

NATIONAL CRIME  
VICTIM LAW INSTITUTE

# Protecting Survivors' Privacy and Other Rights in Multi-Disciplinary Collaboration

August 7, 2024

*South Dakota*

NCVLI actively promotes comprehensive and enforceable legal rights & access to knowledgeable attorneys.

### Crime Victim Centered:

- Education
- Legal Advocacy
- Resource Sharing

# Presenters

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**Rebecca Khalil,**  
Director of Victim Assistance and Training  
*National Crime Victim Law Institute*

**Amy Liu,**  
Senior Appellate Attorney  
*National Crime Victim Law Institute*



- Welcome & Warm Up
- Privacy, Confidentiality & Privilege: The Fundamentals
- Collaboration Among Partners With Different Privacy Obligations: Considerations and Best Practices
- Hypotheticals
- Polls & Thinking About Victims' Other Rights
- Wrap Up

# Warm Up

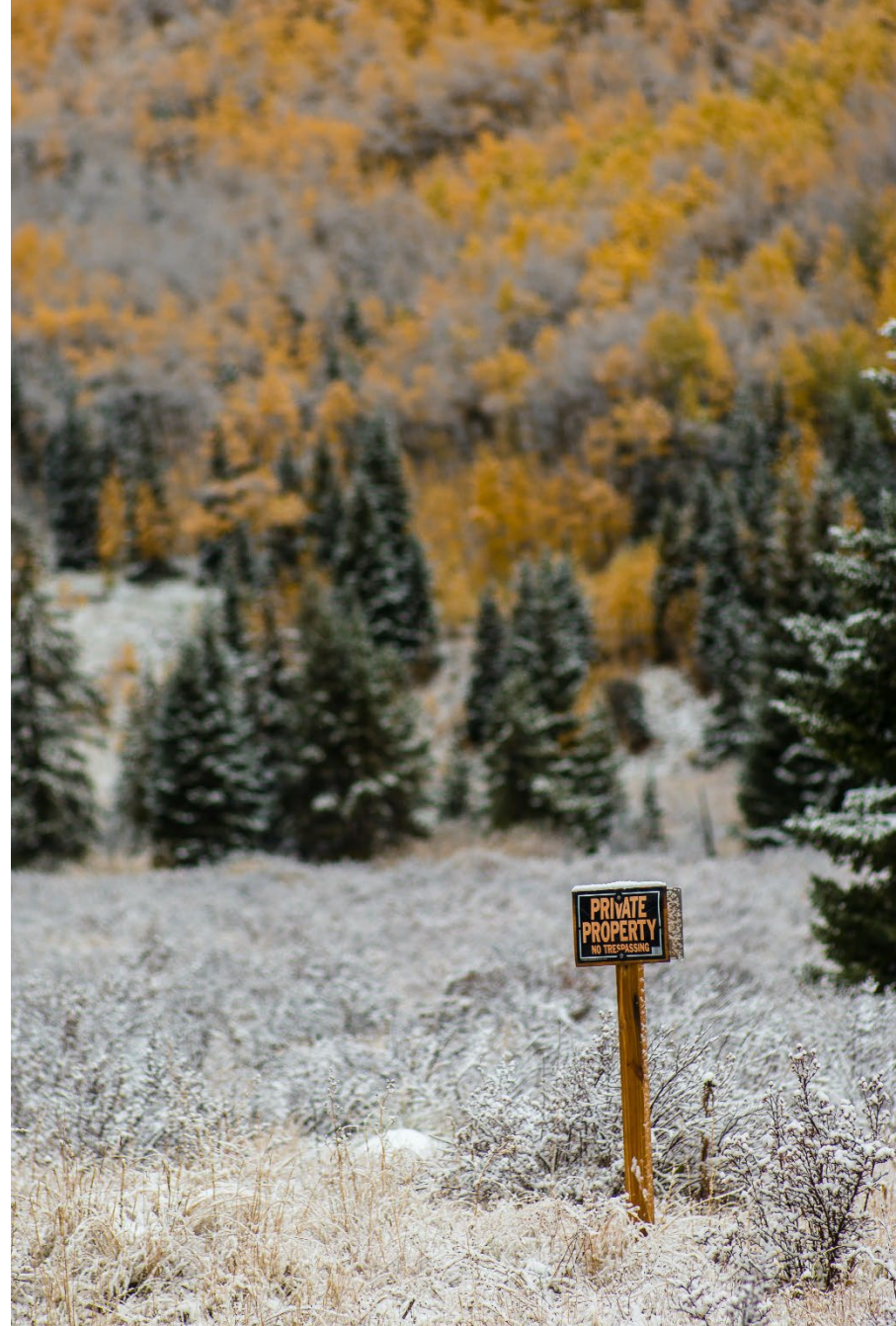
Working in small groups, create a privacy-related haiku

