

At a Glance

Responding to requests for information from law enforcement in a missing persons investigation



WHO? *You*

Advocates' communications with survivors are confidential and privileged. Federal and State law requires advocates to keep information confidential. That means you may not reveal any information about a survivor without their written permission – with some narrow exceptions.



WHAT? *Responding to requests for information about missing persons from a law enforcement agency*

As part of a missing persons investigation, law enforcement may ask you for information about program participants and their children including the use of your programs services or if the survivor is voluntarily missing. First, advocates need to verify that are speaking to a law enforcement officer and the identity of their agency. Inform the officer that before you can proceed, you will need the agency phone number and name to confirm the identity of the officer and then call back. Before calling back, the advocate should verify the law enforcement agency phone number through a phone book or a website.

Keep in mind that the law enforcement officer may not be familiar with your confidentiality obligations and you may have to explain your agency's procedures. Tell the officer that you are not allowed to disclose any information about program participants without written permission and it may take some time before you can respond to their request, if at all.



WHEN? *At any time*

High numbers of persons are reported missing every year. And, missing person cases can remain open indefinitely. Law enforcement who investigate these cases are trying to determine if the survivor is voluntarily missing or may be in danger as a result of domestic violence or other circumstances.

Law enforcement may ask advocates for information about specific survivors who have used your program services in the past or are currently using services. This may happen during a phone call, law enforcement could show up at your program office or shelter or in coordinated community response meeting. But advocates can only give very limited information at certain times. Previous or current program participants are in charge of how and when their information is shared.



WHY? *Your communications with survivors are confidential*

Under federal and state law, advocates must receive permission from program participants in writing (via a Release of Information) to allow for information sharing. Make sure you are clear about who they want to have their information, what exactly should be shared, and why they want the information shared. Always remember that a program participant's information belongs to her, not the program.¹

What if I can't get written permission right away?

If the program participant gives you verbal permission and is not available to sign a written release immediately, advocates should describe the circumstances, note it on the release of information (i.e., "xx could not sign in person because she was at work; gave permission over the phone, plans to stop by on xx date to sign"), and attempt to get written permission as quickly as possible.

What if the program participant is physically unable to sign the Release of Information?

For survivors who are physically unable to sign the release of information (i.e. because of a disability or for whatever reason, cannot sign a document), the survivor can direct the advocate to sign their name on their behalf, and add the advocates initials behind the survivor's name. Or, the survivor could direct a notary to sign on their behalf.



HOW? *Talk it out.*

Talk to survivors about general law enforcement practices during a missing persons investigation² and how information sharing works. Let survivors know that you will keep their information confidential (including the fact that the survivor has used program services) and that you and your program are committed to releasing information ONLY when they have asked you to and ONLY after you have discussed together how that information could be used. Reassure the survivor that you will only share the specific information that she has given you permission to disclose. Be sure to talk about the times when you are required to make exceptions to this practice.

- Talk to survivors about the possibility that their abuser may report them missing to law enforcement. Explain that if the survivor believes that their

¹ RCW 5.60.060 (8) A domestic violence advocate may not, without the consent of the victim, be examined as to any communication between the victim and the domestic violence advocate. RCW 70.123.076 (1) . . . , a domestic violence program, an individual who assists a domestic violence program in the delivery of services, or an agent, employee, or volunteer of a domestic violence program shall not disclose information about a recipient of shelter, advocacy, or counseling services without the informed authorization of the recipient.

² See Appendix A, the **DRAFT MODEL POLICY, Law Enforcement Investigations Involving Missing People and Community Based Domestic Violence Programs**, Washington Association of Sheriffs and Police Chiefs & The Washington State Coalition Against Domestic Violence, May, 2009. This draft policy establishes guidelines for investigating missing persons who may be victims of domestic violence and who may be interacting with community based domestic violence programs.

abuser may report them as missing, law enforcement may contact the program to find out if the survivor is staying there or using any services. It is an opportunity for the survivor to make their wishes clear about what information to share with law enforcement. Help the survivor understand the potential positive and negative consequences of sharing information with law enforcement who are conducting a missing persons investigation.

Pros of sharing information with law enforcement:

1. If the survivor tells law enforcement that they are “voluntarily missing,” law enforcement can close the missing persons investigation of the survivor.
 - Missing persons cases can remain open indefinitely, unless law enforcement learns that the person is “voluntarily missing.”
 - Law enforcement will stop investigating and talking to your neighbors, employers or other people and reduce the chances of information getting back to the abuser.
 - The survivor will be able to limit intrusions into their privacy that are part of this type of law enforcement investigation.
2. Restrict the abuser’s ability to use law enforcement and the missing person’s report process as a strategy to track the survivor and continue further acts of abuse.

