

PROVIDING SERVICES TO MINORS AND PROTECTING CONFIDENTIALITY
PCADV POLICY, LEGAL ANALYSIS AND BEST PRACTICES

GOAL:

Develop a framework for PCADV programs to provide services to minors and protect their confidentiality. The framework is designed with enough flexibility to enable programs to determine on a case-by-case basis whether or not to provide services without parental consent and whether, or when, it is appropriate to breach the minor's confidentiality.

PURPOSE:

The purpose of developing policy and best practices for services to minors and protecting confidentiality is to address Contract Standards for minimal services to children in shelter or receiving program services. Services to minors beyond the minimal Contract Standards are discretionary based on each domestic violence program's resources and capacities to provide additional services.

ISSUES:

Whether a PCADV program can provide services to a minor without parental consent.

Whether a PCADV program can provide housing/shelter to a minor without parental consent.

Whether a PCADV program can release confidential information belonging to a minor seeking services with only the prior, written informed consent of the minor and not the consent of the minor's parent or guardian.

BEST PRACTICES:

Every domestic violence program should discuss the ethical issues inherent to adding services for minors, if the program is not already providing those services, and especially if the program has reduced resources. The range of services will vary from one program to another and each should establish at least a baseline competency for the services that it provides. Programs should refer to the PCADV Program Standards for the minimum requirements for providing referral and safety planning services. The following policy, legal analysis and best practices is designed to guide programs that do provide services to minors around issues involved with service provision and the duty of confidentiality.

I. NO AGE LIMIT

It is the policy of PCADV that a minor may receive services from a domestic violence counselor/advocate without parental consent.

There is no age limit under Pennsylvania law for a person to be considered a victim of domestic violence and eligible for counseling, hotline, advocacy or for prevention education services or shelter. The Protection From Abuse (PFA) Act defines “victim” as

[A] person who is physically or sexually abused by a family or household member. For purposes of section 6116 (relating to confidentiality), a victim is a person against whom abuse is committed who consults a domestic violence counselor or advocate for the purpose of securing advice, counseling or assistance. The term shall also include persons who have a significant relationship with the victim and who seek advice, counseling or assistance from a domestic violence counselor or advocate regarding abuse of the victim.

23 Pa.C.S. §6102. The definition does not include an age limitation for who may be a victim under the act; it only requires that the victim be “physically or sexually abused by a family or household member.” Nor does the Act include a requirement that parental consent is needed in order to provide services to a victim who is a minor. However, a program will need to engage in a more detailed analysis when it considers provision of shelter or housing services to a minor. Further elaboration on that analysis is provided later in this discussion.

The case law interpreting the PFA Act has specifically found that dating relationships, even dating relationships between minors, meet the requirements of the Act for “family or household member.” *Varner v. Holley*, 854 A.2d 520 (Pa. Super. 2004). Even short-lived dating relationships may qualify under the Act, specifically if the parties mutually enter into the relationship and it involves a romantic bond. *Evans v. Bruan*, 12 A.3d 395 (Pa. Super. 2010). Additionally, another appellate court found that referring to the defendant as her “boyfriend” established a sufficient relationship to trigger the PFA Act. *R.G. v. T.D.*, 672 A.2d 341 (Pa. Super. 1996).

BEST PRACTICES: SERVICES TO MINORS:

Parental permission is not required to provide counseling, hotline, advocacy and prevention education services to a minor. It is recommended that where appropriate, services are provided with the knowledge and assistance of the minor victim’s non-abusive parent. Advocates should

work with the minor to encourage the minor to inform the parent of the situation that brings them to the program and seek the parent's participation and/or support and/or consent.

In those instances where the age or circumstances of the victim requesting services calls into question whether to provide services without parental consent, the domestic violence program should determine whether it is appropriate to seek parental consent before providing services to the minor. Programs have the discretion to deny services to minors. Programs should not deny services to minors based solely upon age but need to use clear, articulated criteria for determining if service is appropriate for each recipient. Think about creating guidelines to evaluate cases based not on age alone but on the minor's mental capacity and the minor's ability to comprehend confidentiality and, when needed, provide informed consent for disclosure.