A HAIKU HOW-TO

Five syllables in the first line

Seven syllables in the second line

Five syllables in the last line



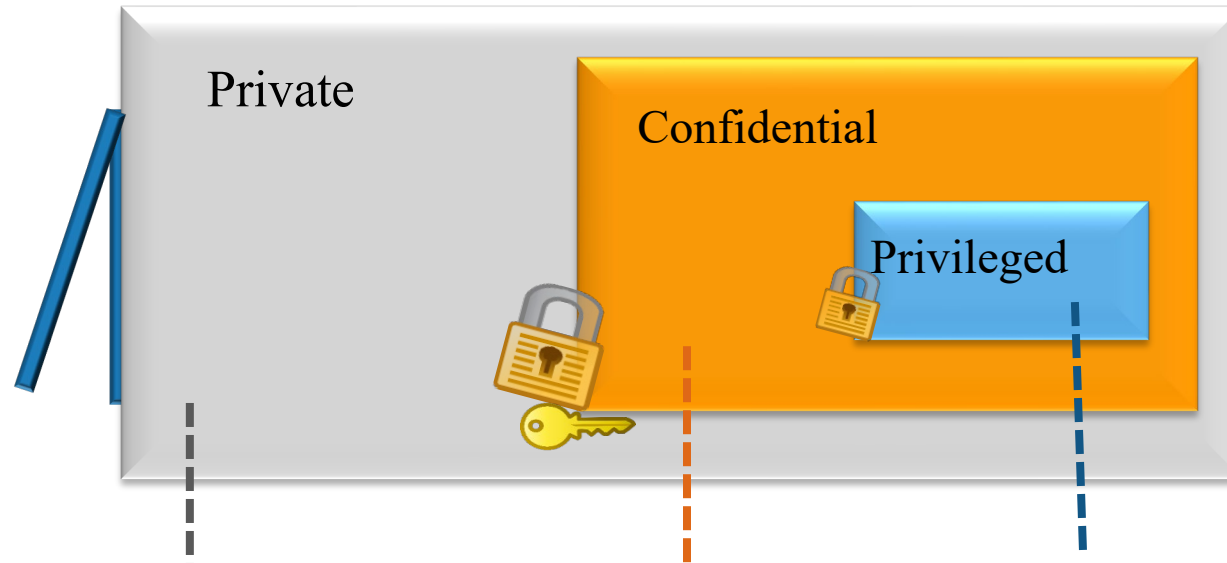




Using the chat  
box:

**Type in reasons  
that privacy  
might matter to  
victims**

# The Privacy Closet



All of the cultural and personal notions of what may be considered “private” information

A legal and/or professional ethical duty not to disclose victim-client information learned in confidence without informed consent

A legal right not to disclose—or to prevent the disclosure of—certain information in connection with court and other proceedings

# Roles/Responsibilities are **EVERYTHING** when it comes to privacy protections

**Victims' Attorneys**

**Prosecutors**

**Judges/Court  
Personnel**

**Community-Based  
Advocates**

**Law Enforcement**

**Mental Health Providers**

**Physical Health  
Providers**

**System-Based  
Advocates**

**Protective  
Services Agencies**



# Where do these obligations come from?



# Professional Confidentiality Obligations

Advocate Ethics

Social Worker Ethics

Victim Attorney Ethics

Medical Provider Ethics

Mental Health Counselor Ethics



# Additional Statutory Confidentiality Obligations

VOCA Requirements

VAWA Requirements

FVPSA Requirements

HIPAA Requirements



VOCA Requirements

VAWA Requirements

FVPSA Requirements

and more . . .



