

# Assisting Battered Women Involved in the Child Protection System

A Framework for San Francisco Domestic Violence Advocates  
in Co-Occurrence Cases



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San Francisco Greenbook Project

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This document is dedicated to battered women who strive daily to keep themselves and their children safe from harm and to the advocates who are by their sides as they make life-changing decisions.

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# Assisting Battered Women Involved in the Child Protection System

## A Framework for Domestic Violence Advocates in Co-Occurrence Cases

### Introduction

The San Francisco *Greenbook* project provided an opportunity for advocates from local domestic violence agencies to discuss their views on key issues surrounding information sharing in cases where victims of domestic violence are involved with the Human Services Agency, Family and Children's Services Division's (FCS).<sup>1</sup> The following framework is their commitment to continue to work to increase safety and well-being for victims of domestic violence and their children by addressing the multi-faceted and often complex needs of families, and removing barriers to that end.

This document is intended to be shared among local domestic violence agencies in order to foster further conversations and the development of uniform practices, policies, and training curricula. The end-goal is to have consistency and clarity about how to respond to requests for information from FCS representatives. While a common framework is being put forth, this is a living document that will need to be reexamined and changed on a regular basis in order to remain current. This is not a protocol. It is a think piece. It was created in the spirit of pursuing practices that better serve battered women and their children from a domestic violence perspective. Additionally, consistency is not being advocated at the expense of differential and flexible responses. A one-size-fits-all approach has never worked as it discounts an individual's values, experiences, and culture.

### Overview

The City and County of San Francisco was one of six communities selected by the federal government to serve as a demonstration site and implement the principles and recommendations outlined in the publication, *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice* (more commonly referred to as the *Greenbook*). The *Greenbook* calls upon child welfare agencies, courts, domestic violence service providers, allied professionals, and the community to work together to improve responses to and outcomes for families who are grappling with the co-occurrence<sup>2</sup> of domestic violence and child abuse and neglect. The overarching principles of the *Greenbook* are: enhancing safety, well-being, and stability for victims of domestic violence and their children; keeping children whenever possible in the custody of their non-offending parents; holding batterers accountable for the violence; increasing collaboration and cross-training; and treating families with respect and dignity.

Confidentiality is a core value shaping the work of domestic violence providers. It is considered a fundamental element underlying safety and therefore guides the development and delivery of all services. Collaboration and coordination have become mantras for communities working to eradicate violence against women and children. For the most part, collaboration has become a best practice, providing an avenue by which a community can create a shared vision for responding to and preventing domestic violence.

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<sup>1</sup> The Human Services Agency (HSA) is the agency that operates the Family and Children's Services Division (FCS) which is responsible for investigating child abuse and neglect allegations and handling the cases that are substantiated. For more information about FCS visit <http://www.sfhsa.org/fcs.htm>

<sup>2</sup> For the purposes of this document, co-occurrence exists when a child is independently abused or neglected in a family where domestic violence is also occurring. The abuse or neglect may or may not be related to the domestic violence.

When topics of coordination and information sharing are raised, domestic violence service providers are justly extremely cautious. Accordingly, the local domestic violence advocates prioritized the issue of information sharing in the *Greenbook* project. During a three month period, advocates discussed and examined their own values, proficiency, and limitations in co-occurrence cases, and how overall, as advocates they could enhance their assistance to victims of domestic violence. Through those conversations, following themes emerged:

- \* Building expertise about the child welfare system is a crucial aspect of an advocate's job in order to serve victims of domestic violence who have some involvement with that system;
- \* Facilitating communication between a victim of domestic violence and her FCS caseworker can be beneficial to the victim and her children, and increase the chance for a positive outcome of the child abuse or neglect investigation or court case;
- \* Understanding what the law permits and prohibits around the dissemination of information is imperative; and
- \* Increasing consistency among domestic violence programs regarding how they respond to requests for information is needed.

### Co-Occurrence Cases

Many families who are experiencing domestic violence are also dealing with other issues such as homelessness, substance abuse, poverty, mental illness, and multiple system involvement. One system that victims of domestic violence often find themselves entangled with is FCS. The co-occurrence of domestic violence and child abuse or neglect is a reality.<sup>3</sup> Not finding ways in which domestic violence agencies can increase coordination with FCS can lead to disjointed, contradictory,



and harmful interventions. In the end, it is the adult victim of domestic violence who is left to navigate through the mandates of various agencies, even when they conflict or pose safety risks to her and her children. Involvement with FCS can lead victims to become vulnerable to: further manipulation from their batterers; depression and feelings of shame; termination of parental rights; economic hardship; pressure to compromise on access to children; and the feeling that they must choose who's safety prioritize – their children's or their own – as they

make decisions. Domestic violence advocates must be ready to assist battered women in understanding how best to work with FCS representatives so as to minimize the above issues and keep the safety of battered women and their children implicitly linked.

There are several ways in which cases become identified as co-occurrence cases. From a child protection perspective some of the most common scenarios are:

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<sup>3</sup> Domestic violence advocates recognize that: between 3.3 and 10 million children witness domestic violence each year; approximately 50 percent of men who frequently assaulted their partners indicated they also abused their children; domestic violence may be the single major precursor to child abuse and neglect fatalities in this country; children who witness violence suffer greater rates of depression, anxiety, post traumatic stress disorder, alcohol and drug abuse and are at greater risk of entering the juvenile and criminal justice system, and have significantly lower academic achievement; and studies indicate that 80 to 90 percent of children living in homes with domestic violence are aware of the violence.

- Domestic violence was the underlying factor that brought the family to the system’s attention and led to the abuse or neglect of the child. For example, the child was hurt when he/she got in the middle of a fight.
- The children were abused or neglected in an unrelated manner and through interviews or during the pendency of the case, the fact that domestic violence is occurring has come to the attention one of the professionals working with the family.
- There is a history of domestic violence between the biological parents who are no longer together but the court notification of the dependency proceedings either reestablishes contact or provides the battering parent further access to the child and abused parent.