Cons of sharing information with law enforcement:

1. Information about the survivor’s general location could be disclosed to the abuser.
 - When a missing person has been found, law enforcement may close the case and report information about **where the person was found to the person who made the original call**. *Unless*, law enforcement learns that the person does not want any personal identifying information³ or their location disclosed.
 - There is the potential for a lack of control over and clarity about what information will be shared with law enforcement, the abuser and anyone else.
 - Ask law enforcement what their policy is regarding with whom they will share information.
2. The survivor’s safety is relying on law enforcement records to clearly indicate that any personal identifying information or their location **not** be disclosed to anyone making a request for the public release of records.

³ Personally Identifying Information:

“The term “personally identifying information” or “personal information” means individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including

(A) a first and last name;

(B) a home or other physical address;

(C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

(D) a social security number; and

(E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any of subparagraphs (A) through (D), would serve to identify any individual.” The Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law 109-162’ Sec. 3(a)(18)

What if the survivor who has been reported as missing is currently using your services?

You can offer the survivor several options:

1. If the survivor is concerned about any information that could link the abuser to the survivor's location, information does not have to be disclosed to law enforcement.
2. The survivor could call law enforcement directly and tell them that they are safe, "voluntarily missing" and does not want any personal identifying information or the location documented in the police report. One benefit of the survivor calling directly is that it eliminates any written connection with your agency through a release of information, or
3. The survivor can sign a release of information from your organization that states they are safe and voluntarily missing, and you can remind law enforcement not to document the location or any personal identifying information in the police report.

What if the survivor who has been reported as missing has used our services in the past?

1. As a part of your confidentiality obligations, you cannot tell law enforcement that the survivor used your services in the past without written permission. Therefore, if you are unable to contact the survivor to obtain permission, you cannot provide any information to law enforcement. If you can contact the survivor and they want to let law enforcement know that they are safe and voluntarily missing, you can discuss the options described above for communicating with law enforcement.
2. Keep in mind that any signed release of information is only authorized for ninety days from the date of the signature. Even if a former resident tells you that it is okay to contact law enforcement, check to make sure that any previously signed release of information is still valid.



EXCEPTIONS! *But wait! You may be required to release information without a program participant's written permission:*

- 1) **In the event of a court order**, after a judge privately reviews the records to determine their relevance. It's best to seek legal counsel before releasing records in response to court orders and subpoenas.
- 2) **If the program suspects child abuse or neglect**, you are required to contact Child Protective Services. Be aware that CPS may ask for the child's *relevant* records. CPS does not have the right to request the parent's records. This is a good reason to keep separate files for parents and children.
- 3) **If the program knows there is potential suicidal behavior or threat of harm to others** that is likely to result in a clear, imminent risk of serious physical injury or death to themselves or another person.
- 4) Advocates should be aware that there are reporting requirements for adult persons with disabilities who meet the legal definition of "vulnerable adult" and have experienced abuse under RCW 74.34. Advocates should check

their agency's policies regarding when and how to make a mandatory report on behalf of a "vulnerable adult."⁴

What I need to know about my Program's Policies

- I know the steps to take when law enforcement is requesting information or records.
- If law enforcement requests information or records, I will contact our program's designated person, _____ for help.
- I know the steps to take when a program participant asks me to provide information or records to law enforcement.

For detailed information on confidentiality and record-keeping, check out the following support publications

Model Release of Information and model Notice of Participants Right to Confidentiality
<http://www.wscadv.org/resourcesPublications.cfm>

Model protocol on Record-Keeping when Working with Battered Women,-2007 WSCADV
<http://www.wscadv.org/resourcesPublications.cfm>

Model Protocol on Confidentiality When Working with Battered Women-2007 WSCADV
<http://www.wscadv.org/resourcesPublications.cfm>

Learning the laws on Confidentiality-WSCADV On-Line Course-2007
<http://www.wscadv.org/onlineTraining.cfm>

See Appendix A, *DRAFT MODEL POLICY, Law Enforcement Investigations Involving Missing People and Community Based Domestic Violence Programs*, Washington Association of Sheriffs and Police Chiefs & The Washington State Coalition Against Domestic Violence, May, 2009.

See Appendix B, *Police Intervention, Domestic Violence Services of Benton & Franklin Counties*, in this document. For a sample protocol on responding to law enforcement requests for information in a shelter environment.