The program should also consider whether the minor is actually receiving services and if the minor is a voluntary recipient. As a general matter, PCADV services are provided on a voluntary basis. Programs may receive referrals from courts or local child protective service agencies that require a person to participate in the DV Program's services. For instance, the county child protective service agency tells a parent or minor that the minor must have domestic violence counseling through the program. What does the program do when the parent or minor does not want the services of the program? Programs should discuss this issue with the child protective service agency or other referral source and explain the voluntary nature of the services provided and what possible alternative programs may be better suited for the parent or minor. This protocol should also be followed when the minor does not want services but the parent wants the child to receive service.

II. SHELTER

It is the policy of PCADV that programs at their discretion may provide shelter and housing services to minors without parental consent. However, each program should create its own individual policy for such service provision.

Providing shelter or housing services for minors without an accompanying parent or parental consent presents a unique challenge for programs. While the PFA Act does not prescribe an age limit for providing services, minors are unable to enter into contracts. For this reason, it is unlikely that a minor would qualify for transitional housing or other leased housing options following a shelter stay. A program could view the minor as not appropriate for shelter or housing because long-term housing planning for minors presents unique challenges. Of course, PCADV advocates a safety first approach when a program evaluates whether to provide shelter to a minor. The program may also need to develop non-traditional approaches to address this issue because the minor cannot stay in shelter indefinitely and traditional plans that include transitional housing or leased housing are not available.

The domestic violence program also will need to determine its level of acceptable risk and liability for taking a minor into shelter without parental consent. Minors, unless emancipated, are under the dominion of their parents and their parents are responsible for them. Parents also have the right to have a child returned to them if the child has run away. Other laws protect parents' authority over their children including some criminal provisions such as Interference With Child Custody (18 Pa.C.S. § 2904) and Kidnapping (18 Pa.C.S. §2901). Each program should determine its own acceptable risk and discuss the policy they choose with the solicitor for their program.

BEST PRACTICES: SHELTER:

A program should decide to provide housing for a minor victim based upon the program's clearly articulated policy that determines the program's acceptable level of risk and liability. Consideration should also be given to whether the minor could be considered emancipated, because an emancipated minor is eligible for housing in the same manner as an adult service recipient. Safety should remain the first priority and a program should err in favor of providing shelter and then decide if other options would be better and safer for the minor victim. Other housing resources, such as a parent, relative or friend's home, should be considered. Programs may need to develop non-traditional resources for minors who seek shelter. In one county, a program was able to connect an emancipated minor with a local church who placed the child as a nanny with one of the their church members. The minor received both housing and a job through this non-traditional placement.

Programs should evaluate whether the shelter intake form needs to be modified. For instance, many programs use an intake form that has check boxes regarding the type of injuries the victim received during the abuse. When a minor is involved, this information could lead to a mandated report of child abuse without the minor fully understanding how that information will be used. Even if a minor meets the criteria for emancipation, the fact of emancipation does not change the program's statutory mandate to report child abuse. If the information is important enough to request on an intake form then the program should ask, but it is important to inform the minor victim that the shelter and program staff are mandated reporters of child abuse. The intake counselor or advocate should clearly inform the minor about what a mandated child abuse report means and how certain information from the victim may result in a mandated report. For additional information about mandated child abuse reporting see "Legal Analysis and Best Practices In Mandated Child Abuse Reporting When Working with Minors –Section I: Statutory Background" (Approved 3/4/11, Updated 4/18/11).

If children are left at the shelter or "abandoned" by their parent or guardian, the shelter should follow their policy and contact the emergency contact for the children provided by their parent or guardian at intake. Abandonment is not child abuse that requires a mandated report but a general protective services referral that would result in a breach of the children's confidentiality. Each Executive Director has the authority to breach confidentiality in circumstances where he or she feels a breach is warranted.

