

Considerations to Protect Victim Privacy



Potential Sources of Victim Privacy Legal Arguments

Constitutional Rights

- Case law regarding the federal constitutional right to privacy
- Explicit state constitutional right to privacy
 - *Note: state constitutional privacy rights may or may not be victim-specific; similarly, remember that state constitutional rights to privacy are often codified in articles and sections separate from provisions addressing constitutional rights that are unique to victims of crime. In some jurisdictions, the right to privacy is styled as a right to be left alone.*
- Case law regarding a state constitutional right to privacy
- Explicit state constitutional rights to be treated with fairness, dignity and respect throughout the criminal justice process
- Federal constitutional right to meaningfully access the courts

Statutory Rights

- Victims' Bills of Rights or similar provisions establishing an explicit right to privacy
- Victims' Bills of Rights or similar provisions guaranteeing the rights to be treated with fairness, dignity and respect throughout the criminal justice process
- Rape Shield laws
- Statutory privilege and/or confidentiality guarantees
 - *E.g., doctor-patient privilege, mental health counselor privilege, victim advocate privilege, attorney-client privilege, confidentiality of foster care or dependency records, confidentiality of state hospital records, confidentiality of victim compensation application information, HIPAA protections, FERPA protections.*
- Exclusions from disclosure of victim-related information from public records provisions
- Offense- or population-specific rights (*i.e.*, child-victims, victims of sex offenses, victims of domestic violence)

Rule-Based or Practice-Based Protections

- Filing requirements or local practice, such as the use of initials or pseudonyms to identify victims, including child-victims
 - *Note: these practices may not be made explicit in some jurisdictions but may nevertheless be routinely cited in footnotes of court decisions when initials or pseudonyms are used in place of victim names*
- Sealing procedures and protective orders to safeguard against disclosure of information
- Rules of criminal procedure similar to Federal Rule 611 explicitly vesting judges with the authority to control their courtrooms and protect participants against harassment or embarrassment
- Procedures governing full or partial closure of court proceedings under specific circumstances

Funding Requirements

- Certain sources of funding, such as VOCA and VAWA grants, require protection of victim information