⁴ For additional information about the Vulnerable Adult statute and advocacy strategies, "Basic Legal Advocacy Information and Legal Requirements for Accessibility, Chapter 5, pgs. 3-6, *Enough and yet not Enough, An educational resource manual on Domestic Violence Advocacy for Persons with Disabilities in Washington State, revised 2003*," Washington State Coalition Against Domestic Violence, Principal Author: Cathy Hoog, <http://www.wscadv.org/resourcesPublications.cfm> browse by topic under "Disability."

Washington Association of Sheriffs and Police Chiefs &
The Washington State Coalition Against Domestic Violence

DRAFT MODEL POLICY

Law Enforcement Investigations Involving Missing People and Community Based
Domestic Violence Programs
May, 2009

Policy Purpose:

This policy establishes guidelines for investigating missing persons who may be victims of domestic violence and who may be interacting with community based domestic violence programs. This policy is intended to supplement an agency's existing missing person's investigation policy and procedures. It is believed that law enforcement agencies' relationships with community based domestic violence programs will be enhanced through the use of this policy and by communicating this policy and general practices for investigating missing persons to community based domestic violence programs.

Policy Statement:

This model policy provides information about general law enforcement practices in missing person's cases that may involve domestic violence. It outlines what law enforcement can expect when requesting the disclosure of information from community based domestic violence programs and provides guidelines for interaction with those programs as law enforcement works to investigate and close missing persons cases.

When an investigation indicates a possible history of domestic violence, it is part of a prudent investigation to explore a missing person's possible connection to community-based domestic violence program using the model policy. The model policy is intended to strengthen the relationships between law enforcement and community based domestic violence programs by improving communication and fostering a mutual understanding of the law.

Historically, there have been misunderstandings about the release of information and statutory confidentiality obligations when a missing person's investigation leads law enforcement to a community based domestic violence program. Statutory obligations under both RCW and WAC provide guidance to community based domestic violence programs regarding the release of information from their program participants. However, written guidelines do not exist that explain what law enforcement should expect from community based domestic violence programs when contacting them for information in a missing person's investigation.

While law enforcement necessarily investigates missing person's cases in order to locate and confirm the safety of the person, community based domestic violence programs are concerned that information disclosed to law enforcement could result

in increased danger for the victim, as well as violate confidentiality obligations under Washington State law. The impact of disclosing general information, such as location, about a missing person who is a domestic violence victim can result in further harm to the victim or children and sever the victim from support and resources.

Procedures:

The procedures address general law enforcement practices for investigating missing persons who may be participants in a community based domestic violence program. They address law enforcement expectations when seeking information from a community based domestic violence program and the disclosure of information to law enforcement by community based domestic violence programs under current law.

Terms:

The following terms are based on Washington statutes and administrative codes. In addition to quoting RCW and WAC, some explanation of terms are expanded for clarity and understanding. Actual RCW or WAC language is in quotes.

1. Missing adult:

A person who is 18 years of age or older and whose absence is contrary to his or her normal patterns of behavior.

2. Emancipated minor:

A minor aged 16 or older who has been granted a declaration of emancipation from the court. This declaration of emancipation results in the minor gaining legal status as an adult. Some exceptions are included. RCW 13.64

3. Domestic Violence¹:

Codified definitions of domestic violence are included in RCW 26.50.010, 10.99.030 or WAC 388-61A-0025. However, these definitions describe specific acts of abuse that do not include many tactics that victims find coercive in their daily lives that are considered part of domestic violence. These include monitoring a person's daily actions, restricting use of and access to financial resources, intimidation, emotional abuse or prior acts of physical violence.

Individuals who may use community based domestic violence program services may identify themselves as domestic violence victims whether or not the abuse they experience meets the legal definition of domestic violence cited above. Therefore, it is important to include reported and unreported history of domestic violence incidents and descriptions of coercive tactics when looking for information.

¹ RCW 26.50.010 (1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member) WAC 388-61A-0025 "Domestic violence" includes, but is not limited to, the criminal offenses defined in RCW 10.99.020 when committed by one cohabitant against another.

4. Community based domestic violence program:

Domestic violence program means an agency that provides shelter, advocacy, or counseling for domestic violence victims in a supportive environment. RCW 70.123.020 (7); RCW 70.123.075

5. Domestic violence advocate:

Domestic violence advocate means an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, or the child protective services section of the department of social and health services as defined in RCW 26.44.020; RCW 5.60.060 (8).

