# Confidentiality for Sexual Assault Survivors under the Age of Nineteen

*This Information bulletin is based on the information available at April 30, 2012. This document is for general information only. It is not intended to be and cannot be relied upon as legal advice.*

When developing a community sexual assault response protocol there are many issues to discuss. A major issue is confidentiality for sexual assault survivors under the age of nineteen, as many agencies have differing policies and practices that they must follow. When making a decision about who to tell about a sexual assault, many young people have fears about "getting into trouble" or about their parents finding out what has happened or where they were. Among other fears, these act to keep the violence a secret and contribute to the low reporting rates of sexual assault

At the protocol table discussion may arise about the various policies and protocols affecting agencies. Some will question policies of automatically notifying the Ministry of Children and Family Development (MCFD) after a sexual assault of a teenager, or informing a young person's parents, because of the risk that young people will not access supports if they feel they will immediately have their parents or MCFD notified.

**This document is intended to clarify some of the questions about legal and policy mandates and to aid discussion when developing community or agency protocols**.

The window of opportunity for a sexual assault survivor to access support is very limited. Sexual assault victims tend to very quickly want to forget about the assault, the trauma becomes imbedded and they may feel too numb or exhausted to want to talk about the sexual assault. It's important for the survivor to get information and referrals early on, while she's still open to support, as self-blame, depression, self-medicating and other symptoms of post-traumatic stress can develop.

> "The physical and mental health implications of sexual violence include acute physical injuries, depression and suicide attempts, unwanted pregnancies and miscarriages and STDS including HIV/Aids." *Strategies and Options For BC on Sexual Violence, 2006*

> "Within days or weeks of a traumatic experience, counselling seems beneficial in dispelling PTSD. It is speculated that this period could reflect the timescale over which the hippocampus in the brain organizes experiences into a person's worldview. Once dissociation or PTSD develops, the majority of psychological symptoms and the hormonal profile are very resistant to treatment." Reference: Scientific American, N.Y., (273: 4) 10/95

This means it is vital to clarify who will be providing long term support to the survivor and ensure that referrals flow smoothly, without confusion about privacy issues or reporting obligations.

Most sexual assault response teams provide services to either youth and adults (including mature minors) or children. Both are very specialized areas of knowledge and expertise and require different training and staffing. For example, when working with children a pediatrician is generally involved in doing the medical and/or forensic sexual assault exams. With young people and adults, specially trained Sexual Assault Nurse Examiners may be involved in doing the sexual assault exam. When deciding on the age of the client group that you intend to focus on, there are many factors to take into consideration. These can include;

**Legislation affecting service providers includes**

- The Child Family and Community Service Act (CFCSA) (Duty to report)
- The Infants Act IA (Ability to consent to treatment)

**Provincial Policies**

- Violence Against Women In Relationships Policy 2010

**Agency Policies**

- Community Based Victim Services (CBVS); Records Management Guidelines, 3rd Edition, 2006, EVABC and BCSTH
- Community Based Victim Services; Individual Agency Policy Manuals
- RCMP Operational Manual
- Individual Municipal Police Department Policy Manuals
- Other: Many agencies have been accredited over the past decade and will have amended their policies to fit their new accreditation standards.

**Police and Police Victim Services**

RCMP, Municipal Police agencies and police victim service agencies generally operate under the **Child Family and Community Service Act**, which doesn't require reporting unless a minor is at risk. However, some detachments do notify the Ministry of Child and Family Development if anyone under 19 is a victim of assault or sexual assault. It's helpful to clarify practice at your local detachment when developing an interagency response to sexual assault

**Police Based Victim Services (PBVS)**
PBVS Programs can only provide services to victims that are referred by a police officer. This means that in order to receive police victim services the sexual assault must be reported to the police. As policies differ between municipal departments and RCMP, it is important to clarify local practice when developing a collaborative response.

**Community Based Victim Services (CBVS)**
Where they exist, Community Based Victim Services are the primary provider of services to sexual assault survivors. There is no obligation to make a police report in order to access CBVS services. It is also possible for CBVS programs to provide services to a young person without the consent of a parent or guardian, if the young person is able to demonstrate understanding of what they're consenting to. CBVS programs would follow section 13 of the **Child, Family and Community Service Act** (**CFCS Act**) and would be required to report the incident to child protection if the young person is at risk of further harm. For more information on how to assess capacity to consent please see the "Records Management Guidelines" P. 71 and 72 at endingviolence.org.

**Hospitals / Health Care Providers**
In terms of consent to treatment issues, hospitals and health agency practices are governed by the **Infants Act** and case law, which specifies that a minor is deemed able to consent to medical treatment if they can demonstrate an understanding of the nature, consequences and foreseeable risks and benefits of the proposed health care.

The **Infants Act** does not identify a minimum age to give health care consent. Each case must be assessed on the basis of the minor's ability to understand.
This means that the parent or guardian does not need to be notified to give consent if the young person presents for treatment such as a sexual assault exam and can demonstrate the necessary understanding.

Minors may only consent to treatment that is in their best interest. Generally speaking, "best interest" means that the health care must be given in the expectation that it will improve (or prevent deterioration or impairment of) physical or psychological health.

If the young person is at risk of further harm, under Section 13 of the **CFCS Act** the worker is obligated to notify the Ministry of Child and Family Development.

**Non-government Agencies** (Including Community Based Victim Services)

Community (non-government) agencies are subject to the **CFCS Act**. Under Section 13(1) of this Act a child needs protection in the following circumstances:

> (a) if the child has been, or is likely to be, physically harmed by the child's parent;
> (b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;

(c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;
(d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;
(e) if the child is emotionally harmed by the parent's conduct;
(f) if the child is deprived of necessary health care;
(g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;
(h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;
(i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;
(j) if the child's parent is dead and adequate provision has not been made for the child's care;
(k) if the child has been abandoned and adequate provision has not been made for the child's care;
(l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.