From a domestic violence perspective the most common scenarios are:

- A domestic violence victim accesses community-based services and informs a domestic violence advocate or other service provider that there is either an investigation or open case with FCS.
- As part of ongoing power and control tactics, the batterer makes a false report to FCS.
- FCS contacts the domestic violence agency requesting that the agency confirm whether a particular victim: resides at the shelter; accessed or participated in services; or has obtained a restraining order.
- A domestic violence advocate believes the children are at risk or are being abused/neglected, and pursuant to her duty as a mandatory reporter contacts the appropriate authorities.

## Confidentiality and Privilege

It is important for domestic violence agencies to know whether they are protected by a privilege or confidentiality laws in order to fully understand how, and if, other agencies or individuals can access the information shared by the victim with the domestic violence agency. There is a lot of confusion about the terms confidentiality and privilege. The two concepts are not interchangeable. A privilege is something that is created in law to prevent (usually the government) from acquiring information. It is formed on the basis of a relationship, such as attorney-client or spouses, and is held by the client or owner of the information. On the other hand, confidentiality is originated as an ethical standard aimed to uphold professional integrity and protect clients from disclosure of information that could be embarrassing or used to their disadvantage.<sup>4</sup> Most frequently, confidentiality is established through professional rules of conduct and codes of ethics. It can also be created by law.

In California, a **victim’s communication with a qualified domestic violence counselor is protected by both confidentiality and privilege.** The law states that communications made between a domestic violence advocate and a victim in the course of counseling or a service

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<sup>4</sup> “Confidentiality refers to a general standard of professional conduct that obliges a professional not to discuss information about a client with anyone. Confidentiality may also be based in statutes (i.e. laws enacted by legislatures) or case law (i.e. interpretations of laws by courts). But when cited as an ethical principle, confidentiality implies an explicit contract or promise not to reveal anything about a client except under certain circumstances agreed to by both parties.”

“Privilege (or privileged communication) is a legal term describing certain specific types of relationships that enjoy protection from disclosure in legal proceedings. Privilege is granted by law and belongs to the client in the relationship....A client is usually not permitted to waive a privilege selectively.” It can either be absolute or qualified; each affording a different level of protection. Keith-Spiegel, Patricia & Koocher, Gerald, ETHICS IN PSYCHOLOGY: PROFESSIONAL STANDARDS AND CASES, (New York, NY: Random House 1985).

relationship are confidential and subject to the “domestic violence victim-counselor privilege.”<sup>5</sup> The definition of a “confidential communication” for purposes of the domestic violence victim-counselor privilege includes “all information regarding the facts and circumstances involving all incidents of domestic violence, as well as all information about the children of the victim or abuser and the relationship of the victim with the abuser.” (emphasis added) Cal. Evid. Code § 1037.2.<sup>6</sup> However, the statute states that **a court may compel disclosure of information in proceedings related to child abuse** if the court determines that the probative value of the evidence outweighs the effect of the disclosure on the victim, the counseling relationship, and the counseling services.

Additionally, many funding streams received by domestic violence agencies require that the agencies comply with the federal confidentiality provisions of the Violence Against Women Act (VAWA) and Family Violence Prevention and Services Act (FVPSA). In the most recent version of VAWA, Congress affirmed existing confidentiality practices and increased protections in order to prevent agencies from sharing personally identifying information about victims of domestic violence. Thus, VAWA and FVPSA funded programs are prohibited from disclosing personally identifying victim information to any third party database, including a health management information system without a proper release of information form and informed consent.

Possessing a privilege and confidentiality is not an absolute. The three main applicable exceptions to the domestic violence counselor privilege are:

- 1) When the advocate learns of an act that falls under the mandatory child abuse reporting law.
- 2) When the court orders release of the information pursuant to statute in criminal and child protection proceedings or in response to a subpoena.
- 3) When the client/holder of the privilege signs a release of information form permitting disclosure of certain information.



Pursuant to Penal Code §§ 11166; 11165.7, **domestic violence advocates are mandated reporters** in California and are obligated to make reports when they have knowledge of, witnessed, or reasonably suspect child abuse or neglect. For purposes of this document, contacting FCS as a mandatory reporter is not sharing information. Instead it is viewed as legal obligation. Outside of mandatory reporting parameters, domestic violence advocates will not initiate contact with FCS unless a client authorizes the communication to take place.

Two critical factors must exist to properly share information under the third scenario referenced above. These are informed consent and an executed release of information form. Ensuring that clients understand their choices and potential effects of their choices is a key component of establishing and maintaining trust. Victims of domestic violence should be informed of the

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<sup>5</sup> See, Cal. Evid. Code § 1037, *et seq.* Enacted in 1986, California’s domestic violence victim-counselor privilege prohibits domestic violence counselors and service providers from disclosing or testifying about confidential communications with a victim without the victim’s consent. Although the victim has ultimate authority to exercise the privilege, the law requires that the domestic violence advocates assert the privilege when protected confidential information about a victim is requested by third parties.

<sup>6</sup> A list of selected laws is attached as Appendix C.

implications of sharing information to the fullest extent known. For consent to be valid, it is **necessary for the persons concerned to know why there is a need to share information, with whom it will be shared, and what are the likely consequences of agreeing or not agreeing to a disclosure of information.** Informed consent requires that a person has given consent upon an appreciation and understanding of the facts and implications of any actions. The individual needs to have knowledge, competence (i.e. in possession of all of his/her faculties), and not under the influence of substances or duress. Informed consent is more than simply getting a client to sign a written consent form. It is a process of communication between a victim of domestic violence and an advocate that results in the victim's authorization to release a specific piece of information.



