

## Third Party Reporting Cases Where There are Warning Signs for High Risk



**Some Guiding Principles**  
**March 2020**

*Sexual Violence Safety and Risk (SVSR) Project*

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### Use with Third Party Reporting Guidebook

These Guiding Principles are intended to be read and used in conjunction with the *Third Party Reporting Guidebook 2.0: Increasing Reporting Options for Sexual Assault Survivors*.

The Guidebook and other important information about Third Party Reporting is available at <https://endingviolence.org/prevention-programs/ccws-program/third-party-reporting-tp/>

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### For General Information Only

*This document is intended as a guide and is for general information only.*

*It is not intended to be, and cannot be relied upon, as legal advice.*

*Responsibility for compliance with the law remains with each participating organization.*

## Acknowledgements

These Guiding Principles were created by were created by the Community Coordination for Women's Safety Program (CCWS) of the Ending Violence Association of BC (EVA BC). EVA BC/CCWS acknowledges and appreciates the Sexual Violence Safety and Risk Project Advisory Group, BC Third Party Reporting (TPR) Work Team, TPR training attendees, and community and police agencies across the province whose input has shaped the creation of these Guiding Principles.

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### Special thanks to PEERS Victoria for reviewing the Guiding Principles

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**The authors of these Guiding Principles would like to acknowledge the trail-blazing work conducted by Steve Hart, Randy Kropp and Kelly Watt in the complex area of risk assessment.**

## **A. Background/Context**

### **What is the purpose of these Guiding Principles?**

The Guiding Principles set out in this document provide basic information to help agencies triage<sup>1</sup> (or identify key warning signs for further violence) in third party reporting cases that may need to go to police for a full risk assessment due to immediate safety concerns.

### **Who should use these Guiding Principles?**

These Guiding Principles are written for Community Based Victim Services (CBVS). Pursuant to the BC Third Party Reporting Protocol, CBVS are the community protocol partners who support adult<sup>2</sup> victims/survivors to complete Third Party Reports (TPRs).

### **If the Third Party Reporting (TPR) Protocol is already in place, why are these Guiding Principles being released now?**

The BC TPR Protocol has been operational since 2008. CBVS workers involved in taking TPRs pursuant to the Provincial Protocol have asked for further guidance regarding circumstances in which a TPR is not appropriate due to serious safety concerns.

### **What are Third Party Reports?**

Third party reporting allows a sexual offence to be reported to police with the victim/survivor remaining anonymous. The report is sent to police by an intermediate agency on behalf of an adult victim/survivor whose name and identifying information is not included. This reporting process is a last resort for adult victims who would not otherwise report directly to police or otherwise provide critical information about the incident to police. A TPR is not a substitute for a 911/emergency call nor should a TPR be used in situations where the victim/survivor or anyone else is in imminent danger from the assailant, or there is a risk of significant harm to the health and safety of the public, a group of people, or risk to a child.

The BC province-wide TPR protocol guides police and community agency practices and procedures. The intent of the Protocol is not to circumvent the criminal justice system but to build a bridge, better enabling victims/survivors to access the system and potentially enabling police--who may have additional information relating to the risk posed--to track serial offenders. The hope is that the existence of the TPR option may encourage vulnerable survivors to seek the help of a community based agency and build a relationship of trust with that agency.

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<sup>1</sup> Triage in this context involves identifying key warning signs indicating a high risk for further violence, referring the case to police and developing an immediate safety plan. For further information see below under: What is the difference between triage and risk assessment, and under Guiding Principles items 3,4, and 13.

<sup>2</sup> Under the BC Protocol, TPR is intended as an option for survivors who are 19 years of age and older. This does not preclude the possibility of TPR for younger survivors in exceptional cases, however, TPR in this context is more complex and a cautious approach is recommended.

