

Washington Association of Sheriffs and Police Chiefs & 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 using 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 Violence<sup>1</sup>: 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 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 likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including
  - a first and last name;
  - a home or other physical address;
  - contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);
  - a social security number; and
  - any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination, would serve to identify any individual." The Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law 109-162' Sec.(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 acknowledged 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 about your local law enforcement agency's practices, please contact the agency in your community.

<sup>1</sup> 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.