Advocates should discuss with victims the risks and benefits of releasing each particular piece of information and remind the client that she may not be able to control what happens to the information after it has been released as other agencies are not under the same rules or obligations as the domestic violence agency. Equally as important is that the release form signed by a client is well-developed, detailed, and understandable. It also needs to be culturally and linguistically sensitive. Domestic violence agencies should create forms that address at a minimum the following elements:

- Designate specific agencies or individuals to whom the information will be released.
- State the duration for which the release is valid.
- Describe the specific information to be released, the purpose for which the information is to be released, and what limits there are, if any.
- Describe the method through which the information will be released.
- Explain the consequences of not signing the release.
- Require signatures and corresponding dates from both the client and advocate.
- Contain a statement that the consent can be withdrawn at any time.
- Summarize the agency's confidentiality policy.

A significant consideration when executing a release of information is the length of time the release will be in effect. A release should be reviewed by the advocate and client regularly and updated accordingly, especially at times where the client's circumstances or services are changing. Entering into releases that are valid for lengthy periods of time may create a situation where there is a release in place but the client is no longer using the agency's services. This situation should be discussed with the client and avoided if possible. Finally, the release should be written in a way that it is not open for interpretation. Instead, it should clearly and concisely describe what information can be released, for what purposes, to whom, and under what circumstances.

*A sample release of information form was developed to accompany this document and can be used as a template. See Appendix A.*



## Recommended Practices

The *Greenbook* through recommendations and principles clearly upholds the concepts of confidentiality and privilege (see chart highlighting the principal *Greenbook* passages on confidentiality). The challenge is often put to child protection workers to think differently about how to promote the safety of children by enhancing the safety of the victimized parent. For domestic violence advocates, the challenge is how to work with other agencies and systems when there are concrete legal parameters within which to do so.

The advocates who worked on this framework believe in and adhere to the domestic violence counselor privilege. It is central to their work and to their clients' safety. Hence, it takes creative thinking about how to approach building safety (broadly defined) for both victims of domestic violence and their children. The *Greenbook* emphasizes that the safety of children is connected to the safety of their victimized parent. Advocates have the obligation of implementing this as well. Whenever possible, strategies should not be employed that compromise the vulnerability of one family member at the expense of another.

|                          |                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Recommendation 13</b> | Child protection services, domestic violence agencies, and juvenile courts should develop memos delineating the mandates of each system, their confidentiality requirements, and agreements for sharing information.                                                                                                                                                         |
| <b>Text p. 43</b>        | Agencies should, however, preserve the confidentiality of information about adult domestic violence, a victim's safety plan, and her current address, unless required by law to disclose this information.                                                                                                                                                                   |
| <b>Principle VI</b>      | When making decisions and policies about information disclosure, juvenile courts and child protection agencies should balance (a) the need for information required to prove the occurrence of child maltreatment and to keep children safe with (b) the need of battered women to keep information confidential in order to maintain and plan effectively for their safety. |
| <b>Recommendation 52</b> | When courts and agencies exchange information concerning family members, the safety and privacy concerns of all parties must be balanced carefully with the need for access to such potentially harmful information.                                                                                                                                                         |
| <b>Recommendation 14</b> | Child protection services and juvenile courts should support the principle and policy goal of privileged communication protections for battered women.                                                                                                                                                                                                                       |

The advocates acknowledged that privilege should not necessarily equate to silence. Advocates should not use their privilege as a way of avoiding difficult conversations with clients or speaking to clients about ways in which they can assist in co-occurrence cases that may involve communication with other service providers. **Domestic violence agencies should create environments that foster and promote dialogues with clients about the existence of child abuse and neglect or FCS involvement.** Silence in these situations can lead to children being harmed and ultimately compromise a victim's parental rights, in the worst cases leading to the loss of those rights.

The following policies and practices are ones that the domestic violence advocates agreed should be considered in co-occurrence cases:

### Mandatory Reports

Domestic violence agencies should take time to develop written procedures and policies for how reports will be made when the mandatory reporting law has been triggered. All staff should be trained on these procedures so that they are able to convey the procedures to clients, including informing clients that they are mandated reporters as part of explaining the agency's overall confidentiality policies.<sup>7</sup> Some procedures to consider are to:

- Identify a person from the agency who will be the designated reporter;
- Inform the client that a formal report will be made to FCS;
- Talk to the client about why the agency thought a report was necessary, including concerns for her welfare and that of her children;
- Discuss with the client if and how she would like to participate in that report; provide information regarding the steps the child protection agency will take once the report has been made; and
- Assign a new domestic violence advocate to help the victim with the child protection case in order to avoid a conflict of interest. This is especially true if the reporting advocate participated in the decision about whether to make a report.

Finally, if a report has to be made, the reporter should speak with the client about whether information about domestic violence can be shared at the time of making the report, so that from the beginning it is a known factor. The opportunity to provide context about relevant issues, including documenting her protective strategies, may be beneficial to the victim and her children. The decision whether to include this type of framing information should be done only when there has been consultation with the victim and such disclosure will not put her or her children at further risk.

### Requests for Information

#### *Calls from FCS Representatives*

FCS caseworkers may call a shelter or domestic violence agency for several reasons, including: to confirm that a client is a resident at shelter or participating in counseling or another service; to check on the welfare of the children; to communicate with the client about a change in case plan or an upcoming court date; or to interview the client as part of an investigation of alleged child abuse or neglect. Here are a few considerations for practice:

#### 1) Initial Response to FCS & Verification

As with any call to a shelter, regardless of the circumstances, a caller looking for a particular client will be told that her presence can neither be confirmed nor denied. If the caseworker is calling to speak with an advocate, the advocate should first validate that the person who called is in fact a representative from FCS. The shelter should ask for a direct phone number for both the agency and the specific caseworker in order to establish that the person calling

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<sup>7</sup> When advocates explain the agency's confidentiality policy to clients they should also inform clients about the court's right to compel disclosure of advocate files in child protection or criminal cases.

is employed by FCS. Calling someone's cell phone is not an accurate indicator of whether he/she truly works for FCS. Also, an advocate must have a signed release of information form before she can speak with the FCS caseworker about a particular client.