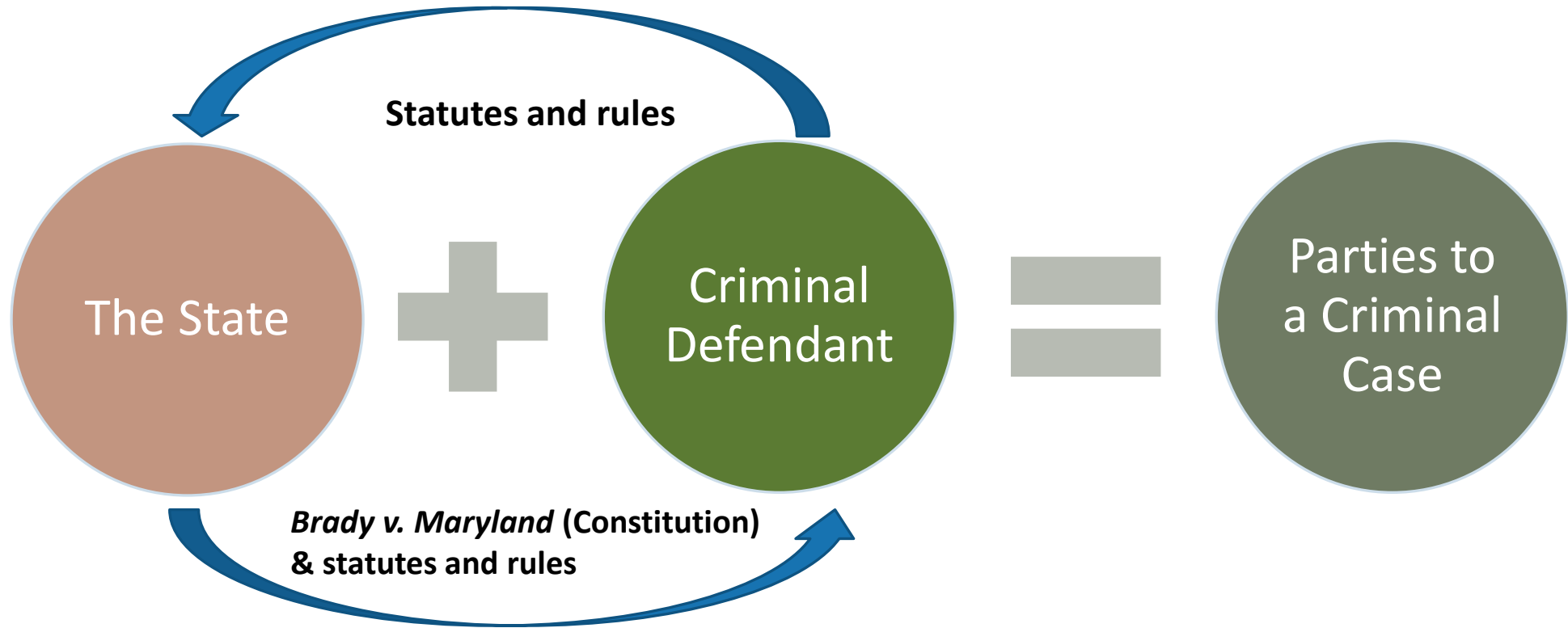
## Basic Rule of Confidentiality

May not disclose personally identifying information or individual client information without the informed, written, reasonably time-limited consent of the person.

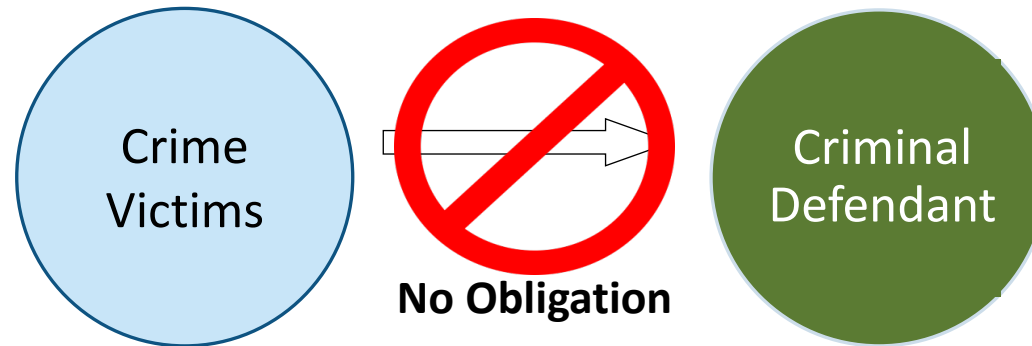
Except...