6. Personally Identifying Information:

"The term "personally identifying information" or "personal information" means individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including

(A) a first and last name;

(B) a home or other physical address;

(C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

(D) a social security number; and

(E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any of subparagraphs (A) through (D), would serve to identify any individual." The Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law 109-162' Sec. 3(a) (18)

Privileged communication and Confidentiality

A. Privileged communication and domestic violence advocates:

"A domestic violence advocate may not, without the consent of the victim, be examined as to any communication between the victim and the domestic violence advocate." RCW 5.60.060 (8)

B. Information shall not be disclosed by the community based domestic violence program without the informed consent of the victim:

"(1) . . . , a domestic violence program, an individual who assists a domestic violence program in the delivery of services, or an agent, employee, or volunteer of a domestic violence program shall not disclose information about a recipient of shelter, advocacy, or counseling services without the informed authorization of the

recipient. In the case of an un-emancipated minor, the minor and the parent or guardian must provide the authorization” RCW 70.123.076 (1)

C. Information disclosed by victims at community based domestic violence programs:

A victim may authorize a community based domestic violence program to disclose information. The authorization must be in writing and signed by the program participant. RCW 70.123.076 (2) (a)

D. A signed Release of Information from a community based domestic violence program:

Community based domestic violence programs do not require program participants to provide a release of information when using program services. If or when such release may be requested and the content of any release varies by agency.

“If the victim chooses to disclose information, the release of information must:

- Be voluntary;
- Relate only to the program participant and/or dependents;
- Clearly describe the scope and any limitations of the information to be released;
- Include an expiration date for the release; and
- Inform the program participant that consent can be withdrawn at any time whether it is made orally or in writing.
- If the written release (or waiver of confidentiality) does not include an expiration date, it shall expire ninety days after the date it was signed.”
(WAC 388-61A-0148; RCW 70.123.076 (2)(a))

Procedures:

1. Upon report of a missing person:

When the investigation leads law enforcement to believe that there is a history or any indication of domestic violence, law enforcement should contact their local community based domestic violence program to ask if the missing person is seeking services.

2. When contacting a community-based domestic violence program:

There are statutory obligations, as described above, and a process that community based domestic violence programs must follow when contacted by a law enforcement representative seeking information. At initial contact, the community based domestic violence program must verify the identity of the law enforcement representative. Law enforcement should be trained to know that a domestic violence program must first seek a release of information from the program participant before information can be shared with law enforcement. Law enforcement should expect that the domestic violence program representative will not be able to confirm or deny that the missing person is receiving services.

Law enforcement representatives should expect that the release of information, if any, will not be instantaneous. Law enforcement should expect that a program will require a reasonable amount of time to respond to any law enforcement inquiry. The program will need to (1) find out if the person is using services and (2), discuss with the person whether she or he want to release any information to law enforcement.

If the missing person has received services in the past and has not given permission to release information, the domestic violence program cannot disclose any information to law enforcement. The disclosure of information by a community based domestic violence program is solely based on the missing person's current permission.

3. Upon locating a missing person:

Generally, law enforcement policy in a missing person investigation requires obtaining a range of information before identifying the missing person as "located." It should be acknowledge that an adult may desire to keep their location unknown. There are specific circumstances in a domestic violence context, where the undisclosed location of the victim is necessary for her/his safety.

When the investigation reveals a history of acts of domestic violence or use of community based domestic violence program services by the "located" person it is best practice to always seek permission from the recovered person before disclosing their personal identifying information or location.

This practice supports the policy that when domestic violence has occurred, it is more important that the missing person is located and remains safe than to collect identifying information about her or his physical location. Disclosing the victim's location may contribute to the victim's (and children's) exposure to further abuse and isolation from support and resources.

4. Protecting the recovered person's personal identifying information and location:

It is a critical part of safety planning strategies for victims of domestic violence to be able to rely upon law enforcement's ability preserve their confidentiality and not disclose their location if desired.

- In order to ensure the limited release of information, law enforcement agencies should develop a procedure for the report writing process that addresses the non-disclosure of the recovered persons' personal identifying information and location. (RCW 42.56.240)
- Each law enforcement agency should review or establish a policy for regarding public information disclosure and records request procedures to ensure that information related to a voluntarily missing person, such as her or his location, remains confidential. (RCW 42.56.240).

5. Communication of policy to the community-based domestic violence program:

Law enforcement should make every effort to meet with the community based domestic violence programs in their area to discuss and review this policy.

6. Misuse of access to reports, records, or other information:

The agency shall follow its existing policies and disciplinary procedures regarding misuse or unauthorized access to information regarding missing persons that may be the victims of domestic violence and seeking services from community based domestic violence programs as discussed in this model policy.