## **How were these Guiding Principles Developed?**

These Guiding Principles were undertaken in consultation with key stakeholders and in collaboration with:

- an advisory group of subject matter experts from CCWS/EVA BC, Community Corrections, RCMP, Community Based Victim Services, Police Based Victim Services, Indigenous Support Services, MOSAIC, and the University of Victoria
- the CCWS TPR Work Team that developed the provincial protocol.

## **What does the BC TPR Protocol say about cases involving imminent risk?**

The Protocol states that TPR should not be used in circumstances where the victim/survivor is in imminent danger from the assailant, or there is a risk of significant harm to the health or safety of the public, or a group of people or risk to a child. The Protocol also directs CBVS to consult their agency's privacy and risk management policies and guidelines to help determine whether the situation requires immediate protective intervention.

## **What is a risk assessment?**

A *risk* is a hazard that is not completely understood and which cannot be forecast with certainty.

Risk is multifaceted:

It refers to the nature of the hazard, the likelihood that the hazard will occur, the frequency or duration of the hazard. Risk is also an inherently dynamic and contextual concept, as hazards arise and exist in specific circumstances. (Boer, Hart, Kropp and Webster, 2017)

*Assessment* is the process of gathering information on conditions, events that might play a role in causing the hazard or risk. (Boer, Hart, Kropp and Webster, 2017)

## **What is the difference between triage and risk assessment?**

*Triage* is a process which involves identifying key warning signs which indicate that a risk assessment is needed, and if it is, then referring the case to police and if necessary, developing an immediate safety plan. The *risk assessment* helps determine what type of sexual violence might be committed in future, why it might be perpetrated, with whom, how soon, and how serious the violence may be.

## **Risk Management in Cases Involving Indigenous People**

Indigenous communities are differently affected by violence, particularly in countries with a colonial history such as Canada. The Truth and Reconciliation Report represents an opportunity for non-indigenous Canadians to acknowledge and begin to address the tragic legacy of colonialism and residential schools. Our justice system, based on the British model, has until recently largely disregarded the presence of pre-existing Indigenous legal frameworks and cultural practices. Given this history, it is critical that when working with Indigenous communities, the process of risk identification and management be conducted in a culturally sensitive and culturally safe manner (Community Coordination for Women's Safety and Ending Violence Association of BC, 2018).

### **Risk Management in the Context of Cultural Diversity**

BC's population is diverse and the cultural mix in our province continues to evolve as new immigrants and refugees join our communities. Violence risk management and triage should be informed by recognition and regard for distinct cultures.

### **Risk Management in the Context of Marginalization**

Marginalization can take many forms. Marginalization generally refers to the reality that specific groups of people experience discrimination based on factors such as race, ethnicity, language, class, occupation, disability, age, gender identity, gender expression, sexual orientation and geographic location. For marginalized individuals, there may be particular risks associated with reporting to police. Sex workers for example, may be fearful to report for many reasons including:

- fear that they will be arrested if they have outstanding warrants
- fear of retaliation by the assailant
- the public perception that sexual assault is part of the risk of their work
- mistrust of the justice system; belief that the system will not respond
- fear of being retraumatized by police and criminal justice processes
- fear that they will be “outed” as a sex worker to their family
- fear that they will not be believed.

More research is needed to guide the process of identifying risk indicators and triaging sexual violence cases in the context of diverse community needs. Many of the risk assessment models, for example, are designed primarily for use with cisgender individuals who are from countries with developed economies. Violence risk management and triage should always be informed by recognition of and regard for the potentially distinct needs of the victim/survivor within their particular social/cultural context. For more information see: *Diversity Issues in Violence Risk Assessment: Culture* (Hart, 2018) and *Diversity Issues in Violence Risk Assessment: General Principles and Best Practices* (Watt, 2018).