If compelled by statute or a valid court mandate

# Pretrial “Discovery” In Criminal Cases



Among the *parties* in the criminal case, the *Brady* Rule, statutes & court rules impose discovery and disclosure obligations.



# What Information-Sharing Rules Do You Want For Your Collaboration?

## Keep in mind:

- Law enforcement and prosecutors can't agree *not* to disclose information to the defendant or to others, if the law says that they are mandated to disclose (example: *Brady* information)
- “What happens in the team stays in the team”
  - This may not be something that can be promised by all members of the team
  - This still may not mean that all members of the team can share all/any information
- Each person's ethics rules and laws will determine what they are allowed to share with the collaborative partnership
- The partnership needs to work out its internal rules based on the goals of the team

# What About MOUs?

- MOUs are contracts/agreements, not the law
- MOUs can be a great tool to establish purpose and set expectations
- If privilege or confidentiality obligations prevent sharing, no MOU can change that
- If the law mandates sharing/disclosure of certain information, no MOU can change that, either



# What About Technology?

- What kind of information is created?
- How is that information shared?
- How is that information protected?
- How is access to/revocation of access to information managed?
- How long is access shared?



**No Method Is Foolproof – There Is Always A Risk Of Breach**



**Let's practice.**



If the collaborative team has an MOU promising that all information shared with the team is confidential, then all members of the team can share identifying information about crime victims.

- *True/False*



If I trust my partners on the collaborative team, then it is safe to share individual survivor/case information with the team.

- *True/False*



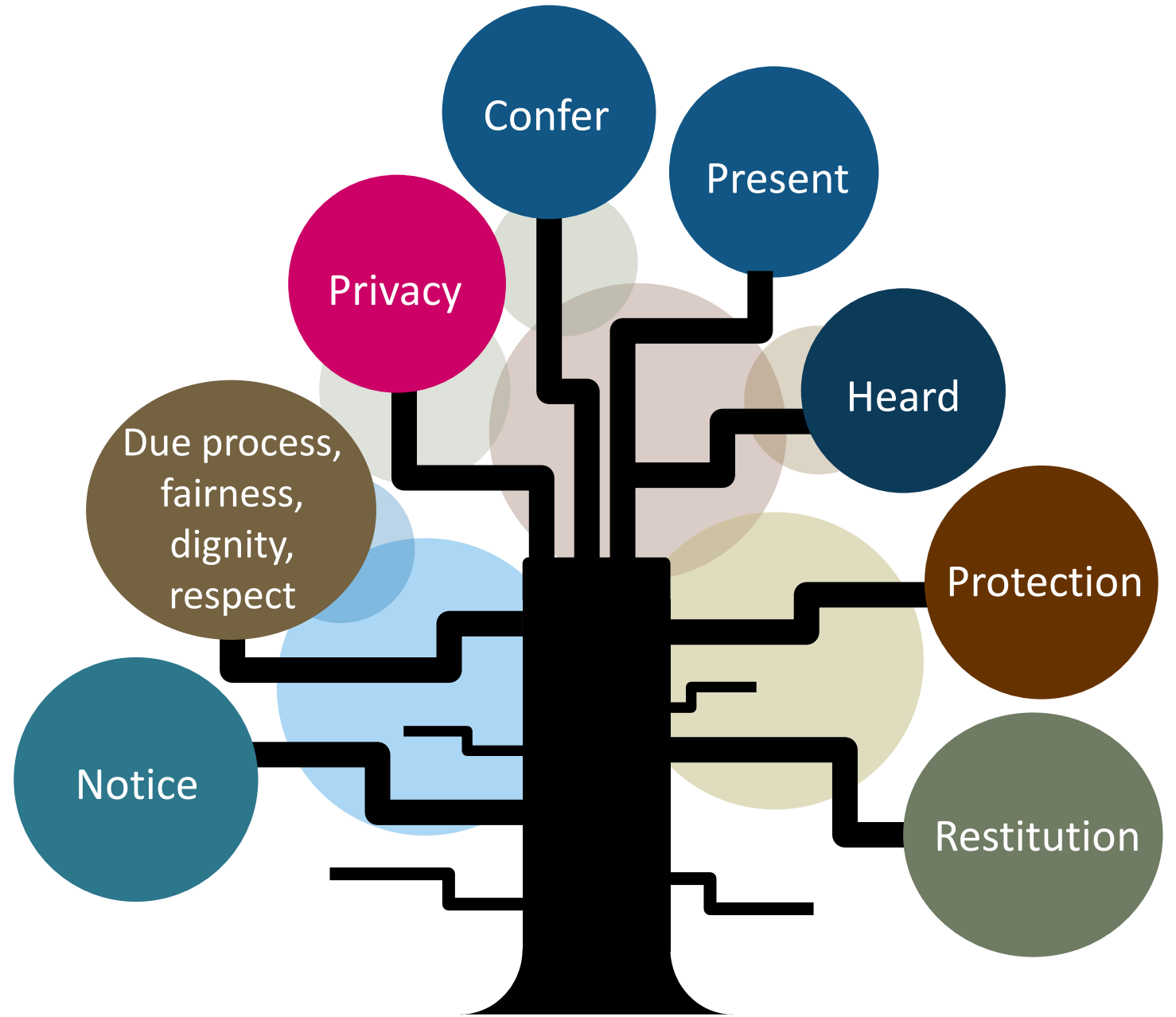
If a collaborative team is funded by VAWA, then victim service providers should encourage survivors to sign a release permitting them to disclose their information to the collaborative team.