*** Please note that the law enforcement model policy is a draft and has not been formally adopted by the Washington Association of Sheriffs and Police Chiefs. For questions regarding WASPC adoption of the draft model policy, please contact Joanna Arlow, Policy Director, WASPC, 360-486-2401 (v) or jarlow@waspc.org . For questions about your local law enforcement agency's practices, please contact the agency in your community.*

Police Intervention
Domestic Violence Services of Benton & Franklin Counties

Responsibility:

It is the responsibility of advocates to know how to respond to Law Enforcement (LE) intervention in the shelter environment.

Procedure:

1. Any time Law Enforcement makes contact with the shelter, either via phone or in-person, the Shelter Manager should be notified immediately. If unable to reach the Shelter Manager, attempt to contact the Program Director or Executive Director.
2. The Shelter Manager is then responsible for informing the Program Director and Executive Director.
3. Complete and provide an Incident Report (found in file caddy on large file cabinet in office) to the Shelter Manager for review, by placing report in Shelter Manager's in-box (on top of large file cabinet in office.)

Police bring a client to the shelter:

- If LE is bringing a client into the shelter, they are to meet staff at _____, as we would any other client. Law Enforcement is not to bring a client directly to the shelter. If LE brings a client into the shelter, the client should sign the Law Enforcement Referred Release of Information to clearly define what information she does or does not want shared with Law Enforcement, Prosecution and any systems advocates.

Police trying to get information on a client / Police trying to contact client:

- If LE call or come by the shelter trying to find a client, staff shall maintain confidentiality by neither confirming nor denying that a client is in the shelter or has ever received services from the agency, unless the client has signed an Release of Information (ROI) allowing staff to do so. Even with an ROI staff will be very cautious to share only the information the client consented to share and nothing additional.
- If the client is in the shelter, staff will inform her that LE is trying to contact her or find out information about her, and will encourage the client to contact LE directly if the client feels safe and comfortable enough to. Staff will work with the client to problem solve about the pros and risks of contacting LE directly. Staff will also inform client of the risk of files being subpoenaed and agency procedures for handling subpoenas.

Police serving a warrant on client / Police serving a search warrant on the shelter, or a vehicle or area on shelter property:

- If LE attempts to serve a warrant at the shelter, DO NOT ACCEPT WARRANT. Do not allow Law Enforcement to enter the shelter. Anyone attempting to serve a warrant should be referred to the Shelter Manager or other supervisors. Provide the cell phone numbers for the immediate supervisor.
- Immediately notify Shelter Manager, Program Director or Executive Director via cell phone that service of warrant was attempted. The Executive Director or Program Director must be notified of all attempts to serve warrant. Shelter Manager, Program Director and/or Executive Director will work to ensure that Law Enforcement understands the laws protecting the confidentiality of victims of domestic violence.
- Complete an incident report regarding the attempted service. Document the time, date, location, any information about the person attempting to make service, and statement on how situation was handled.

Police dispatched for an emergency response:

- If there is not an emergent situation or the situation is under control and law enforcement assistance is not needed staff will inform LE as such and thank LE for their concern and timely response. If LE insists on having access to the shelter to assess the situation, staff will explain that because the shelter is confidential we cannot allow access and let him/her know they can call the Shelter Manager or Program Director if further assistance or clarification is needed.
- If LE assistance is needed, access will be provided. Contact the Shelter Manager or a supervisor immediately.

If a client allows Police access to the shelter:

- Staff will inform LE that due to confidentiality the officer needs to step back outside. Address issue as you would in above scenarios.
- If the officer refuses, ask him/her to step into the staff office and contact the Shelter Manager or a supervisor immediately, and let the officer know he/she will need to wait to speak to a supervisor.

Request for police response:

- In an emergency situation, if staff needs to call the police - dial 911.
- Be prepared to provide the EXACT location, description, and address to the dispatcher – **ask dispatch not to relay the address or location of the shelter over the radio!** If safe to do so, stay on the phone with the 911 dispatcher until help arrives.

If another client contacts police:

Staff has no control over whether another client breaks confidentiality. Even when it has been revealed to law enforcement that a client may be at the shelter, even if a crime was allegedly committed at the shelter, staff will follow policy regarding how to handle police trying to get information on a client or trying to contact a client at the shelter.

Please do not reprint or adapt without permission of Domestic Violence Services of Benton & Franklin County, Contact Erinn Gailey at (509) 735-1295 (v) or erinn.g@dvsbf.org