III. MINOR VICTIMS OF DATING OR DOMESTIC VIOLENCE ARE PROTECTED BY CONFIDENTIALITY UNDER PENNSYLVANIA’S PROTECTION FROM ABUSE ACT.

It is the policy of PCADV that programs may provide services to minors who seek services as a victim of dating or domestic violence without parental consent and shall not disclose or release information regarding a minor without the minor’s prior, informed and reasonably time-limited written consent unless the release:

- **is mandated by court order; or**
- **is made pursuant to a mandated report under the Child Protective Services law.**

Programs, at the discretion of the Executive Director, may choose to breach confidentiality in response to specific indications that a minor may be a danger to themselves or others.

Under the PFA Act’s broad definitions of “victim” (23 Pa.C.S. §6102) and “confidentiality” (23 Pa. C.S. §6116), minors who are victims of dating or domestic violence have the absolute privilege of confidentiality. Neither definition provides an age limitation for extending services or the protections of confidentiality.

The Act’s extension of confidentiality to minors implies that minors should be able to receive the services of a domestic violence counselor or advocate without the consent of a parent or guardian. Pennsylvania has clear public policy pertaining to the availability of health care services to minors that indicates that the Commonwealth intends for minors to receive services. Where obtaining a parent’s permission would impede the minor from seeking services the Commonwealth has removed that consent requirement. See, *The Minor’s Consent Act, 35 P.S. §10101, (relating to consent for Medical, Dental and Health Services); The Drug Abuse and Alcohol Control Act, 71 P.S. §1690.112 (relating to consent to drug and alcohol treatment)*. Therefore, while no specific statutory authority exists for provision of confidential domestic violence services to minors without parental consent, the public policy of Pennsylvania validates such service provision.

A minor should receive all of the protections of confidentiality that an adult victim would receive, including every attempt by the program to maintain confidentiality whether by a motion to quash a subpoena or systems advocacy in support of the privilege held by victims of domestic violence.

BEST PRACTICES: CONFIDENTIALITY – RELEASE TO NON-ABUSIVE PARENT:

The information of minors who are victims of dating or domestic violence or who accompany their parents who are seeking services, is protected by confidentiality under the PFA Act and under VAWA.

A program may not reveal any information to the abuser of the minor or to the abuser of the minor's parent.

Before an advocate or program may release any information to the non-abusive parent about the minor, the minor must provide an informed and reasonably time-limited written consent. This requirement applies to all communication, whether written, spoken or observed, as well as all information contained in a victim's file.

If a non-abusive parent wants the domestic violence counselor or advocate to disclose information about the services provided to a minor and the minor will not consent to the disclosure, the program cannot disclose that information. In those instances where the minor does not at first consent to the release of information to allow the parent(s) to participate with the minor in counseling, the counselor or advocate should discuss the request for information with the minor. The counselor or advocate may assist the minor to weigh the pros and cons of revealing the protected information. If the minor decides to reveal his or her information and requests assistance from the counselor or advocate, the counselor or advocate may assist the minor to reveal the requested information.

IV. MINORS SEEKING SERVICES AS THE RESULT OF A PARENT'S VICTIMIZATION ALSO HAVE CONFIDENTIALITY UNDER PENNSYLVANIA LAW.

It is the policy of PCADV that programs may provide services to minors who seek services with a parent who is a victim of domestic violence without parental consent and shall not disclose or release information regarding the minor without the minor's prior, informed and reasonably time-limited written consent unless the release:

- **is mandated by court order; or**
- **is made pursuant to a mandated report under the Child Protective Services law.**

Programs, at the discretion of the Executive Director, may choose to breach confidentiality in response to specific indications that a minor may be a danger to themselves or others.