- *True/False*



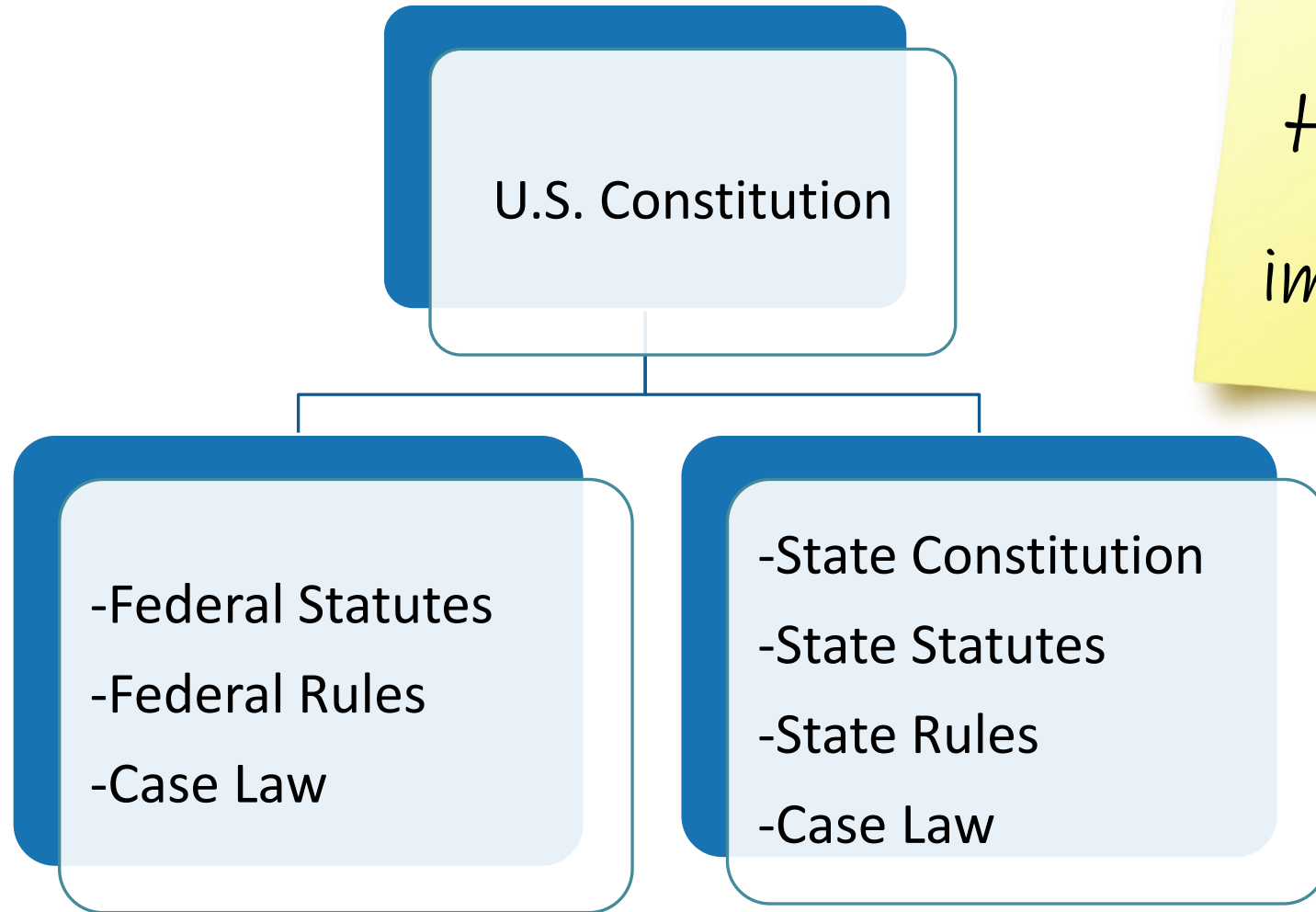
# Don't Forget Victims' Other Rights!

