

# **Confidentiality Issues and Victim Advocacy in Indian Country**

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Native American Topic-Specific Monograph Series

**Purpose**

The purpose of the Native American Topic-Specific Monograph project is to deliver a variety of booklets that will assist individuals in better understanding issues affecting Native communities and provide information to individuals working in Indian Country. The booklets will also increase the amount and quality of resource materials available to community workers that they can disseminate to Native American victims of crime and the general public. In addition to the information in the booklet, there is also a list of diverse services available to crime victims and resources from the Department of Justice.

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CCAN believes that the information contained herein is factual and that the opinions expressed are those of the consultants/writers. The information is not however, to be taken as warranty or representations for which the Center on Child Abuse and Neglect assumes legal responsibility. Any use of this information must be determined by the user to be in accordance with policies within the user's organization and with applicable federal, state, and tribal laws and regulations.

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## Confidentiality Issues and Victim Advocacy in Indian Country

Confidentiality is a big concern for everyone who works with victims of crime. Many victims are afraid to report crimes because they are concerned that family members and friends may learn about their victimization. Some crimes, such as rape, can be especially embarrassing to a victim who may believe that she or he will be blamed for what happened to them. It is very important that people who have been a crime victim feel comfortable that they can receive services in a confidential manner. These concerns are especially important in small reservation communities where everyone knows everyone else.

There are many times when confidentiality issues come into play, when law enforcement is called to the crime; when a report is filed; when a Victim Assistance provider (Victim Advocate, Rape Counselor, Child Advocate, Domestic Violence Shelter Advocate) becomes involved; when a multidisciplinary team (Child Protection Team, Family Violence Task Force, etc.) is part of the case; and, when numerous agencies participate in the case (e.g., Indian Health Service, Bureau of Indian Affairs, Federal Bureau of Investigation, U.S. Attorney's Office, District Attorney's Office, tribal or county Child Protective Services, etc.). With so many people and agencies involved in cases, it is easy to understand how a victim would be concerned about keeping their victimization confidential.

If a case goes to trial, victims may be concerned that the details of a crime, including sexual assault, will be open for the public to hear. In cases involving child victims, state and federal laws protect the child. Tribal courts may also have rules or policies allowing the courtroom to be closed and/or limiting the amount of information that could identify the victim.

### What is Confidentiality?

Simply defined, confidentiality means not telling information which is supposed to be kept secret. There are more formal definitions, including legal definitions which are part of federal state, and tribal laws.

The Youth Law Center (Soler, Shotten, & Bell, 1993) has listed 10 interests of children and families in privacy:

- 1) the right to be left alone;
- 2) avoiding embarrassment and humiliation;
- 3) avoiding exposure of inflammatory information;
- 4) protecting personal security;
- 5) protecting family security;
- 6) protecting job security;
- 7) avoiding prejudice or differential treatment;
- 8) preventing denial of discretionary services;
- 9) encouraging adolescents to seek medical care; and,
- 10) reestablishing privacy boundaries for children.

Victim service providers are particularly concerned with avoiding embarrassment and humiliation (not disclosing that someone was a victim of rape), protecting personal security (not disclosing the location of a woman who is being stalked by her husband), and reestablishing privacy boundaries for children (child abuse victims need to feel in control of their lives as much as possible).

One of the most important things to remember about confidentiality is that the "privilege" belongs to the client. That is, the client has the right to tell people information, but those who are providing services to the client do not have this right. For example, a woman staying in a domestic violence shelter may choose to tell her family that she is in the shelter, however the shelter staff may not tell anyone that she is there.

A Victim Advocate cannot even say hello to a client s/he runs into in the post office. Under no circumstances can a victim services provider talk to anyone about their clients or cases without the client's permission (usually in written form). In some cases, a client signs a release of information when they request services. Such a release of information allows the program to share information with other programs. Sharing of information usually takes place on a "need to know basis." A need to know means just what it says, only people or agencies who **must** have the information to carry out their job can get the information.