Minors who are not victims, fall under the definition of "significant relationship" in the PFA Act (23 Pa.C.S. §6102) and thus have confidentiality. By requiring prior, written, time-limited, informed consent for all minors' records, we are ensuring consistency in the treatment of all minors, whether they come "attached" to an adult victim of domestic violence, are on their own seeking their own services, or come with an adult victim and then receive services for their own dating violence issues.

BEST PRACTICES: SERVICES TO MINOR ACCOMPANYING VICTIM PARENT:

Parental permission for a minor to participate in services is not necessary in order to provide services to a minor who accompanies a parent who is a victim to shelter or for services.

If a non-abusive or custodial parent learns that the program is providing services to the minor and requests that services be discontinued, the program should stop services and engage in an individualized analysis to determine if services should resume. When the non-abusive parent is also a parent seeking the domestic violence program's services, the program should strive to balance the victim's autonomy to make decisions for her child and the need of the child for those services. The program should discuss the parent's concerns and seek to address those concerns in a way that creates the opportunity to serve the minor and also engage the parent who is seeking services in the process, if possible. In order to determine if services should resume, a counselor or advocate should discuss with the parent their objections to the service provision and try to reach a resolution.

V. THE FEDERAL VIOLENCE AGAINST WOMEN ACT (VAWA) PROTECTS CONFIDENTIALITY.

It is the policy of PCADV that parental consent to the release of a minor victim's confidential information is not required if the minor received services without parental consent. If the minor received services without parental consent then the minor may consent to the release of their information as well as withhold consent to release.

The federal VAWA mirrors the confidentiality requirements found in Pennsylvania law for those programs that receive federal funding. Section 13925(b)(2) requires all grantees and sub-grantees of the U.S. Department of Justice, Office on Violence Against Women to protect confidentiality and privacy of persons receiving services. VAWA prohibits disclosure without the informed, written, reasonably time-limited consent of the person.

VAWA specifies that if the service recipient is a minor then the consent to release information must be signed by both the minor and a non-abusive parent or guardian. 42 U.S.C. §13925(b)(2)(B)(ii). However where the service recipient may consent for services without a parent or guardian then the minor may be able to sign the release without a parent. In Pennsylvania, there is no state law that prohibits a minor from seeking services without parental consent. Therefore, because a minor in Pennsylvania may receive services without parental consent, the minor may release or prohibit the release of confidential information without parental consent.

BEST PRACTICES: CONFIDENTIALITY – RELEASE OF INFORMATION TO A THIRD PARTY ENTITY:

Both Pennsylvania and federal law require that domestic violence programs maintain the confidentiality and privacy of victims of domestic violence who seek services from the program. Confidential information should never be released to anyone without prior, informed and reasonably time-limited written consent of the service recipient. This requirement also applies to minors' information. Where a program provides services to minors without parental consent, the

minor may also consent for release of information without the signature of their parent or guardian.

VI. ABUSER PARENT MAY NOT PROVIDE CONSENT FOR RELEASE OF A MINOR'S INFORMATION.

It is the policy of PCADV that in no case may an abusive parent provide consent to the release of a minor's confidential information.

VAWA is clear that under no circumstances can the abuser of the minor or the abuser of the minor's other parent provide the consent for release of information. 42 U.S.C. § 13925(b)(2)(B)(ii). In the case of an abusive parent seeking the records of the minor child who is the subject of a custody action, 23 Pa.C.S. § 5336(b)(2) bars the release of confidential information of an abuse counselor or shelter.

VII. RELEASE OF INFORMATION WITHOUT THE CONSENT OF EITHER THE MINOR OR HIS OR HER PARENT OR GUARDIAN.

It is the policy of PCADV to recognize that there may be circumstances under which a program is compelled by court order or statutory mandate to release confidential information without the minor's prior written consent or may exercise its discretion to breach the confidentiality of a minor when circumstances suggest that the minor may pose a danger to him or herself or to others.

VAWA further provides that if a release of protected information is compelled by statutory or court mandate then the service provider shall make reasonable attempts to provide notice to the victim and take steps necessary to protect the privacy and safety of the person affected by the release of information. 42 U.S.C. § 13925(b)(2)(C)(i-ii).

