

Sexual Assault Victims Have No Privacy: Updating Georgia's Victim Privacy Statute

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ABSTRACT

In the early 1900s, Georgia was among a handful of states with a law to protect against the publication of a sexual assault victim's identity. These laws started facing constitutional challenges in the 1970s and were struck down as a violation of the press's freedom of speech. Florida rewrote its law to meet the constitutional standards set out by the U.S. Supreme Court. Georgia, however, has not rewritten its law to protect a victim's identity from publication. The U.S. Supreme Court has provided an outline to do so. Georgia, and other states, should enact laws to protect victim privacy, particularly in light of the psychological repercussions and the unique risks posed by modern social media.

Introduction

The purpose of this article is to examine the ability of sexual assault victims to legally prevent their identities and personally identifiable information from being made publicly available without their consent in Georgia specifically, but the case law discussed herein may apply in other jurisdictions as well. Protecting the privacy of sexual assault victims may encourage more victims to report while also protecting the victims from harassment.

The importance of the issue was highlighted as recently as 2021 when a lawmaker in Idaho publicly revealed the identity, photo, and personal details of a 19-year-old female who reported she was sexually assaulted by another legislator without the victim's consent. After testifying at a committee hearing investigating her allegations, the victim was followed and harassed. Even after the legislator resigned, the victim continued to suffer attacks on social media and other forums (Boone 2001). In 2018, a decorated Olympic gymnast found herself targeted for public harassment. Even though Olympic medalist Jamie Dantzscher filed a lawsuit against the USA Gymnastics and Larry Nassar as the anonymous "Jane Doe," her coaches and friends outed her and disparaged her character on social media (May 2018). In early December 2014, the alleged rape victim at the center of the University of Virginia scandal was involuntarily identified on Twitter. Although Rolling Stone had to retract the alleged victim's story about a year later when a subsequent investigation showed the alleged victim's story was fabricated, in the meantime, the alleged victim's identity had been made public without her consent. The alleged victim had requested the magazine use an alias when it published the story to protect her identity. A young teenager from Missouri who accused another student of rape in 2012 had mysterious fires set at her home. She and her family eventually had to move from the community (Slifer 2013). These are examples of serious threats to the safety and well-being of sexual assault victims, and it is not entirely clear that a state, through its police, has the ability to keep these victims safe once their identities are made public.

These are four high-profile examples of what can happen when a sexual assault victim is involuntarily publicly identified. Tracking less publicized instances of involuntary publication is not easy. If a jurisdiction does not have a law prohibiting the revelation, it is unclear whom a victim would complain to or who would track such incidents in a comprehensive and reliable way. In jurisdictions with laws prohibiting involuntary publication, it would likely not be a criminal violation. It would be a civil tort, invasion of privacy. For violations of civil law, the only recourse for the victim would be to file a lawsuit in civil court. To file the civil lawsuit, a sexual assault victim would have to voluntarily come forward, publicly identify themselves in the court filing, and go through the legal process. For the same reasons discussed below regarding why sexual assault victims do not report assaults to law enforcement, this is unlikely. While the F.B.I. tracks crime statistics, it does not track civil lawsuits. Civil lawsuits may be settled out of court, resulting in the case's dismissal. If the case is dismissed, there may not be much information provided about the reason in legal databases (American Bar Association 2019). Similar to when jurisdictions lack legal prohibitions, it is unclear who would monitor all invasion of privacy lawsuits, sort out those related to sexual assault victims, and monitor outcomes. If there were a legal standard, perhaps a victim services organization would be able to gather some data from victim-clients. Without a legal standard, tracking incidents in a systematic way appears difficult.

Despite the lack of formal data and tracking, there have been media reports of victims who have had their identities revealed without their consent or approval. Moreover, the issue of whether victims of sexual assault should be identified by the media is not a new one. Even before the last victim privacy statute, Florida's, was declared unconstitutional by the U.S. Supreme Court

in 1994, the media was reconsidering standing policies against identifying victims of sexual assault (State v. Globe 1994).

Victim Outcomes

Regardless of what the policy is of traditional news outlets regarding the release of a rape victim's name, a backlash against victims of sexual assault who speak out is not uncommon. After the Palm Beach victim's identity was released, a number of people expressed concern that rape victims would not report their rape or would choose not to go to trial as a result of seeing what happened to the Palm Beach victim (Kantrowitz 1991). A rape victim in Oakland, California, told law enforcement she would drop the charges against her attacker if she were publicly identified (Kantrowitz 1991). A single instance of a victim's identity being made public on a local talk show in 1983 led the victim to move to Florida from Massachusetts and her death in a car accident (Kantrowitz 1991). Her friends believed the accident was actually a suicide (Kantrowitz 1991).

