



NNEDV

## Approaches to Evidence Collection: Criminal vs. Civil Cases

The collection and availability of evidence may look different in criminal versus civil cases. This document provides general tips for each system. For more detailed suggestions on investigating evidence from specific types of technologies, see our [Evidence Collection Guides](#).

### Criminal Investigations

Generally speaking, criminal cases have a larger selection of evidence available. Criminal investigators often have the benefit of being able to access evidence from both the survivor *and* the alleged perpetrator. For example, many criminal investigations include a forensic professional who can examine the devices for all relevant parties. Additionally, criminal investigators can often access important records from technology companies that are difficult to obtain in civil cases.

Although beneficial, the larger availability of evidence in criminal investigations increases the possibility that the disclosure of sensitive information may cause survivors and other witnesses embarrassment, fear, or misunderstanding. This may impact their willingness to provide access to records, and/or data, unless safety protocols are put in place. It is essential that survivors are informed about what information is being sought out, why it is needed, and how it will be used.

One option is to perform a more focused investigation, by collecting only the data from the survivor's device(s) that is relevant to the investigation. By NOT doing an entire "dump" of the data, one is able to respect the privacy of the survivor, collect the necessary evidence to further the investigation, and still allow prosecution to fully comply with the *Brady* requirements of providing defense counsel with exculpatory evidence. This more focused investigation may also provide an elevated level of comfort to the survivor and increase their willingness to assist with the investigation.

## **Civil Investigations**

Many civil investigations do not include a forensic professional, and even when forensics are a part of the case, the investigation is generally limited to the client's devices. Similarly, many companies are unwilling to respond to civil subpoenas, even when properly signed by a civil court judge. While some companies may respond to requests for documentation about a person's own account, few will respond to requests regarding the abusive person's account. Because of these limitations, civil attorneys need to be creative to locate relevant information. Civil attorneys will have to rely on evidence the survivor and the abusive person may have access to, and take proactive steps to protect and document evidence.

There is one essential way in which civil investigations have a major advantage. Generally, civil attorneys have many more opportunities to speak with survivors and to get to know their stories. Civil attorneys have attorney-client privilege and other protective factors that can lead to survivors to share more sensitive information. The depth of the relationship can help uncover essential evidence that may be useful for both civil and criminal cases.

## **Working Together**

The needs of survivors of domestic violence, sexual assault, and stalking may vary substantially. Some cases require a civil intervention, while others need the criminal justice system. Some cases need all systems to work together. When investigating the misuse of technology, both criminal and civil investigations have strengths that can be used to increase survivor safety and offender accountability. The strengths of both systems can be leveraged in important ways to the benefit of survivors and the community.

This document is a part of a series that details how to collect evidence related to the misuse of technology in domestic violence, sexual assault, and stalking cases. We recommend that you also read [A Primer for Using the Legal Systems Toolkit: Understanding & Investigating Tech Misuse](#) and [Approaches to Evidence Collection: Survivor Considerations](#). The series is part of a [Legal Systems Toolkit](#)

that includes various detailed guides meant to assist prosecutors, law enforcement, and civil attorneys.

If you have further questions about investigating tech abuse cases, please contact [Safety Net](#), and visit [TechSafety.org](http://TechSafety.org) for more information.

*Special thank you to Bryan Franke of [2CSolutions](#) for providing expertise and guidance on the creation of this series.*

© 2018 National Network to End Domestic Violence, Safety Net Project.  
Supported by US DOJ-OVW Grant No. 2016-TA-AX-K069. Opinions, findings, and conclusions or recommendations expressed are the authors and do not necessarily represent the views of DOJ. We update our materials frequently. Please visit [TechSafety.org](http://TechSafety.org) for the latest version of this and other materials.