

April 29, 2020: National Webinar

Confidentiality and Information Sharing in FJCs

Privacy, confidentiality, and privilege are cornerstones of victim recovery and victim services. With these as our foundation, informed consent prior to information sharing is the next building block. On this webinar, national experts Casey Gwinn, President of Alliance for HOPE International, and Meg Garvin, Executive Director of the National Crime Victim Law Institute (NCVLI), will discuss privacy, confidentiality, privilege, informed consent, and information sharing in the context of Family Justice Centers (FJCs). Presenters will highlight best practices for upholding victims' rights in ways that empower victims and help Family Justice Centers to deliver coordinated, multi-disciplinary, hope-centered services to survivors.

On this webinar, attendees will gain a deeper understanding of:

- Federal laws surrounding confidentiality, informed consent, and information sharing
- Ways to uphold victims' rights during Family Justice Center intake processes
- The importance of privilege, its role in client intake processes, and how it protects client information
- Concrete steps towards creating a trauma-informed, hope-centered intake process that gives survivors full control over their information and offers coordinated, multi-disciplinary services to survivors

About the Presenters

Casey Gwinn is the President and Co-Founder of the Alliance. He is the visionary behind the Family Justice Center Movement, first proposing the concept of the Family Justice Center model in 1989. Casey founded Camp HOPE America in 2003. He is a national expert on domestic violence dynamics, including investigation and prosecution, the handling of non-fatal strangulation cases, and is one of the leading thinkers in the country on the science of hope. Prior to this position, Casey was the elected San Diego City Attorney.

Meg Garvin, MA, JD, is the executive director of the National Crime Victim Law Institute (NCVLI) and a clinical professor of law at Lewis & Clark Law School. Ms. Garvin is recognized as a leading expert on victims' rights. She has testified before Congress, state legislatures, and the Judicial Proceedings Panel on Sexual Assault in the Military.

Welcome to Our Webinar

While waiting for the presentation to begin, please read the following reminders:

- The presentation will begin promptly at 10:00 a.m. Pacific Time
- If you are experiencing technical difficulties, email Rylie@allianceforhope.com
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Confidentiality and Information Sharing in Family Justice Centers

Casey Gwinn, Esq. and Meg Garvin, Esq.

April 29, 2020



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Thank You to the Office on Violence Against Women



Laura Rogers
Acting Director

Kevin Sweeney
Program Manager

Thank you for making this presentation possible!

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HOPE Team



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20th Annual Conference Will Be Hosted Virtually through Our New Hope HUB Online Learning Academy



Confidentiality and Information Sharing in Family Justice Centers

Casey Gwinn, Esq. and Meg Garvin, Esq.

April 29, 2020



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Your Presenters Today



Casey Gwinn
President, Alliance for HOPE International



Meg Garvin
Executive Director, National Crime Victim Law Institute (NCVLI)



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PRIVACY, CONFIDENTIALITY & PRIVILEGE

Meg Garvin, MA, JD
National Crime Victim Law Institute at
Lewis & Clark Law School

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WHO IS NCVLI?

National nonprofit based at Lewis & Clark Law School working to promote balance and fairness in the justice system through crime victim centered legal advocacy, education, and resource-sharing.

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Learning Objectives

- **DESCRIBE** the concept of privacy
- **EXPLAIN** the obligation of confidentiality
- **ARTICULATE** the difference between confidentiality and privilege
- **IDENTIFY** key considerations in thinking about protecting survivor agency in Family Justice Centers

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The Privacy Closet



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What is Privacy?



"[T]he right to be let alone . . ."

"The concept of privacy requires . . . a sense of control and a justified, acknowledged power to control aspects of one's environment."

"The quality, state, or condition of being free from public attention to intrusion into or interference with one's acts or decisions."

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Why Is Privacy Important?

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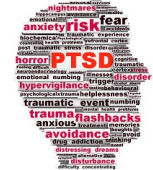
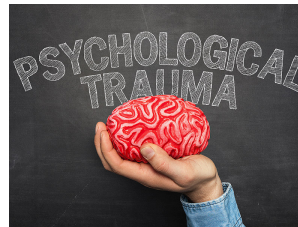
For many victims, "privacy is like oxygen; it is a pervasive, consistent need at every stop of recovery. Within the context of the legal system, if a victim is without privacy, all other remedies are moot."

