

## **COLLABORATION AND CONFIDENTIALITY: CHALLENGES TO VICTIM CONFIDENTIALITY WITHIN MULTI-DISCIPLINARY RESPONSES TO DOMESTIC VIOLENCE\***

The benefits of collaboration between law enforcement and community-based advocates providing intervention to domestic violence cases have been recognized throughout the country. In Portland, Oregon, we have had the opportunity to observe those benefits first-hand through the work of the Multnomah County Domestic Violence Enhanced Response Team (DVERT)<sup>1</sup>. However, when criminal defendants started issuing subpoenas to multiple members of the DVERT team, we started to see the potential risks that such a collaboration poses to victim confidentiality.

The response of DVERT partner agencies to these subpoenas ultimately highlighted the necessity of balancing two competing interests within the collaboration: the need to share information among DVERT partners in order to plan and provide effective services to victims of domestic violence and the need for confidentiality to protect the safety of those victims.

These competing interests were brought into focus when defense counsel in a recent domestic violence prosecution issued subpoenas to community-based advocates assigned to DVERT, seeking any records relating to the victim. Defense counsel claimed that they had a right to review the victims' statements made to community-based victim advocates before trial as part of the discovery process. Although criminal defendants do not have a right to engage in pretrial discovery in Oregon, they argued that the District Attorney's Office had a duty to produce the records because they were in the prosecutor's "possession and control." They further argued that the collaboration between law enforcement and community-based advocates on DVERT meant that the advocates were, in effect, under the direction and control of the police, which, in turn, meant they were under the direction and control of the prosecution. According to defense counsel, because the advocates were under the direction and control of the District Attorney, the prosecutor had a pretrial duty to disclose discoverable information supposed to be in the advocates' files. The District Attorney's Office agreed and joined in the defendants' motion to release the advocates' material as part of pretrial discovery.

Community-based victim advocacy agencies filed motions opposing disclosure of the records. While domestic violence advocates do not have state protected privilege in Oregon, they argued that their agency obligations under the federal Violence Against Women Act of 2005 (VAWA) prohibited the requested disclosure. Moreover, they argued that they were neither a party to the litigation nor under the direction and control of the prosecution, who never had access to their files. Advocates also raised concerns about the potential danger to the victim and the potential that the offender might use information from an advocate's file to intimidate victims to keep them from testifying or reporting abuse.

After a two-day evidentiary hearing, the judge ruled that the advocates were not required to release their files. The judge held that the mere fact of collaboration between the advocates and police did not mean that the advocates were under the direction and control of the prosecution. Because the advocates worked for entities that were not parties to the litigation, the judge held that the defendant did not have a right to seek the advocate file prior to trial. However, the judge ordered that any information that had been shared with the police and prosecutors be turned over to the defense. Before release of this information to the defense, the judge allowed for a reasonable period of time for advocates to provide notification to the victim in the case regarding this judgment.<sup>2</sup>

Although the records at issue here were ultimately protected, this case raised concerns within the advocate community about the potential vulnerability of their files. Among other things, advocates recognized the need for a careful review of the DVERT policies and practices to avoid any misconceptions about their independence and their victim-centered approach. The partners decided to stop their daily operations within DVERT and began an intensive restructuring of the program. A special team of law enforcement, prosecutors, parole and probation, legal aid, department of human services, and victim rights advocates from our community and from around the country came together to restructure the DVERT program so as to reduce the possibility of future challenges.

Some of the questions that this team grappled with included: How closely can community-based advocates work with law enforcement without being considered part of the investigation? What are the implications of co-located services in regards to record keeping and confidentiality? Does the structure of multi-disciplinary team meetings make records more vulnerable to exposure? Are there legitimate answers for how and why case information is collected and stored? Is there information currently collected that would put victims at risk if disclosed, and, if so, is this information necessary for successful job completion? Is each agency involved in the collaboration aware of each other's professional roles and responsibilities as guided by law and agency policy? Are these policies understood and transparent to victims who access DVERT services?

Many of these questions were answered, and some we are still addressing. However, we are confident that this restructuring process resulted in improved program policies honoring victim confidentiality. This process also rejuvenated our commitment to examining our approach to the work we do on a regular basis, knowing that successful collaboration is an ever evolving process.

Our team is honored to present at NCVLI's 8th Annual Crime Victim Law & Litigation Conference this summer. At the conference we will further discuss the details of this restructuring process, the framework of VAWA, and where we hope to go in the future. We look forward to seeing you there!

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<sup>1</sup> DVERT is a nationally recognized model of intervention that places an emphasis on identifying and providing coordinated, multi-disciplinary responses to high-priority/high-risk domestic violence cases. This model was adopted in Portland, Oregon in 2004, and is coordinated by the Multnomah County Domestic Violence Coordinator's Office. Partners of this DVERT program include: community-based advocacy agencies; county and city law enforcement, legal aid services; the District Attorney's Office; the State Department of Human Services, Child Welfare and Self Sufficiency; and county parole and probation departments.

<sup>2</sup> In this case, subpoenas were also issued to other members of the DVERT team to include the DVERT Project Coordinator and the Multnomah County Domestic Violence Coordinator's Office. Motions opposing disclosure of these records were filed by the Senior Assistant County Attorney. The result of these motions will be discussed at NCVLI's 8th Annual Crime Victim Law & Litigation Conference.