## B. Guiding Principles

1. Risk assessments should be evidence based<sup>3</sup>. Such assessments often involve a team of evaluators and are conducted by specifically trained personnel.
2. In the context of the criminal justice system, it is the role/responsibility of the police<sup>4</sup> and in certain cases, Corrections, to conduct risk assessments.
3. In third party reporting cases, it is the role/responsibility of CBVS to identify warning signs which may indicate there are reasonable grounds to be concerned about the potential for further violence, either with respect to the current victim or someone else.
4. If CBVS has reasonable grounds to believe that a violence risk exists and is significant, a comprehensive risk assessment is required and the case, including identifying information regarding the victim/survivor, should be referred to police for a risk assessment. The CBVS worker should ask themselves: would a reasonable person in my position based on the information available at this time, conclude that there are grounds to believe that a violence risk exists? Release of the victim/survivor's identifying information without their consent would be extremely rare.
5. If CBVS become aware that their client is a participant or protected individual involved in the provincial witness security program, CBVS should contact the Director of Witness Security's office for guidance regarding any decisions with respect to the sharing of the client's personal information.<sup>5</sup>

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<sup>3</sup> That is, a risk assessment conducted by police should be based on the information and evidence available at the time the assessment is taking place.

<sup>4</sup> According to the *Best Practice Guide for Law Enforcement Investigations into Sexual Violence* developed by the Alberta Justice and Solicitor General, Sexual Violence Police Advisory Subcommittee, the preliminary interview the police have with the victim has two purposes:

- "To establish the basic elements of the crime, including the identity of the offender, location and type of physical evidence to be obtained (particularly evidence that may degrade), and
- **To establish the level of threat the offender currently poses to the victim and to public safety.**" [emphasis added]

<sup>5</sup> The *Witness Security Act* sets up a provincial program providing stronger witness support and security management. The program is meant to encourage more people with knowledge of murders, drug trafficking and other gang-related crimes to share details with police. The legislation empowers law enforcement agencies to apply to the program on behalf of a witness or someone associated with the witness, such as a family member who is also under threat. The Director of Witness Security is empowered to seek information and require cooperation from public bodies and agencies to assess someone's suitability for the program. The Act also prohibits the disclosure of sensitive information about the protected individual except for specific purposes related to the delivery and administration of the program.

6. The CBVS worker should consider the following factors when deciding whether the concern for public safety outweighs the principle of client confidentiality:
  - Is there a clear risk<sup>6</sup> to an identifiable person or group of people?<sup>7</sup> (The individual or person should be ascertainable.)
  - Is there a risk of serious bodily harm or death?<sup>8</sup>
  - Is the risk imminent?

Note that in the case of *Smith v. Jones*, the Supreme Court of Canada observed that serious *psychological* harm may amount to serious *bodily* harm if it substantially interferes with the health or well being of the person.

7. CBVS should consider: is the risk imminent in the sense of being active; does the assailant present a clear and present danger for committing further violence.
8. When deciding about disclosure without consent of the victim/survivor, CBVS should consider a number of factors including the:
  - seriousness of the potential injury to others if the harm occurs
  - likelihood that it will occur and its imminence.

With respect to imminence: it will not always be necessary to impose a particular time limit on the risk. It is sufficient if there is a clear and imminent threat of serious bodily harm to an identifiable group and if this threat is made in such a manner that a sense of urgency is created.  
(*Smith v. Jones*, [1999])

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<sup>6</sup> Each of these criteria should be considered in the context of the specific case, however, some further considerations would be:

- With respect to the clear risk—is there evidence of long range planning, has a method for attack been suggested; is there a prior history of violence or threats of violence; if yes, has the violence increased in severity?

<sup>7</sup> With respect to stranger assaults on targeted individuals who are members of targeted groups, the Vancouver Police Department Sex Crimes Unit has identified scenarios involving foreign students with cultural or language barriers (such as Asian ESL exchange students), and also scenarios involving victims who are intoxicated, as indicative or a risk of imminent harm to others.

