Confidential Services for Survivors of Sexual Assault Who Are Incarcerated and Detained

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“Like many of those from the #MeToo movement, we prisoners have for years remained quiet about the abuses we’ve suffered…. Just like with the #MeToo women, it’s a system-wide cover-up.”

Jerry Metcalf, “When Prisoners Say #MeToo.”

Poll 1

Where do you work? (select one)

• SA (primarily) services organization
• DV (primarily) services organization
• Dual SA and DV services organization
• Multi-service organization
• State coalition
• Prosecutor or other law enforcement office, etc.
• Other
Poll 2

What do you do? (select one)

• Advocate
• Attorney
• Other

Poll 3

What services do you offer to sexual assault survivors who are incarcerated or detained?

• None
• Safety planning
• PREA-related advocacy
• General advocacy
• Support groups
• Referrals
• Sexual assault forensic examination – perform
• Sexual assault forensic examination – advocate support
• Legal services
Poll 4

Where do you provide services to sexual assault survivors who are incarcerated or detained?

- Prisons
- Jails and/or lockups
- Community confinement
- Juvenile facilities
- Immigration detention facilities
- Dept. of Homeland Security holding facilities
- Unaccompanied children facilities
- Military brigs
- Other

“Our commitment to changing the world is going to have to be reflected in how we treat . . . incarcerated people . . . . It’s in that context that we change the world.”

- Bryan Stevenson
Workshop Road Map

During this workshop, we will explore:

• Barriers to confidential services faced by sexual assault survivors in custodial settings.
• How VAWA confidentiality requirements, the Prison Rape Elimination Act (PREA) Standards, advocate privilege, and mandatory reporting laws are tools for this work.
• Tips for providing confidential services in confinement.

Your Roadmap

• Do you have any points you hope we’ll get to that weren’t on my road map?
Who Are We Talking About?

- Survivors in custodial settings:
  - Prison
  - Jail
  - Immigration detention
  - Juvenile detention
- At least 2.3 million people in U.S.
- Disproportionately represented: LGBTQ, people of color, people with disabilities, people with mental illnesses, et al.

“A big part of death penalty work – and of all good fiction writing, I believe – is abandoning our assumptions and letting others tell their truth.”

- Rene Denfeld
Why do confidential services matter?

- Safety
- Healing
- Autonomy
- Connection
- (Your) Reputation
- “Letting others tell their truth.”

Discussion: What barriers do you face with confidential services?
Legal Tools: Federal Law

Prison Rape Elimination Act (PREA)
PREA and PREA Standards

- Designed to create culture of reporting and quality response to rape.
- Require facilities to provide survivors in custodial settings with access to confidential support services from community-based advocates “in as confidential manner as possible.”

Where do PREA Standards apply?

- Adult Prisons and Jails (28 CFR 115.5 et seq., Subpart A)
- Lockups (28 CFR 115.5 et seq., Subpart B)
- Community Confinement (28 CFR 115.5 et seq., Subpart C)
- Juvenile Facilities (28 CFR 115.5 et seq., Subpart D)
- Immigration Detention Facilities (6 CFR 115.5 et seq., Subpart A)
- DHS Holding Facilities (6 CFR 115.5 et seq., Subpart B)
- Unaccompanied Children (45 CFR 411.5 et seq., Subpart F)
Violence Against Women Act (VAWA)

VAWA Confidentiality

- Grantees and subgrantees MAY NOT DISCLOSE personally identifying information UNLESS:
  1. Written, informed consent;
  2. Statutory mandate; OR
  3. Court mandate (including case law)
Releases of Information

- **DISCUSS**
  - Benefits and risks of sharing information.
  - Why need a release and what information might be shared.
  - Who would have access to information.
- **AGREE**
  - What information will be shared and with whom.
  - Be specific.
- **RECORD**
  - Agreement about the scope of the release.

- **Written**
- Specific scope, limited circumstances
- No blanket release
- Specific, reasonable duration
- Informed
- Revocable
- May not be a condition of service
Who signs the ROI?

Signature of survivor required UNLESS:

• Minor lacks legal capacity to consent:
  – Minor victim + non-abusive parent or guardian sign.
  – Non-abusive parent or guardian only if minor incapable of knowing consent.

• Legally incapacitated person with court appointed guardian:
  – Non-abusive guardian signs.

Discussion: ROIs

When a survivor in custody calls your hotline/office requesting help:

1. Will you need a VAWA-compliant release of information to serve them?

2. If so, how will you get it?
When Statute or Court Mandate Compels PII Disclosure

1. Make reasonable efforts to notify victims affected by disclosure; and

2. Take steps necessary to protect the privacy and safety of the affected persons.

Legal Tools: Confidentiality, Privilege, and Mandatory Reporting Laws
Confidentiality and Privilege Law

- Jurisdiction-specific
- Advocates, attorneys, social workers, et al.
- Know the exceptions
- Need to know if held by a professional or all employees/volunteers of organization

Types of Mandatory Reporting

- Child abuse
- Elder abuse
- Abuse of a person with a disability
- Serious, non-accidental injury

What about PREA reporting?
Mandatory Reporting Laws

• Jurisdiction-specific
• Are you a reporter?
• Must you report about this survivor?
• Has survivor experienced the type of abuse that must be reported?
• Are you exempt?
• What must be reported to whom?

Discussion: Reporting

Your point of contact at a facility lets you know that per the PREA Standards, all employees, volunteers, and contractors at the prison must disclose any sexual assault that takes place at the facility.

1. Must you disclose sexual assaults you know about? Why or why not?
2. What if the survivors are minors? Elders? People with disabilities?
Practice Tips

Tips: Relationship Building

1. Know and promote your role at the facility; understand the role of staff at the facility.
2. Learn each others’ vocabulary.
3. Use your relationships with a friend of a friend of a friend.
4. Be persistent and consistent with building and nurturing relationships.
5. Integrate turnover into your relationship building plan.
6. Building viable working relationships can take years; expect setbacks.
**Tips: Communication with Survivors**

1. Understand how communications are, and are not, confidential at a specific facility.
2. Develop options for confidential communications with facility leadership and revise as you learn more or circumstances change.
3. Diversify the options.
4. Arrange for access to blank releases of information.
5. Survivors lead on which modes are safest for them.

**Tips: Sexual Assault Forensic Exams**

1. Talk with Sexual Assault Nurse Examiners (SANEs), hospital staff, and corrections officers (COs) in advance about how you will manage a survivor’s need for confidentiality along with everyone’s need to be safe.
2. Have written protocols and walk through exams in advance.
3. Be creative about options (e.g., space at a hospital or how the exam will be done).
4. Communicate expectations to the survivor as soon as possible.
Tips: Training

1. Advocates and facility staff need training about how confidential services will be provided.
2. Co-train.
3. Support the training structures already in place.
4. Require attendance to the extent possible.
5. Train before implementing new approaches.

Tips: Memorandums of Understanding (MOUs)

CONTEXT: PREA Standards require agencies to “maintain or attempt to enter into [MOUs] or other agreements with community service providers that [can] provide . . . confidential emotional support services related to sexual abuse.”

1. Capture expectations about how services will be delivered.
2. Can drive conversations with facility staff about services.
3. Balance facility needs with advocacy needs.
4. Revisit MOUs regularly (e.g., each year).
“Your hope is your superpower.”

- Bryan Stevenson
Thank you for the work you do!

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