CONFIDENTIALITY
& INFORMATION SHARING ISSUES

FOR DOMESTIC VIOLENCE ADVOCATES
WORKING WITH CHILD PROTECTION
AND JUVENILE COURT SYSTEMS

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end abuse
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ABOUT THIS PAPER

The Greenbook[1] National Technical Assistance Team is led by the National Council of Juvenile and Family Court Judges in collaboration with the Family Violence Prevention Fund and the American Public Human Services Association. During the past two years, advocates at the Greenbook Demonstration Sites have consistently requested guidance regarding confidentiality, mandated reporting, and other information sharing issues. The production of this paper is part of the technical assistance provided by the Team to advocates in those sites.

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[1] "Greenbook" refers to the publication, *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice, Recommendations from the National Council of Juvenile and Family Court Judges, Family Violence Department*, by Susan Schechter and Jeff Edleson, 1998.

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I. INTRODUCTION

Shari has two young children and a partner who beats her. The police called CPS (Child Protection Services) the last time they were at the house because one of the kids got hurt during the fight. Shari, afraid of her partner and afraid CPS will take her children, calls the domestic violence program for help. You (an advocate) help her get a protective order that evicts her partner. CPS believes as long as Shari's partner is out of the house the children will be safe. So, they leave the case open but don't remove the children.

Shari calls you every few days, sometimes with questions and sometimes just to talk. You're the first person she's ever trusted enough to talk about the abuse. One day she calls and it is clear to you that she is drunk. She tells you, "it's just too hard alone. When he showed up last night, I let him in."

What will you do with the information Shari just shared with you? Listen and offer support? Try to respond to the safety issues and alcohol use? Ask about the kids? Write down what you learn? Tell CPS? What you decide is likely to have a huge impact on Shari's life, her children, your future advocacy with her and how you feel about the work you do. Your decision will also determine whether or not you comply with legal requirements in your state.

For advocates to be effective, they need to what to do with information, when to share it, how to share it, and with whom to share it. This paper uses the phrase "information sharing" to describe the range of information-related issues advocates face when working with CPS and Juvenile Court. Protecting battered women's and children's privacy, supporting a woman's right to control information about her family, asserting confidentiality and other legal protections, and meeting mandated reporting requirements are all part of the broad category of "information sharing" issues.

Neither the law nor advocacy practice alone will provide the necessary guidance for decisions about confidentiality and information sharing. A number of factors affect such decisions, including:

- how battered women want the information used;
- the level of danger for the children and for their mother;
- domestic violence agency procedures and advocacy practice;
- legal requirements;
- consideration of the consequences of disclosure or non-disclosure for battered women and their children;
- protocols for coordination between the domestic violence agency and CPS;
- professional ethical standards; and
- in some cases, juvenile court rules and practice.

This list makes clear that there can be strong policy and practice tensions between protecting information and disclosing information.

However, the decision is not always difficult. In many cases, battered women will permit advocates to disclose information because they understand it is a necessary part of advocacy. The most challenging issues arise when a woman does not give her permission to disclose information and the advocate has a separate legal or ethical obligation to do so (such as in cases of child abuse) and when the domestic violence agency, CPS, or the courts are unclear about information sharing protocols and practice or the laws governing information and confidentiality.

This paper explains basic advocacy practice and legal concepts related to information sharing and provides a framework for making decisions about how to handle and use information when working with women involved in the child protection or juvenile court systems.

II. OVERVIEW OF ADVOCACY AND LEGAL CONCEPTS RELATED TO INFORMATION SHARING

A. ADVOCACY CONTEXT

Many battered women are raising children. Like most mothers, they try to provide the emotional and physical support that their children need. Unlike most mothers, however, they face the violence and control of an abusive partner. Domestic violence affects a battered mother's options and decisions, and so do her concerns for her children. Children are often the primary consideration in the decision-making process of battered women, and many women craft safety plans around their children's needs. Consequently, children are central to advocacy and safety planning with women.

Some battered women leave their relationships to protect their children and then must face the financial, legal, and emotional consequences. Other women make a different decision and endure years of violence to give their children a home with a father and a better chance at having the material things that they need. Of course, staying also has its price: mother and children will have to cope with the violence and its effects. The violence is different in each family and so is the aftermath. For some battered women the impact is minimal and for others the harm is extensive and devastating. Children also face a range of consequences, with some coping fairly well and others seriously injured and traumatized.[2] Battered women benefit from the skill, knowledge and resources of advocates. The children of battered women also need the know-how and commitment of domestic violence advocates.