By accepting services from some programs, the client must agree to this type of information sharing. Some programs, such as Child Protective Services will share information with other agencies in a Child Protection Team (CPT) in order to coordinate services for abused children and their families. More and more communities are developing multidisciplinary task forces to deal with problems such as domestic violence.

### **The First Report**

Crimes come to the attention of law enforcement in two different ways: the victim reports the crime or someone else reports the crime. No matter who reports the crime, the first people to respond are sent to the crime scene by a dispatcher. The dispatcher calls the patrol car over the radio. In many reservation communities lots of people own "scanners" which pick up these radio signals. Any member of the community who is listening to such a scanner knows when the police are responding to a call. After listening to these calls for a time, most people can identify the codes used by the police. Someone listening to a scanner would know, for example, when the police are responding to a home because of a domestic dispute or some similar type of problem.

In small communities, most people know where other community members live. So by listening to the police channel, anyone can know who is having a family dispute or where a victim of a sexual assault lives. There are even stories of law enforcement being unable to find a residence and community members, who have listened to the call over the scanner, coming out to tell the police where the suspect is!

In cases of family violence, a victim may be reluctant to call the police because she does not want family or friends to know she is being abused. If someone else calls the police, the victim may be additionally traumatized by realizing that others in the community are aware of what is happening to her.

It is important for law enforcement agencies in tribal communities to beware of the problems caused by the wide use of scanners by community members. They need to realize that victims of some types of crime may not make reports due to fears that other people will hear the call. Police departments may want to sponsor community awareness activities to encourage victims to report crimes. Law enforcement agencies may work to develop alternative means of talking to patrol officers which cannot be overheard by the public, especially for child sexual abuse or rape.

Some studies have suggested that the number one reason women do not report rape is because they are afraid that their family or friends will find out. Obviously, a crime such as rape, should never be discussed over an unsecured radio channel.

### **Information Sharing**

There are many times when it is important for many people to know what is going on in a case. This is especially true in child abuse cases. Most tribal communities have a Child Protection Team (see the monograph on *Child Protection Teams in Indian Country* for more information on these teams). Such teams are developed to help coordinate responses to child abuse. The members of the Child Protection Team (CPT) are usually representatives of Child Protective Services, Prosecutor, Law Enforcement, medical providers, mental health staff, Victim Advocates, and Social Services. Some teams have fewer members, other teams have more members.

When there are so many people on a team, it is clear why people would be concerned that the information discussed during a team meeting will not be kept secret. All CPTs have confidentiality policies. In many teams, all members must sign a form agreeing to keep information discussed confidential at every meeting. Penalties for breaking this policy range from a written reprimand, to being fired.

Most CPTs have both community members and nonmembers as Team participants. Some community members may be concerned that other tribal members will go home and talk about what they heard at the CPT. Because there are so many relationships, such as clan/band relationships, in tribal communities, a victim may be concerned that their relative will learn intimate details about their case. It is easy to understand why people would have these concerns.

Laws can set up the rules for information sharing. Tribal ordinances can describe situations in which information can be shared and who is allowed to share the information. Federal laws, such as Public Law 101-630 the Indian Child Protection and Family Violence Prevention Act, mandate multidisciplinary teams be established. These types of laws include an understanding that the people on these teams will be sharing information on child abuse victims and their families. However, laws can also be used to set out the punishments for violating confidentiality.

Strong confidentiality policies which are always enforced can help community members feel more secure that no one will reveal information that is supposed to be confidential.

### **Laws Protecting Privacy**

The South Dakota Coalition Against Domestic Violence and Sexual Assault has developed a Bill of Rights for Women who have been Battered or Raped. Among these rights is confidentiality. Expanding on this right, it is stated, "you have the right to choose what information you wish to share, whom you wish to share it with and how it will be used."

Programs which receive funding from federal sources must follow the rules regarding confidentiality. Both the Family Violence Prevention and Services Act (FVPSA) and the Victims of Crime Act (VOCA) contain definitions of confidentiality.

Individual victim assistance programs also have their own confidentiality policies. Each program must decide what types of information they will keep in a client's files and who will be able to look at the files or get information from the files. It is important that these confidentiality policies be written and that everyone in the agency (staff, volunteers, members of the Board of Directors, etc.) signs a statement agreeing to follow the confidentiality policy.

