

SART Confidentiality Waiver **by Alice Vachss**

This is a time in your life when your privacy is particularly important to you. The same rules apply to your personal decisions as they always did – you must decide for yourself who you feel you can trust. If you do confide in other people, the law builds in some protection to keep these communications private, but it is limited and imperfect. What you say to police and prosecutors is not confidential. What you say to any other professional may or may not be confidential depending on the law in your state, on any releases of information that you may sign and, in some circumstances, the particular case involved.

What you say to advocates and rape crisis counselors is usually confidential *unless they work for the district attorney's victims' assistance unit*. (This is an important distinction because the principle that what you tell prosecutors is not confidential also applies to their employees including the victims' assistance unit.) Some states have much stronger confidentiality laws than others to protect your private communications with a rape victim advocate or rape crisis counselor. If someone offers you help, you can ask them whether your communications with them are confidential. If they do not know, then you can ask them to find out.

What you say to medical professionals is usually confidential. However, if you decide to prosecute, you will generally be asked to sign a release allowing the police and prosecutor access to what is often called a rape kit (the forensic evidence collection kit prepared during a sexual assault medical examination). The medical records that were made at the time the rape kit was taken, the rape kit itself, and the results of any testing that is done on the forensic samples in the rape kit, will then become part of the prosecution casefile and will probably be disclosed to the defense. For example, once you have signed a release, if your underpants are tested and body fluids are found on them that match the suspect's DNA, the prosecutor is required by law to give that information to the defense attorney. Often the disclosure of this information actually makes it easier for you to prosecute, but it is impossible to know at the time you sign the release what the test results will show. For example, forensic tests can be inconclusive even when the facts are not in dispute.

There is a second kind of release that you should be aware of, and that you may or may not want to sign. In some jurisdictions the various professionals have organized what are called SARTs. A SART is a Sexual Assault Response Team which most often includes representatives from law enforcement (including both the police and the prosecutor's office), medical professionals, and some advocates and therapists. When a SART works well, it means that a variety of professionals have the opportunity to give

input before the prosecutor or the police decide how a case is handled and whether it is prosecuted. However, just because your jurisdiction has a SART, that is no guarantee by itself of the quality or sincerity of their efforts. You may want to ask someone you trust what they think of your SART.

You do not have a say in whether a SART considers your case, and you cannot prevent anyone in law enforcement from being part of the discussion. However you do have a say over whether the other people you confided in are allowed in a SART meeting to discuss what you told them. On the attached SART waiver form, there is a list of various professionals that you might have spoken to, and besides each profession there is a check box. As to each person you spoke to, you have a choice of whether they are permitted to discuss your confidences in a SART meeting. To make your decision, you should weigh two different considerations. First ask yourself:

1. How important is it to me that this particular person advocate on my behalf during a SART meeting?

Then balance the importance of having them speak for you with the answer to the second question which is:

2. How important is it to me to keep private what I have told or want to tell this particular person?

The SART does not have to listen to the people you authorize to speak . . . but without your consent, those people cannot be heard at all. In making your decision please also remember that you cannot assume that just because someone seemed sympathetic to you, that they agree with you on what the criminal justice system should do. If you decide that you want the SART considering your case to hear from people other than police and prosecutors, then the attached form allows you to either list their names, or (in case you don't know their names) to check off their profession.

SART Confidentiality Waiver Form

I, _____ authorize the following person or people to discuss the report of sexual assault that I made in confidence to them, with the Sexual Assault Response Team that is considering prosecution of my assailant.

- | | |
|----------|-----------|
| 1. _____ | 6. _____ |
| 2. _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

- the doctor who examined me in connection with the sexual assault
- the SANE (Sexual Assault Nurse Examiner) who examined me in connection with the sexual assault
- the nurse who was present during the sexual assault examination
- the rape victim advocate who was present during the sexual assault examination
- the hospital social worker I spoke to as a follow-up to the sexual assault examination
- the counselor from a rape crisis center that I spoke to regarding the sexual assault
- the minister, priest, rabbi or other religious counselor I spoke to regarding the sexual assault
- the person I spoke to regarding the sexual assault when I called the hotline
- the therapist I have been seeing since the sexual assault
- other professional to whom I spoke who works as a

Signed: _____

Dated: _____