As these examples demonstrate, a sexual assault victim's privacy concerns are not without cause. Victim privacy is not just about preventing harassment, though. There is research showing female victims fear others finding out they were assaulted or raped as they decide whether to report the assault to law enforcement (Denno 1993). A 2006 study of college students showed that college-age men were more concerned about privacy and confidentiality when reporting a sexual assault than college-age women (Sable et al. 2006). U.S. Bureau of Justice Statistics also shows that 20% of those who did not report their assault between 1994 and 2010 did not do so because they feared retaliation (Rain and Incest National Network 2022). In fact, a key 1992 study directly contradicted the argument that the media publishing a sexual assault victim's name would encourage reporting. Instead, fully half of rape victims included in the study said exactly the opposite- they would be more likely to report if the media couldn't publish their identities or identifying information (Kilpatrick 1992). Other privacy concerns included their families or other people generally finding out and being blamed for the assault (Kilpatrick 1992). Confidentiality concerns were a key factor in the decision to pass a law in the U.K., making an exception to the media's free speech rights in that country (Boyle 2012). More generally, rape victims experience P.T.S.D. and nervous breakdowns at higher rates than other crime victims (Kantrowitz 1991). A 1992 study found that 31% of rape victims developed P.T.S.D., increasing their risk for other problems such as alcohol and drug abuse (Kilpatrick 1992). Some experts contend that forced public identification of a rape victim recreates the rape trauma, reigniting feelings of helplessness and powerlessness (Kantrowitz 1991). Privacy and confidentiality concerns may explain why the Rape and Incest National Network (2022) reports that only one-quarter of sexual assaults are reported to law enforcement. The media's inconsistent approach to releasing a victim's identifying information is part of the problem.

Media Policy

In 1989 an article in *The Newsletter on Journalism Ethics* (1989) identified the media's policy of not publicly identifying victims of sexual assault as an ethical one, not a legal one. The Central Park Jogger found this out the hard way when she was publicly identified by the *New York Times*, with other outlets following suit (Elliot 1989). The *Times* and the other news organizations then apologized or had to explain their actions (Elliot 1989). Elliott (1989) states that some journalists believe not naming policies are the result of increased female power in the field, while others see the policy as discriminatory to both parties. Michael Gartner, the then-president of N.B.C. news, says the press's refusal to name the victim contributes to the ongoing tendency of the public to blame the victim because withholding the identity creates mystery (Elliot 1989). Gartner also expresses concern that those accused of sexual assault are not afforded the same protection, and their name and character can be dragged through the mud prior to a trial (Boyle 2012). Despite this view, Gartner says he wouldn't have the courage to be the first, second, or third editor to name a rape victim (Elliot 1989). However, the new managing editor, Michael Rouse, at the Fayetteville (N.C.) *Observer* expected to carry on his policy, begun in the 1970s, of naming both the prosecuting witness and the defendant in rape cases (Elliot 1989). The policy was ended when Rouse left because the new editor was told there were sexual assault cases that didn't go to trial because the victims feared being publicly identified (Elliot 1989). Similarly, Charles Gay, an editor of the Shelton-Mason (W.A.) *County Journal*, continued naming names, defying community petitions, and picketing (Elliot 1989).

The debate continued when, in 1991, the woman who accused William Kennedy Smith of rape was publicly identified by N.B.C. She had already been named by British newspapers and a tabloid. While many news outlets did not follow suit, the *New York Times* subsequently published a profile of the woman, and a handful of other outlets identified her, too (Warren 1991). The public was treated to detailed descriptions of everything from her high school grades and traffic tickets to being an unwed mother (Kantrowitz 1991). While a number of local and national news outlets refused to name the victim, the *Des Moines Register* also won a Pulitzer Prize for a series of stories about a rape victim who self-identified and recounted her ordeal (Warren 1991). The victim, Ziegenmeyer, subsequently claimed she would never have reported her rape if she'd known her name would be made public (Denno 1993). She eventually lobbied the Iowa Legislature for a bill to stop police from releasing victim names to the public until after criminal charges were filed (Kantrowitz 1991). The managing editor of the

Chicago Tribune at the time, F. Richard Ciccone stated the paper would be formally re-examining their policy of not naming rape victims (Warren 1991). Additionally, as seen in the examples in the introduction, friends and family of the victim can also reveal the victim's identity and contribute to harassment.

Historical Attempts

Therefore, the question of how to balance the concerns of victims with the role of traditional media in reporting on crime and the criminal justice system is not a new one. Several methods have been tried or encouraged in order to keep a victim's identity confidential. A 2004 article evaluated the efficacy of victims' rights statutes and rape shield statutes to protect sexual assault victims' privacy (Reidy 2004). Generally, neither are effective tools for preventing the publication of victim names. While a rape victims' rights statute prevents the victim's identifying information from publication, it does not stop their sexual history from being released to the public, and the victim is tried in the court of public opinion before the trial begins. This is harmful because it defies credulity to believe jurors are able to forget all they have heard once they enter the courtroom (Reidy 2004). However, victims' rights statutes apply broadly and prohibit any person, from mainstream media to private individuals, from publicly revealing the victim's identity.

In the past, a 2014 National Crime Victim Law Institute (2014) publication encouraged victim advocates to use the right to privacy found in the Constitution to ask courts to protect a victim's identity. The right to privacy is not explicitly found in the Constitution; instead, the right to privacy was implied in the 9th Amendment and was the basis of the landmark *Roe v. Wade* decision (*Roe v. Wade* 1973). The Institute's recommendation to cite the federal right to privacy may need to be re-evaluated in light of the recent U.S. Supreme Court decision in *Dobbs*, which overturned the *Roe* decision and throws the very existence of a federal right to privacy in question (*Dobbs v. Jackson Women's Health Organization* 2022). Moreover, these suggestions only address the pre-trial publication of a victim's identity once the court process has begun. Release of the victim's identity through police reports, news interviews of lawyers or defendants, etc., done prior to the court process would not be prohibited.

After the trial is over, a victim's identity remains available in trial transcripts, indictments, motions, etc., stored at the courthouse. Historically, a person would have to physically go to the courthouse and request to review the documents. However, more and more court records are available online free or close to free. Anyone can "google" anyone else and potentially have access to a wide-ranging amount of information. It is getting easier and easier to find potentially embarrassing or even damaging information on the internet. When combined with the ability to share this information nearly instantly and widely across multiple social networks, it is easy to see why a sexual assault victim would hesitate to move forward with a public trial if the victim is concerned with how others will react.

