Electronic Communication and Privacy Rights: Rape Shield Laws, Sexual Assault Survivors’ Rights, and Defense Subpoenas in a Digital World

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**The Story**
As electronic communications and online information access become indispensable components of our day-to-day lives, they also begin to trigger changes in policy and produce unintended consequences from existing policies. Privacy of personal information has always been an issue in legal cases dealing with sexual assault, but in the information age, so much more information exists in a digital format, and without proper protections, provides a tempting trove of information ripe for unjust “fishing expeditions.” Privacy protections for survivors of sexual violence are as important as ever in this new technological landscape.

**Rape Shield Laws**
- State laws cover slightly different legal territory. In general they seek to keep testimonial of a survivor’s sexual history prior to an assault out of the courtroom.

**Subpoenas**
- Easier to obtain than a search warrant
- Does not go on the public record—those whose records are searched are often unaware unless a service provider notifies them (Johnson, 2012)
- Endangers the rights guaranteed by the Fourth Amendment to the U.S. Constitution “people have the right to be secure in their ‘persons, houses, papers, and effects, against unreasonable searches and seizures ... and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation.’” (Johnson, 2012)
- Subpoenas do not carry the same weight as search warrants for procuring records or information, although most of the public is not aware of this differentiation (Johnson, 2012).

**Chilling Effect**
This kind of case creates a chilling effect on reporting sexual assault crimes if survivors of these crimes feel they will not be believed and subject to revictimization by the legal system.

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**Policy Questions**
- What protections are in place to protect sexual assault survivors?
- How do those protections hold up in a digital world?
- Are there pre-digital analogues of email and Google searches which we can draw upon as policy is made?
- And, finally, what might a new policy look like which would protect the rights of all involved in these types of cases?