

Vermont's Partnership Between Domestic Violence Programs and Child Protective Services

Publication #3
The Confidentiality Series
Vol. 1

A collaboration of the Vermont
Network Against Domestic
Violence and Sexual Assault,
the Vermont Department for
Children and Families, and the
Vermont Center for Crime
Victim Services.

Information
Sharing in a
Collaborative
Relationship

Domestic Violence
and
Child Protection

Lead Author:
Jill Richard, M.Ed.

April 2004

Information Sharing in a Collaborative Relationship
Domestic Violence and Child Protection
Lead Author: Jill Richard, M.Ed.

I. Introduction

In any collaboration between child protection and domestic violence, the question of information sharing can create anxiety and discord and/or create increased understanding and relationship. When discussing the how's and

The framework reflected in this document is a result of ongoing meetings between Vermont domestic violence advocates and the Vermont Department of Social and Rehabilitation Services (child protective services agency) Domestic Violence Unit around issues of information sharing, confidentiality and service provider role in rural areas in cases where domestic violence and child maltreatment co-exist. These discussions took place from July 2001 until October 2003 as a working group of the Vermont collaboration established through the statewide Rural Domestic Violence and Child Abuse Project.

This document is one in a series that explores issues of confidentiality and information sharing, poses some guiding questions, and makes recommendations for programs and for multi-disciplinary teams who work with affected families. Each document is the culmination of a collaborative effort and identifies the lead author who captured the rich discussions. Thus while there may be one or two lead authors, the work is truly a reflection of the collaborative efforts of many people involved in the discussions over the years. For more information about the documents' content and development or how to reach the lead authors, you may contact The Vermont Network Against Domestic Violence and Sexual Assault, 802-223-1302 or The Vermont SRS Domestic Violence Unit, 802-241-1206.

when's of information-sharing the central purpose must remain clear – that our efforts must serve to enhance the goals of safety, well-being, stability and dignity for abused children, victims/survivors of domestic violence, families and communities.

II. Context

When exploring the parameters and best practices of sharing information between child protection and domestic violence programs, it is important to recognize that each system's history, role and framework is distinct, purposeful and legitimate in their own right. Critical to a successful dialogue is each partner's maintaining the individual integrity of each agency's identity and response to women who are battered and children who are abused or neglected. While mutual goals and efforts to achieve safety and security for all victims exist, the frameworks through which these goals are pursued are designed and implemented, independent of the other and rely on distinct and different mandates and laws for guidance.

Furthermore, all relationships require respectful, honest and fair communication when creating responses to women who are battered, and abused children. Due to the inherent complexity and political nature of issues related to confidentiality, privacy, information-sharing, domestic violence and child abuse, the following summary provides general guidance and possibilities for policy development and presents avenues for effective inquiry where these issues intersect.

III. General Principles for Practice

- When combining the expertise of two distinct systems with the multiplicity of experiences faced by families experiencing child abuse and domestic violence, concerns and needs can become more than complex.
- We should approach this discussion from the perspective of a woman who is battered and is involved with child protective services (CPS). With this lens, confidentiality policies may need to adapt to adequately address her needs.
- Adaptation does not mean co-optation.
- Trust is an issue. It is hard for anyone to be in a role where you feel that people don't trust you. Therefore, it is important to recognize that anyone in collaborative situations can feel this way.
- Open dialogue is a good alternative to emotional reactivity. Be willing to negotiate. Good negotiation does not compromise principles but is a creative tool in crafting new best practice.
- Relationships between programs and agencies are not always in a place to have constructive dialogue around these issues. With experience comes more ease and trust in collaboration, yet principles should still not be compromised and creative solutions enable women and child(ren) to get what they need.
- Focusing on the common ground of safety, flexibility, creativity, and utilization of existing resources and expertise lay the groundwork for successful relationship building.
- Each situation is different. Don't assume that a decision in one case will resemble the next. Policy interpretation is often more fluid than we would like.
- Be sure the person on the other end understands your legal parameters at the onset of discussion, i.e. if you need to report alleged child abuse within the frame of a hypothetical situation.
- Improper handling of victim information and records can harm the ability of the advocacy program to accomplish its goals in the community.

IV. Specific Principles for Practice

Non-governmental and/or community-based Advocates

- Battered women often seek services from traditional external advocacy programs (such as shelters) instead of other types of services (such as governmental) for purposes of confidentiality.
- A crisis in victims' confidence may be the result of improper release of information, may cause victims to become reluctant to seek the program's services and may result in exposing women to risk of further violence.

- Some states have established limitations on the disclosure of information about the identity of victims served by state-funded programs. Similarly, some federal grants to domestic violence programs are conditioned upon compliance with rules requiring confidentiality of services rendered.
- The goal of a domestic violence advocacy program should include both victim safety and victim autonomy. Offender accountability to the criminal justice system may not be the goal of individual advocacy where the woman does not make that a priority. The centrality of victim autonomy to the role of advocacy programs makes the handling of information about the woman even more important.
- Discuss your concerns with the other agency on a case-by-case basis. Blanket statements such as “I can’t confirm or deny” create additional barriers to agency collaboration. Proceed with a willingness to explore potential avenues to work together without violating confidentiality or policy.
- Don’t be talked into sharing information that you would otherwise not share under the auspices of collaboration. Collaboration only works when each partner maintains role clarity.
- Don’t assume that information seekers are acting to harm battered women. With collaboration we can seek out and inquire about certain practices and principles.
- Domestic violence programs may want to consider including “time limited releases” in consent forms for work with CPS.