Many times, it is simply beyond the authority and ability of law enforcement to keep a sexual assault victim safe. However, the responsibility should not lie solely with law enforcement since more parties are directly involved and able to help protect victims. Before greater protections can be put in place, though, it is important to understand how victims found themselves in this position and what the courts have said about a victim's right to privacy. In light of all this, the questions become should Georgia protect their identities, and, if so, can Georgia do anything to protect victim identities?

Marcy's Law

As previously mentioned, victims' rights statutes that apply to all crime victims fail to address privacy at all (Reidy 2004). For example, over the past several decades, there has been a growing and powerful push by Marcy's Law advocates to ensure all states pass constitutional amendments giving victims specific rights in the state's constitution. The Marcy's Law movement grew out of a 1983 California case where a young woman was stalked and murdered by her ex-boyfriend (Marcy's Law 2022). Years later, in 2007, the young woman's family mounted a campaign to amend the California State Constitution to provide crime victims (or their families) with more information about and opportunities to participate in the criminal justice system (Wikipedia 2022). For example, prior to 2008, victims of crime in California typically did not "address the court until after a conviction or plea" and could be excluded from the courtroom during a trial if the judge granted a motion to exclude (or sequester) witnesses made by either the prosecution or the defense (Wikipedia 2022). Called "Proposition 9, the Victim's Bill of Rights Act of 2008: Marcy's Law," the California State Constitution now provides victims with several protections, including the right to be "reasonably protected from the defendant and persons, acting on behalf of the defendant," and to have the victim's safety considered in bail decisions (Office of the Attorney General 2022). The Marcy's Law for All organization offers model legislation language for lawmakers interested in passing Marcy's Law protections in their state (Marcy's Law 2018).

Interestingly, in 1995 Georgia passed its own Crime Victims Bill of Rights that closely tracked the future model Marcy's Law language (Prosecuting Attorneys' Council of Georgia 2022). Georgia's statutory Crime Victims Bill of Rights provides victims of crime with the following rights:

1. to be notified and kept updated about scheduled court proceedings;

2. to be updated on the custodial status of the accused;
3. to be present at court proceedings unless excluded by law;
4. to be heard at court proceedings about the custodial status, plea deals, or sentencing of the accused;
5. to file an objection during parole proceedings;
6. to speak with the prosecutor regarding the prosecution of the accused;
7. to restitution;
8. to have the case resolved without unreasonable delay; and
9. to be treated with dignity and respect by all criminal justice agencies involved.

Nevertheless, beginning in 2017, Georgia was targeted by Marsy's Law advocates, and in November 2018, Georgia voters approved an amendment to the state constitution adding specific protections for crime victims to paragraph XXX of Article 1, Section 1 of the state's constitution (Ballotpedia 2022). Paragraph XXX currently provides victims with rights identical to the first four rights originally enumerated in the statutory Crime Victims' Bill of Rights. A victim who believes there has been a violation of their constitutional rights can file a motion with the court to request a hearing on the issue (Georgia State Constitution 2019). The sole remedy for a violation of these first four rights is for the court or the prosecuting attorney to recuse themselves from the case (O.C.G.A. §17-17-15 (c)(6) (2019)). Rights 5 – 9 of the original bill of rights remain only statutory rights with no enforcement mechanism.

Marsy's Laws, as general crime victim statutes, do not address victim privacy, and Georgia has no separate law addressing a sexual assault victim's privacy.

Georgia's Privacy History

The history of whether a sex crime victim's name and other identifying information can be made public is complicated. As described in *Cox Broadcasting Corp v. Cox* (1975), as far back as 1890, there was nationwide recognition of a "zone of privacy" surrounding private individuals that the press could not invade without consequence unless the information was publicly available in judicial proceedings. Traditionally, this "zone of privacy" prevented the appropriation of one's likeness, a physical or tangible intrusion into a private space, or the publication of private and false, but not necessarily defamatory, information. Historically, this right to privacy required a finding that the release of private but true information would offend a reasonable person's sensibilities in order to receive protection.

Georgia has recognized a zone of privacy since at least 1905. Georgia is one of four states that passed laws in the early 1900s prohibiting the publication or broadcasting of a sex crime victim's name by the media (*Cox Broadcasting Corporation v. Cohn* 1975). These laws went unchallenged until 1975. Before the 1970s, the majority of news organizations did report the identity of rape victims in states where it was legal to do so (Cox 1975). This changed in the 1970s when women's rights activists developed relationships with news organizations and journalists. The activists were able to convince the media to voluntarily refrain from identifying victims out of respect for the victims' sense of privacy in the states where the publication was otherwise legal (Cox 1975). From the 1970s to the 1990s, news reports nationwide generally did not publicize the names of sex crime victims (Johnson 1999). Georgia's privacy law was only challenged once during this time.

Case Law

In 1975, the U.S. Supreme Court took up a Georgia case to address the limited question of whether the state could punish the accurate publication of a rape victim's identity when the identity was obtained from judicial records (Cox 1975). In 1971 six people were charged with the rape and killing of a young woman. A reporter from a television station attended the jury trial of the lone defendant who requested a jury trial. During the trial, the reporter was able to view the indictments, which identified the victim. The T.V. station later reported the information in two separate broadcasts. The victim's father sued and sought monetary damages.