Advocates will not initiate a call with FCS unless it has been permitted by the client. This includes, letting a caseworker know that a client has left shelter or stopped services that were required in her FCS case plan. However, advocates should make every effort to encourage clients to tell caseworkers of their change of location and decision-making in these instances.

2) Notification to Client & Advocate

When a call is received from an FCS worker, every effort must be made to inform the victim that a call was received; best practice would be within 24 hours. Even volunteers should be trained that calls from FCS workers require as much attention as calls from law enforcement, batterers, and other service providers where safety of the victim and her children could be compromised if the advocate is not informed of the call. Both advocates and clients should be aware that failure of the client to receive or respond to a message can lead to negative consequences in the child protection case. Agencies should discuss what mechanisms can be developed to apprise advocates immediately that a representative from the child protection system has tried to contact a particular client. This mechanism affords the advocate an opportunity to speak with the client about FCS, discuss why and how FCS may be involved with her family, and begin to strategize about next steps.

Whenever a conversation takes place between a victim and caseworker or an advocate and caseworker, the victim should be asked if she would like those conversations to involve both her and the advocate together. This will help keep advocates abreast of the information that the victim is receiving. Often the amount of information relayed to the victim and the number of tasks she may be asked to complete is overwhelming. Advocates can support the victim by being a sounding board for the information the victim is receiving and linking her with needed resources.

3) Standardized Letters

Agencies need to develop a standardized form<sup>8</sup> for instances when written verification is requested (of either shelter residency or participation in agency activities) and the client signs a release of information allowing for the form to be sent. The form should provide the needed information without opening up the legal argument that the privilege has been waived. *A sample standard form was developed to accompany this document and can be used as a template. See Appendix B.*

*Requests from Attorneys*

1) Client's Attorney

If a client is a party in a child protection matter, she most likely will have a court-appointed attorney. The attorney representing the victim may ask the domestic violence advocate to testify as a witness (about domestic violence generally or specific to the victim's circumstances) in the child abuse or neglect proceeding or submit something in writing to the court. In this instance, it is recommended that the attorney and advocate meet with the

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<sup>8</sup> If a client wants an advocate/agency to be able to verbally let a FCS representative know whether she is living at the shelter, the release of information should be worded in a way that permits the agency to confirm or deny her presence only and not provide her current or future address.

victim together to discuss the benefits and ramifications of waiver of privilege and openly share differing professional opinions if they exist.

2) Subpoenas

In order to uphold confidentiality and privilege, domestic violence agencies have a history of quashing subpoenas and have built relationships with attorneys in order to do so. However, when a co-occurrence case exists and the subpoena relates to that matter, an advocate should first explain to the client the agency's standard response to subpoenas and then discuss if there are ways in which the client would like the domestic violence agency to assist in conveying information to the court or other parties even if it is not through the subpoena.

Increase Expertise about FCS & Co-Occurrence Cases

*Training*

It is imperative that advocates thoroughly comprehend the child protection system so as to better respond to questions and assist in the decision-making of battered women. It can be harmful to the safety and well-being of victims of domestic violence if professionals working with them are operating on erroneous information or assumptions. Thus, there must be ongoing training and cross-training. Some of the training topics should include, but not be limited to: what constitutes child abuse or neglect; what is involved in an investigation; the ensuing process if a report is



substantiated (including voluntary and court-involved cases); how a FCS case plan is developed and monitored; the role of different players at FCS; and the overall court process.

*Build Specialized Knowledge – Advocates & Attorneys*

As with domestic violence advocates who work in child protection agencies, it is useful to have an advocate on staff that has experience working in the child welfare system or has dedicated time to increasing her knowledge about it. The child protection system, including the court process, is very intricate and

confusing. An advocate with specialized knowledge can work with battered women who also have an open FCS case and assist other domestic violence advocates in thinking through approaches with their clients where they suspect or are dealing with co-occurrence issues.

Historically, victims of domestic violence have received conflicting information from child protection and domestic violence agencies about how to protect their safety and the safety of the children. Agencies should strive to maintain a list of attorneys who are familiar with both domestic violence and the child protection system. The attorneys can be called upon to speak in confidence and advise battered women of their options and potential consequences of their choices in co-occurrence cases. Ideally, the attorneys would also have knowledge about immigration and other issues that can impact decision-making and viable legal options. It is recognized that creating a bank of attorneys and increasing the capacity of attorneys to effectively handle co-occurrence cases is an issue for the community as a whole. Advocates should be part of that effort.

### *FCS Case Plans*

Advocates should actively inquire into the existence of FCS case plans, review them when they do exist, and assist in implementing and shaping their contents. The case plan is the tool that courts and FCS uses to monitor the progress and compliance of parents. They outline what will be required of the parent in order to successfully close the case and be reunified with her children. They will also indicate if reunification or another outcome for the family is being pursued.

Instead of thinking in terms of information sharing, advocates should instead consider facilitating communication between the victim and her FCS caseworker and how as an advocate he/she can support and advance causes for the client within the child protection system.

For example, advocates can:

- Explain and review the components of the FCS case plan in conjunction with the client.
- Link the client to agencies (preferably with ones that understand domestic violence) that offer the services that are required by the case plan.
- Discuss with the client how failure or completion of services can impact reunification efforts.
- Participate in shaping FCS case plan items in advance (new case plans are developed for each court review/approximately every 6 months).
- Help prioritize case plan activities.
- Inform the FCS caseworker about services offered at the agency that will meet case plan requirements.
- Explain to the caseworker and/or court what barriers may exist that are preventing completion of the case plan or how the batterer may be working to undermine the victim's efforts to comply.
- Alert the caseworker to actions by FCS or the court that could compromise the safety of the victim and/or her children.
- Ensure that the victim's protective strategies and behaviors are being documented and accounted for by FCS.