<sup>8</sup> This would include attempts to gain the victim's compliance by causing physical harm or the fear of physical harm using tactics such as threats to kill, physical confinement (e.g. binding, captivity) or severe physical assault (e.g. disfigurement, strangulation) (Boer et. al.(2017); The Vancouver Police Department Sex Crimes Unit has identified the presence of strangulation as a high risk indicator and as indicative of the intent to cause serious bodily harm and possibly death. The impacts for survivors can be very serious, even lethal.

9. If the TPR case involves domestic violence (DV), in other words is committed in the context of an ongoing intimate relationship, the victim/survivor's anonymity cannot be protected by CBVS as BC police agencies have a pro-investigation policy for DV, which means that if they become aware of DV they must do a full investigation which would involve speaking to the victim/survivor. It is important to note that sexual assault/forced sex in the context of domestic violence is a known risk factor for serious bodily harm or death.
10. If CBVS has reason to believe a child (anyone under 19) is in need of protection due to the risk of physical harm, sexual abuse or sexual exploitation, the case must be reported to a Child Protection Social Worker and the victim/survivor's anonymity cannot be protected.
11. If the TPR case involves a situation where the perpetrator is a police officer, the Independent Investigations Office is required to do an investigation and the victim/survivor's anonymity cannot be protected.
12. CBVS should advise the victim/survivor when they first come in to make a TPR, that while every effort will be made to protect their privacy, their identity may be disclosed by CBVS in the above exceptional situations. The TPR cover sheet in the Third Party Reporting Guidebook 2.0 can be used to facilitate this conversation. The cover sheet and consent should be signed by the victim. Every effort should be made to obtain permission to disclose any identifying information. Disclosure without consent would be extremely rare.
13. If a decision is made to release victim/survivor identifying information without consent:
  - Consult with a colleague or supervisor prior to release
  - Confirm who within your agency has the authority to make the final decision about release pursuant to any in-house policies
  - Inform the victim/survivor of your actions unless doing so would put them or anyone else at further risk
  - Advise the victim/survivor of the processes that will come into play once the information is disclosed
  - Let the victim/survivor know about the support your agency or other relevant agencies will provide during these processes
  - Keep the victim/survivor informed of developments in the case
  - Ensure that only proportionate and relevant information is disclosed in light of the level or risk or harm involved.
14. In potentially high-risk cases, in addition to informing the police, CBVS should consider whether there is a need to develop an immediate safety plan.

For further information see: <http://endingviolence.org/publications/safety-planning-across-culture-community-a-guide-for-front-line-violence-against-women-responders/>

15. In potentially high-risk cases where identifying information may need to be disclosed to police without consent, CBVS should consider consulting a lawyer. Most CBVS programs are subject to The *Personal Information Protection Act (PIPA)*<sup>9</sup>. *PIPA* permits disclosure of personal information without consent in the following circumstances:

- There are reasonable grounds to believe that compelling circumstances exist that affect the health or safety of any individual and notice is sent to the last known address of the individual to whom the personal information relates. Section 18(1)(k)<sup>10</sup>
- The disclosure is to a public body or law enforcement agency in Canada to assist in an investigation or in the making of a decision to undertake an investigation. Section 18(1)(j)
- Where disclosure is clearly in the interests of the individual and consent cannot be obtained in a timely way. Section 18(1)(a).

16. In potentially high-risk cases where identifying information may need to be disclosed to police without consent, CBVS should review any contractual or ethical guidelines and in-house policies which might apply.

17. In making a decision about whether to disclose identifying information without consent, CBVS should consider whether primary or secondary warning signs of future violence can be identified. Primary grounds might include:

- previous acts of violence on the part of the assailant, involving physical contact causing physical harm
- other unwanted physical contact such as forced kissing or unwanted touching (physical assault).

Secondary grounds might include:

- assailant health problems
- assailant adjustment problems
- assailant conduct problems.