Ilene Seidman & Susan Vickers, *The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform*, 38 Suffolk U. L. Rev. 467, 473 (2005).

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How do you define "trauma"?



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What is trauma?



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What are types of trauma or things that can cause trauma after an initial victimization?



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Practice Pointer

Understand Prosecutors' Role

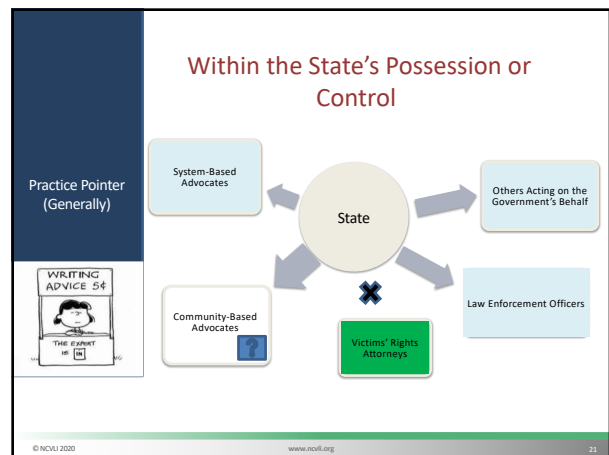
Prosecutors have a legal obligation to disclose select information to defendants.

“[S]uppression by the prosecution of evidence favorable to an accused . . . violates due process where . . . evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”

Brady v. Maryland, 373 U.S. 83, 87 (1963).

WRITING ADVICE 54
THE EXPERT IS IN

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The Power of a STORY

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Key is to Map

Threat

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HOW DO YOU MAP TO SAFETY?

Know the laws of privacy, confidentiality, and privilege

Default to the MOST protective

Create space for survivor agency not just autonomy

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Know the

LAW

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What Is Confidentiality?



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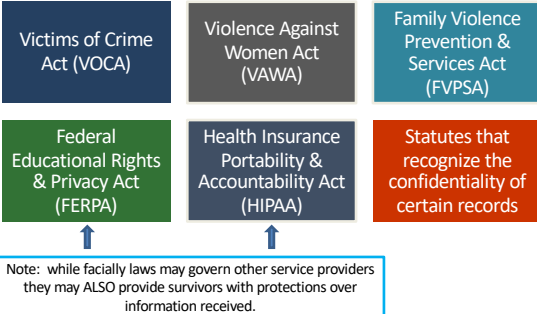
Confidential Information



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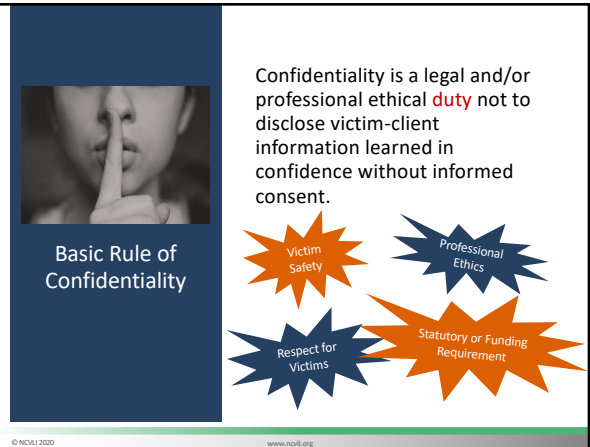
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Examples of Statutory Confidentiality Obligations



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Next steps if disclosure is compelled:

This also at time of request

- Take reasonable steps to notify the victim/survivor.
- Take steps to determine action(s) necessary to protect the privacy and safety of those impacted by the compelled disclosure.

Except If Compelled By Statute Or Valid Court Mandate

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Informed Consent

Victims **MUST** understand the potential impacts of disclosure



Potential consequences may include:

- The inability to "take back" a disclosure
- Lack of control over the information once released
- Risk of defendant accessing the information

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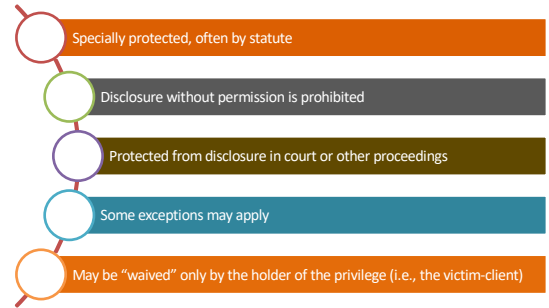
What is Privilege?



