

June 2007

Official Position Statement on **SART Confidentiality Waivers**

BACKGROUND

If made in the immediate aftermath of the sexual assault, the survivor's often difficult decision to come forward activates the Sexual Assault Response Team (SART), composed of a Sexual Assault Nurse Examiner (SANE), a Confidential Sexual Violence Advocate (CSVA), and often a member of law enforcement. SART Confidentiality Waivers ostensibly give survivors the opportunity to waive confidentiality in the interest of allowing relevant professionals to advocate on their behalf.

POSITION

It is the position of NJCASA that SART confidentiality waivers are not in the survivors' best interest.

RATIONALE

Since sexual assault is a traumatic event, survivors are often left vulnerable in its wake. The days that follow are an inopportune time to call upon survivors to make critical decisions that will subsequently affect the course and outcome of their criminal cases. The problem of timing would be exacerbated if the waivers were provided by individuals who did not understand or were not able to explain the benefits of confidentiality. Further, such waivers, may mislead survivors into thinking that confidentiality must be waived in order to participate in, or benefit from SART. Importantly, the New Jersey Attorney General's Standards already reflect sensitivity to the precarious quality of this period, requiring each county to provide the survivor at least 90 days to decide whether to turn the sexual assault forensic evidence (SAFE) kit over to police. Survivors should receive similar consideration with regard to confidentiality. If it is in their best interest to do so, survivors can choose to waive confidentiality at a later date, when they have been afforded the opportunity to consider the matter under less exigent circumstances.

In addition, SART waivers diverge from the customary criteria for confidentiality waivers in several important ways. While waivers typically authorize only one party to speak with only one other, SART waivers are omnibus measures, authorizing multiple parties to talk amongst themselves (without the presence of the survivor). Moreover, unlike most waivers, which ask the undersigned to specify the scope of the permission, SART waivers do not allow for such limitations in breadth, authorizing these multiple parties to discuss any and all aspects of the case. Finally, where consent is usually time-limited, SART waivers have the dubious distinction of being unbounded, inviting survivors to forfeit confidentiality *ad infinitum*.

As a result of both its timing and construction, SART waivers can have perhaps unintended but potentially harmful consequences. Although, by definition, the officers, nurses, and advocates are all part of the same team, their roles are very different. Most importantly, the primary role of forensic nurses and law enforcement is to facilitate criminal prosecution. It is only the Confidential Sexual Violence Advocates whose sole purpose is to support survivors, entirely on the survivors' terms. This distinction may be obscured by a document that limits the advocate's role to the SART process, when in fact the CSVA is available to support the survivor throughout the healing process, regardless of their decision to/not to participate in the criminal justice process. Such a form threatens to dilute the survivor's knowledge of and ability to trust in the advocate's exclusive focus on his or her needs.