18. In reviewing risk factors indicating a potential high risk for future violence, CBVS should be aware that risk indicators are context specific and dynamic: information provided by the victim/survivor should be considered in the context of the circumstances of that particular case. Any decisions should be informed by the exercise of individual discretion on the part of the CBVS worker taking the TPR.

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<sup>9</sup> The application of *PIPA* may be restricted in the case of activities of First Nations organizations housed on reserve.

<sup>10</sup> Note that the notice requirement only applies in the case of s. 18(1)(k). Refer to your agency's in-house records management or privacy guidelines for specific instructions regarding the sending out of the notice.

19. In conducting violence risk triage, CBVS workers should be aware that the relevance of risk factors for violence and the social response to violence differ across cultures. Violence risk triage should be informed by information relevant to the particular cultural communities involved in the case. CBVS should encourage the victim/survivor to provide information about her cultural context and how this may affect the dynamics of risk in her particular situation.
20. If identifying information regarding the victim/survivor is disclosed to police due to indications of high risk, the CBVS worker should prepare a written note which includes:
- the date and time of the communication in which the disclosure was made
  - the grounds in support of the disclosure including the nature of the harm the CBVS worker intended to prevent
  - the identity of the person or group of people exposed to the potential harm
  - the content of the communication and the identity of the person to whom the communication was made. (Ideally, there would be a local TPR protocol in place which would identify a specific police liaison for all TPR cases.)
21. If a TPR case is identified as potentially high risk, CBVS should ensure the file is reviewed at periodic intervals to determine if the safety plan needs to be updated or additional information provided to police to further inform the police risk assessment process.

## Possible Warning Signs to Consider

### **Assailant Sexual Offending**

Access to the victim/survivor  
Presence of prior sexual offences  
Having a history of non-sexual violence  
Threats  
Stalking  
Age less than 25  
Physical harm in sexual offending, including strangling  
Psychological coercion in sexual offending  
Escalation in sexual offending  
Extreme minimization/denial of sexual offending  
Attitudes that support or condone sexual offending

### **Assailant Psychosocial Adjustment**

Substance use problems  
Suicidal /homicidal ideation  
Relationship problems  
Employment problems  
Non-sexual offending  
Hostility (may be directed towards anyone; often focused on persons in authority or women)  
Change in social supports  
Deviant sexual interests

***Note that the above list is illustrative. It is not meant to be comprehensive. For further discussion of risk indicators in the context of sexual violence, consult the references listed at the end of this document.***

## Disclosure of Personal Information by CBVS

***“In emergency situations, privacy laws in BC authorize public bodies or private organizations to responsibly disclose an individual’s personal information ...to third parties who may be able to help in a crisis. Privacy legislation in BC accommodates the disclosure of personal information in the event it could prevent a tragedy.”***

*(OIPC Guidance Document: Disclosure of Personal Information of Individuals in Crisis Sept. 2019 at p 1)*

### **Example:**

A CBVS worker’s client discloses that she has been violently sexually assaulted by a young man who lives in her apartment building. The victim discloses that during the assault, she was physically restrained and suffered a broken jaw when struck with a bottle. She also reports that before the assault, the assailant had been stalking her and that as he left the scene of the assault, he said that if she reported to police he would break into her bedroom via the ground level window and “shut her up for good.”

Section 18(1)(k) of the *Personal Information Protection Act*, permits the CBVS worker to disclose the victim’s identifying information to police without consent, because there are compelling circumstances that affect her safety and potentially the safety of other women students in the residence. Also, based on the known risk factors for further violence in sexual assault cases, there would be reasonable grounds to believe there is a violence risk, that it is imminent and may involve death or serious bodily harm.

Section 18(1)(j) of the *Personal Information Protection Act*, permits CBVS to disclose the victim’s identifying information without consent because the disclosure is being made to a public body or law enforcement agency in Canada to assist in an investigation or in making a decision to start an investigation.

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