Under Pennsylvania law, there are two narrow exceptions to the prohibition against disclosure that are relevant when serving minors: mandated child abuse reporting and in response to a court order. A third narrow exception to absolute privilege between a domestic violence counselor or advocate and a minor is in the instance that the minor may be a danger to themselves or others. In that case, the program's Executive Director may exercise his or her discretion on a case-by-case basis to breach confidentiality and release the minor's confidential information. This third exception to privilege is not based on Pennsylvania law but on PCADV policy. Service providers should use the exception sparingly. Remember that the release of information under such circumstances still constitutes a breach of confidentiality.

BEST PRACTICES: CONFIDENTIALITY – RELEASE PURSUANT TO COURT OR STATUTORY MANDATE:

If a release is compelled by statutory or court mandate, such as an order of court or a subpoena that has not been quashed, then the program must make reasonable attempts to provide notice of the report to the victim and take steps necessary to protect the privacy and safety of the person affected by the release of information.

BEST PRACTICES: CONFIDENTIALITY – RELEASE PURSUANT TO MANDATORY CHILD ABUSE REPORTING:

If a domestic violence counselor or advocate has reasonable cause to suspect that the minor to whom the counselor or advocate has been providing care, supervision, guidance or training has been the victim of child abuse as defined in the Child Protective Services law, the counselor or advocate shall make reasonable attempts to provide notice of the report to the victim of child abuse and report only the information which the counselor or advocate holds without further investigation and in compliance with Child Protective Service law. The minor must be informed about what will happen as a result of the mandated report. Also, if the parent is a service recipient of the DV Program, the program will need to inform him or her that it is making a mandated child abuse report regardless if the report is for abuse purportedly committed by the parent or another person. How, by whom and when the parent is told will depend on the particular circumstances of each instance.

VIII. CUSTODY

It is the policy of PCADV to provide services, including shelter, to victims regardless of the custody status of their children. Further, domestic violence programs should use the custody law to protect information requested about minors.

Victims often flee their abusive partners with their children. A victim may also bring her non-biological children with her. Whether a victim has a formalized custody order or not should not impact a DV Program's decision to provide shelter or other services to a victim and her children. Often a victim will not have any formal court ordered custody, especially if she was residing with the abuser prior to coming to shelter. When the parents do not have a formal custody order or court approved agreement for custody, then each parent has the same right to custody of the parties' children. The practical reality is that the parent with possession of the children determines what occurs to the children until one of the parties initiates a custody action with the court.

Information about custody of children accompanying a victim may assist a program to discuss options with that victim, it should not, however, be used as a criterion for providing or not providing services. While some risk of liability may be involved when providing shelter to a victim and any children who accompany her, any consequence for keeping the children from their rightful parent, in most instances, will be the placed on the victim. For instance, if the child's parents have a custody order that provides the other parent with physical custody and the victim

parent does not follow that order, the other parent's recourse is to file a civil contempt action through the custody court process. However, if the victim parent is not a biological parent and does not have a custody order or a proper claim to custody, the victim could face criminal charges in the form of interference with child custody, 18 Pa.C.S. §2904.

Additionally, the Pennsylvania Custody Act provides protection for confidential information between victims and their domestic violence counselor. Section 5336 provides the following:

(b) Nondisclosure of confidential information --. The court shall not order the disclosure of any of the following information to any parent or party granted custody:

- (1) the address of a victim of abuse.
- (2) Confidential information from an abuse counselor or shelter.

23 Pa.C.S. § 5336(b)(2). This protective provision of the custody statute maintains the confidentiality of information between the minor and domestic violence counselor even if the abusive parent requests that information. Although many courts order shared legal custody, which is the "right to make major decisions on behalf of the child, including but not limited to medical, religious and educational decisions," section 5336 protects the information shared with a domestic violence counselor. Because section 5336 does not distinguish between a parent receiving services or a minor both are protected under the act. Programs should be able to have subpoenas for testimony or records quashed based on this protective provision when the abusive party seeks the information through the custody court process.