When an advocate learns that a victim has an FCS case plan, the advocate should ensure that the client understands that it is her responsibility to keep FCS informed about her location, the welfare of her children, and potential consequences for not communicating that information. At the onset of services, discuss with client things she will need to do if at some point she decides to terminate services. For example, if she leaves shelter, she should inform her FCS caseworker as soon as possible of her new address and housing situation. This is so she remains in compliance with the court order and case plan. This is part of a holistic safety plan for her and her children.

### Create an Accepting Atmosphere

#### *Establishing a Receptive Tone & Affirmative Inquiry*

Advocates should become comfortable with facilitating conversations with battered women about their involvement with the child protection system. Incorporating inquiries at the inception of service (e.g. during intakes) sets the tone and establishes an environment for ongoing discussions and the possibility of disclosure of co-occurrence issues. Traditionally, advocates have asked whether a victim had other issues that could impact her safety, but have not actively incorporated the existence or risk of the co-occurrence of child abuse or neglect into that conversation. It is also important for advocates to learn whether a client has had past involvement with child protection as

it can reveal: potential responses from the abuser; possible risks to her children; facts that can be used against the battered woman in a custody proceeding; and needed aspects of a safety plan. Domestic violence agencies should also display information related to child abuse and neglect and navigating the child protection system in accessible areas of the agency and shelter.

Normalizing conversations about the intersection of domestic violence and child abuse and making them part of standard advocacy work will create a more natural environment for victims to disclose and discuss whether child abuse and neglect is a concern. For example, talk about how child protection's services can help in certain situations, discuss the risks of becoming involved in the system, and describe how the domestic violence agency continues its support and advocacy for clients who are involved with FCS.

The following questions can be used to guide discussions about co-occurrence:

- \* Sometimes we help with parenting. Are there things you would like us to focus on while you are working with us?
- \* Have you ever had someone contact you from a child protection agency? What did they want? What was the outcome?
- \* Have you ever been to court concerning the custody or welfare of your children? If so, what the case was about?
- \* Has your batterer ever threatened or made calls to FCS as part of the battering tactics?
- \* Was violence ever directed at your children? Did your abuser threaten to hurt or kill your children if you left or sought help?
- \* Do you have children that you did not bring with you to the shelter? Do you have children that are not in your custody? Do you get a chance to visit with them?
- \* Have you ever been concerned that something you did to the children could be used against you? What was that?
- \* Do your children display signs of trauma or distress?
- \* Do you have a case open with FCS or another child protection agency? Do you know if your case was filed with the court? If so, did you have an attorney with you? What is the name of the attorney? What children are involved in the case? Do you have a copy of the FCS case plan? Is this something you would like assistance with? What other steps have you taken on your own behalf regarding the case?
- \* What strategies have you used in the past to protect your children?

#### *Awareness of Personal Bias & Attention to Cultural Sensitivity/Competency*

No one is without biases or preconceived notions. Everyone has opinions and beliefs that contribute to the way in which they view the world. Personal experiences and backgrounds influence our values and in turn impact how we perceive relationships between mothers and children, fathers and children, how we parent, and our attitudes and beliefs about child abuse and neglect. Studies have demonstrated that people can be consciously committed to social equality and actively work to live a life without bias yet possess hidden negative prejudices or stereotypes. They may believe they see and treat others as equals, but their hidden biases may still influence their perceptions and actions. Biases can be reflected in verbal and nonverbal communication and the approach taken on a particular case. Unknowingly, this can lead to tensions and obstacles from well-meaning actions or can discriminate or create disadvantages through the types of expectations placed on family members and recommendations made to court. Examining one's own belief system in order to determine if co-occurrence cases are ones in which you can fairly and objectively participate in may be the most difficult task as an advocate you will undertake.

Advocates and agencies should be committed to ongoing self-assessment. In co-occurrence cases, biases can appear in comments made about the child welfare system, in who gets reported under the mandatory reporting law, and feeling uneasy about working with battered women who may have neglected or abused their children or did not leave a relationship as soon as they discovered child sexual abuse was happening.

Moreover, understanding the interface of culture, ethnic identity, language, sexual orientation, gender identity, and poverty with domestic violence is essential to competent and sensitive practices in co-occurrence cases. While domestic violence and child abuse are difficult for any family to deal with, various populations often experience additional stresses when they seek services. Persons from groups that have been oppressed over the course of generations include those experiences of oppression, racism, ethnocentrism, homophobia, biphobia, transphobia and discrimination in their worldview. Thus, they may see mainstream “helping” systems as more abusive than the homes they live in and will do everything in their power to avoid having their abuser, children, and themselves involved with them. It is important to recognize that immigrant populations, people of color, and transgender, gay, lesbian, and bisexual victims of domestic violence face obstacles to accessing help, such as racism, prejudice, language, and lack of culturally or linguistically appropriate services that are not present for other battered women who have children that have been abused or neglected.

### Other Supportive Roles

Here are a few other ways advocates can serve as supports to battered women in co-occurrence cases:

- Offer to accompany clients to meet with FCS caseworkers and to attend court hearings.
- Participate in and help clients prepare for Team Decision-Making (TDM) meetings. The purpose of TDM is to hear from interested parties about their solutions and desires for the placement of children in a specific case. Although privacy is respected in a TDM, there is no guarantee of confidentiality. Any information shared may be used for FCS case planning, but may also be used against a parent in court, to support a petition for removal, and any new allegations of abuse or neglect must be reported. Yet, advocates can play a vital role in relaying how the children’s safety is linked to the victim’s and outline placement options that could enhance safety and explain how other options could compromise safety.
- Work with clients to increase parenting and coping skills so as to reduce future interactions/referrals to child welfare agencies.