This is just  
the beginning





# Victims' Rights Can Be Found:







# SD Constitutional Rights (Marsy's Law) (1 of 2)

Due process; treated w/ fairness & respect for V's dignity

Free from intimidation, harassment & abuse

Reasonably protected

Have the V and family's safety & welfare considered in bail & release decisions

Heard in any proceeding involving release, plea, sentencing, adjudication, disposition, or parole, or proceeding in which a V's right is implicated

Provide info re impact of the offender's conduct, and to have such info considered in sentencing or disposition recommendations

Full & timely restitution in every case

Proceedings free from unreasonable delay, and a prompt and final conclusion of the case

**Be informed of these rights, and be informed that a V can seek the advice of an attorney w/ re the V's rights**



# SD Constitutional Rights (Marsy's Law) (2 of 2)

## Rights "upon request"

Prevent disclosure of info/records that could be used to locate/harass the V and family, or which could disclose confidential/privileged info, and be notified of requests

Privacy, which includes right to refuse an interview, deposition or other discovery request, and to set reasonable conditions

Reasonable, accurate and timely notice of, and be present at, proceedings involving the criminal/delinquent conduct, including release, plea, sentencing, adjudication, disposition, or parole, or proceeding in which a V's right is implicated

Prompt notification of release or escape of the accused

Confer with the attorney for the government

Receive a copy of any pre-sentence report or plan of disposition, and any other report/record relevant to the exercise of a victim's right, except if confidential by law