Georgia's confidentiality statute made it a misdemeanor to publicize a rape victim's name and did not include an exception for the publication of lawfully obtained information about a victim (Cox 1975, footnote 1). The Georgia Supreme Court did not address the constitutionality of the statute, and the limited decision to find the criminal statute did not create a civil cause of action for invasion of privacy. However, since the confidentiality statute included language declaring there was no public or general interest in the name of a rape victim sufficient to require disclosure and publication under the First Amendment, the case proceeded based on common law invasion of privacy.

Cox was fundamentally about unwanted publicity about private but true information when such a release would offend a reasonable person's sense of privacy. In its decision, the Court ruled the state could not punish the accurate publication of a rape victim's identity obtained from public judicial proceedings. The Court refused, however, to decide if states could ever define and protect an area of privacy from unwanted media publicity.

In its reasoning, the Court stated an average citizen relies on the press to fully and accurately report on the proceedings of government since the average citizen does not have the time to do so. When it comes to judicial matters, this reliance is doubly important as press coverage helps ensure the fairness of trials and can develop improvements brought on by public scrutiny. When combined with the constitutional mandate to hold trials on public property and open to the public, press coverage of the judicial system and criminal trials becomes especially important. As a result, there was no invasion of privacy when the television station published the victim's name in *Cox*. However, the Court said the situation might have been different if the victim's name had never made it into the public record via public documents or proceedings (*Cox* 1975). If there had been privacy interests to protect in the judicial proceedings, the State had the responsibility, and the ability, to avoid public documentation or other exposure of this information (*Cox* 1975). Since the State puts the information in the public domain through court records, the presumption is that the public interest is served by the release of information (*Cox* 1975). The U.S. Supreme Court next questioned the constitutionality of a Florida confidentiality statute prohibiting the law enforcement agency from releasing a victim's identity and penalizing the publication of the victim's identity.

In *Florida Star v. B.J.F.* (1989), law enforcement had a legal obligation to redact victim information prior to releasing incident reports to the public and failed to do so; consequently, the victim's identity was publicized in a local newspaper. The victim made a robbery and sexual assault report to local police, who made a report and put it in their pressroom without redacting the victim's identifying information. A reporter copied the report word for word, and the information was published, including the victim's identity, in a crime section of the newspaper. Both Florida law and the *Star's* internal policy forbade the publication of a sexual assault victim's name.

Addressing the constitutionality of holding a newspaper civilly liable for publishing legally obtained information, including the name of a rape victim, the Court found the Florida law violated the First Amendment. Specifically, it was illogical to hold a newspaper liable for publishing information the paper lawfully obtained when less dramatic options existed to protect victim privacy. The Court pointed out that the law enforcement agency was not legally obligated to release the information and was in the best position to prevent the victim's identity from being made public. Consequently, requiring the media to decide whether it was legal to publish the information was too high a burden and might result in self-censorship. Additionally, the Court pointed out that the Florida statute only applied to mass communications and would not have prohibited other forms of dissemination, such as a private citizen sharing the information. Florida's law also did not require any finding that the publisher failed to exercise the same level of care as a reasonably prudent person as both common law and *Cox* required. However, the Court refused to make a sweeping declaration that the publication of a sexual assault victim's name could never receive constitutional protections or that the media could never be legally liable. The decision did render all similarly worded rape victim confidentiality statutes unconstitutional, including Georgia's.

Briefly summarizing, under *Cox* (1975), as soon as a victim is identified in publicly available documents or judicial proceedings, the press cannot be prohibited from reporting the information unless the release of such information would offend a reasonable person. *Star* added all confidentiality statutes must prevent the victim's identity from entering the public domain, apply to all forms of communication, apply to private citizens and the media equally, and require an individualized assessment of whether a reasonable person would find the publication highly offensive, and hold the actual entity making the identification public responsible.

The next case directly addressing a confidentiality statute was another Georgia case, *Doe v. Board of Regents*, in 1994. The alleged victim reported a sexual assault on the University of Georgia (hereinafter "U.G.A.") campus. During the investigation by campus police, the alleged victim revealed the sexual assault did not take place in the location and manner originally reported, although she maintained an assault did take place. The alleged victim declined to prosecute, and campus police dropped the investigation. Days later, the campus newspaper filed an open records request with the university police to obtain the incident report. U.G.A. contacted the alleged victim, notifying her of the request and of U.G.A.'s intent to comply with the request. She filed suit to prevent the disclosure, asserting the incident report was protected from disclosure under the Rape Victim's Confidentiality Statute and exceptions to the open records act. The superior court agreed and granted her an injunction, preventing the university from releasing any information. The university appealed to the Georgia Court of Appeals.

The court of appeals found the incident report, U.G.A., and the Board of Regents were subject to the open records act and the rape victim's confidentiality statute provided the necessary exception to the open records act. Next, the court had to decide if the language of the confidentiality statute covered situations where no prosecution took place. At the time, the Georgia statute covered sexual assault victims who "may have been" assaulted; no proof was needed in order for the protections to apply. Since the alleged victim maintained an assault took place, the confidentiality statute's protections still applied. To require otherwise would have been counterproductive since proving the assault occurred would involve judicial proceedings where the victim's

identity would become public and subject to publication under *Cox*. This would have the effect of making the confidentiality statute superfluous.

In *Doe*, neither the campus newspaper nor the university challenged the statute's constitutionality or raised any First Amendment violations, so the court of appeals never addressed the constitutionality of Georgia's in light of *Star*. *Doe* is important, though, because it demonstrates an instance where the confidentiality statute worked to prevent a victim's identity from becoming publicly available, after which the identity could be published or broadcast by the media. In *Doe*, the lack of prosecution meant the victim's name was never revealed to the public via court documents or other judicial proceedings. Campus police did not leave any identifying information about the victim where members of the public could access it, unlike in *Star*. In effect, U.G.A. campus police did exactly what the U.S. Supreme Court previously said in *Star* was necessary to further the state's interest in maintaining a victim's privacy while remaining in compliance with the constitution – kept the information from the public domain in the first place. *Doe* demonstrated exceptions to open records acts could work in conjunction with victim confidentiality statutes to keep victim identities private even if an alleged sexual assault was never referred for prosecution or a prosecution did not result.

Seven days after *Doe*, the Florida Supreme Court issued its decision in *State of Florida v. Globe Communications Corporation* (1994). A reporter identified the victim through "standard investigative techniques," including reports in several British newspapers identifying the victim (Globe 1994). Florida's statute imposed liability when a person published, broadcast, or printed (or allowed the same) any identifying information about the victim in any mass communication (Fla Stat. 92.56 (2018)). The court found the statute imposed liability without the individualized determination that a reasonable person would have found the publication highly offensive, as required by *Star* (1989). Since the victim's name was already published and available to the public, the court reasoned further publication was unlikely to offend a reasonable person's sensibilities. Florida's statute also limited liability to situations where the information appeared in an "instrument of mass communication," a violation of *Star* (Globe 1994). The U.S. Supreme Court had previously said in *Star* that such underinclusiveness raised doubts that the state's significant interests were satisfactorily served since limiting the prohibition to mass communications was no guarantee as the victim's identity could still be publicized widely through other means (Star 1989). The Constitutional rights of the press were restricted even though it would not necessarily result in the specific outcome the state was looking to achieve. As a result, Florida's statute violated both the United States and Florida constitutions.

To recap, there are several standards a confidentiality statute must meet to be constitutional, effective, and enforceable. It must not prohibit the reporting of publicly available information, except when, after an individualized hearing, the release of that information would offend a reasonable person. However, law enforcement may prevent a victim's identity from entering the public domain altogether through redaction and careful record keeping or adherence to other privacy regulations. Additionally, any victim confidentiality statute must cover all forms of communication, apply equally to private citizens and the media, and hold responsible the entity that makes the information public, not just the instrument of mass communication.

Georgia did not have occasion to specifically test the constitutionality of its confidentiality statute until 2001. At the time of *Dye v. Wallace* (2001), the relevant section of the Georgia statute read as follows:

It shall be unlawful for any news media or any other person to print and publish, broadcast, televise or disseminate through any other medium of public dissemination or cause to be printed and published, broadcast, televised, or disseminated in any newspaper, magazine, periodical, or other publication published in this state or through any radio or television broadcast originating in the state the name or identity of any female who may have been raped or upon whom an assault with intent to commit the offense of rape may have been made.

A subsection provided an exception for truthful information obtained from public court documents. Any person or corporation found in violation of the code section was guilty of a misdemeanor. In *Dye*, the media had obtained the victim's information legally. The victim's family sued the newspaper for invasion of privacy. The Georgia Supreme Court found that, although the privacy of sexual assault victims is one of the "highly significant interests" the state can protect, the state must use a more narrowly tailored method. Consequently, the court struck down the statute as a violation of the First and Fourteenth Amendments of the United States Constitution (Dye 2001). Georgia's statute also contained the same broad negligence per se standard and underinclusive language the *Star* decision found objectionable. It was unnecessary to test the circumstances of publication against what would offend a reasonable person. The simple act of doing what the law prohibits was all the evidence necessary to demonstrate guilt or liability. Further, the Georgia statute seemingly applied only to public mass communication and did not prohibit the sharing of identifying information in private conversations as required by *Star*. Although the statute remains on the books, it has not been revised to comply with the standards set out in *Dye* or other case law. As a result, Georgia's statute cannot protect victim privacy.

The U.S. Supreme Court's rulings on the issue of victim privacy have left a labyrinth for legislators to navigate to enact privacy rules that will withstand constitutional challenges. How can legislators reconcile Georgia's long-standing commitment to privacy with the constitutional requirements set out by the Supreme Court? How can the law protect a sex crime victim's identity, particularly a child victim, while also complying with the Constitution? There are three places legislators can look to

for guidance: juvenile law, a Florida statute, and federal victim protections.

Georgia Juvenile Law

When considering how to protect the privacy of victims of sexual assault, it is beneficial to look to other court systems for ideas. The juvenile system is one such place. Most people believe juvenile records are sealed and juvenile proceedings are confidential. Although not always true in Georgia, some victim privacy protections are available.

From the beginning, juvenile courts have stood in contrast to adult systems with a focus on rehabilitation and guarding against the collateral consequences that can come with a criminal history that are too much for children to bear for youthful indiscretions (Juvenile Law Center 2014). In Georgia, when the child has not been previously adjudicated delinquent and is not accused of a designated felony, the juvenile court proceedings and court records are regularly shielded from public view (O.C.G.A. §15-11-700(b)(1) (2018)). However, if the opposite is true, and the child has been previously adjudicated delinquent or is accused of a designated felony, court proceedings and records are open to the public and available to review (O.C.G.A. §§15-11-700 et seq (2018)). This means any victim's information would be publicly available, either by examining the court records or by attending the hearing in person.

During court proceedings, if the judge finds any individual's presence would be contrary to the best interests of a child who is a party to the proceeding, would impair the fact-finding process, or would be against the interests of justice, then the individual can be excluded from the otherwise public hearing (O.C.G.A. §15-11-700 (f) (2018)). Unfortunately, it is unlikely a court could exclude all persons, though, and so there would be observers who could publicize information about an involved child. Currently, the law does not provide protections against persons other than the media from revealing identifying information of a child involved in a hearing (O.C.G.A. §15-11-700 (i) (2018)). In stark contrast to the law discussed above, current juvenile court laws allow the court to order the media not to release the identifying information of any child involved in a public hearing. Available victim identity protections are unequal during court proceedings.

Outside of a court hearing, Georgia law allows the court to "seal any record containing information identifying a victim of an act which, if done by an adult, would constitute a [specified] sexual offense" (O.C.G.A. §15-11-701 (f) (2018)). These offenses include rape, sodomy, statutory rape, and child molestation (O.C.G.A. §16-6-1 et seq (2018)). If anyone reveals the victim's information, the possible punishment is 20 days in confinement or a fine of up to \$1,000 (O.C.G.A. §15-11-31 (2018)). However, if the person discovered the information from a different source, such as observing a court proceeding, there is no consequence for publicizing the information.

Current confidentiality rules in juvenile court are not specifically written to protect witnesses or victims, leaving gaps that would still allow a victim's identifying information to become public. Sealing court records does not stop a person from attending court proceedings in person and discovering the child's information. Limited prohibitions on media outlets identifying children participating in court proceedings ignore the real possibility that another court observer could make the information public and that social media has the power to spread the information just as quickly and widely as traditional media. While gaps exist, a template for protecting child victims in adult courts exists in juvenile law.

Protections under Federal Law

Federal protections are comprehensive. Federal law includes specific language protecting the identifying information of children who are the victims of crime. 18 U.S.C.S. §§3509 (d) and (e) create an affirmative duty to keep all documents containing a child victim's information secure and only share the documents with people directly associated with the case. This duty applies to all persons involved in the case, including court employees and members of the jury. If a document filed in court contains the name or other information about a child, the document is automatically sealed. Only a redacted copy is available in the public record. During court proceedings, the court is authorized to close the courtroom to anyone who does not have a direct interest in the case if the court finds the child would suffer substantial psychological harm or the child's ability to testify would be impaired. Under the law, the press and members of the public could be excluded during the child's testimony, thereby reducing the number of court observers able to make a child victim's identifying information public. If members of the public or the media are allowed to remain in the courtroom, the law still protects the victim's identity through the affirmative duty to keep the information confidential.

The Supreme Court made clear in *Star* that once a victim's identity is in the public domain, the government cannot proscribe or punish further publication or dissemination (*Star* 1989). The federal rules combine an affirmative duty to keep the information from the public domain with the ability to exclude persons from the courtroom during testimony works to keep a victim's identity from the public domain. The victim's privacy interests outweigh the media and public's interest in open and transparent monitoring of the judicial system. Current federal law narrowly limits public access to protect juvenile victim privacy in accordance with current U.S. Supreme Court rulings. However, the protections do not extend to adult victims of sexual assault.

Florida Legal Protections

Florida law is more expansive and applies to child victims of child abuse or human trafficking, and all victims of sexual assault, regardless of age (Fla. Stat. §92.56 and Fla. Stat. §§119.071 2(h)1.a, b, c, and (j) 1., 2. a, b (2018)). A strict reading of the victim privacy statutes appears to leave out adult victims of human trafficking, though. Under Florida law, anything identifying a victim of one of these crimes is exempt from Florida public records, with limited exceptions (Fla. Stat. §§119.071 2(h)1.a, b, c, and (j) 1., 2. a, b (2018)). The protections specifically include documents, videos, photographs or other images (Fla. Stat. §§119.071 2(h)1.a, b, c, and (j) 1., 2.a, b (2018)). Furthermore, the courts, the prosecution, and the defense must keep the information confidential (Fla. Stat. §92.56 (2)). If someone files a petition to gain access to the information, the court can refuse to release the information if the victim meets the following criteria:

- The victim's identity is not already known in the community;
- The victim has not called public attention to the offense;
- The victim's identity is not a reasonable subject of public concern otherwise;
- Disclosure of the victim's identity would offend a reasonable person;
- And the disclosure would
 - Endanger the victim's safety because the assailant is unknown to the victim and hasn't been apprehended
 - Endanger the victim due to retaliation, harassment, or intimidation;
 - Cause severe emotional or mental harm;
 - Cause the victim to be unwilling to testify;
 - Or be inappropriate for good cause (Fla. Stat. §92.56 (2018)).

Violations of the statute constitute contempt. Unlike the federal statute, Florida law covers both adult and child victims of sexual assault. While Florida law does not allow a judge to exclude people from a courtroom, the law does allow a judge to order those present during the trial to refrain from disclosing any identifying information about the victim without the victim's written consent, much like the federal law discussed above. Unlike federal law, this allows the press and the public unfettered courtroom access to accurately report on court proceedings without exposing the victim to undue attention and scrutiny, providing broader protections for victims while allowing the press to provide oversight of the justice system.

Conclusion

"Doxing" is the public identification or publishing of private information without the consent of the individual (Merriam-Webster 2022). Typically, doxing is done as revenge or punishment, but this is not always the case. Given the backlash victims have faced for making sexual assault allegations, the simple act of making a victim's information public can have significant consequences for the victim, even if this is not the publisher's intent. Faced with this possible "collateral consequence" of coming forward to report a sexual assault, many adults choose to stay quiet and maintain their privacy and confidentiality (Forde 2018). When it comes to children, society wants to protect them from harm and encourage them to report. Caregivers of all stripes are mandated reporters if they suspect any form of child abuse (O.C.G.A. §19-7-75 (c) (2018)). Children have no choice, and yet they face the same risk of public humiliation and threats to their and their family's physical safety as adults. In Georgia's juvenile courts, child victims only receive privacy protections when their alleged assailant meets certain criteria. In the adult judicial system, no victim receives privacy protections once the case is referred for prosecution.

Future Policy

As federal and Florida law demonstrate, there is a path to passing constitutionally sound confidentiality laws. Open records acts should exempt all types of evidence or documents that identify victims of any age of child abuse or sexual assault. Current exemptions should extend to include reports of sexual assault referred for prosecution. Next, courts must be allowed to keep victim identity information confidential, except when a petition is filed, and certain standards are met, similar to the standards found in Florida's laws. If a court filing contains identifying information of the victim, rules should require automatic sealing of the record and a redacted copy be substituted in the public record.

Mirroring federal law, victim privacy laws should create an affirmative duty to keep all documents containing a victim's info secure, and the duty should apply to all persons involved in a case, including jurors, court staff, and law enforcement employees, with limited exceptions. Specific, serious consequences, such as contempt of court, should be set out for any violation of the confidentiality laws.

In order to protect the greatest number of victims, victim privacy laws should allow a judge to put a "gag order" on any and all courtroom observers, preventing the release or publication of the victim's identifying information without the victim's written consent.

Adults can weigh the pros and cons of coming forward to make a report of a sexual assault. Children, on the other hand, cannot, and the decision of whether to involve the police or refer a case for the prosecution is completely out of their hands.

When adults make these decisions for children, the adults may not fully comprehend the risks to privacy or mental health if the child's assault becomes widely known. In either case, under current law, once the report is made, there is a real risk the victim's identifying information will be published alongside the details of the crime. New sexual assault confidentiality laws will provide real protections. Real privacy protections can help more victims of all ages feel safe enough to come forward, report, and follow through with prosecuting alleged perpetrators of sexual assault.

References

- American Bar Association. "How Courts Work." American Bar Association. September 9, 2019. https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/cases_settling/.
- Ballotpedia. "Georgia Amendment 4, Marsy's Law Crime Victim Rights Amendment (2018)." Accessed August 8, 2022. [https://ballotpedia.org/Georgia_Amendment_4,_Marsy%27s_Law_Crime_Victim_Rights_Amendment_\(2018\)](https://ballotpedia.org/Georgia_Amendment_4,_Marsy%27s_Law_Crime_Victim_Rights_Amendment_(2018)).
- Boone, Rebecca. "Idaho Legislative Intern Reports Rape, Is ID'd by Lawmaker." A.B.C. News. May 4, 2001. https://abcnews.go.com/Politics/wireStory/idaho-intern-reported-rape-faced-overwhelming-harassment-77476436?cid=clicksource_4380645_6_heads_posts_headlines_hed.
- Boyle, H. "Rape and the Media: Victim's Rights to Anonymity and Effects of Technology on the Standard of Rape Coverage." *European Journal of Law and Technology* 3, no. 3 (2012). <https://ejlt.org/index.php/ejlt/article/view/172/262>, (citing Gartner, Michael. "The Privacy Rights of Rape Victims in Media and the Law: Perspectives on Disclosing Rape Victim's Names." *Fordham Law Review* 61, no. 5 (1993): 1133-1135. <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3033&context=flr>)).
- Chin, Caitlin. "What Privacy in the United States Could Look Like without Roe v. Wade." Center for Strategic & International Studies, May 25, 2022. <https://www.csis.org/analysis/what-privacy-united-states-could-look-without-roe-v-wade>.
- Cox Broadcasting Corporation v. Cohn, 420 U.S. at 487, 493 (1975).
- Denno, Deborah W. "Perspectives on Disclosing Rape Victims' Names." *Fordham Law Review* 61, no. 5 (1993): 1113-1131. <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3032&context=flr>.
- Dobbs v. Jackson Women's Health Organization, 597 US __ (2022). <https://www.oyez.org/cases/2021/19-1392>.
- Doe v. Board of Regents of the University System of Georgia, 215 Ga.App. 684, 452 S.E.2d 776 (Ga. App., 1994).
- Dye v. Wallace, 274 Ga. 267, 553 S.E.2d 561 (Ga., 2001) (quoting O.C.G.A. §16-6-23 (2018)).
- Elliot, Denni, "Anonymity for Rape Victims." *The Newsletter On Journalism Ethics* 1, no. 3 (June 1989): 1,2. <https://ethicscasestudies.mediaschool.indiana.edu/cases/naming-newsmakers/anonymity-for-rape-victims.html>.
- Fla. Stat. §92.56 and Fla. Stat. §§119.071 2(h)1.a, b, c, and (j) 1., 2.a, b (2018).
- Fla. Stat. §§119.071 2(h)1.a, b, c, and (j) 1., 2.a, b (2018).
- The Florida Star v. B.J.F., 491 U.S. 524 (1989).
- Forde, Kaelyn. "Why more women don't report sexual assaults: A survivor speaks out." A.B.C. News. September 27, 2018. <https://abcnews.go.com/US/women-report-sexual-assaults-survivor-speaks/story?id=57985818>.
- Georgia State Constitution, paragraph XXX of Article 1, Section 1 (2019).
- Johnson, Michelle. "Of Public Interest: How courts handle rape victims' privacy suits." *Communication Law & Policy* 4, no 2 (Spring 1999): 201-242. <https://doi.org/10.1080/10811689909368675>.

COCHRAN, 2022.

Juvenile Law Center. "Juvenile Records: a national review of state laws on confidentiality, sealing and expungement." 2014. <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/national-review.pdf>.

Kantrowitz, Barbara. "Naming Names." *Newsweek*. April 28, 1991. <https://www.newsweek.com/naming-names-202306>.

Kilpatrick, Dean. "Rape in America: A Report to the Nation [Abstract]." National Victim Center and the Crime Victims Research and Treatment Center. 1992. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/rape-america-report-nation#:~:text=Data%20from%20two%20national%20studies,forcible%20rapes%20occur%20each%20minute>.

Kilpatrick, Dean. "Rape in America: A Report to the Nation." National Victim Center and the Crime Victims Research and Treatment Center. 1992. <https://mainweb-v.musc.edu/vawprevention/research/sa.shtml>.

Marcus, Nancy. "Yes, Alito, There Is a Right to Privacy: Why the Leaked Dobbs Opinion Is Doctrinally Unsound." (2022). *IdeaExchange@Uakron*. <https://ideaexchange.uakron.edu/cgi/viewcontent.cgi?article=1137&context=conlawnow>.

Marjorie Sable et al. "Barriers to Reporting Sexual Assault for Women and Men: Perspectives of College Students." *Journal of American College Health*, 55, no 3 (2006): 157-162.

"Marsy's Law: a model state constitutional amendment to afford victims meaningful rights." Last modified February 28, 2018. <http://d3n8a8pro7vhm.cloudfront.net/marsyslawforall/legacy/url/1086/Marsys-Law-Short-Form-Model-Language-2.28.18.pdf?1533058098>.

Marsy's Law. "About Marsy's Law." n.d. Accessed August 8, 2022. <https://marsyslaw.us/about-marsys-law/>.

May, Ashley. "Sexual assault survivors risk lives, reputations to stand up to powerful men." *U.S.A. Today*. Last modified September 26, 2018. <https://www.usatoday.com/story/news/nation-now/2018/09/21/christine-blasey-ford-kavanaugh-death-threats-reporting-sexual-assault/1355798002/>.

Merriam-Webster.com Dictionary, s.v. "dox," accessed August 8, 2022, <https://www.merriam-webster.com/dictionary/dox>.

Mindlin, Jessica and Liani Reeves. "Confidentiality and Sexual Assault Survivors: A toolkit for state coalitions." National Crime Victim Law Institute. 2005. <https://law.lclark.edu/live/files/6471-confidentiality-and-sexual-violence-survivors-a>.

National Crime Victim Law Institute. "Protecting Victims' Privacy Rights: The Use of Pseudonyms in Criminal Cases." 2014. <https://law.lclark.edu/live/files/27405-protecting-victims-privacy-rights-the-use-of>.

O.C.G.A. §15-11-31 (2018).

O.C.G.A. §§15-11-700 et seq (2018).

O.C.G.A. §16-6-1 et seq (2018).

O.C.G.A. §17-17-15 (c)(6) (2019).

O.C.G.A. §19-7-75 (c) (2018).

Office of the Attorney General, California Department of Justice. "Victims' Rights Under Marsy's Law." Accessed August 8, 2022. https://oag.ca.gov/victimservices/marsys_law.

Ordway, Denise- Marie. "Why many sexual assault survivors may not come forward for year." *The Journalist's Resource*. October 5, 2018. <https://journalistsresource.org/studies/government/criminal-justice/sexual-assault-report-why-research/>.

Prosecuting Attorneys' Council of Georgia. "Georgia Crime Victims Bill of Rights." Accessed August 8, 2022. <https://pacga.org/resources/for-victims-of-crime/georgia-crime-victims-bill-of-rights/>.

Rape and Incest National Network. "The Criminal Justice System: Statistics." Accessed July 22, 2022.

COCHRAN, 2022.

<https://www.rainn.org/statistics/criminal-justice-system>.

Reidy, Megan. "The Impact of Media Coverage on Rape Shield Laws in High-Profile Cases: Is the Victim Receiving a 'Fair Trial'?" *Catholic Law Review* 54, no. 1 (Fall 2004): 297 – 334.

Roe v. Wade, 410 U.S. 113 (1973). <https://www.oyez.org/cases/1971/70-18>.

Slifer, Stephanie. "Maryville Alleged Rape: Mo. prosecutor says charges dropped in Mo. teen sexual assault case over lack of evidence, alleged victims say otherwise." C.B.S. News. October 15, 2013. <https://www.cbsnews.com/news/maryville-alleged-rape-mo-prosecutor-says-charges-dropped-in-mo-teen-sexual-assault-case-over-lack-of-evidence-alleged-victims-say-otherwise/>.

State v. Globe Communications Corp., 648 So.2d 110 (Fla., 1994).

United States Courts. "Covering Civil Cases - Journalist's Guide." Accessed July 7, 2022. <https://www.uscourts.gov/statistics-reports/covering-civil-cases-journalists-guide>.

Warren, James and Media Writer. "Naming Rape Victims A Debate for Media." Chicago Tribune. April 18, 1991. <https://www.chicagotribune.com/news/ct-xpm-1991-04-18-9102040444-story.html>.

Wikipedia. 2022. "Marsy's Law." Wikimedia Foundation. Last modified July 13, 2022, 02:07. https://en.wikipedia.org/wiki/Marsy%27s_Law#Impact_of_Marsy's_Law.