member understands confidentiality obligations in confinement facilities. This person might also track emerging issues and promising practices that impact confined survivors' confidentiality.

Please contact the Victim Rights Law Center privacy team if you want to discuss any of these tips or have other questions about survivors' privacy at PrivacyTA@victimrights.org.

This project was supported by grant number 2015-TA-AX-K025 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.