



Upholding Your Principles: Protecting Confidentiality for Incarcerated Survivors

National Sexual Assault
Conference
August 31, 2016


JDI's Mission

JDI is a health and human rights organization that seeks to end sexual violence in all forms of detention.

JDI's Core Goals

1. To hold government officials accountable
2. To change public attitudes about sexual violence behind bars
3. To ensure that survivors get the help they need

JDI's Core Belief



No matter what
crime a person
may have
committed,
rape is not part
of the penalty.

JUST DETENTION
INTERNATIONAL
RAPE IS NOT PART OF THE PENALTY

Special Thanks

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The opinions, findings, conclusions, and recommendations expressed in this webinar are those of the presenters and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.



Agenda

- I. Different Frameworks
- II. The Law
- III. The PREA Standards
- IV. Confidentiality in Action
- V. Common Challenges



www.dreamstime.com



Why is Confidentiality Important?



Why is Confidentiality Important?

- Fundamental principle of victim services
- Enhances survivor safety
- Preserves the dignity of survivors
- Empower survivors



What happens when incarcerated survivors lose control of their information?



Different Frameworks



**CORRECTIONS
STAFF**



**VICTIM
ADVOCATE**

Advocates' Approach

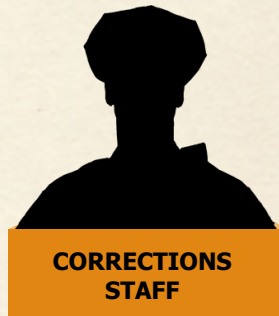
- Accompanying survivors through the reporting and investigations process
- Providing emotional support and crisis intervention
- Helping with safety planning
- Offering referrals and other resources



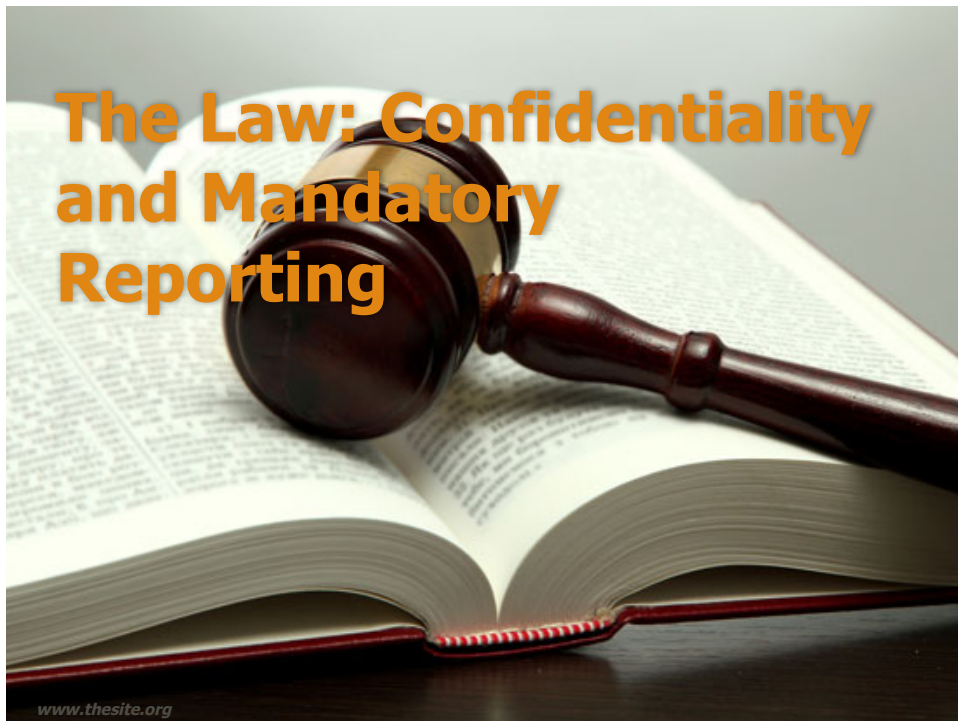
**VICTIM
ADVOCATE**

Corrections' Approach

- Enforce rules to maintain safety and security
- Supervise activities of prisoners
- Responding to emergencies
- Report and investigate prisoner and staff misconduct
- Aid in rehabilitation and counseling of prisoners