Advocates know that integrating children's needs into their mother's safety plan is often the best way to protect children and help women. However, even with this strategy, the children of some battered women will still be at risk and may require separate interventions for a variety of reasons: sometimes their mother does not understand what is happening to them; sometimes the mother's situation is so dire that she has no real choice at all (e.g. the "choice" of living with an abusive partner or becoming homeless and having no income); and sometimes children are at risk because their mothers are assaulting them or neglecting them because of serious substance abuse or mental illness. Each of these circumstances calls for careful assessment and a distinctly different response, some of which will include the child protection and juvenile court systems. Domestic violence advocates concerned with the interests of adult and child victims can ensure those assessments are informed and help to develop individualized responses that increase women's safety and financial stability and promote their children's well-being. This is part of the work to end domestic violence.[3]

[2] Edleson, J.L. (2001) Problems Associated with Children's Witnessing of Domestic Violence, for VAWnet. http://www.vaw.umn.edu/ccp.asp

[3] Some of the concepts and language in this section were taken from *Policy Blueprint on Domestic Violence and Poverty*, Davies, J., Building Comprehensive Solutions to Domestic Violence Initiative, National Resource Center on Domestic Violence, 2002.

B. ADVOCACY APPROACH

Although each domestic violence agency may have its own policies about confidentiality and information sharing, most programs follow a "basic rule." The basic rule is:

> *A client's information is not shared outside the agency unless the client gives the agency permission to do so.*

The basic rule reflects three important goals of domestic violence advocacy:

1. Preserve safety strategies that rely on certain information remaining private. For example, ensuring an abusive partner does not find out where the woman and her children are staying.

2. Provide the privacy necessary for women to talk freely with advocates and share details that will be essential to planning for safety. For example, a woman struggling with addiction will need safety strategies that support her staying clean and sober.

3. Place control of the information in the woman's hands and demonstrate advocates' commitment to women's autonomy and self-determination.

   This goal is both philosophical and practical. Philosophically, it reflects core values of many advocates and practically it is the "antidote" to the pattern of coercive control that is domestic violence. When battered women make decisions about information, their options, and their children and work with an advocate to guide and define the advocacy, they are exerting independence from a violent and controlling partner.

Most programs have exceptions to the basic rule. The most common is that information about the abuse or neglect of a child that requires a mandated report will be disclosed to CPS with or without the client's permission.

Of course, protecting information is only one part of advocacy. Effective advocates must both keep information private and share it. Battered women's safety plans often include sharing information, disclosing details about the violence and abuse, and talking about the impact on their children. They need advocates to help them ensure that the information provided to systems accurately reflects their circumstances, is understood, protected from further disclosure, and that the system's response matches their need. Because this advocacy is so helpful, many battered women will give advocates permission to disclose the information necessary to do this work.

C. LEGAL CONCEPTS

Advocates could simply follow the "basic rule" (no disclosure without permission) if it weren't for laws that determine how certain information must be handled. The law and legal system change the "basic rule." Laws can require disclosure (mandated reporting and subpoenas), prohibit disclosure (confidentiality laws), and protect information that would otherwise have to be disclosed (privileged communications). As with other legal issues, the law regarding information sharing is complicated by multiple state (and sometimes federal) laws and regulations.

Three types of laws important to information sharing are confidentiality, privileged communications, and mandated reporting. These laws are connected and because each has a particular purpose, they will at times conflict. The descriptions below are intended to provide advocates with general information. The law will be different in each state.

CONFIDENTIALITY LAWS

The principal purpose of confidentiality laws is to protect a person's privacy. Generally, confidentiality laws state that certain information should not be disclosed without permission. For example, a law might state that HIV information is confidential. If a battered woman tells an advocate she is HIV positive, the advocate can't disclose that information without her permission. Confidentiality laws that limit the use of information gathered by child protection during an investigation are also common. Confidentiality laws typically have exceptions, for example, reporting child abuse or in certain circumstances providing information to law enforcement investigating an alleged crime.

PRIVILEGED COMMUNICATION LAWS

Privileged communications laws protect information shared in certain relationships. For example the information shared between a patient and her doctor, a client and her attorney, or a battered women and her domestic violence advocate may be protected. The information shared in these type of relationships is protected by law because it is understood that for a person to get the assistance she needs from such professionals, the client must feel comfortable and be able to speak openly and freely. Privileged communications laws also have exceptions and there may be circumstances when a judge would require an advocate to disclose information without the battered woman's permission.

MANDATED REPORTING LAWS

Mandated reporting laws try to protect an abused or neglected person who may be unable to ask for help on her own, such as a child, elder, or person with disabilities by requiring certain people to inform proper authorities if they believe a protected person is being abused, neglected, or exploited.

The law provides guidance but not always the answer in a particular information sharing decision. For example, Shari's advocate has to apply the law to Shari's situation. The law mandates reporting if Shari's children are abused or neglected, but the advocate must decide if the information she has about Shari's drinking and letting her partner into the house constitutes "abuse" and/or "neglect."

III. FRAMEWORK FOR EFFECTIVE INFORMATION SHARING POLICY AND PRACTICE

As advocates struggle to develop information sharing policies and practices to encompass work with battered women and children in the child protection and juvenile court systems, it is important to consider agency policy issues and interagency protocols as well as internal practices. Implementation of constructive procedures can support battered women, protect children and help advocates respond in a particular situation when they face tough information sharing decisions. Internal and interagency information sharing protocols that are widely understood will help battered women make decisions about how their information should be used, reduce stress on advocates, and improve advocate credibility and effectiveness with child protection and court systems.