Governmental Advocates

- The goals of the program should include victim safety as well as the enforcement of state mandates. While offender accountability, child protection or law enforcement may be the critical role served by the system, holding victim autonomy as equally valuable must not undercut the ability of the system to fulfill its purpose. Record handling by such programs must balance victim safety considerations with the legal requirements for disclosure of information.
- Victims seeking advocacy services from governmental programs must be told clearly what the limits of confidentiality might be so that unreasonable expectations are not created.
- Programs must establish physically separate files and record keeping methods to ensure that their true independence is understood by victims and by agency staff.

(Adapted from: Data Privacy and Confidentiality Issues Arising from Child Protection Services/Domestic Violence Program Collaborations, July 11, 2001 Kristine Lizdas)

V. General Guidelines and Discussion Framework

Release of Information

- To analyze whether release of information is appropriate, ask the following questions:
 - What is the information for?
 - Who am I? (Am I bound by any laws or policies and/or protected by any law or policy?)
 - Who is the client? (Parent, child?)
 - What is the information?
 - Who is requesting the information?
 - Why are they requesting the information? What is the purpose of release?
 - Does the client consent to this release?
 - Are there any safety issues that impact this decision?
- (Adapted from: Family Advocacy Program. Boston Medical Center Handout)*

- Improper handling of victim information and records can cause great harm to individual victims.
 - Release of information about the victim's residence or location can make her accessible to the perpetrator from whom she is hiding. Such accessibility can endanger both the victim and the children.
 - Release of some kinds of information about the victim or the children can provide ammunition to an abuser seeking to punish or intimidate the victim through child custody battles or child protection complaints.
 - Release of certain information to the abuser can complicate or harm the state's case in any criminal proceeding brought against the perpetrator, thereby placing some victims in further jeopardy.

Policy Development

- When developing policy on confidentiality in domestic violence cases, use the following questions:
 1. What is the purpose for the collection of this information?
 2. What harm could come to the victim/victim's children and family if the information was disclosed to the abuser or abuser's attorney?
 3. In light of this risk, should the information be recorded at all?

4. If the information should be recorded, what is the best format to use for the record? How permanent a form or record? How detailed/summary?
- Adequate and effective policies governing the confidentiality of victim records and information must address several issues.
 1. What types of information should be sought from victims at various stages of involvement with the case?
 2. What information should be provided to victims about the nature of the victim/advocate relationship and any related confidentiality implications?
 3. What information does the advocate record and in what form would the program retain it?
 4. What should the procedure be for responding to any request for information, whether by letter, subpoena, phone call, law enforcement inquiry, or funder request?
 - General principles for setting policy on confidentiality
 1. Policy must be informed by legal advice on state and federal law applicable to records handling by the program.
 2. Policy must be informed by the purpose of the program and be designed, in any event, to promote victim safety.
 3. Policy must be set out clearly in writing and be the subject of ongoing training, supervision and review, in light of the high stakes associated with its implementation.
 4. Policy must be made available to all victims in advance of conversations that may result in disclosure of sensitive information.

VI. Recommendations

1. Procedures should comply with state statutes and case law governing what information child protection workers can share with whom, and the information domestic violence advocates can share. Attorneys familiar with governing statutes, case law and local agency policies should review this provision.
2. Include provisions that articulate the regulations governing confidentiality for each agency, including the types of information on families that will be shared between the child protection agency and local domestic violence programs.
(Rose Thelen, Gender Violence Institute, email 8/20/01)
3. Provide information up front to victim/survivors re: confidentiality and reporting policies. Advocates could assist women by being as specific as possible

about what child abuse is and what gets reported. Advocates could benefit from training on specific phrases to use in these situations.

4. Current thinking regarding case review, case consultation and other types of information sharing regarding particular cases stresses the importance of protecting the identity of the individuals involved and should only occur when (a) there has been a request or permission granted by the battered woman to do so, (b) there is a signed release, and (c) the information shared is strictly relevant to the case. *For battered women's programs, identifying information should only be shared to make a mandatory report or if the battered woman requests it, in which case releases must be secured.*

5. Documentation should be kept to a minimum with little detail and only objective, factual information.

6. Duty to Warn situations do not require consent to release. These include threats to harm someone, threat of suicide or homicide and child abuse.

7. Articulate procedures for battered women's programs that will be used when child protection or law enforcement is seeking the whereabouts of a particular battered woman.