Prompt return of the V's property

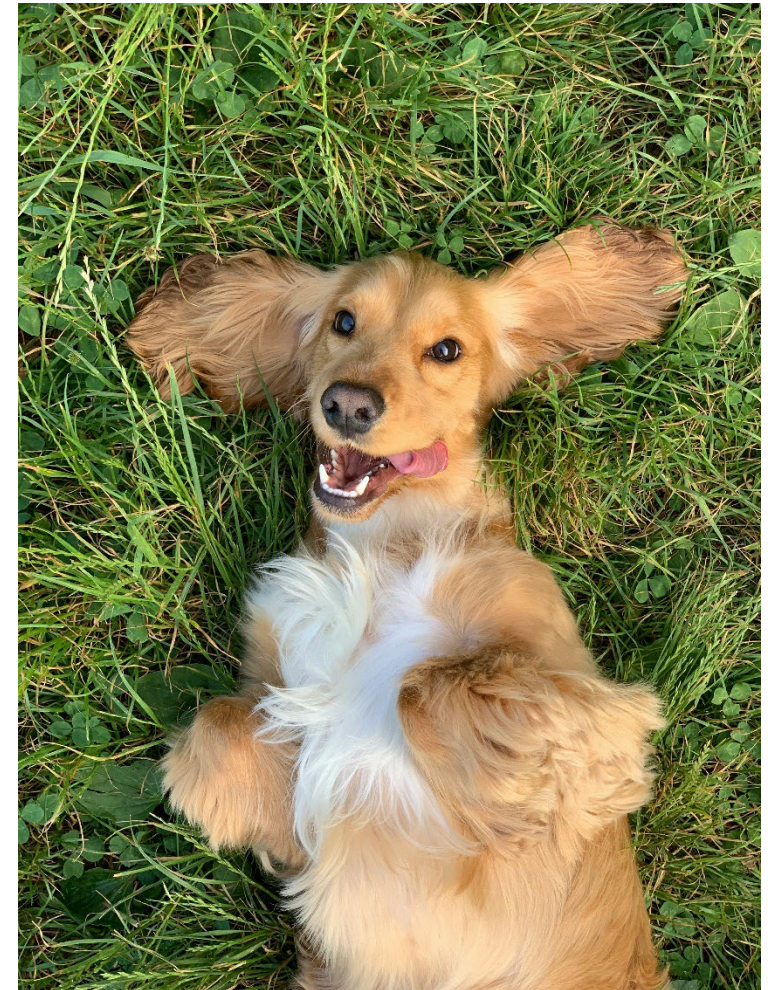
Informed of conviction, adjudication, sentence, disposition, place and time of incarceration, detention or other disposition of the offender, scheduled release date, and the release of or escape from custody

Informed timely of post-judgment processes and procedures, to participate in such processes and procedures, to provide info to the release authorities to be considered before release decision, and to be notified of any release decision

Informed timely of clemency and expungement procedures, provide info, and have that info considered before a clemency/expungement decision



# Break





# Small Group Discussion



## Small Group Discussion #1

Your collaborative partnership has established a norm where each member of the partnership shares the information they are authorized to share with the partnership verbally only (and not in writing), with the understanding that members will not share beyond the group unless mandated to disclose the information – and that they will notify members of the group when that has to happen.

The team is discussing your county's response to child-victims of neglect and abuse, and a community-based advocate shares a concern they have witnessed: non-offending parents of child-victims being frustrated when they don't receive return phone calls from the investigators on the case.

The law enforcement member of the group says, "I think I know the parent you are talking about. They just keep calling nonstop and expect us to drop everything for them – we have history with that parent and they are always causing some kind of trouble."

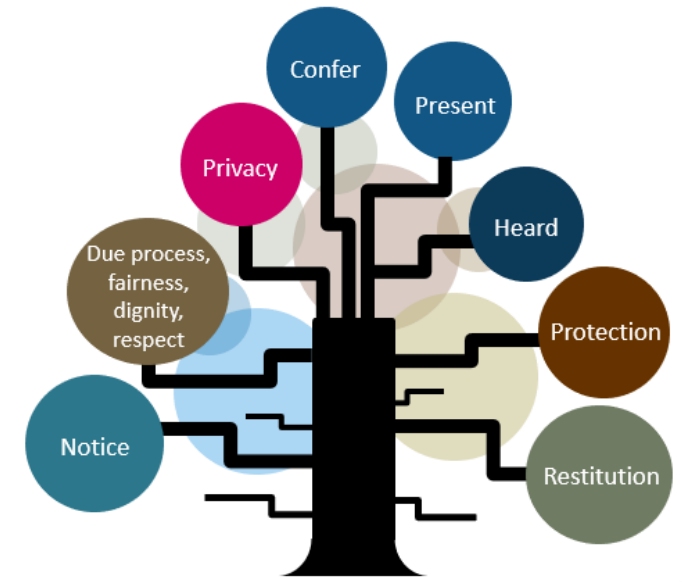
## Small Group Discussion #2

Your collaborative partnership has been working successfully together for more than a year, and all members seem to understand and respect the limits of their different privacy obligations.