### **Conclusion**

Domestic violence advocates are in a position to assist battered women and their children when it comes to issues around child abuse and neglect without dishonoring the legal parameters that uphold fundamental philosophies of their work. Advocates have opportunities to open the lines of communication with their clients about co-occurrence in order to identify child abuse and neglect indicators and provide services to diminish those indicators; support and aide in the successful completion of a FCS case plan if in existence; link clients to legal and other social supports; create environments that remove perceptions of shame about involvement with FCS; and promote cooperation and collaboration with the client and the other systems involved in her life.

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**Appendix A**  
**Sample Release of Information**

**SAMPLE RELEASE OF INFORMATION FORM**

**Summary of Agency Confidentiality Policy:**

We will not disclose any personally identifying or individual information collected in connection with services requested, utilized, or denied through our program. All conversation with a domestic violence advocate are considered privileged under California law and cannot be revealed. There are **exceptions** to this policy. They are:

1. If you sign a release of information form giving us permission to share information with another person or agency.
2. If the court compels/orders us to release the information. This can happen in criminal cases and hearings related to child abuse.
3. If a staff member of the agency has knowledge of, witnessed, or reasonably suspects that your children have been abused or neglected, a report will be made to the proper authorities. We are mandatory reporters of child abuse and neglect under the law.

I, \_\_\_\_\_ (name of person authorizing release of information), give my consent to release my confidential information as outlined below.

**Information to Be Released:** Please be specific about the information you want the agency to release. For example, that you are client at this programs, the dates of service, types of services you received, number of children you have, etc.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Purpose for Release of Information:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Person/Agency to Whom the Information Is to Be Released:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Method of Releasing/Exchanging Information:**

\_\_\_ Verbal \_\_\_ Written \_\_\_ Other \_\_\_\_\_  
(indicate form of communication)

- continued on next page -

**Date this Consent Expires:**

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_ (Month/Day/Year) (never to exceed 6 months from date of signing). If additional time is necessary, I understand that I will need to sign a new release form.

I understand that I may cancel and/or make changes to this release at any time. If I want to cancel and/or make changes, I must tell \_\_\_\_\_ (name of person/agency) in writing and/or sign the cancellation section below.

**I have also been advised about and understand the following:**

- 1) The specific information that is going to be released;
- 2) The risks and benefits of releasing the confidential information;
- 3) That \_\_\_\_\_ (name of agency) and I may not be able to control what happens to the information once it has been released to \_\_\_\_\_, and that the agency to whom the information is released may be required by law or practice to share it with others;
- 4) That a limited release of information can potentially open up access to additional or other confidential information held by \_\_\_\_\_ (name of agency); and
- 5) The method by which the information will be released (e.g., phone, copied documents sent by mail, e-mail, etc.) and the risks of such a method of communication.

I have read and understand the terms of this release of information.

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Date

**Revocation/Cancellation of Consent:**

I revoke any release of information consent given prior to this date.

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Date

**Appendix B**  
**Sample Reporting Form**

**SAMPLE REPORTING FORM**

This letter is to verify that \_\_\_\_\_ (name of client) is receiving services from \_\_\_\_\_ (name of agency), a community-based domestic violence agency that provides advocacy, counseling, resources, referrals and emergency shelter to victims of domestic violence and their children.

*(check all boxes that apply)*

- As a result of domestic violence, \_\_\_\_\_ is currently residing in our emergency shelter. This is a residential program located at a confidential address. The mailing address is \_\_\_\_\_
- \_\_\_\_\_ is participating in counseling and/or other supportive services. These services are voluntary.
- Other \_\_\_\_\_

If you have any questions or need any further information, please feel free to contact me at \_\_\_\_\_.

Sincerely,

Signature  
Name and Contact information of advocate

# **Appendix C**

## **Selected Laws Impacting Confidentiality**

## Selected Laws Impacting Confidentiality

*(laws appearing below were selected due to their relevance to this document  
and do not necessarily appear in their entirety)*

### California Evidence Code, Section 1037-1037.8

1037. As used in this article, "victim" means any person who suffers domestic violence, as defined in Section 1037.7.

1037.1. As used in this article "domestic violence counselor" means any of the following:

(a) A person who is employed by any organization providing the programs specified in Section 18294 of the Welfare and Institutions Code, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence, who has received specialized training in the counseling of domestic violence victims, and who meets one of the following requirements:

(1) Has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in the counseling of domestic violence victims.

(2) Has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a counselor under paragraph (1); or is a psychotherapist, as defined in Section 1010. The training, supervised by a person qualified under paragraph (1), shall include, but need not be limited to, the following areas: history of domestic violence, civil and criminal law as it relates to domestic violence, societal attitudes towards domestic violence, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of domestic violence victims, and referral services available to domestic violence victims.

(b) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of counseling and assisting victims of domestic violence, and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in counseling victims of domestic violence.

(2) Has the minimum training for counseling victims of domestic violence required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas: law, victimology, counseling techniques, client and system advocacy, and referral services.

1037.2. As used in this article, "confidential communication" means information transmitted between the victim and the counselor in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the domestic violence counselor is consulted. It includes all information regarding the facts and circumstances involving all incidences of domestic violence, as well as all information about the children of the victim or abuser and the relationship of the victim with the abuser.