As well, Section 13 1.1 states that:

"…a child has been or is likely to be sexually abused or sexually exploited if the child has been, or is likely to be,

(a) encouraged or helped to engage in prostitution, or
(b) coerced or inveigled into engaging in prostitution."

Therefore for a person under 19 who has experienced a sexual assault or assault, who is deemed mature enough to make decisions and understand information given, where the abuse was not perpetrated by a parent or guardian [s. 13(1)(a),] or where the parent or guardian was not behaving in a way that left the child in need of protection, and where the child is not currently at risk of further harm [s. 13(1)(c)], a report to MCFD is not required in every case. This decision should be made after discussion with the worker's supervisor and within the guidelines of the agency policy.

The variety of mandates and policies means that the various agencies who are participating in your community sexual assault protocol may have different points of view or concerns about what age group the protocol covers. Before referring a sexual assault survivor to a service, it's very important that s/he is informed about reporting requirements and is sent to the appropriate service.

**Discussion Scenarios**:

Developing an effective response for sexual assault survivors can make an enormous difference to the survivors in your community by reducing the rate of re-traumatization and getting survivors to effective and appropriate services quickly. Attached are a few scenarios that may help you to clarify mandates and referral protocols.

1.
- 15 year old girl
- Had several beers at a house party involving teens from the local high school
- Woke up the next morning in a bedroom in the home with her pants and underwear off. Has vague memory of teenage boy on top of her.
- Knows who the boy was, sees him around her school but doesn't know him well.

2.
- 14 year old girl
- Sexually abused by her father since she was 11
- Has moved out of her parent's home and disclosed the abuse to a friend who she's been staying with for the past week.
- Friend's mom has brought her in to talk with you.

3.
- 18 year old girl
- Has lived on her own with her boyfriend for 2 years
- Raped last night by live-in boyfriend
- Afraid she may be pregnant

Assume that each one of these young women has asked that her information be kept private. She does not want her parents to find out that she's been sexually assaulted. Through your work with her you may be able to help her come to a point where she does connect with parents or services, but assuming that at first she does not want to will help highlight the difficulties that different agencies would encounter with providing support to this client.

Working through these scenarios as if they have presented to each service in your team (ie: hospital, health unit, victim services, STV Counselling, school counsellor…) may help highlight areas where program mandates differ.

*Practice and Policies are subject to change. We make every effort to update CCWS documents accordingly. Please check our website on a regular basis to obtain the most up to date version of our materials. (www.endingviolence.org)*

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# INFANTS ACT

## [RSBC 1996] CHAPTER 223

### Part 2 — Medical Treatment

**Consent of infant to medical treatment**

**17** (1) In this section:

**"health care"** means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health related purpose, and includes a course of health care;

**"health care provider"** includes a person licensed, certified or registered in British Columbia to provide health care.

(2) Subject to subsection (3), an infant may consent to health care whether or not that health care would, in the absence of consent, constitute a trespass to the infant's person, and if an infant provides that consent, the consent is effective and it is not necessary to obtain a consent to the health care from the infant's parent or guardian.

(3) A request for or consent, agreement or acquiescence to health care by an infant does not constitute consent to the health care for the purposes of subsection (2) unless the health care provider providing the health care

(a) has explained to the infant and has been satisfied that the infant understands the nature and consequences and the reasonably foreseeable benefits and risks of the health care, and

(b) has made reasonable efforts to determine and has concluded that the health care is in the infant's best interests.

## CHILD, FAMILY AND COMMUNITY SERVICE ACT

## [RSBC 1996] CHAPTER 46

### Part 3 — Child Protection

### Division 1 — Responding to Reports

*When protection is needed*

**13** (1) A child needs protection in the following circumstances:

(a) if the child has been, or is likely to be, physically harmed by the child's parent;

(b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;

(c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;

(d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;

(e) if the child is emotionally harmed by the parent's conduct;

(f) if the child is deprived of necessary health care;

(g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;

(h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;

(i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;

(j) if the child's parent is dead and adequate provision has not been made for the child's care;

(k) if the child has been abandoned and adequate provision has not been made for the child's care;

(l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.

(1.1) For the purpose of subsection (1) (b) and (c) and section 14 (1) (a) but without limiting the meaning of "sexually abused" or "sexually exploited", a child has been or is likely to be sexually abused or sexually exploited if the child has been, or is likely to be,

(a) encouraged or helped to engage in prostitution, or

(b) coerced or inveigled into engaging in prostitution.

(2) For the purpose of subsection (1) (e), a child is emotionally harmed if the child demonstrates severe

(a) anxiety,

(b) depression,

(c) withdrawal, or

(d) self-destructive or aggressive behaviour.

### *Duty to report need for protection*

**14** (1) A person who has reason to believe that a child needs protection under section 13 must promptly report the matter to a director or a person designated by a director.

(2) Subsection (1) applies even if the information on which the belief is based

(a) is privileged, except as a result of a solicitor-client relationship, or

(b) is confidential and its disclosure is prohibited under another Act.

(3) A person who contravenes subsection (1) commits an offence.

(4) A person who knowingly reports to a director, or a person designated by a director, false information that a child needs protection commits an offence.

(5) No action for damages may be brought against a person for reporting information under this section unless the person knowingly reported false information.

(6) A person who commits an offence under this section is liable to a fine of up to $10 000 or to imprisonment for up to 6 months, or to both.

(7) The limitation period governing the commencement of a proceeding under the *Offence Act* does not apply to a proceeding relating to an offence under this section.