BEST PRACTICES: CUSTODY:

A DV Program should not use custody concerns as a means to deny shelter service to a victim and the children with her. While some risk of liability may be involved in providing shelter to a victim and any children who accompany her, any consequence for keeping the children from their rightful parent, in most instances, will be placed on the victim. If the DV Program does not request specific information about custody then it is less likely the Program will be held liable for any action of the victim parent or caregiver. Information about custody of children accompanying a victim may assist a program to discuss options with that victim, it should not, however, be used as a criterion for providing services. A DV Program should continue to aggressively fight subpoenas for records of parents or children who receive services from the program.

IX. EMANCIPATED MINORS

It is the policy of PCADV that if a minor can be regarded as emancipated then there is no need for the DV Program to receive parental consent for services or for the release of

information. The emancipated minor is able to provide consent to receive services and release information to third parties.

According to Black's Law Dictionary, an emancipated minor is "a minor who is self-supporting and independent of parental control, usually as a result of a court order." *Black's Law Dictionary, 8th Ed.*, (2004). In Pennsylvania very few counties utilize court procedures to establish emancipation for minors. Therefore, Pennsylvania has very few minors who actually have a court order that declares the minor emancipated. Establishing whether a minor is emancipated will assist programs to determine what services are most appropriate for that minor, especially relating to shelter and housing services.

Pennsylvania case law further defines emancipation and provides analyses of whether a minor child is in fact to be considered emancipated. In a case involving whether a minor can refuse medical treatment, the Pennsylvania Supreme Court has stated, "[a]n emancipated minor assumes all legal responsibility for his or herself." *Commonwealth v. Nixon*, 761 A.2d 1151, 1153 (Pa. 2000). The Pennsylvania Superior Court stated, "[e]mancipation refers to the minor's establishment as a self supporting individual independent of parental control. When a minor still has a need for care, custody and maintenance, the minor is not emancipated . . ." *Nicholson v. Follweiler*, 735 A.2d 1275 (Pa. Super. 1999).

Factors to consider in determining whether a minor is emancipated include the child's age, marital status, the ability to support him or herself, and the desire to live independently of his or her parents. *Berks County Children and Youth Services v. Rowan*, 631 A.2d 615 (Pa. Super. 1993). The factors should be considered under the totality of the circumstances in each case. *Marino by Marino v. Marino*, 601 A.2d 1240 (Pa. Super. 1992). While parenthood may be a factor to consider, it will not automatically make a child emancipated. *Griffin v. Griffin*, 558 A.2d 75 (Pa. Super. 1989).

BEST PRACTICES: FILES:

The PCADV Program Standards require a program to open a case record for each victim served. The program should open a case record for minor dating or domestic violence victims as they would for an adult victim. For any minor who is accompanying an adult, the program should consider opening and keeping a separate file for the minor(s) when the minor(s) receives services separate from the parent or the minors have different fathers or custody litigation is on-going. If a separate file is created, any service recipient number for the adult may be referenced by the minor's file. Separating the minor's file from the adult's case record provides greater protection for the adult victim's information. Also, a separate file provides consistency in the treatment of minors' files regardless if the minor is a victim or a minor is accompanying a parent who is seeking domestic violence services from the program. A separate file reinforces the separate confidentiality that an adult victim and a minor receive under the PFA Act. This practice will give further protection to the privilege of each.

If a third party issues a subpoena for program records or for the advocate to come to court to testify with respect to services rendered to either the parent or the minor, and the subpoena is not quashed, the information of the person who is not the subject of the subpoena does not also immediately lose the protections of privileged information.

Consistent with state and federal law, programs should provide absolute protection of information contained in a minor's file that is sought by an abusive parent or by the abuser of the minor's parent in a child custody action or in any other matter.