The court may compel disclosure of information received by a domestic violence counselor which constitutes relevant evidence of the facts and circumstances involving a crime allegedly perpetrated against the victim or another household member and which is the subject of a criminal proceeding, if the court determines that the probative value of the information outweighs the effect of disclosure of the information on the victim, the counseling relationship, and the counseling services. The court may compel disclosure if the victim is either dead or not the complaining witness in a criminal action against the perpetrator. The court may also compel disclosure in proceedings related to child abuse if the court determines that the probative value of the evidence outweighs the effect of the disclosure on the victim, the counseling relationship, and the counseling services.

When a court rules on a claim of privilege under this article, it may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and such other persons as the person authorized to claim the privilege consents to have present. If the judge determines that the information is privileged and shall not be disclosed, neither he nor she nor any other person may disclose, without the consent of a person authorized to permit disclosure, any information disclosed in the course of the proceedings in chambers.

If the court determines that information shall be disclosed, the court shall so order and inform the defendant in the criminal action. If the court finds there is a reasonable likelihood that any information is subject to disclosure pursuant to the balancing test provided in this section, the procedure specified in subdivisions (1), (2), and (3) of Section 1035.4 shall be followed.

1037.3. Nothing in this article shall be construed to limit any obligation to report instances of child abuse as required by Section 11166 of the Penal Code.

1037.4. As used in this article, "holder of the privilege" means:

- (a) The victim when he or she has no guardian or conservator.
- (b) A guardian or conservator of the victim when the victim has a guardian or conservator.

1037.5. A victim of domestic violence, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a domestic violence counselor if the privilege is claimed by any of the following persons:

- (a) The holder of the privilege.
- (b) A person who is authorized to claim the privilege by the holder of the privilege.
- (c) The person who was the domestic violence counselor at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

1037.6. The domestic violence counselor who received or made a communication subject to the privilege granted by this article shall claim the privilege whenever he or she is present when the communication is sought to be disclosed and he or she is authorized to claim the privilege under subdivision (c) of Section 1037.5.

1037.7. As used in this article, "domestic violence" means "domestic violence" as defined in Section 6211 of the Family Code.



1037.8. A domestic violence counselor shall inform a domestic violence victim of any applicable limitations on confidentiality of communications between the victim and the domestic violence counselor. This information may be given orally.

### **California Evidence Code, Section 911-920**

911. Except as otherwise provided by statute:

- (a) No person has a privilege to refuse to be a witness.
- (b) No person has a privilege to refuse to disclose any matter or to refuse to produce any writing, object, or other thing.
- (c) No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any writing, object, or other thing.

912. (a) Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege), 980 (privilege for confidential marital communications), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1033 (privilege of penitent), 1034 (privilege of clergyman), 1035.8 (sexual assault counselor-victim privilege), or 1037.5 (domestic violence counselor-victim privilege) is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has the legal standing and opportunity to claim the privilege.

(b) Where two or more persons are joint holders of a privilege provided by Section 954 (lawyer-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), or 1037.5 (domestic violence counselor-victim privilege), a waiver of the right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege. In the case of the privilege provided by Section 980 (privilege for confidential marital communications), a waiver of the right of one spouse to claim the privilege does not affect the right of the other spouse to claim the privilege.

(c) A disclosure that is itself privileged is not a waiver of any privilege.

(d) A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), or 1037.5 (domestic violence counselor-victim privilege), when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer, physician, psychotherapist, sexual assault counselor, or domestic violence counselor was consulted, is not a waiver of the privilege.

913. (a) If in the instant proceeding or on a prior occasion a privilege is or was exercised not to testify with respect to any matter, or to refuse to disclose or to prevent another from disclosing any matter, neither the presiding officer nor counsel may comment thereon, no presumption shall arise because of the exercise of the privilege, and the trier of fact may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding.

(b) The court, at the request of a party who may be adversely affected because an unfavorable inference may be drawn by the jury because a privilege has been exercised, shall instruct the jury that no presumption arises because of the exercise of the privilege and that the jury may not draw any

inference there from as to the credibility of the witness or as to any matter at issue in the proceeding.

914. (a) The presiding officer shall determine a claim of privilege in any proceeding in the same manner as a court determines such a claim under Article 2 (commencing with Section 400) of Chapter 4 of Division 3.

(b) No person may be held in contempt for failure to disclose information claimed to be privileged unless he has failed to comply with an order of a court that he disclose such information. This subdivision does not apply to any governmental agency that has constitutional contempt power, nor does it apply to hearings and investigations of the Industrial Accident Commission, nor does it impliedly repeal Chapter 4 (commencing with Section 9400) of Part 1 of Division 2 of Title 2 of the Government Code. If no other statutory procedure is applicable, the procedure prescribed by Section 1991 of the Code of Civil Procedure shall be followed in seeking an order of a court that the person disclose the information claimed to be privileged.

915. (a) Subject to subdivision (b), the presiding officer may not require disclosure of information claimed to be privileged under this division or attorney work product under subdivision (a) of Section 2018.030 of the Code of Civil Procedure in order to rule on the claim of privilege; provided, however, that in any hearing conducted pursuant to subdivision (c) of Section 1524 of the Penal Code in which a claim of privilege is made and the court determines that there is no other feasible means to rule on the validity of the claim other than to require disclosure, the court shall proceed in accordance with subdivision (b).

(b) When a court is ruling on a claim of privilege under Article 9 (commencing with Section 1040) of Chapter 4 (official information and identity of informer) or under Section 1060 (trade secret) or under subdivision (b) of Section 2018.030 of the Code of Civil Procedure (attorney work product) and is unable to do so without requiring disclosure of the information claimed to be privileged, the court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and any other persons as the person authorized to claim the privilege is willing to have present. If the judge determines that the information is privileged, neither the judge nor any other person may ever disclose, without the consent of a person authorized to permit disclosure, what was disclosed in the course of the proceedings in chambers.

916. (a) The presiding officer, on his own motion or on the motion of any party, shall exclude information that is subject to a claim of privilege under this division if:

(1) The person from whom the information is sought is not a person authorized to claim the privilege; and

(2) There is no party to the proceeding who is a person authorized to claim the privilege.