Agencies will sometimes use confidentiality as a reason they cannot participate in multidisciplinary teams. Agency employees may say that they cannot participate in team meetings because agency policy prevents them from talking about cases. In order to make sure that everyone understands when they can talk about, it is helpful to have a written policy about what type of information can be shared and when it can be shared. Written policies can avoid conflicts and misunderstandings.

### **Maintaining Confidentiality in a Small Community**

Many reservations are located in small, rural communities where everyone knows everyone else and it is difficult to keep anything confidential. Community members recognize which cars belong to certain tribal programs. So if a representative of a child sexual abuse project goes for a home visit, their neighbors will know that a child in that house has been abused.

Also, tribal members recognize each other's cars. Someone driving by a victim assistance program office can see a person's car in front of this office and be able to identify who is seeking services. Information travels quickly through a small community, through the "moccasin telegraph." One person who notices a neighbor receiving a visit from a Victim Advocate, can set the telegraph in motion.

These challenges are particularly difficult for domestic violence shelters or children's advocacy centers. It is easy to identify who is seeking services from these agencies and it is not possible to move the agency to another location.

With all of these challenges, the question becomes, is it possible to maintain confidentiality in a small community? The answer is yes, but it is difficult. While it is not possible to move a child abuse agency, it is possible to locate the program in a building which provides a variety of other resources. One tribal program offers a variety of community events in the same building where they house their child abuse program. People coming to this building may be attending a sewing class or bringing their child to be interviewed because they were abused. It is not possible to know why a particular person is visiting the building.

It may be possible to use community volunteers to provide transportation to appointments. If someone is picked up and dropped off for an appointment, no one will see their car in front of a specific building. Home visits can be kept more confidential if the victim assistance provider can park their car away from the client's home, or the provider can arrange to meet their client in a neutral location.

It is important that everyone in a community understands what confidentiality is and why it is important. Staff training is one aspect of building community understanding. The Youth Law Center (Soler, Shotton, & Bell, 1993) identified seven essential elements of staff training on confidentiality:

- 1) the reasons for protecting the confidentiality of information about children and families;
- 2) the specific information the worker's agency requires, and the reasons the agency needs the information;
- 3) information the worker's agency will share with other agencies, and the purposes of that information sharing;
- 4) the applicable legal provisions, particularly federal and state statutes and regulations;
- 5) conveying to staff the importance of fully explaining the significance of consent to clients, the requirements of informed consent, and the necessary elements of written releases;
- 6) interagency agreements, MOUs, court orders, and other mechanisms used by the agency to facilitate interagency information sharing without the consent of clients; and,
- 7) particular considerations that arise in the context of any automated management information system utilized by the agency.

It is difficult to keep information confidential on the reservation. Community support is vital to keeping information confidential. There needs to be an on-going public education effort to teach people about confidentiality. In cases of domestic violence, for example, talking about where a woman is getting shelter may be life threatening. Community members can help in the effort to keep information confidential instead of being part of the problem. Focusing on a community's strengths is often overlooked.

## REFERENCES

Marks, L. (1997) *Protecting Confidentiality: A Legal Manual for Battered Women's Programs*, Pennsylvania Coalition Against Domestic Violence, 1-800-537-2238.

Mending the Sacred Hoop and Sacred Circle. (1998) *Women are Sacred Training Manual*. Author: Rapid City, S.D.

Soler, M.I., Shotton, A.C., and Bell, J.R. (1993) *Glass Walls: Confidentiality Provisions and Interagency Collaborations*. Author: San Francisco, CA.

Whitcomb, D. (1992) *When the Victim Is a Child* (2nd ed.), National Institute of Justice: Washington, D.C.

