



Updated November 2017 | For educational purposes only. Not legal advice.  
Funded by the Victims of Crime Act.

## Privilege/Confidentiality Outline

Name	To whom does this protection belong?	What information is protected?	From what is the information protected?	Source of Law
VAWA (Violence Against Women Act)	Survivor <sup>1</sup>	Personally identifying information <sup>2</sup> or individual information collected in connection with services requested, utilized, or denied, even if it is redacted or encrypted.	Disclosure or release to any person or any entity without written, informed, and reasonably time-limited consent. Must prevent accidental disclosure.	U.S. Code (34 U.S.C. § 12291(b)(2))
VOCA (Victims of Crime Act)	Survivor	Any personally identifying information or individual information collected in connection with VOCA-funded services requested, utilized, or denied, even if it is redacted or encrypted.	Disclosure or release to any person or any entity without written, informed, and reasonably time-limited consent. Must prevent accidental disclosure.	Code of Federal Regulations 28 CFR § 94.115

<sup>1</sup> VAWA, VOCA, and FVPSA protections also extend to children receiving shelter services with survivor. If a minor or person with a guardian receives services without parent or guardian consent, then he/she may also sign a release without parent/guardian consent; otherwise, they must have the signature of the non-abusive parent or guardian, for example, a child who happens to be in shelter with mom. 34 USC § 12291(b)(2)(B).

<sup>2</sup> **Personally identifying information** is that information “likely to disclose the location of a victim” including, but not limited to first and last name, home or other physical address, contact information, social security number, driver license number, passport number, student identification number, and date of birth, racial or ethnic background, religious affiliation, or anything else that “would serve to identify any individual.” 34 USC § 12291(a)(20).



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FVPSA (Family Violence Prevention & Services Act)	Survivor	Personally identifying information or individual information collected in connection with services requested, utilized, or denied, even if it is redacted or encrypted.	Disclosure or release to any person or any entity without written, informed, and reasonably time-limited consent. Must prevent accidental disclosure.	U.S. Code 42 USC § 10401 <i>et seq.</i>
Domestic Violence or Sexual Assault Counselor	Survivor	Any information transmitted between a victim and counselor <sup>3</sup> and any other person who needed to know it in order to help that is transmitted in connection with advice, counseling, or other assistance.	Protected only from being admissible as evidence in any civil or criminal court proceeding without prior written consent of the victim.	State statute MCL § 600.2157a
Professional Counselor or a Limited Licensed Counselor	Survivor (person who is counseled)	Any communication between counselor and person who is counseled.	Must be “preserved inviolate” by the counselor and cannot be waived. Cannot be admitted into evidence in any proceedings except if the counseling is by referral of the court in the context of a custody or parenting time dispute.	State statute MCL § 551.339

<sup>3</sup> The statute lists sexual assault or domestic violence counselor, but pending legislation would add “human trafficking counselor.”



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"Rape Shield"	Survivor	Any evidence of past sexual conduct, opinion or reputation evidence of sexual conduct except if judge thinks it is highly valuable to show prior sexual conduct with alleged perpetrator or source of semen, pregnancy, or disease.	Entry into evidence in court in a criminal case.	State law MCL § 750.520j
FERPA (Family Educational and Privacy Rights Act)	Survivor / Parents <sup>4</sup>	Educational records, which means anything pertaining directly to a student and maintained by an educational institution (not teacher's prep notes, law enforcement, non-student employee records, or physician / therapist records for students over 18)	Disclosure or release without written permission except to school officials with legitimate educational interest, schools to which the student transfers, auditing or accrediting organizations, and in response to a valid subpoena, health or safety emergency, or authority pursuant to state law.	U.S. Code 20 USC § 1232g
Educator-student privilege	Student	Communications received in confidence from students or other juveniles and any records of a student's behavior.	Disclosure or testimony in state criminal or civil court unless the student or parent of minor student consents.	State statute MCL § 600.2156

<sup>4</sup> FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level.



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HIPAA (Health Insurance Portability and Accountability Act)	Patient	“Protected health information” which means individually identifiable health information transmitted or maintained by a covered entity or business associate.	Disclosure by a “covered entity” which includes health plans, clearinghouses, providers and business associates of those entities.	45 CFR §§ 160, 164
Physician-patient	Patient <sup>5</sup>	Any information that a licensed medical doctor or surgeon has acquired in attending a patient in a professional character that was necessary to obtain treatment.	Any disclosure. <sup>6</sup>	State statute MCL § 600.2157; 767.5a
Attorney – client confidentiality	Attorney’s client	Anything the client tells an attorney in the process of seeking legal services and anything the lawyer learns while representing the client as part of the representation.	Any disclosure.	Attorney ethical rule MRPC 1.6; state statute MCL § 767.5a
Attorney-client privilege	Attorney’s client	Anything the client tells an attorney in the process of seeking legal services in private.	Admission into evidence in a court proceeding. Any waiver must be knowing and voluntary.	Case Law, State statute MCL § 767.5a

<sup>5</sup> (or heirs / beneficiary in life insurance action if patient has died)

<sup>6</sup> This can be waived if the patient brings a medical malpractice case.



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Attorney work product	Attorney's client <sup>7</sup>	Anything prepared by an attorney or assistant / consultant in preparation for trial.	Discovery by opposing counsel unless there is no other way to obtain the information without undue hardship.	Case law, State court rule MCR 2.302(B)(3)(a)
Marital Privilege	Spouse against whom the other spouse would testify	Blanket rule that does not allow the other spouse to testify except in certain proceedings, for example, divorce or criminal action for crime against child.	Testimony in court.	State statute MCL § 600.2162
Clergy-penitent	Penitent and Priest/Minister	Confessions made in [priest or minister's] professional character / made in order to enable clergy to serve as clergy.	Any disclosure whatsoever, including as mandatory reporter if the only way the priest or minister knows about it is because of the confession.	MCL § 600.2156; 767.5a
Crime stoppers communications	Any individual who knows about the confidential communication	Statements made for the purpose of reporting alleged criminal activity to a private, "crime stoppers" organization.	Any disclosure or production pursuant to subpoena. However the prosecution or defense can ask for production and the court may order it as the court deems appropriate.	State statute MCL § 600.2157b

<sup>7</sup> Prosecutors' work product is also protected from Freedom of Information Act requests, such that the public cannot access prosecutors notes, memoranda, etc.



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