



## The Victim Rights Law Center

### *Leading a New Response to Sexual Violence*

**Boston Office** • 115 Broad Street, 3<sup>rd</sup> Floor, Boston, MA 02110 • 617-399-6720

**Portland Office** • 520 SW Yamhill Street, Suite 200, Portland, OR 97204 • 503-274-5477

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

### TIPS ON PROTECTING SEXUAL ASSAULT VICTIMS' PRIVACY

- ✓ Review all of a victim's confidential records before they are released pursuant to a subpoena or a release to a third party.
- ✓ If a victim intends to sign a release of information, explain beforehand what may happen to that information once it is released. Also, suggest that it is often a good idea for a victim to review the information that will be disclosed before the victim executes a release.
- ✓ Be sure you know your jurisdiction's rules on release of records in sexual assault cases – this includes counseling, medical, rape crisis center and other private records.
- ✓ Request permission to file under seal or subject to a protective order documents that contain a victim's private information.
- ✓ At the end of the case, you may want to ask the judge to seal the court file so that all of the information in the file is not open to public inspection.
- ✓ Request permission for the victim to testify by closed circuit camera or videoconference, if the rules allow for this.
- ✓ If permissible under your state, tribal or territorial law, ask for the courtroom to be cleared of observers before the victim testifies.
- ✓ Request permission for the victim to testify in chambers (many states have statutes already authorizing this for child victims).
- ✓ Work with court administrators in your community so that sexual assault victims' names or court records are not available online.
- ✓ If a victim's private records are subpoenaed, file a Motion to Quash if there are any grounds for such a request.
- ✓ If you're a lawyer and the victim is a witness for the prosecution in a criminal case, you may want to file a notice of appearance on behalf of the victim so that you can intervene to protect the victim's privacy, will receive notice of certain court dates, etc.
- ✓ Request permission for you to redact irrelevant information that is contained in any records that have to be produced to the court or the defendant. If possible, redact the information *before* it is released to the court. If this is not possible or your request is denied, ask the judge to redact the private information before the documents are released.
- ✓ REMEMBER:
  - Just because you received a subpoena doesn't mean that the other side is necessarily entitled to the documents as a matter of law. Not all subpoenas are validly issued, properly served, or otherwise legally enforceable.
  - A privilege belongs to the person to whom the service was provided or about whom the information was collected – e.g., the doctor's patient, the lawyer's client, etc. While the provider has the responsibility to assert the privilege on a victim's behalf in order to protect the information until the survivor decides how to proceed, it is the survivor's (and not the provider's) decision whether – and what – information may be released.
  - Even if there is no evidentiary privilege to rely on, there are often legal arguments that can be made to try and keep a victim's personal information private.
  - Explain to the survivor how "waiver" of a privilege operates, and some common pitfalls regarding the inadvertent release of information.