The Law: Confidentiality and Mandatory Reporting



www.thesite.org

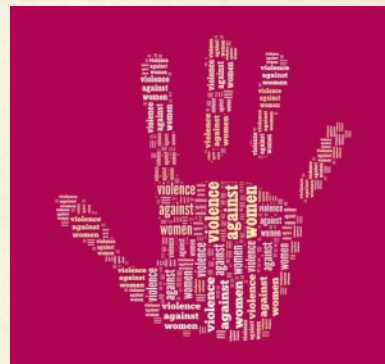
Definition of Terms

- Privacy is a personal choice whether to disclose
- Confidentiality is a responsibility to protect info shared
- Privilege is a right to prevent disclosure of confidential information



Confidentiality Overview

- What protects survivor information in general?
 - Privacy rights
 - State laws
 - VAWA
 - Agency policy



Exceptions to Confidentiality

Mandatory Reporting Laws

Court Order vs. Subpoena

Written Informed Consent



Does Setting Matter?

- Advocates' confidentiality requirements don't change if the survivor is incarcerated
- With incarcerated survivors, building this foundation may take longer
- Having space for confidential communication may be more challenging



LA County Sheriff



What Advocates Need to Know

- Advocate privilege
 - What is the definition of advocate in the law?
 - Is where an advocate works specified?
 - Protects communication and/or agency records?
 - What are the exceptions?
- Records protection
 - Is this contained in the privilege statute or elsewhere?
 - Is it absolute, or is there an in camera review process?
- Do these protections apply in all types of cases?

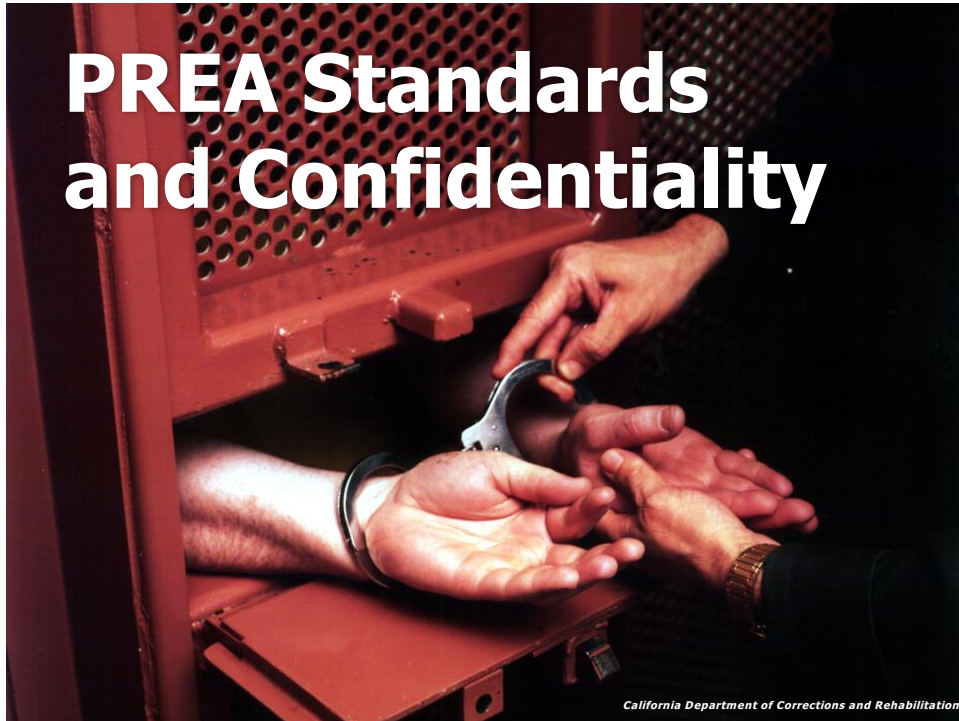
Basic Rule

- Decision to share or not share is survivor's choice
- An advocate cannot release/share information without the informed consent of the survivor



<https://pixabay.com>

PREA Standards and Confidentiality



Confidentiality Checklist

- Provide multiple ways to report
- Offer medical and mental health care
- Increase accountability
- Provide survivors access to victim services





Provide multiple ways to report

- To a staff member, contractor, or volunteer
- In writing
- To third parties
- To an outside reporting entity



Give access to medical and mental health care

- For emergencies and ongoing care
- At no cost to the survivor

Thomas Hawk



Provide access to victim services

- Forensic exam
- Accompaniment at forensic exams
- Accompaniment at investigatory interviews
- Confidential follow-up services
- Confidential emotional support via phone or letter

PREA and Victim Services: Common Misunderstandings



Clarifications

Rape crisis centers must **comply with state mandates on confidentiality**

Rape crisis center staff **support** good investigations

The PREA Standards are binding on **corrections agencies**

PREA and Confidentiality

- All staff members who work in corrections facilities are mandated report sexual abuse
- The PREA standards do not change the legal and ethical principles that guide rape crisis services
- Rape crisis services are for all survivors, even if they're not ready to make a report



PREA Applies to All Corrections Agencies

- The PREA standards are **not** binding on rape crisis centers
- It is the responsibility of corrections agencies to implement and comply with the PREA standards
- Under the standards, corrections agencies are required to “attempt to” establish an MOU with local rape crisis centers



Scenario #1

–“Hi Jenny, I heard that Inmate Jones contacted you about being sexually assaulted in my facility. I’m concerned about the safety and security of the facility and the inmates who are in my custody.

–I need you to tell me everything the inmate told you.”



Jon Snyder, Wired.com

Scenario #2: Whose duty is it anyway?

"We're working on complying with the PREA standards and since we're already working together, we'd like your agency to take reports from inmates and forward them to us. That way your agency will be in compliance, too. I've modified our Memorandum of Understanding for your signature. Can you please get it to me by the end of the week?"



External Reporting

- The role of the outside entity is to receive and immediately forward reports to the agency where the abuse occurred
- The outside entity, which can be public or private, must be able to forward reports, including anonymous ones, to the facility



Common Challenges



Challenges

- Difficulty explaining advocate role
- 3rd party presence
- System partners may not view advocates as equal professionals
- Push back from corrections
- Compromising confidentiality for partnership



<http://saalt.org/the-coalition/capacity-building/advocates-for-community-empowerment>



Tips for Maintaining Confidentiality

- Know the PREA victim services standards and what facilities are required to provide
- Know your state laws and agency policies and be ready to explain them
- Give a survivor multiple options for talking with you



Elevator Pitch: Confidentiality

- The law can be a powerful tool for advocates
- Elements of a elevator pitch about confidentiality
 - Clear and concise
 - Firm and confident
 - Cite your authority
 - Tips
- Homework – use your state-specific protections to create an elevator pitch to corrections

Overcoming Reluctance and Conflict

- Frame positively what you can provide
- Emphasize the benefits for facilities
- Know their rules
 - Sight or sound
- Tour the facility
- Share your deal breakers



<http://www.healthyplace.com/>



Eileen Pace / TPR News

"I remember working once with a survivor who was behind a glass partition and having to use the telephone to communicate. One side of the telephone was not working, so we spoke through the glass. We had to raise our voices to hear each other. There were other inmates present, and I worried that his confidentiality was being compromised."

— Karin Stone, Women's Center High Desert

Scenario #3

You receive a call from an officer at your local jail. He says he has just been put in charge of figuring out how to make their facility comply with this PREA stuff he's been hearing about. He doesn't seem too excited about it, but invites you to a meeting at the jail.

What you would want to be prepared to discuss and ask for at the meeting?



Scenario #4

You think your meeting goes well, but later that week you get another call from the officer. He says "Hey, our staff has been talking about this whole advocacy thing you told us about, and we think we're just going to assign one of our staff to be the advocate. People in here don't really get sexually assaulted anyway, so it won't come up that often."

How would you respond?

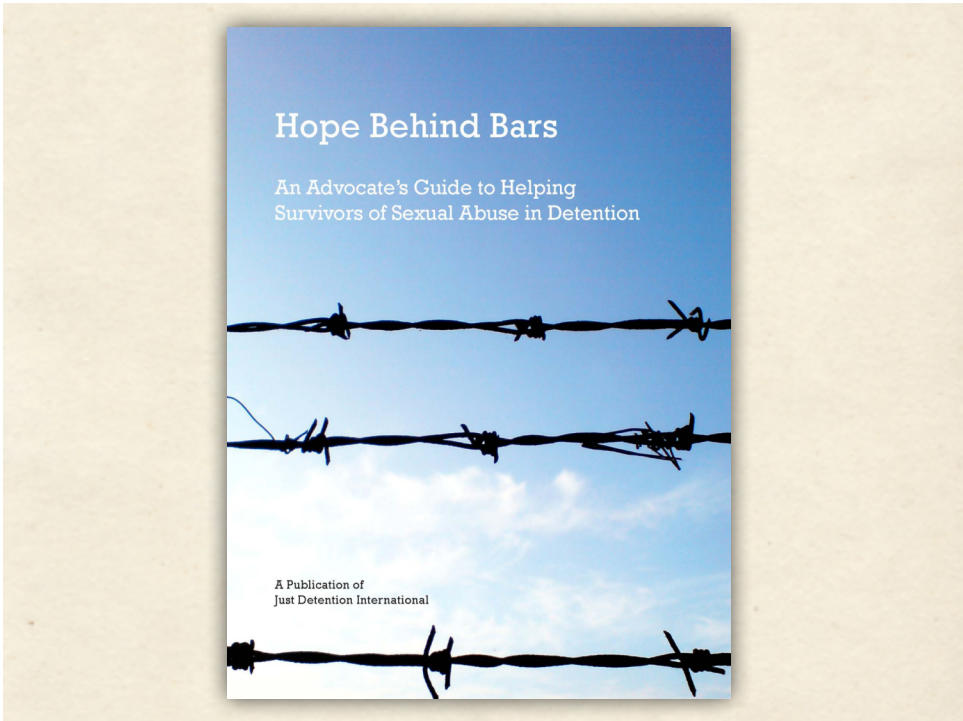


Scenario #5

You arrive for your first in person advocacy session and the staff person loudly announces the arrival of the "PREA lady." They then say, "inmate Smith is in the visiting room." You are ushered into the visiting room where they are waiting at a table with an officer. Across the room, another incarcerated person is visiting with a family member. Your client says they don't want to meet with you after all.

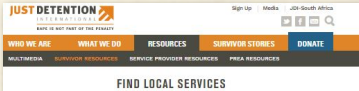
What would make an in person visit go more smoothly next time?





Advocate Resources

- Advocates Manual



Advocate Resources:
www.justdetention.org/advocate-resources

- SART Toolkit
- Archived Webinars
- Technical Assistance Request Form
- PREA Resource

Center:
prearesourcecenter.org



Resource Guide for Survivors

Add your agency to
JDI's **Resource
Guide for Survivors
of Sexual Abuse
Behind Bars:**

<https://www.surveymonkey.com/r/23GD837>




For More Information

For additional information, please visit:
www.justdetention.org/advocate-resources
Direct questions to: advocate@justdetention.org

For WCSAP, please visit:
<http://www.wcsap.org/contact.htm>

For more information about **Just Detention International**,
visit www.justdetention.org.

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