

# CONFIDENTIALITY QUICK GUIDE

## FOR LAW ENFORCEMENT

As a result of state and federal laws, domestic violence advocates have very strict and specific duties to protect the identity of the victims they serve. So that they don't violate these duties an advocate's typical response to law enforcement inquiries is "I can neither confirm or deny the presence of the person you are asking about in our shelter/program." These confidentiality duties also prevent advocates from sharing any program files or records, which contain a victim's personal information, without a valid release of information. These duties of confidentiality are not shared by law enforcement and this difference can lead to unnecessary conflict between providers and law enforcement that may undermine victim safety and service coordination.



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# Collaborate Communicate Connect Coalition Coordinate

## RECOMMENDATIONS

The New Mexico Confidentiality Task Force recommends the following approaches to reducing conflict and promoting good working relationships between law enforcement and domestic violence service providers:

- ❑ Understand the legal constraints which prevent advocates from disclosing the information you are asking for.
- ❑ Obtain a search warrant if you want to serve an arrest warrant on someone you believe may be in shelter. [NMSA Section 30-22-2.1]
- ❑ Give program staff an opportunity prior to execution of a warrant to surrender the person or things sought.
- ❑ Find non-intrusive ways to get the confidential information you are trying to get such as leaving your business card with the provider and requesting that the victim contact you him or herself, or pursuing other sources of information.
- ❑ Encourage cross training to understand the different roles and responsibilities of law enforcement and advocates.
- ❑ Build interagency practices and policies around challenging situations, such as service of warrants and missing persons.

## STATUTES

The following federal and state laws instruct the policies and procedures of domestic violence service providers *(for more in depth discussion see the Confidentiality Manual, available through the New Mexico Coalition Against Domestic Violence):*

- ❑ Federal law, the Violence Against Women Act (VAWA) forbids its grantees and sub-grantees from disclosing, revealing or releasing any personally identifying information or individual information (including the location of the victim) collected in connection with providing services utilized, or denied through their programs.
- ❑ VAWA limits the information that domestic violence programs may share with anyone, including law enforcement, to:
  - **non-personally identifying aggregate data regarding services to their clients** (i.e. number of clients served in a year)
  - **non-personally identifying demographic information** (i.e. number of clients between ages of 40 and 50)
- ❑ Under VAWA there are only two situations, statutorily required reports of child abuse and neglect and valid court orders, which might mandate disclosure of confidential information.
- ❑ VAWA permits the sharing of information **generated by outside agencies** such as courts (i.e. court orders), law enforcement (i.e. police reports) or prosecution. This permits law enforcement to share information but does not permit domestic violence agencies to disclose confidential client information to law enforcement.
- ❑ The New Mexico Victim Counselor Confidentiality Act protects confidential communications between a domestic violence victim and advocate and the identification of the domestic violence program.
- ❑ Prior to attempting to serve an arrest warrant within a domestic violence safe house or shelter, a law enforcement officer shall obtain a valid search warrant, unless exigent circumstances exist necessitating immediate entry. [NMSA Section 30-22-2.1 B]

## CHARGING AN OFFENDER - HOUSEHOLD MEMBER DEFINED BY 30-3-11 (as of July 1, 2010)

HOUSEHOLD MEMBERS	NON HOUSEHOLD MEMBERS
<p>May arrest <b>without a warrant</b> if victim is:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Married couple/Divorced couple</li> <li><input type="checkbox"/> Current or former Boyfriend or Girlfriend</li> <li><input type="checkbox"/> Parents or Co-Parent (child in common)</li> <li><input type="checkbox"/> Present or Former Step-Parent</li> <li><input type="checkbox"/> Present or Former Mother-in-Law or Father-in-Law</li> <li><input type="checkbox"/> Grandparent or Grandparent-in-Law</li> </ul> <p>*Continuing personal Relationship (dating or intimate) *Living together not required</p> <p>Charge Under DV Statutes Example: Battery Against a Household Member 30-3-15 Warrantless Arrest 31-1-7</p>	<p>May arrest if victim is:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Brother/Sister</li> <li><input type="checkbox"/> Cousin</li> <li><input type="checkbox"/> Aunt/Uncle</li> <li><input type="checkbox"/> Niece/Nephew</li> <li><input type="checkbox"/> Current or Former Sibling-in-Law</li> <li><input type="checkbox"/> Current or Former Step-Grandparent</li> <li><input type="checkbox"/> Current or Former Brother-in-Law/Sister-in-Law</li> <li><input type="checkbox"/> Minor or Adult Children</li> </ul> <p>Charge Under Non DV Statutes Only Example: Battery (Non-HHM) 30-3-4 Arrest pursuant to Domestic Violence 31-1-7 in the body of the complaint only.</p>

**PC and Exigent Circumstances:** Is the arrest reasonably necessary to protect the victim from further abuse? If yes, then arrest. If no, issue summons. Either way, document the incident.