The prosecutor who had been part of the group since its inception recently retired, and the prosecutor selected by their office to take over the role is a relatively new prosecutor who has never worked on a collaborative partnership like this one before.

The new prosecutor has been using the group's listserv frequently, and some members of the partnership have expressed concern about the amount of victim-related information that is being shared.

Names are not being used, but other identifying information could allow them to identify the victims without too much effort. Once, a link to a recording of a court proceeding was shared with the group, and the recording itself included identifying victim information.



**How might other victims' rights issues arise?**



# Questions/Comments/Curiosities



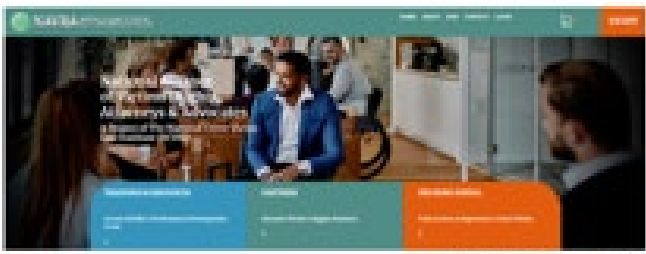




**And you  
are NOT  
going  
into it  
alone!**



# Victims' Rights: Additional Resources



### Professional Resources

**Victim Law Library**

**Rights Enforcement Toolkit**

### Victims' Resources

**Know Your Rights**

NCVLI Know Your Rights / Outbooks provide a general overview of victims' rights.

[View Details](#)

**Victim Resources Database**

NCVLI's Victim Resources Database is a tool for victims with links to organizations that provide aid, information, and support directly to victims of crime.

[View Details](#)

TECHNICAL ASSISTANCE

AMICUS SUPPORT

TRAINING

And More!



### Pro Bono Attorneys Make a Difference

The work of ensuring victims' rights in coordination with the criminal justice system is supported by a team of passionate pro bono attorneys who are willing to expand their practice to serve survivors for free or at a reduced cost.

Pro bono opportunities include:

- Representing a victim to qualify a subpoena for privileged counseling records
- Providing legal assistance to survivors seeking criminal or civil protective orders
- Providing legal advice regarding victims' rights in the post-conviction context
- Serving as legal counsel to an amicus brief
- And more.

Pro bono attorneys or law firms will individual attorneys work closely with survivors by helping them to understand their legal system to asserting and seeking enforcement of their victims' rights, outcomes.

**Enroll as a Pro Bono Attorney today.**

# NCVLI



**RIGHTS ENFORCEMENT  
TOOLKIT** that guides  
practitioners through  
the steps of asserting  
victims' rights



National, regional,  
local, and online  
**TRAININGS** on  
victim law



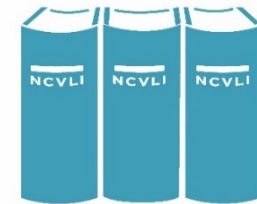
Basic victims'  
rights information  
in short video  
**QUICKTOOLS**



Listings of victims'  
rights and resources  
by location and topic  
in an online **VICTIM  
RESOURCE MAP**

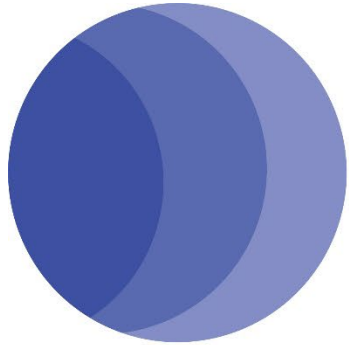


**TECHNICAL  
ASSISTANCE** in  
the form of legal  
research, writing,  
strategic advice,  
and amicus curiae  
briefing



**VICTIM LAW  
LIBRARY** filled with  
innovative legal  
articles

# Save The Date



## CRIME VICTIM LAW CONFERENCE

NATIONAL CRIME VICTIM LAW INSTITUTE

**May 19-21, 2025**

**Portland, OR**

Now accepting presentation proposals on our website:

[ncvli.org/crime-victim-law-conference/](https://ncvli.org/crime-victim-law-conference/)

