

Final Sent Via GTWO 10/5/09 as Recommended Guidelines and Training Materials Model Policy for Law Enforcement Interaction with Community Based Domestic Violence Programs During Missing Persons Investigations¹

Policy Purpose:

This policy establishes best practice principles for law enforcement investigating missing persons who may also be victims of domestic violence and who may be using the services of community based domestic violence programs.² It outlines what law enforcement can expect when requesting the disclosure of information from community based domestic violence programs, such as shelters, and provides guidelines for interaction with those programs as law enforcement works to investigate and close missing persons cases.

The model policy is intended to improve public safety by strengthening relationships between law enforcement and community based domestic violence programs. It is intended that the development and publication of these documents will improve communication and foster mutual understanding about each others' policies and the current law regarding missing persons' investigations and domestic violence victims using community based services.

General Policy Statement

When a missing persons investigation indicates a possible history of domestic violence, it is part of a prudent investigation to explore a person's possible connection to community-based domestic violence program using the guidelines contained in this model policy. This policy is intended to supplement and not replace an agency's existing missing person's investigation policy and procedures.

Additionally, law enforcement should be familiar with the laws, policies and practices regarding the release of information and confidentiality obligations of community based domestic violence organizations when investigating a missing person's case. Statutory obligations under both the RCW and the WAC provide guidance to community based domestic violence programs regarding the release of information from their program participants. Written guidelines have recently been created that explain what law enforcement should expect from community based domestic violence programs when contacting them for information in a missing person's investigation. The guidelines also articulate concerns both community based organizations and victims of domestic violence might have in communicating with law enforcement in missing person's cases. Victims and organizations may articulate an adult's desire to keep their location unknown and that in specific circumstances in a domestic violence context keeping the location of the victim/missing person undisclosed, even to law enforcement, is necessary for her/his safety. See Appendix A.

¹ In the Spring of 2009, pursuant to a directive from the Washington State Department of Social and Health Services, the Washington State Coalition Against Domestic Violence (WSCADV) and the Washington Association of Sheriffs and Police Chiefs chaired a workgroup to create draft guidelines that address law enforcement practices when requesting information from a community based domestic violence program in missing persons cases. The policies also were to address community program obligations and practices under the privilege and confidentiality laws. The workgroup included representatives of law enforcement and advocates from community based domestic violence programs. The WSCADV distributed the work products of that workgroup in June 2009, which included "Draft Model Policy: Law Enforcement Investigations Involving Missing People and Community Based Domestic Violence Programs" and a booklet of information for community-based organizations regarding best practices for responding to law enforcement requests for information in missing persons investigations. See Appendix A and B.

Terms:

The following definitions are based on Washington statutes and administrative codes. In addition to the RCW and the WAC, some definitions have been expanded for clarity and understanding. Verbatim 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 and may be due to one or more of the unusual circumstances.

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 Violence³:

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.

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

³ 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.

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)

7. 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 in order receive program services. Community based programs’ policies regarding if or when such release may be requested of a victim will vary..

“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:

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

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 or has recently sought 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 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 inquire whether the person sought has provided the community based organization with a release of information permitting the organization to tell law enforcement whether or not she is using/has used services and/or is voluntarily missing. 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 without that release of information.

Law enforcement representatives should expect that obtaining the release of information, if any, may not be provided immediately but may be provided within a reasonable amount of time. 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. Whether or not the organization communicates that the person sought is using services or has a release of information, law enforcement should explain why a release of information may be helpful to both law enforcement and the victim. For example, having a release of information that leads to law enforcement discovering the person is safe and missing voluntarily will assist in the closing of the investigation.

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 articulated in a release of information.. However, law enforcement should discuss the benefits of having a release of information such as permitting law enforcement to identify that the person has been located, is safe or voluntarily missing and that the case can be then be closed.

3. Upon locating a missing person:

Law enforcement should follow agency policy regarding missing person's investigation requirements before classifying the missing person as "located."

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

location to a third party. This includes, for example, release of information to the citizen who originated the missing person report. Maintaining the safety of the located person should be paramount to providing third parties with identifying information about the missing person's location, as disclosure of 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 confidentiality of information regarding the location of a missing person if he or she has expressed the desire that such information not be disseminated beyond what is necessary for the agency to close the missing person's case..

In order to ensure the appropriate limited release of information as requested by a victim or otherwise deemed necessary or appropriate, law enforcement agencies should adopt written procedures for completing a missing person's report that addresses disclosure of the recovered persons' personal identifying information and location. (RCW 42.56.240). These procedures should comport with and compliment existing policies and procedures regarding public information disclosure and records requests (RCW 42.56.240).

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

If adopted, law enforcement should communicate with community based domestic violence programs in their area to discuss and review this model policy or any policies related to missing persons who may be domestic violence victims utilizing services in the community.

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

An agency shall follow its existing policies and disciplinary procedures regarding misuse or unauthorized access to information regarding missing persons that maybe victims of domestic violence and who are seeking services from community based domestic violence programs..