**DV Arrests:** Arrest can only be made on Assault Against HHM or Battery Against HHM. Must have Assault/Battery HHM charge first to arrest under other charges (telephone harassment, criminal damage, etc.).

## OBTAINING AN ORDER OF PROTECTION - HOUSEHOLD MEMBER DEFINED BY FAMILY VIOLENCE PROTECTION ACT 40-13-1

DV ORDER OF PROTECTION	CIVIL RESTRAINING ORDER (Information report only)
<ul style="list-style-type: none"> <li><input type="checkbox"/> Married couples/Divorced couples</li> <li><input type="checkbox"/> Current or former Boyfriend or Girlfriend</li> <li><input type="checkbox"/> Parents or Co-Parent (child in common)</li> <li><input type="checkbox"/> Present or Former Step-Parent</li> <li><input type="checkbox"/> Present or Former Mother-in-Law or Father-in-Law</li> <li><input type="checkbox"/> Grandparent or Grandparent-in-Law</li> <li><input type="checkbox"/> Child, Step Child, Grandchild</li> </ul> <p>*Continuing personal Relationship (dating or intimate) *Any stalking victim, regardless of relationship (HHM or non-HHM) *Any sexual assault victim, regardless of relationship (HHM or non-HHM)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Brother/Sister</li> <li><input type="checkbox"/> Cousin</li> <li><input type="checkbox"/> Aunt/Uncle</li> <li><input type="checkbox"/> Niece/Nephew</li> <li><input type="checkbox"/> Current or Former Sibling-in-Law</li> <li><input type="checkbox"/> Current or Former Step-Grandparent</li> <li><input type="checkbox"/> Current or Former Brother-in-Law/Sister-in-Law</li> </ul>

### EMERGENCY ORDERS OF PROTECTION 40-13-3.2

Is the victim or child in immediate danger following the dv incident? If yes, then seek an Emergency Order of Protection on their behalf.

### ORDER OF PROTECTION ENFORCEMENT

You may arrest the **restrained party** without a warrant for violations of protection orders. Book under Violation of Order of Protection (HHM) 40-13-6. In addition to charging the violation you must file all other possible criminal charges arising from the dv incident when probable cause exists. 40-13-6 (G). You cannot arrest for civil restraining orders; information reports only.

DV STATUTES:	NON DV STATUTES:	OTHER RELATED STATUTES:
Domestic Violence 31-1-7 Battery on a HHM 30-3-15 Assault on a HHM 30-3-12 Aggravated Assault on a HHM 30-3-13 Aggravated Battery on a HHM 30-3-16 Crim Dam to Prop of HHM/Deprivation of Prop of HHM 30-3-18	Battery 30-3-4 Assault 30-3-1 Aggravated Battery 30-3-5	Criminal Damage 30-15-1 Harassment 30-3A-2 Interference with Communications 30-12-1 Stalking 30-3A-3 Telephone Harassment 30-20-12 Kidnapping 30-4-1 False Imprisonment 30-4-3

### LAW ENFORCEMENT DUTIES UNDER FAMILY VIOLENCE PROTECTION ACT (FVPA):

- Advise victim of remedies available (written statement, criminal complaint, shelters, medical care, counseling and other services).
- Provide/Arrange transportation for victim to medical facility or shelter.
- Accompany victim to victim's residence to obtain victim's clothing and personal effects for them or child.
- Assist in placing victim in possession of the dwelling or premises.
- Assist in execution, enforcement, or service of an order of protection.
- Dual arrests are discouraged; seek to identify predominant aggressor and consider whether one party acted in self-defense.
- Arrest the alleged perpetrator when appropriate (ensure police report includes "the arrest of the alleged perpetrator was in whole or in part premised upon PC to believe the alleged perpetrator committed domestic abuse against the victim" and indicates that the party arrested was the predominant aggressor).