The next section outlines three fundamental steps to establishing a domestic violence agency information sharing policy. Section B provides a discussion of legal considerations, and a framework for supporting effective internal agency practice is provided in section C.

A. DEVELOPING EFFECTIVE INFORMATION SHARING POLICY

1. DEFINE HOW THE AGENCY WILL PROTECT THE CHILDREN OF BATTERED WOMEN AND WHAT ADVOCACY IT WILL PROVIDE.

There are wide ranging views about the domestic violence advocate's role in protecting children and it is important not to assume consensus regarding a particular position. Personal views and experience of advocates on staff may be very different from the agency position. Therefore, it is important to begin the policy process with an internal conversation among agency advocates and administrators. The use of hypothetical case examples, a structured conversation, and use of an outside facilitator can help ensure a constructive exchange of perspectives.

Exploration of a domestic violence agency's role might include consideration of the following questions:

- What services and advocacy does the agency provide children?
- Does the agency work directly with children or is most of the help provided indirectly by advocacy with their mother? How might advocates work with mothers and children together?
- If advocates work with children who need help what does the agency provide? What advocacy and services would the agency like to be able to offer?
- How will the agency determine if a child is in danger? If a child is in immediate danger, how will the agency respond? What will the agency do beyond compliance with mandated reporting requirements?
- How will the agency support battered mother's protection and parenting of their children? What resources could the agency offer to assist battered women in their role as mothers?
- How will cultural considerations change the agency's advocacy?

For example, how will the agency ensure that a mother's parenting skills are assessed accurately and are not skewed by racial or ethnic bias?

- What advocacy role will the agency play with CPS? For the mother? For the child? What will that advocacy look like? What role would battered mothers like the agency to play?
- If battered women want advocates to collaborate on case planning or CPS services will the agency offer this assistance? How does the agency respond to battered women who are seeking services and are already involved with CPS and/or juvenile court?
- Do advocates routinely ask women and/or children if they want advocacy with CPS or juvenile court? Are advocates allowed the time and support to provide it?
- How will the agency include battered women's needs and perspectives about CPS and juvenile court in the process to develop policy? How will the agency include the needs and perspectives of battered women's children?

Make sure to talk about situations when the mother's interests and the children's interests are different or even conflict. For example, a battered mother and her two young girls are in your shelter. The oldest child has a scar on her cheek from a broken glass thrown at her mother by an abusive boyfriend. You observe that the mother rarely interacts with her children or attends to their food or hygiene needs unless strongly encouraged to do so by staff. She tells you she's just staying in shelter long enough for you to help her "get CPS off her back." Will your agency limit its advocacy to the mother's articulated interests (to get rid of CPS)? How might advocates help the woman meet her children's needs when shelter staff are no longer there to encourage her? What advocacy will the agency provide the children? Must the agency choose between the mother and her children or can advocates work for them all?

Some domestic violence agencies use a "law firm" approach to advocacy. Lawyers and law firms are ethically prohibited from advocacy for one person that would be in conflict with a current or former client's interest. Unless the agency is actually representing women and practicing law, it might consider approaching work with a battered mother and her children as a community agency rather than a law firm. Community agencies often acknowledge and help members of a family with different interests, such as parents and their children. Ethical and practical challenges remain, but do not limit advocacy to only one family member.

After an internal exploration of the agency's role in protecting children, it is important to expand the conversation to include battered women, funders, and community and collaborative partners. Depending on the available time, resources, and how comfortable staff feel about discussing these issues externally, the conversation with others may be very candid and extensive or quite brief. Minimally, it is essential that the agency convey the role it will play to protect children and their mothers.

2. DETERMINE WHAT INFORMATION ADVOCATES NEED TO OBTAIN AND WHAT INFORMATION ADVOCATES NEED TO SHARE IN ORDER TO FULFILL THE ROLE THE AGENCY HAS DEFINED.

Generally, the broader the role the more information advocates need to have and to share. For example, if the agency has decided to identify children's needs, provide services to meet those needs, and to offer the advocacy with CPS and other systems that battered women request, then advocates will be gathering and sharing information with a variety of sources. The following are some of the questions to consider:

- What information will advocates need from battered women about their children? About their CPS and/or juvenile court involvement? What information will advocates need from children (depending on their age)?, Or even from abusive partners if the agency is also working with them?

- What information do battered women want from advocates? What information do children want from advocates?

- What advocacy with juvenile court do battered women and their children want? What information will advocates need to share with the court to provide that advocacy? What information from juvenile court would strengthen advocacy with battered women and children?

- What advocacy with CPS do battered women and their children want? What information from CPS would strengthen advocacy with battered women and their children? For example, it can be helpful for advocates working with a battered mother and her children to understand what is in the CPS service plan for that family. What information will advocates need to share with CPS to provide the advocacy that battered women and children want? For example, a battered woman wants you to help convince CPS that she has the services in place to keep her and her children safe. To provide this advocacy with many CPS workers, you'll need the woman's permission to disclose at least some of the details of her safety plan.

- Are there policy issues beyond information sharing?

  For example, if you find yourself saying, no matter what role the agency defined, that "we're afraid to tell them (CPS) anything because they'll probably either ignore it or use it against her" then the advocacy necessary to help battered women must go beyond information sharing issues. While it may currently help some battered women to withhold information

that might be used in this way, such a blanket policy can make advocates irrelevant in the CPS decision-making process and all but assure the voice and concerns of battered women will be muted. The long-term outlook for battered women and their children is bleak if the best advocacy strategy is to keep the reality and context of domestic violence a secret.

Systemic advocacy has always been a part of domestic violence work. If the CPS response to battered women's information is unhelpful, then policy advocacy must try to change the response not just the amount of information shared. For example, many CPS workers believe that court ordered physical separation of the batterer from the mother and children is the only way to protect the children. If CPS sees this as the only option, then information that the children are exposed to domestic violence —no matter the source— will lead to that response. Advocates know that physical separation may help protect some battered women and their children but may do little for others. Advocates also know that physical separation raises other issues and risks for children and their mothers. No contact might mean the mother loses access to transportation that got her to work and the kids to school and health care or even that she now can't afford the rent or even food.

Advocacy with CPS may be necessary to ensure that there are safety options available beyond the mother's physical separation from an abusive partner and to build collaborative strategies that provide the resources and supports necessary for children and their battered mothers when they do have to separate. Once constructive responses are in place, many of the concerns about information sharing will disappear.

3. DEVELOP AND IMPLEMENT INTERAGENCY PROTOCOLS AND PRACTICES THAT ALLOW ADVOCATES TO GATHER AND SHARE NECESSARY INFORMATION.

Advocates will need to develop and negotiate interagency protocols that reflect their agency's role in protecting children and meet battered women's privacy and safety needs. Protocols must be flexible enough to reflect the range of information sharing battered women and their children might need. Any protocol should be analyzed for its effects on battered women and the children.

The following are some of the questions to consider when developing protocols:

- Under what circumstances will advocates, CPS, or juvenile court request permission from battered women to disclose confidential information?

  For example, advocates might seek permission for disclosure of information to juvenile court when a battered woman asks the advocate to go to court with her and help her explain why the children aren't in danger.

- How will a system receiving information handle that information and ensure that battered women's privacy is maintained? What process will be used to address inappropriate disclosures of information and prevent repeat occurrences?

  In particular, protocols should consider when an abusive partner/ex-partner might get access to the information and include protections for battered women and children. For example, once a case is filed in juvenile court, an abusive partner might have a right to access certain CPS information. If an abusive partner learned the details of a battered woman's safety plan, it could place the children and their mother in danger.

- What forms will be used to obtain battered women's permission for information sharing? When will battered women be asked to sign them? How will the forms be presented to ensure informed consent?

  For example, forms should be in easy to understand format in the woman's primary language and clearly indicate what information is to be disclosed, to whom the information is to be disclosed, and include an expiration date and notice that the battered woman can rescind her permission.

- How will effective implementation of the protocol be assured? What supervision is necessary? What peer support for making difficult decisions regarding information sharing would be helpful? What training do advocates need? What training do CPS and juvenile court staff need? What training do supervisors need?

- How will information be handled if domestic violence advocates are providing analysis and information as part of multi-disciplinary teams or case conferences? Will the discussions include identifying information? How will information that advocates share be used? How will information that advocates gather during the discussions be protected? Who will ensure that the team has permission from the family members involved in the case to discuss confidential information?

- How will CPS and the domestic violence agency respond to situations when a woman and her children are in shelter and CPS needs to contact the woman or her children? For example, a CPS worker may know a woman is in a particular shelter and have a legal responsibility to see the children and assess their situation. What procedures are necessary to assure the safety and privacy of all shelter residents and responsiveness to CPS requests for contact?

B. BASIC LEGAL CONSIDERATIONS

Once the agency defines how it will protect children and their mothers and what information advocates need to gather and share to fulfill that role, the agency will need to explore how the law affects that information sharing. In particular, does the protocol ensure CPS, juvenile court, and domestic violence advocates will comply with confidentiality, privacy, and reporting laws?

1. HOW TO FIND OUT "THE LAW"

Determining what laws govern information sharing can be harder than it seems. "The law" is actually multiple rules from different sources which are often complicated and may even conflict with one another. Information and privacy may be governed by federal and state statutes and court interpretations of those statutes. Particular agencies, such as CPS may also have agency rules and regulations providing additional details and procedures. Advocates will need the help of an attorney to interpret how the laws might affect the role and information sharing goals their agency defines.[4] The questions listed in the next section provide an outline of issues to explore with a knowledgeable attorney.

2. WHAT ADVOCATES NEED TO FIND OUT ABOUT INFORMATION SHARING LAWS AND PRACTICE.

A. CONFIDENTIALITY LAWS, REQUIREMENTS, AND PRACTICE

- What information must be kept private by the agency?

  For example, are there laws, regulations, or mandates from funders that require advocates to keep information from victims of violence private? Make sure to check for rules about other types of information advocates might obtain as well, such as HIV status, substance abuse treatment, mental health or other health information.

- What type of permission does a person have to give to allow the information to be released?

  For example, some laws require written permission in a certain format.

- What information must be kept private by CPS? By the juvenile court? Are there exceptions to these laws or requirements?

[4] The Michigan Coalition Against Domestic and Sexual Violence has developed materials and training on information sharing issues. Contact Kathy Hagenian at 517-347-7000 for more information.

CPS gathers all kinds of information about families and children from a variety of sources, some of the information is very personal. The rules and laws requiring that CPS information be kept confidential usually also define when the information can be disclosed, what information can be disclosed and who will have access to CPS files. For example, an attorney representing an abusive father in a child protection case will typically have access to the file. If this is the case, then advocates will need to work with CPS to develop rules to keep information from being disclosed to a batterer that would undermine safety plans for children and their mothers.

- What is the practice? Are the laws and rules generally followed? How do judges affect what information is shared?

  This can be harder to find out because the practice may vary from office to office, worker to worker, or court to court. Keep track of women's experiences with different CPS offices and courts, and gather information from advocates who have worked with them. It will also be helpful to talk directly with CPS or juvenile court staff about how private information is handled and to talk to battered women, attorneys and other community service providers about their experiences.

Judges interpret what laws mean when applied to particular situations and cases. Judges have the authority to order that certain information be kept private or that certain information be shared. For example, a judge might order that a particular father who abuses his partner does not have a right to know where his child is currently living. In another case, that same judge might order a domestic violence agency to share its records with the court or with CPS because the children's interests in having the information known overrides the mother's interest in keeping it private. Judge's decisions about information sharing are important considerations when developing inter-agency protocols. In some locations, it can be difficult to predict what will happen to information if CPS takes the case to court.

Uncertainty about how information might be handled by another agency or how legal interpretations might affect disclosure make it difficult to develop information sharing protocols that advocates or battered women can rely on. A knowledgeable attorney can help advocates make an educated assessment of what is likely to occur and this judgment can guide policy development. Informing battered women of uncertainty should be included in the protocol as well as contingency plans for unanticipated disclosures that place women or child at risk. For example, a protocol could require that a battered woman is notified of a court ordered disclosure before that information is actually shared.

B. PRIVILEGED COMMUNICATIONS LAWS

Is the information battered women share with agency staff protected? In legal language the question might be, "is there privileged communications between a domestic violence victim and a victim advocate?" Does the privilege apply to agency clients who are children? If the agency has a multi-disciplinary staff are there different rules depending on their field and practice? This question can be more difficult than it appears. For example, your state may protect a battered woman's information if she talks to a licensed social worker but not if she talks to an advocate. If your agency has a staff member who is a licensed social worker, a judge might decide that because the social worker is acting as an advocate there are no protections for the information a battered woman shares with that social worker—staff member.

C. LEGALLY REQUIRED DISCLOSURES

• Mandated reporting

Under what circumstances is reporting child abuse/neglect mandated in your state? When will a child's exposure to domestic violence be considered abuse/neglect? What procedure must be followed to make the report? What information must be reported? What are the legal consequences for failing to make a mandated report? If the agency has a multi-disciplinary staff are there different rules depending on their field and practice? *[For more information, see the discussion on disclosing information without permission.]*

• Subpoenas

In general, a subpoena is a legal document or process that attorneys or judges use to require a person to come to court to testify in a particular case. Subpoenas often also require that the person bring with her any and all records, documents, or notes related to the case.

Who has the authority to activate a subpoena in child protection related cases? What must an agency do to comply with the subpoena? How much advanced notice will an agency receive? Who must actually give/serve the subpoena on the agency? Could the protocol include ways to make the subpoena process easier on the agencies receiving them and ensure enough time for agencies to consult with battered women? (Some battered women will want the advocate/agency to testify/share information and may even, through their attorneys, have initiated the subpoenas.)

• Law enforcement investigations

A police officer comes to the door of a shelter and tells the person answering the door that she and the CPS worker with her are looking for a resident and her children and want to know if she is there. The officer states you'll be arrested for failing to cooperate with an investigation if you don't answer her.

How does law enforcement participate in CPS matters? How might that participation change the protocol? What investigative power does law enforcement have in these cases? At what point in CPS cases might domestic violence agencies have contact with law enforcement? What are a battered woman's rights and the agency staff's rights when law enforcement is involved? How will the agency respond to a situation like the one mentioned above?

C. WORKING TOWARD EFFECTIVE INFORMATION SHARING PRACTICE

For battered women, all the protocols, laws, legal analysis and negotiation will come down to two basic questions: 1) What do I want done with the information I share? 2) How will the advocate I talk to handle the information I share?

For the advocate, the question of what she will do with a particular client's information will depend on what the woman wants her to do with the information, the content, what the information indicates about the children, the woman's safety plan, her agency's policies and practices, and even her own skill, experience, and beliefs about what the woman shares. The hardest questions arise when advocates face legal or ethical guidelines that call for disclosure of information whether or not the woman agrees. Under these circumstances the "basic rule" —A client's information is not shared outside the agency unless the client gives the agency permission to do so – has exceptions and gets more difficult to apply to particular situations.

When developing practice procedures it can be helpful to remember that broad policy positions can differ from effective advocacy with a particular battered woman. For example, an agency's position might be to keep few, if any, written records to ensure written information is never used against battered women. However, that same agency may be working with a particular battered woman who wants the agency to keep extensive documentation of the activities she and her children are participating in, because such records will be convincing evidence for the juvenile court judge who will decide whether or not her children are safe in her care. This is also an example of the importance of having procedures that are flexible enough to meet the diverse information sharing needs of battered women and their children.
Clear agency policies and practices will help inform battered women about what will happen to the information they share and will assist advocates as they make the decision to disclose. The following sections raise key considerations for disclosing information when an agency has permission from the woman to do so and when the agency does not have permission.

1. ESTABLISH AND FOLLOW PROCEDURES FOR DISCLOSING INFORMATION WITH PERMISSION.

- HOW WILL THE AGENCY ENSURE THAT WOMEN'S DECISIONS TO DISCLOSE INFORMATION ARE VOLUNTARY AND INFORMED?

Key elements to informed and voluntary disclosure include the following:

- the woman understands what information will be disclosed and for what purpose;
- the process is described in a language easily understood by the woman, either directly by staff or through an interpreter;
- the process is effective for women from different cultures;

For example, an immigrant woman from a country that has no equivalent to CPS will need additional information, and may need additional time, before making a decision.

- the permission is in writing, time limited, and content limited; and
- the woman has access to legal advice from an attorney, particularly if the information will be disclosed in court or be used in a court process.

Children's information: If the agency also gathers information from the woman's child/ren, then the agency will need to get voluntary and informed permission from the mother as the children's legal guardian to disclose that information.[5] This process to obtain permission should be done separately.

- HOW WILL THE AGENCY ENSURE THAT THE INFORMATION THAT IS DISCLOSED IS ACCURATE?

Key elements to disclosing accurate information:

- Report current, up-to-date information whenever possible, and ensure information that is not current is reported as such.

- Report observations or facts and do not include conclusions or judgments in the information that is shared.

[5] There may be some exceptions to this process. For example, if the minor is considered mature enough to make the decision for herself.

It is particularly important not to exceed staff expertise in a particular area, for example, providing a mental health or substance abuse diagnosis when the staff is not clinically trained to do so. However, it is important to remember that an advocate does not need particular training or expertise to provide facts that may be useful, and the lack of certain credentials should not be used as a justification for refusing to provide information.

- Report women's strengths and children's resilience as well as identifying issues and problems.

Advocacy and services sometimes get focused on "fixing problems" or documenting problems so that most of the intake form and other records reflect negative information. This does not provide a complete or accurate picture of the woman's circumstances or the effects on the children. In CPS and juvenile court proceedings it is essential that decisions are based on records, testimony, and/or conversations that accurately reflect what is happening to the children and their mother. Providing a complete view, including strengths and protective factors, might require a significant shift in agency intake and assessment process or record keeping procedures. Staff will need to understand and be able to identify parenting strengths, coping factors, and resilience in order to provide this more accurate documentation.

Minimally, if agencies only document problems, dangers or weaknesses, then the reporting should acknowledge the information is one sided.

- Report only the information the agency has permission to disclose.

Part of protecting women's and children's privacy is ensuring staff do not casually or inadvertently disclose information without permission. This might mean staff keep written information in files, are careful with faxes and email, lock file cabinets, talk to women in locations where no one can overhear them and remind themselves to follow the basic rule (no permission —no information) during conversations with CPS or juvenile court staff.

2. ESTABLISH AND FOLLOW PROCEDURES FOR DISCLOSING INFORMATION WITHOUT PERMISSION.

These are often difficult decisions that have to be made quickly. No two situations will be the same and sometimes there is no clear "right" answer. Therefore, agencies need to establish a process in order to help advocates make the best decisions they can.

There are a number of circumstances when an agency might disclose information without permission. This discussion will focus on the issue of mandated reporting of child abuse. The following are key elements to developing a decision-making process regarding mandated reporting:

- When is reporting mandated? How does your state define abuse/neglect?
- What process will the agency use to determine if a particular situation meets the legal definition?

It is important to talk about this. Many states have fairly broad definitions of abuse/neglect and that leaves advocates with significant discretion. In addition, there may be a significant difference of opinion between CPS staff and domestic violence advocates about when domestic violence meets the standard. In particular, agencies should be sure to discuss and develop some guidelines for the following two difficult circumstances:

1. The children have witnessed/been exposed to domestic violence but there are no other risk factors (e.g. there is no physical abuse of the children and their basic nutritional, health, and educational needs are met). In what circumstances will the domestic violence agency consider this exposure as abuse/neglect and report it to CPS?

2. As part of a safety plan, agreement with CPS, or court order, the woman and her children are to have no contact with an abusive partner. Advocates learn that there is contact. Will the domestic violence agency consider this abuse/neglect and report it to CPS? Under what circumstances?

- Who in the agency must be involved in the decision to make a mandated report to CPS? Supervisor? Experienced staff member? Liaison with CPS?
- Who will actually complete the report and meet the legal requirements for reporting? How will the agency decide how much information to include in the report? For example, there may be circumstances when providing more information than required may help a battered woman and her children remain together.
- How will the battered woman/children be involved– if at all – in the reporting process?
- How will the agency ensure that the risk assessment and decision to report is objective and accurate for families from all cultures and circumstances?

- What advocacy will the agency offer and provide to the woman and to the children? Will advocacy be provided during the reporting process? During the investigation? During court procedures? Will advocacy be available if the woman loses the children?

- How will the agency ensure the information reported is accurate? [For more information, see discussion about ensuring accurate information in the previous section.]

IV. CONCLUSION

It may feel overwhelming for advocates when they have to make information sharing decisions about children and their mothers involved with CPS and/or the juvenile court. Advocates know that for children, the decision might lead to a safer place to grow up or it might mean they will still be in danger or even that they lose contact with both parents. Advocates also know that for battered mothers, the decision might mean the state intervenes in ways that enhance safety and autonomy from an abusive partner or in ways that limit options and increase danger, and in some cases will lead to the loss of the children. The stakes are high. Advocates will be in the best position to use information in ways that protect children and their battered mothers when they can rely upon carefully crafted protocols that are grounded in sound practice and when their work with systems has generated better responses and more resources.

V: APPENDICES

APPENDIX A: WORKSHEET FOR DEVELOPING EFFECTIVE INFORMATION SHARING POLICY

This worksheet includes the process and questions posed in the paper in a condensed format.

1. DEFINE HOW THE AGENCY WILL PROTECT CHILDREN OF BATTERED WOMEN AND WHAT ADVOCACY IT WILL PROVIDE.

Exploration of a domestic violence agency's role might include consideration of the following questions:

- What services and advocacy does the agency provide children?
- Does the agency work directly with children or is most of the help provided indirectly by advocacy with their mother? How might advocates work with mothers and children together?
- If advocates work with children who need help what does the agency provide? What advocacy and services would the agency like to be able to offer?
- How will the agency determine if a child is in danger? If a child is in immediate danger, how will the agency respond? What will the agency do beyond compliance with mandated reporting requirements?
- How will the agency support battered mother's protection and parenting of their children? What resources could the agency offer to assist battered women in their role as mothers?
- How will cultural considerations change the agency's advocacy? For example, how will the agency ensure that a mother's parenting skills are assessed accurately and are not skewed by racial or ethnic bias?
- What advocacy role will the agency play with CPS? For the mother? For the child? What will that advocacy look like? What role would battered mothers like the agency to play?
- If battered women want advocates to collaborate on case planning or CPS services will the agency offer this assistance? How does the agency respond to battered women who are seeking services and are already involved with CPS and/or juvenile court?
- Do advocates routinely ask women and/or children if they want advocacy with CPS or juvenile court? Are advocates allowed the time and support to provide it?
- How will the agency include battered women's needs and perspectives about CPS and juvenile court in the process to develop policy? How will the agency include the needs and perspectives of battered women's children?

2. DETERMINE WHAT INFORMATION ADVOCATES NEED TO OBTAIN AND WHAT INFORMATION ADVOCATES NEED TO SHARE IN ORDER TO FULFILL THE ROLE THE AGENCY HAS DEFINED.

- What information will advocates need from battered women about their children? About their CPS and/or juvenile court involvement? From children (depending on their age)?, Or even from abusive partners if the agency is also working with them?

- What information do battered women want from advocates? What information do children want from advocates?
- What advocacy with juvenile court do battered women and their children want? What information will advocates need to share with the court to provide that advocacy? What information from juvenile court would strengthen advocacy with battered women and children?
- What advocacy with CPS do battered women and their children want?
- What information from CPS would strengthen advocacy with battered women and their children? What information will advocates need to share with CPS to provide that advocacy?
- What are the policy issues beyond information sharing?

3. DEVELOP AND IMPLEMENT INTERAGENCY PROTOCOLS AND PRACTICES THAT ALLOW ADVOCATES TO GATHER AND SHARE NECESSARY INFORMATION.

The following are some of the questions to consider when developing protocols:

- Under what circumstances will advocates, CPS, or juvenile court request permission from battered women to disclose confidential information?
- How will a system receiving information handle that information and ensure that battered women's privacy is maintained? What process will be used to address inappropriate disclosures of information and prevent repeat occurrences?
- What forms will be used to obtain battered women's permission for information sharing? When will battered women be asked to sign them? How will the forms be presented to ensure informed consent?
- How will effective implementation of the protocol be assured? What supervision is necessary? What peer support for making difficult decisions regarding information sharing would be helpful? What training do advocates need? What training do CPS and juvenile court staff need? What training do supervisors need?
- How will information be handled if domestic violence advocates are providing analysis and information as part of multi-disciplinary teams or case conferences? Will the discussions include identifying information? How will information that advocates share be used? How will information that advocates gather during the discussions be protected? Who will ensure that the team has permission from the family members involved in the case to discuss confidential information?
- How will CPS and the domestic violence agency respond to situations when a woman and her children are in shelter and CPS needs to contact the woman or her children? What procedures are necessary to assure the safety and privacy of all shelter residents and responsiveness to CPS requests for contact?

APPENDIX B
WORKSHEET FOR BASIC LEGAL CONSIDERATIONS

This worksheet includes the process and questions posed in the paper in a condensed format.

WHAT ADVOCATES NEED TO FIND OUT ABOUT INFORMATION SHARING LAWS AND PRACTICE.

A. CONFIDENTIALITY LAWS, REQUIREMENTS, AND PRACTICE

- What information must be kept private by the agency?
- What type of permission does a person have to give to allow the information to be released?
- What information must be kept private by CPS? By the juvenile court? Are there exceptions to these laws or requirements?
- What is the practice ? Are the laws and rules generally followed? How do judges affect what information is shared?

B. PRIVILEGED COMMUNICATIONS LAWS

- Is the information battered women share with agency staff protected? In legal language the question might be, "is there privileged communications between a domestic violence victim and a victim advocate?"
- Does the privilege apply to agency clients who are children?
- If the agency has a multi-disciplinary staff are there different rules depending on their field and practice?

C. LEGALLY REQUIRED DISCLOSURES

- Mandated reporting
- Under what circumstances is reporting child abuse/neglect mandated in your state? When will a child's exposure to domestic violence be considered abuse/neglect?
- What procedure must be followed to make the report? What information must be reported?
- What are the legal consequences for failing to make a mandated report?
- If the agency has a multi-disciplinary staff are there different rules depending on their field and practice?

- Subpoenas
- Who has the authority to activate a subpoena in child protection related cases?
- What must an agency do to comply with the subpoena?
- How much advanced notice will an agency receive?
- Who must actually give/serve the subpoena on the agency?
- Could the protocol include ways to make the subpoena process easier on the agencies receiving them and ensure enough time for agencies to consult with battered women?

(Some battered women will want the advocate/agency to testify/share information and may even, through their attorneys, have initiated the subpoenas.)

- Law enforcement investigations
- How does law enforcement participate in CPS matters?
- How might that participation change the protocol?
- What investigative power does law enforcement have in these cases?
- At what point in CPS cases might domestic violence agencies have contact with law enforcement?
- What are a battered woman's rights and the agency staff's rights when law enforcement is involved?

APPENDIX C
WORKSHEET FOR EFFECTIVE INFORMATION SHARING PRACTICE

This worksheet includes the process and questions posed in the paper in a condensed format.

FOR BATTERED WOMEN, ALL THE PROTOCOLS, LAWS, LEGAL ANALYSIS AND NEGOTIATION WILL COME DOWN TO TWO BASIC QUESTIONS:

1) What do I want done with the information I share?
2) How will the advocate I talk to handle the information I share?

1. ESTABLISH AND FOLLOW PROCEDURES FOR DISCLOSING INFORMATION WITH PERMISSION.

- HOW WILL THE AGENCY ENSURE THAT WOMEN'S DECISIONS TO DISCLOSE INFORMATION IS VOLUNTARY AND INFORMED?

  Key elements to informed and voluntary disclosure include the following:

- the woman understands what information will be disclosed and for what purpose;
- the process is described in a language easily understood by the woman, either directly by staff or through an interpreter;
- the process is effective for women from different cultures;
- the permission is in writing, time limited, and content limited; and
- the woman has access to legal advice from an attorney, particularly if the information will be disclosed in court or be used in a court process.

  Children's information: If the agency also gathers information from the woman's child/ren, then the agency will need to get voluntary and informed permission from her as the children's legal guardian to disclose that information. This process to obtain permission should be done separately.

- HOW WILL THE AGENCY ENSURE THAT THE INFORMATION THAT IS DISCLOSED IS ACCURATE?

  Key elements to disclosing accurate information:

- Report current, up-to-date information whenever possible, and ensure information that is not current is reported as such.
- Report observations or facts and do not include conclusions or judgments in the information that is shared.
- Report women's strengths and children's resilience as well as identifying issues and problems.

- Report only the information the agency has permission to disclose.

2. ESTABLISH AND FOLLOW PROCEDURES FOR DISCLOSING INFORMATION WITHOUT PERMISSION.

The following are key elements to developing a decision-making process regarding mandated reporting of child abuse/neglect:

- When is reporting mandated? How does your state define abuse/neglect?
- What process will the agency use to determine if a particular situation meets the legal definition?

  In particular, agencies should be sure to discuss and develop some guidelines for the following two difficult circumstances:

  1. The children have witnessed/been exposed to domestic violence but there are no other risk factors (e.g. there is no physical abuse of the children and their basic nutritional, health, and educational needs are met). In what circumstances will the domestic violence agency consider this abuse/neglect and report it to CPS?

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- How will the agency ensure that the risk assessment and decision to report is objective and accurate for families from all cultures and circumstances?
- What advocacy will the agency offer and provide to the woman and to the children? Will advocacy be provided during the reporting process? During the investigation? During court procedures? Will advocacy be available if she loses the children?
- How will the agency ensure the information reported is accurate?

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