

Quick take on the issue...

A recent change in Washington State law has made it significantly more likely that evaluations, psychotherapy notes, and progress notes that are provided to the courts or other agencies will be treated as public records and posted to publicly accessible court websites.

Likely public disclosure of your work product requires careful consideration of whether to include victim names, protected health information, personally identifying information, and other facts in your submissions to the courts.

TIPS:

- Remember that there is a difference between psychotherapy notes and progress notes. According to HIPPA, [Psychotherapy notes](#) are “recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record.” They are [excluded](#) from disclosure to the individual under HIPPA (as are forensic reports) and may not be subject to discovery. Thus, if you’re filing progress notes make sure they are not actually psychotherapy notes.
- If you must include names or other identifying information about victims or innocent third parties, consider limiting that to a single paragraph near the beginning of the report to help facilitate redaction and use a pseudonym or other indirect reference in the body of the report.

Details

There were two core holdings in the Washington Supreme Court’s decision in *John Doe G v. Department of Corrections and Zink*, [190 Wn.2d 185](#) (2018): 1) Level I sex offenders’ Special Sex Offender Sentencing Alternative (SSOSA) evaluations are subject to public records requests because they do not contain “health care information” within the meaning of Washington Law and 2) The SSOSA evaluations did not contain “health care information” because they were forensic examinations done for the purpose of aiding a court in sentencing. As a result of this decision, it is probably safest to assume that any forensic report held by a government entity is subject to disclosure under the Public Records Act.

Ethical rules generally require clinicians to protect confidential information and limit the information included in our documentation and reports to only that which is necessary to answer the referral question or document progress. Thus, whenever possible, it is likely wise to limit the inclusion of superfluous information such as victim names, victim relationships, and examinee medical information, particularly if the information is not key undergirding for your opinion or impression or is not already publicly available.