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## RESOURCES

### **Office for Victims of Crime**

810 Seventh Street, NW  
Washington, DC 20531  
(202) 307-5983  
<http://www.ojp.usdoj.gov/ovc>

### **Office for Victims of Crime Resource Center**

Box 6000  
Rockville, MD 20849-6000  
800-627-6872  
<http://www.ncjrs.org>

### **Center on Child Abuse and Neglect**

CHO 3B-3406  
940 NE 13th Street  
P.O. Box 26901  
Oklahoma City, OK 73109  
<http://pediatrics.ouhsc.edu/ccan>

### **Bureau of Indian Affairs**

Office of Tribal Services  
1849 C Street, NW, MS 4603  
Washington, DC 20240  
(202) 208-2721  
<http://www.doi.gov/bia>

### **Office of Justice Programs**

American Indian and Alaska Native Desk  
810 Seventh Street, NW  
Washington, DC 20531  
(202) 616-3205

### **Tribal Law and Policy Institute**

P.O. Box 460370  
San Francisco, CA 94146  
(415) 647-1755  
<http://www.tribal-institute.org>

### **U.S. Department of Justice**

Office of Tribal Justice  
10<sup>th</sup> and Constitution Ave., NW, Room 1509  
Washington, DC 20530  
(202) 514-8812

**American Indian Development Associates**

Ms. Ada Pecos Melton  
7301 Rosewood Court, NW  
Albuquerque, NM 87120  
(505) 842-1122

**National Congress of American Indians**

1301 Connecticut Avenue NW, Suite 200  
Washington, DC 20036  
(202) 466-7767  
<http://www.ncai.org>

**National American Indian Court Judges Association**

1301 Connecticut Avenue, NW  
Washington, D.C. 20036  
(509) 422-6267  
<http://www.naicja.org>

**Native American Rights Fund**

1506 Broadway  
Boulder, CO 80302  
(303) 447-8760  
<http://www.narf.org>

**National CASA Association**

100 W. Harrison St., North Tower #500  
Seattle WA 98119  
1-800-628-3233  
<http://www.casenet.org>

**National Children's Alliance**

1319 F Street, NW, #1001  
Washington, DC 20004  
(800) 239-9950  
<http://www.nncac.org>

**Colorado State University**

Tri-Ethnic Center  
C138 Andrews G. Clark  
Ft. Collins, CO 80523  
(970) 491-0251

**Northern Plains Tribal Judicial Institute**

University of North Dakota Law School  
Box 9000  
Grand Forks, ND 58202  
(701) 777-6176  
<http://www.law.und.nodak.edu/lawweb>

## Native American Topic Specific Monograph Project Titles

- Abusers Who Were Abused: Myths and Misunderstandings**  
Dewey J. Ertz, Ph.D.
- Community Readiness: A Promising Model for Community Healing**  
Pam J. Thurman, Ph.D.
- Confidentiality Issues in Victim Advocacy in Indian Country**  
Eidell Wasserman, Ph.D.
- Dealing with Disclosure of Child Sexual Abuse**  
Eidell Wasserman, Ph.D.
- The Differences Between Forensic Interviews & Clinical Interviews**  
Jane F. Silovsky, Ph.D.
- Guidelines for Child Advocacy Centers in Indian Country**  
Eidell Wasserman, Ph.D.  
Roe Bubar, Esq.  
Teresa Cain
- History of Victimization in Native Communities**  
D. Subia BigFoot, Ph.D.
- Interviewing Native Children in Sexual Abuse Cases**  
Roe Bubar, Esq.
- Memorandums of Understanding Between Indian Nations, Federal, and State Governments**  
Jerry Gardner, Esq.
- Native Americans and HIV/AIDS**  
Irene Vernon, Ph.D.
- An Overview of Elder Abuse in Indian Country**  
Dave Baldrige  
Arnold Brown, Ph.D.
- Psychological Evaluations**  
Eidell Wasserman, Ph.D.  
Paul Dauphinais, Ph.D.
- Public Law 280: Issues and Concerns**  
Ada P. Melton, Esq.  
Jerry Gardner, Esq.
- The Role of the Child Protection Team**  
Eidell Wasserman, Ph.D.
- The Role of Indian Tribal Courts in the Justice System**  
B.J. Jones, Esq.
- The Roles of Multidisciplinary Teams and Child Protection Teams**  
Eidell Wasserman, Ph.D.