VII. Vermont Related Statute and Policy

Crisis Worker Privilege (Network Advocates)

§ 1614. Victim and Crisis Worker Privilege

(a)(1) "Crisis Worker" means an employee or volunteer who:

(A) provides direct services to victims of abuse or sexual assault for a domestic violence program or sexual assault crisis program incorporated or organized for the purpose of providing assistance, counseling or support services;

(B) has undergone 20 hours of training;

(C) works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program; and

(D) is certified by the Director of the program.

(2) A communication is "confidential" if not intended to be disclosed to third persons other than those whom disclosure is made in furtherance of the rendition of services to the victim or those reasonably necessary for the transmission of the communication.

(b) A victim receiving direct services from a crisis worker has the privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the victim to the crisis worker, including any record made in the course of providing support, counseling or assistance to the victim.

The crisis worker shall be presumed to have the authority to claim the privilege but only on behalf of the victim (Added 1993, No. 228 (Adj. Sess.), § 8.)

SRS Policies Concerning Confidentiality and Written Records-Title 33, VSA

§ 4916. Records of abuse and neglect

(a) The commissioner of Social and Rehabilitation Services shall maintain a registry which shall contain written records of all investigations initiated under section 4915 of this title unless the commissioner or the commissioner's designee determines after investigation that the reported facts are unsubstantiated, in which case, after notice to the person complained about, the records shall be destroyed unless the person complained about requests within one year that it not be destroyed.

(b) If no court proceeding is brought pursuant to subsection 4913(d) of this title within one year of the date of the notice to the person complained about, the records relating to the unsubstantiated report shall be destroyed.

(c) The commissioner shall adopt rules to permit use of the registry while preserving confidentiality of the records.

(d) Written records maintained in the registry shall only be disclosed to the commissioner or person designated by the commissioner to receive such records, persons assigned by the commissioner to investigate reports, the person reported on, or a state's attorney. In no event shall records be made available for employment purposes, for credit purposes, or to a law enforcement agency other than the state's attorney. Any person who violates this subsection, except as provided in section 4919 of this title, shall be fined not more than \$500.00.

(e)(1) Verbal Notice. The commissioner or the commissioner's designee shall promptly inform a parent or guardian of the child that a report has been made and substantiated. If a parent or guardian is under investigation for abuse or neglect, such information need only be provided to that parent or guardian in accordance with subsection 4916(d) of this title.

(2) Written Records. If a report has been substantiated, the commissioner or the commissioner's designee may provide upon request the written record to the child's parent or guardian or, if there is a pending juvenile proceeding or if the child is in custody of the commissioner, to the child's attorney.

(f) The commissioner or the commissioner's designee may inform the following persons that a report has been substantiated:

(1) The person responsible for supervising the staff in the child's residential, educational or day care setting.

(2) Upon request, to the person who made the report under subsection 4913(a) of this title.

A person receiving information under this subsection shall not disclose that information to persons who are not involved with the provision of treatment services under section 4915 of this title to the abused or neglected child.

(g) A person may, at any time, apply to the human services board for relief if he or she has reasonable cause to believe that contents of the registry are being misused. All registry records relating to an individual child shall be destroyed when the child reaches the age of majority. All registry records relating to a family or siblings within a family shall be destroyed when the youngest sibling reaches the age of majority. All registry records shall be maintained according to the name of the child who has been abused or neglected, and the name of the person about whom the report was made.

(h) A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is unsubstantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the commissioner to establish that the record shall not be expunged. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1989, No. 295 (Adj. Sess.), § 5; 1991, No. 159 (Adj. Sess.), § 3.)

§ 4919. Disclosure of information

(a) The commissioner or the commissioner's designee may disclose the existence of a substantiated report of child abuse to the owner or operator of a facility regulated by the department for the purpose of informing the owner or operator that employment of a specific individual may result in loss of license or registration.

(b) Disclosure of information or records used or obtained in the course of providing services to prevent child abuse or neglect or to treat abused or neglected children and their families by one member of a multidisciplinary team to another member of that team shall not subject either member of the multidisciplinary team, individually, or the team as a whole, to any civil or criminal liability notwithstanding any other provision of law.

(c) The commissioner or the commissioner's designee may, insofar as federal regulations allow, disclose the existence of a substantiated report of child abuse to the commissioner of the department of aging and disabilities or the commissioner's designee for the purpose of informing the owner or operator that employment of a specific individual may result in loss of license or certification. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1983, No. 169 (Adj. Sess.), § 2; 1991, No. 159 (Adj. Sess.), § 4; 1993, No. 100, § 7.)

(b)

SRS Collaboration with Department of Corrections-

SRS has a relatively new Memorandum of Understanding (MOU) with the Department of Corrections (DOC) regarding the sharing of information. The purpose of this MOU is to assist the two departments in protecting children and working with families as well as to improve communication and collaboration between the departments. As part of this collaboration, certain SRS staff have access

to the DOC database, including case information and DOC staff have access to some of the SRS database. Both departments have strict guidelines as to when and how information can be accessed by the other department. SRS employees' access to the DOC database is limited to purposes directly related to assessment of risk and delivery of services to children and families served by SRS, including the screening of potential caregivers for children. (Social Services Policy No. 156, July 16, 01).