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Privileged Communications



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Examples of Privileges

- Attorney-Client
- Spousal
- Clergy-Penitent
- Psychotherapist/Counselor-Patient
- Doctor-Patient
- Advocate-Victim



Rationale: One should be able to speak freely to certain persons without fear of repercussions

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got privilege?



Privilege is a legal **right** not to disclose—or to prevent the disclosure of—certain information in connection with court and other proceedings.



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got privilege?



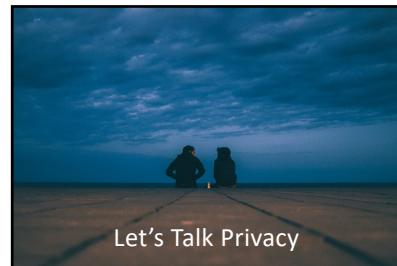
Except . . .
Many/Most
Privileges Are
Not Absolute

Ask: How Protective Is This Privilege?

- Explicit exception in the statute/rule?
- No explicit exception in the statute/rule, but case law recognizes an exception?
- No explicit exception in the statute/rule, and no case law recognizes an exception?

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What are some risk points where we should be particularly cautious to protect victim privacy, confidentiality and privilege?

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Default to



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We cannot put the genie back
in the bottle



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Subpoenas

“Law Enforcement
or Prosecution
Team” Claim

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**Confidentiality,
Information Sharing,
Privilege, and Informed
Consent in the Context of
an FJC**



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A Little History about Confidentiality

- Child Abuse Movement - Confidentiality
- Sexual Assault Movement - Confidentiality
- Battered Women's Movement - Confidentiality
- Family Justice Center Movement:
 - Co-locates partners with centralized intake process
 - Government and non-government agencies
 - Confidential and public information
 - It is a different framework and it can scare people
 - But information sharing can also save lives

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“When it comes to the intake
process of a Family Justice
Center, there is a philosophical,
not a legal divide.”

Casey Gwinn

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California Penal Code 13750



- Defining FJCs in State Law in California
- The Journey to Unanimous Support
- Why Legislation is Needed Across America
- Next Steps for the Alliance
 - Training
 - Awareness
 - Supporting Similar Legislative Initiatives
- http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1623

Key Provisions in PC 13750

- “(d) Nothing in this section is intended to abrogate existing laws regarding privacy or information sharing. Family justice center staff members shall comply with the laws governing their respective professions.”



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Thank you, Assembly Speaker Toni Atkins and Former Senator Chris Kehoe!

- Family Justice Centers defined:
 - “Multiagency, multidisciplinary service centers
 - Where public and private agencies assign staff members on a full time or part-time basis in order to
 - Provide services to victims of domestic violence, sexual assault, elder abuse or human trafficking from one location in order to
 - Reduce the number of times victims must tell their story, reduce the number of places victims must go for help and increase access to services and support for victims and their children”



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Key Provisions in PC 13750(e)(f)

- “(e) Victims of crime shall not be denied services on the grounds of criminal history. No criminal history search shall be conducted of a victim at a family justice center without the victim's written consent unless the criminal history search is pursuant to a criminal investigation.”
- “(f) Victims of crime shall not be required to participate in the criminal justice system or cooperate with law enforcement in order to receive counseling, medical care, or other services at a family justice center.”



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Resources

- White paper on Confidentiality & Information Sharing– Lynn Rosenthal & Casey Gwinn - 2005
- Alameda FJC Confidentiality Protocol - 2008
- Confidentiality & Information Sharing Webinar – Strack 2010
- Professional Confidentiality Agreement – 2010
- Confidentiality & Brady Webinar – O'Malley 2010
- FJC – Dream Big, Start Small 2011
- NY Ruling – Policy reasons – DeCarli 2013
- California FJC (confidentiality) Law - 2015
- Collaboration with Respect Webinar – Aiken 2016



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Confidentiality and Privilege Are Sacred in Family Justice Centers but...

Information from a client can be shared when you have “informed, written, reasonably time-limited consent of the person.”

Section 3 of VAWA, 34 USC §12291(b)(2)



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“Information sharing in a high risk domestic violence situation can save lives. The best intelligence in the hands of a multi-disciplinary team can increase victim safety and offender accountability.”

Casey Gwinn



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“People die when we don’t share information. There is no other conclusion that can be drawn from the cases we have reviewed.”

Gael Strack (after three years of serving as the Chair of the San Diego Fatality Review Team)



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The Alliance strongly recommends that all FJCs “opt-in” to the VAWA Confidentiality Provision



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“The primary information to be gathered and stored for a reasonably, time-limited period in a Center’s intake system, with the informed consent of the victim, is basic demographic information, a record of agencies/professionals providing services, and risk assessment information.”

Family Justice Center Alliance
Intake Toolkit (2019)



Release/Sharing of Information is Permissible:

“...(1) When the victim provides written, informed, and reasonably time-limited consent to the release of information (‘a release’); (2) When a statute compels that the information be released; or (3) When a court compels that the information be released.”

(VAWA 2013, 34 USC §12291(a)(20)(b)(2))



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A Client Walks in the Door

- Client comes to the FJC seeking help.
- “Welcome to the FJC. What brings you here today?”
- “I need a restraining order against my husband.”
- Intake advocate conducts an intake and risk assessment. Victim is at high risk.
- What should happen?
- What goes in the the intake system?
- Do is her DA score? What is her safety plan?



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How the Intake Works

- Survivor decides what goes in the system, which partners can access basic demographic information, and how long the information will be available in the FJC Intake System
- Will the FJC Intake System keep track of who the survivor sees and what services were used? It is the survivor's choice.



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How a Central Intake Works

- Warm Welcome
- Verify victim is at right place
- Fill out 1 page intake sheet (Demographics only)
- Verify information
- Check Client into FJC
- Notify Screener
- Client waits in dining room



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Starts with a Warm Welcome in a Confidential Setting

- Overview of FJC services
- Discuss consent, confidentiality and information sharing (dialogue)
- Conduct risk assessment and safety planning (survivor decision to share or not)
- Develop service plan and follow up plan
- Provide and coordinate services



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Exit Survey

- Verify all services were provided
- Answer any questions
- Provide additional information
- Client Survey
- Verify parking and safety leaving FJC
- Discuss follow-up plan



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The Follow-Up



- All Clients
 - Next Day
 - Next Week
 - Every Month
 - Or as Safe and Necessary
- High Risk Clients
 - By same provider
 - As Needed and Safe
 - Case Review and Management



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Questions?

Please submit your questions via the chat and question feature.



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Providing Training & Advocacy to Victims' Rights

Technical Assistance

NCVLI provides technical assistance in the form of legal research and educational writing as well as training to attorneys, advocates, judges, legislators, and victims. NCVLI does not provide legal advice, nor does it directly represent victims.

NCVLI encourages you to view and download the educational materials in our **Victim Law Library**.

If the Library does not contain the information you are seeking, you can request technical assistance or a training by clicking on the appropriate link:

- If you are an Equal Justice Works Fellow seeking technical assistance under the Crime Victims Justice Fellowship Program, click [here](#).
- If you are a lawyer or professional victim advocate seeking technical assistance, click [here](#).
- If you would like to request a training, click [here](#).

Technical Assistance

Did you know NCVLI attorneys spend an average of 16 hours on each technical assistance request? Each request is fielded by an expert legal team with more than 40 years' of experience in victims' rights litigation! The fair market value of this work that is provided free of charge is \$4,500 PER request. We need your help to continue to provide this service. Please consider a donation!

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Thank You!

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Certificate of Participation

Webinar Training

Confidentiality and Information Sharing in FJCs

Casey Gwinn, Esq. and Meg Garvin, Esq.

1.5 Hours

A handwritten signature in black ink, appearing to read "Casey Gwinn".

Casey Gwinn, J.D.
Co-Founder and President
Alliance for HOPE, International

April 29, 2020

A handwritten signature in black ink, appearing to read "Gael Strack".

Gael Strack, J.D.
Co-Founder and CEO Alliance
for HOPE, International