(b) The presiding officer may not exclude information under this section if:

(1) He is otherwise instructed by a person authorized to permit disclosure; or

(2) The proponent of the evidence establishes that there is no person authorized to claim the privilege in existence.

917. (a) If a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, physician-patient, psychotherapist-patient, clergy-penitent, husband-wife, sexual assault counselor-victim, or domestic violence counselor-victim relationship, the communication is presumed to have been made in

confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

(b) A communication between persons in a relationship listed in subdivision (a) does not lose its privileged character for the sole reason that it is communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication.

(c) For purposes of this section, "electronic" has the same meaning provided in Section 1633.2 of the Civil Code.

918. A party may predicate error on a ruling disallowing a claim of privilege only if he is the holder of the privilege, except that a party may predicate error on a ruling disallowing a claim of privilege by his spouse under Section 970 or 971.

919. (a) Evidence of a statement or other disclosure of privileged information is inadmissible against a holder of the privilege if:

(1) A person authorized to claim the privilege claimed it but nevertheless disclosure erroneously was required to be made; or

(2) The presiding officer did not exclude the privileged information as required by Section 916.

(b) If a person authorized to claim the privilege claimed it, whether in the same or a prior proceeding, but nevertheless disclosure erroneously was required by the presiding officer to be made, neither the failure to refuse to disclose nor the failure to seek review of the order of the presiding officer requiring disclosure indicates consent to the disclosure or constitutes a waiver and, under these circumstances, the disclosure is one made under coercion.

920. Nothing in this division shall be construed to repeal by implication any other statute relating to privileges.

## **California Codes**

### **Penal Code Sections 11164-11174.3**

11164.

(a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

11165.1. As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation).

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

11165.2. As used in this article, "neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

11165.3. As used in this article, "the willful harming or injuring of a child or the endangering of the person or health of a child," means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

11165.7.

(a) As used in this article, "mandated reporter" is defined as any of the following:

- (1) A teacher.
- (2) An instructional aide.
- (3) A teacher's aide or teacher's assistant employed by any public or private school.
- (4) A classified employee of any public school.
- (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.
- (6) An administrator of a public or private day camp.
- (7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.
- (8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.
- (9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.
- (10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.
- (11) A Head Start program teacher.
- (12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section
- (13) A public assistance worker.
- (14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.
- (15) A social worker, probation officer, or parole officer.
- (16) An employee of a school district police or security department.
- (17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.
- (18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.
- (19) A peace officer
- (20) A firefighter, except for volunteer firefighters.
- (21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.
- (22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.
- (23) A psychological assistant
- (24) A marriage, family, and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.
- (25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of

the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

....

(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer.

(32) A clergy member

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (c) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the California Rules of Court.

.....

11165.9. Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referred by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction. Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or another person unless otherwise authorized pursuant to this section, and shall maintain a record of all reports received.

11165.12. As used in this article, the following definitions shall control:

(a) "Unfounded report" means a report that is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.

(b) "Substantiated report" means a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred.

(c) "Inconclusive report" means a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

11166. (a) Except as provided in subdivision (d), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is

practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written follow-up report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) Any report made by a mandated reporter pursuant to this section shall be known as a mandated report.

.....

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

11166.05. Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report to an agency specified in Section 11165.9.

11167. (a) Reports of suspected child abuse or neglect pursuant to Section 11166 shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's name, the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

## **Violence Against Women Act & Family Violence Prevention Act**

### **VAWA SEC. 3. NONDISCLOSURE OF CONFIDENTIAL OR PRIVATE INFORMATION.—**

“(A) IN GENERAL.—In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees under this title shall protect the confidentiality and privacy of persons receiving services.

“(B) NONDISCLOSURE.—Subject to subparagraphs (C) and (D), grantees and subgrantees shall not —

“(i) disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees’ and subgrantees’ programs; or

“(ii) reveal individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of persons with disabilities, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor.

(C) RELEASE.—If release of information described in subparagraph (B) is compelled by statutory or court mandate—

“(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure of information; & “(ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

“(D) INFORMATION SHARING.—Grantees and subgrantees may share— “(i) nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements; “(ii) court-generated information and law-enforcement generated information contained in secure, governmental registries for protection order enforcement purposes; and “(iii) law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

### **Violence Against Women Act of 2005 (VAWA III) Confidentiality Amendments**

See <http://www.nnedv.org/pdf/VAWAConfidentiality.pdf> for more information

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### **Section 605. Amendment to the McKinney-Vento Homeless Assistance Act**

Section 423 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383) is amended—

(1) by adding at the end of subsection (a) the following:

“(8) CONFIDENTIALITY.—

(A) VICTIM SERVICE PROVIDERS.—In the course of awarding grants or implementing programs under this subsection, the Secretary shall instruct any victim service provider that is a recipient or subgrantee not to disclose for purposes of a Homeless Management Information System personally identifying information about any client. The Secretary may, after public notice and comment, require or ask such recipients and subgrantees to disclose for purposes of a Homeless Management Information System non-personally identifying data that has been de-identified, encrypted, or otherwise encoded. Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this paragraph for victims of domestic violence, dating violence, sexual assault, or stalking.

“(B) DEFINITIONS.—

“(i) PERSONALLY IDENTIFYING INFORMATION OR PERSONAL 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—

“(I) a first and last name;

“(II) a home or other physical address;

“(III) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

“(IV) a social security number; and

“(V) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any other non-personally identifying information would serve to identify any individual.

“(ii) VICTIM SERVICE PROVIDER.— The term ‘victim service provider’ or ‘victim service providers’ means a nonprofit, nongovernmental organization including rape crisis centers, battered women’s shelters, domestic violence transitional housing programs, and other programs whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking.