

Documentation, Record-Keeping, Subpoenas, & Court Engagement Practices

Guidance for Supervised Visitation and Safe Exchange Programs When Serving Families Who Have Experienced Intimate Partner Abuse

Written in partnership:

Alicia Aiken, Confidentiality Institute

Beth McNamara, Jennifer Rose, Amrita Hanjrah, &
Sarah Capdeville, Inspire Action for Social Change



"This project was supported by Grant No. 15JOVW-21-GK-02241-MUMU and Grant No. 15JOVW-23-GK-05165-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women."

TABLE OF CONTENTS

FAQ #1: How do we explain what our supervised visit/safe exchange services are (and are not) to the community and participants?	2
FAQ #2: How do we build and foster relationships with courts and attorneys?.....	6
FAQ #3: What should be included in an order for supervised visits/safe exchanges?	8
FAQ #4: What confidentiality rules are we supposed to follow?	10
FAQ #5: What should we document about visits?	11
FAQ #6: What should our record-keeping practices be?	15
FAQ #7: How should we be using releases of information?	17
FAQ #8: What information are we supposed to share with the parties and the court?.....	18
FAQ #9: How do we respond to subpoenas?.....	19
Appendix A	22
Appendix B.....	24
Appendix C	29
Appendix D	31
Appendix E	32
Appendix F	34

FAQ #1: How do we explain what our supervised visit/safe exchange services are (and are not) to the community and participants?

Supervised visitation and safe exchange programs are incredibly essential to increasing safety for children and families experiencing intimate partner abuse. Courts rely heavily on visitation and exchange programs to facilitate safe contact between children and parents who have committed harm. Unfortunately, the parents referred to visitation and exchange programs often do not understand what to expect. Lawyers and judges may be unaware of how visitation and exchange programs work. This presents an opportunity to share about your respective roles within the community. When providing services to families who have experienced intimate partner abuse, there are five core purposes to a supervised visitation and safe exchange program:

1. Provide a safe space for visits/exchanges to happen
2. Interrupt harm related to the reason the family was referred to you
3. Make visible behavior that poses a continued risk related to the reason the family was referred
4. Provide safety & predictability
5. Reduce risk of violence & harm for survivors

Supervised visitation and safe exchange programs that serve families who have experienced intimate partner abuse should actively work to foster a sense of safety, honesty, trust, and well-being. Your aim should be to create an environment that increases the adult survivor's and child's sense of safety and allows for reparative experiences and opportunities in a warm, caring, and humanistic environment.

This environment should also provide an opportunity for those who use violence to stop causing harm to their partner and children, create a healthy, safe, and caring relationship with their children, and potentially change their behavior.

In general, supervised visitation and safe exchange programs:

1. **Do not** force visits or exchanges to happen at the expense of adult and child survivors' safety and well-being
2. **Do not** assess risk to adult and child survivors (outside the context of supervised visitation and safe exchange service provision)
3. **Do not** act as an extension of the criminal justice and family court systems
4. **Do not** intervene in parenting choices (outside of interrupting risk and harm during the context of visits) or interpret parenting capacity
5. **Do not** weigh in on custody decision-making
6. **Do not** weigh in on when it would be safe to transition out of supervised visitation and safe exchange services / **Do not** determine if a parent is safe outside the visitation and exchange setting
7. **Do not** reunify families
8. **Do not** demonstrate the quality of parenting or evidence for the final parenting arrangement
9. **Do not** replace other necessary interventions
10. **Do not** work in isolation as the sole intervention

Explaining these points and the rationale behind them can help courts and attorneys better understand the limitations of your services, while enjoying the benefit they offer the community. They may not know your core purposes or what a supervised visitation and exchange program should not have a role in conducting. Below are some common misperceptions that others, including courts and attorneys, may have about supervised visitation and safe exchange programs. As supervised visitation and safe exchange providers, it is in your interest to correct these misperceptions so you can have a good working relationship.

- Lawyers and judges may think that the program will provide evidence that the visiting parent is safe or unsafe to have unsupervised contact with the children.
 - Communicate the specific role of your program to judges and attorneys. Explain that your program does not have the ability to evaluate future behaviors of visiting parents outside of supervised settings.
- Lawyers and judges often think that your program can provide more visitation and exchange time than you actually can.
 - A lawyer seeking to maximize the client's time with the children may ask for visitation more often or longer than your program can accommodate.
 - Your relationship with parents will go more smoothly if you inform the judges and lawyers in advance about the maximum amount of time you can accommodate for any single family.
- In addition, lawyers and judges might believe that you are going to help the visiting parent improve the parent/child relationship or strengthen parenting skills.
 - Obviously, you want visits or exchanges between children and their parents to go well, and you will provide support to help visits and exchanges go well. But nothing in your program is designed to address underlying problems in the parent-child relationship. You also are not responsible for providing parent education or ensuring enhanced parenting skills.
 - Encourage the legal community to consider specialized services, such as therapeutic visitation and parenting classes, for cases requiring interventions beyond the scope of supervised visits, thus leveraging a holistic approach to family wellness.

- It is important to note that healing can take place within the context of any safe environment or relationship. With this orientation, we know that healing can happen in a myriad of ways, largely defined by culture and psychological trust and safety. People can heal inside and outside of formal settings, whether or not a specific strategy is used.
- We also contend that anyone can engage in trauma-informed service delivery without treating specific traumas and that universal trauma-informed approaches can be healing and connective for all people. Therefore, supervised visitation and safe exchange services that are equitable, trauma-informed, and grounded in competent practices for survivors of intimate partner abuse and those who have caused harm have the potential to support healing for all family members. You do not need to be a mental health practitioner to contribute to environments that are healing.

When serving families who have experienced intimate partner abuse, supervised visitation and safe exchange programs have the responsibility to:

1. Connect and build strong relationships with each parent and child
2. Engage from a humanistic and compassion-driven approach
3. Respect the humanity and unique life circumstances of each individual in the family
4. Centralize the safety for adults and child survivors
5. Counteract the experiences and tactics of intimate partner abuse

When participants are referred to your program, you have a responsibility to inform them about what they should expect from working with your program. Be sure to use clear, simple language about how your services work. It is especially important to help people understand that you don't work for the judge or the lawyers and are not there to collect evidence about whether anyone is a good or bad parent.

FAQ #2: How do we build and foster relationships with courts and attorneys?

Encourage a mutual learning environment where program staff and legal professionals share knowledge and insights. This collaborative approach helps ensure all parties, including parents, receive consistent and accurate information about services. This can include courts, attorneys, mediators, guardians ad litem, and court-based advocates.

You may be wondering how you get an audience with court staff, judges, and lawyers. Some strategies are:

- Reach out to the chief or most senior judge in the local courts. Ask if your program can attend a meeting of judges or come to a judicial education session to explain how your program works and answer any questions.
- Provide a short 1-2 page overview of your services with supporting photos.
- Hold an in-person or virtual open house to showcase your program.

- Reach out to the local bar associations to offer a presentation and overview of your services.
- Be present in court once a quarter to get to know court staff and other stakeholders and to strengthen those relationships.
- Talk to the legal aid lawyers who specialize in representing survivors of intimate partner abuse.
- Reach out to lawyers representing parents who have committed harm and build relationships. You should work to ensure they understand supervised visitation and your role in ensuring a safe environment for the families you serve. There are several ways to reach attorneys representing parents who have committed harm. Some examples include:
 - Bar associations
 - Criminal defense bar associations, as many of those lawyers will represent a parent who committed harm in criminal court and protective order or custody cases.

And remember, one presentation is probably not enough. Explore whether you can be an annual guest at judicial and bar association meetings or seek to hold a regular open house for tours. Provide those written materials often. Ask about participating in any new judge orientation programs. Find out what judges and lawyers think of your program and consider how you could improve. Keep the lines of communication open!

You will form relationships just through the training and education sessions. From there, you can build on those relationships to do systemic advocacy around your court system's response to violence. Because your program is important to the overall functioning of the court response, it is reasonable to ask for a seat at the table in any local group that is working to improve systemic responses to intimate partner abuse. It is equally reasonable for you to start a discussion about creating a standard order for supervised visits or safe exchanges.

If you are struggling to get these relationships going, reach out to your allies in the domestic violence community. It might be legal aid attorneys, domestic violence programs, or the domestic violence coalition working for the whole state or territory. Ask these different groups to help you participate in coordinated community responses to violence, as well as to make introductions to the chief judge or the head of a bar association.

It will take time to build partnerships. But investing the time to have a working relationship that allows you, the courts, and the lawyers to provide the best systemic response to parents and children is important.

FAQ #3: What should be included in an order for supervised visitation/safe exchanges?

Ideally, you can work with your local courts to develop a standard order for supervised visits and safe exchanges. Standard orders give a set of guidelines to all future judges, lawyers, and parties. Standard orders say, "This is the information we need to have," but you don't have to be in court to say that because the order says it for you.

What should go in a standard order? We have included a handout in Appendix A that gives further information on what should be included, but here are six crucial questions that you would like to have answered in a standard order from the court:

1. Who are the people involved, and what is their contact information?

This includes telling you who the lawyers and any guardians ad litem are.

2. Why is supervised visitation or safe exchange being ordered?

This can include a list of other court orders or findings, such as protective orders or requirements for substance abuse treatment.

3. What services are being ordered, and what are any limitations?

In this section of a standard order, you can include language that makes clear the limits of how much visit or exchange time you can provide, or at least that makes clear that visitation or exchange schedules will not go beyond the maximum frequency or duration that your center provides.

4. What are the responsibilities of the parties and attorneys?

This is where the court gives instructions about what the parents and their lawyers need to do next. Typically, this part of the order requires parents to contact your program within a certain number of days (seven days is recommended). It also can require the courts or lawyers to send you documentation, such as the court filings in the case.

5. What are the responsibilities of your supervised visitation and safe exchange program?

In this section, the standard order can set clear expectations about what your program will share with the court. By doing that, you can also be clear with the parties that you don't share any additional information with the court. If the order very clearly states that your program will report whether or not visits or exchanges occurred and whether or not there were incidents of harm during a visit or exchange, then it is also clear to the parties that they should not expect a report on whether the person's parenting is good or bad.

6. What is the next step with the court?

This usually means the supervised visitation and safe exchange program is kept informed of when the parties will return to court for a regular review or status hearing.

FAQ #4: What confidentiality rules are we supposed to follow?

If your program is receiving Violence Against Women Act funding to provide supervised visitation and safe exchange services, then your program is required to follow the VAWA non-disclosure confidentiality rule. That rule instructs your program not to disclose personally identifying or individual information that you collect while providing services to victims of domestic and sexual violence. To see the exact language of VAWA, see Appendix B.

VAWA allows for three circumstances when you can share information collected about violence survivors:

1. When the survivor of intimate partner abuse gives you written instructions to share (also called a release of information)
2. When a statute requires you to share information (the most common example of this is mandatory child abuse reporting)
3. When a court order requires you to share information. This is a big part of the reason for negotiating a standard order with the court and ensuring that the order sets clear guidelines mandating you to share specific information about whether or not visits or exchanges happened. If a court order requires these limited reports, then VAWA allows you to file those reports with the court. VAWA also allows you to tell the lawyers for the parties that you won't share more than what the court ordered.

If you have more questions about how to handle the survivor release of information process, you can find guidance from the Confidentiality Institute and NNEDV's Safety Net in the Confidentiality Toolkit at www.techsafety.org

You may be wondering whether you should follow your local privilege that covers domestic and sexual violence advocates and victim counselors. The answer depends, particularly on how your local law is written. Your work in supervised visitation and safe exchange might or might not be covered by your local law. If you are not sure what your local law is, you can find a state confidentiality statute chart on techsafety.org, or you can reach out to your local domestic violence coalition to ask them where you can find your local law.

FAQ #5: What should we document about visits and exchanges?

When thinking about what to document about visits and safe exchanges, remember that documentation should be connected only to your five core purposes of supervised visitation and safe exchange services, as discussed in FAQ #1:

1. Provide a safe space for visits and exchanges to happen
2. Interrupt harm related to the reason the family was referred to you
3. Make visible behavior that poses a continued risk related to the reason the family was referred
4. Provide safety & predictability
5. Reduce risk of violence & harm for survivors

To ensure you are not outside the parameters of your role, your documentation should only include: 1) the date and time of the scheduled visit or exchange, 2) whether or not visits or safe exchanges happened, 3) the length of the actual visit, 4) individuals in attendance, and 5) any interventions or redirections that occurred or any violations of your program rules that pose a continued risk related to the reason the family was referred. That's it. Sample supervised visitation and safe exchange report templates can be found in Appendix E.

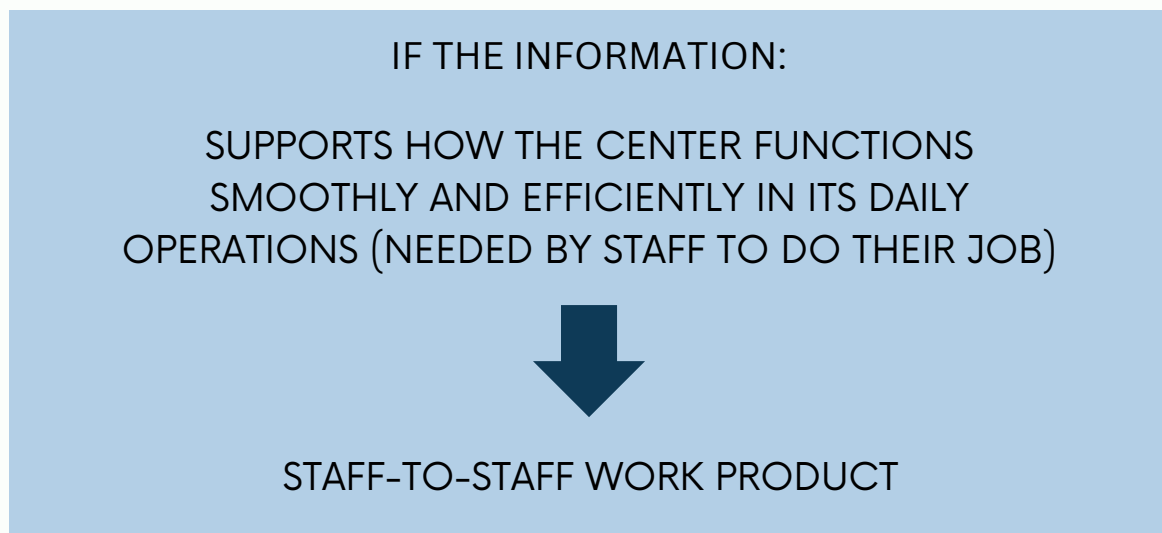
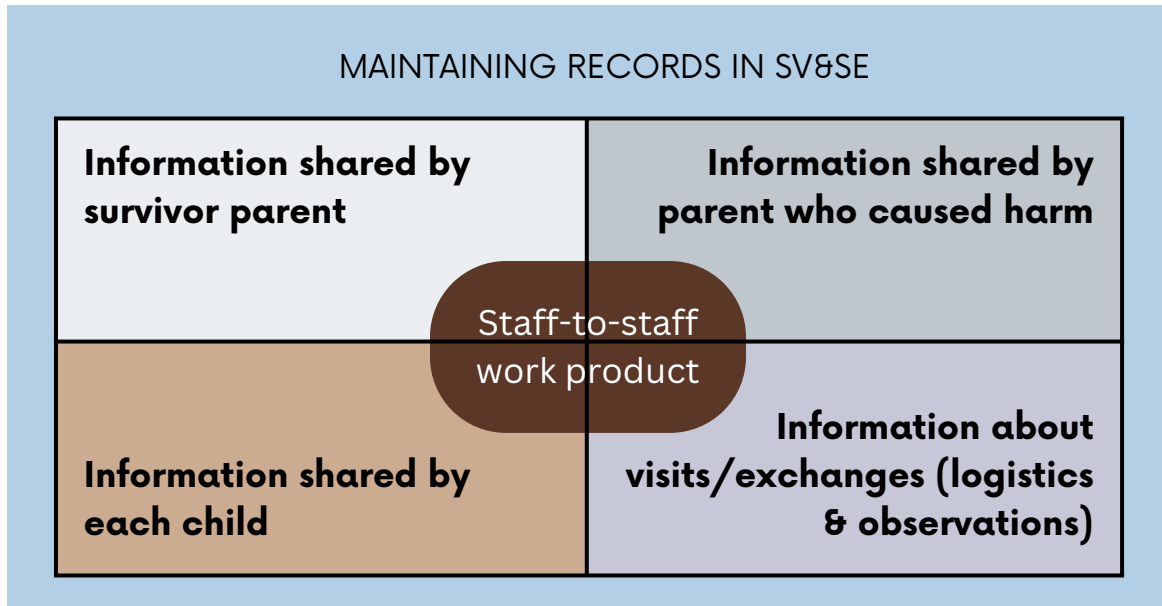
Your documentation is not supposed to be an observation, assessment, or evaluation of how the parent and children interact, nor should it be a detailed record of everything that occurred during the visit or exchange. A supervised visitation and safe exchange program should not be trying to collect or record evidence of parenting skills or parenting deficits. Instead, documentation should be clear, focused, and directly related to the reason supervised visitation or safe exchange is needed and any behavior that creates risk or harm to the child and/or survivor parent.

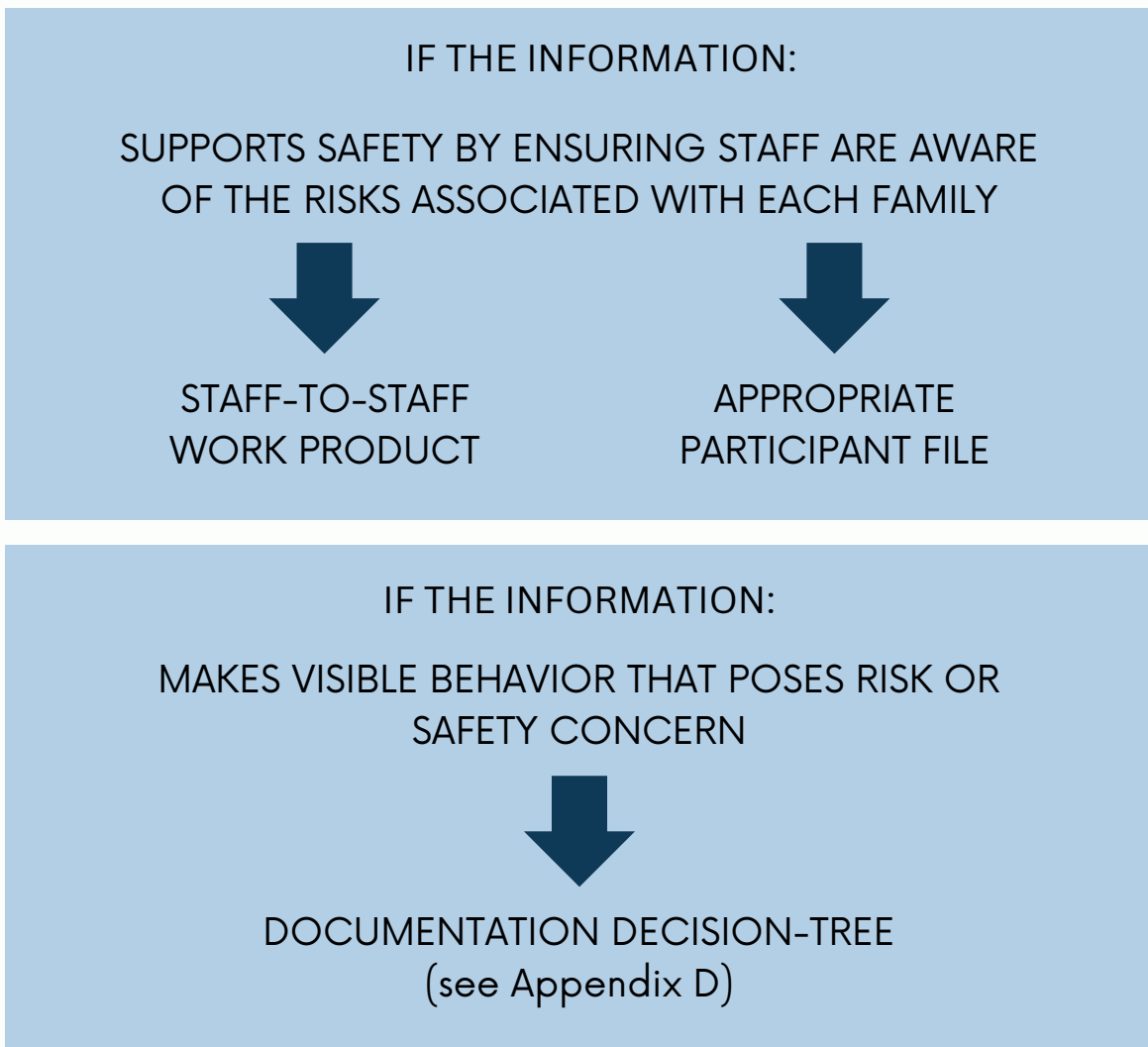
The court should clearly understand that the lack of documented behavior that caused risk or harm does not mean the safety risks present at the time of the order are no longer present. In other words, the lack of harmful or concerning behavior in the context of a supervised setting cannot be an indicator of how safe a parent will be outside of a supervised setting; it simply means the use of supervised visitation has been successful at maintaining a safe environment for that family.

Documentation serves three primary purposes:

1. Supports how the center functions smoothly and efficiently in its daily operations.
2. Supports safety by ensuring staff are aware of the risks associated with each family
3. Makes visible behavior that poses a risk or safety concern.

How a supervised visitation and safe exchange program carries out these purposes is varied and can grouped into these categories.





In Appendix D, you will find a “Documentation Decision Tree,” which will help guide you through a framework to determine whether you will document an action, behavior, or situation.

Once a documentation determination has been made, we have provided sample visitation and exchange documentation forms, which you can find in Appendix E. These forms will help your team record the necessary information outlined in the list above and will help your team avoid over-documenting unnecessary details.

In Appendix C, you can also find a “Sample Guide: Supervised Visitation/Safe Exchange Status Summary.” This form offers a simple way to organize an overview of the services a program has provided to date.

FAQ #6: What should our record-keeping practices be?

This is a broader question than FAQ #5, which addresses what you should document about a visit/exchange.

In your work with families, you will likely collect other information about the family, such as information shared at orientation, registration information provided by parents, information forwarded by attorneys and other system interveners, and information useful to your staff about working with the families. This poses questions about what to write down and how long you should keep what you write down (whether on paper or in an electronic database).

The answer to “What should I write down and how long should I keep it?” is unique for different categories of information. We have identified five kinds of information that programs should treat separately in decisions about storage and retention. Those five kinds are:

1. Information shared by survivor parent/non-abusive parent
2. Information shared by the abusive parent
3. Information shared by each child
4. Information about the actual visits/exchanges
5. Staff-to-staff communication used to carry out your services

These buckets of information should be kept separately from each other. That will make it much easier to decide what is supposed to be shared if you get a request or a court order for disclosure.

How do you decide what to do with the information in each bucket?
Your program needs to ask the following questions about the category of information:

1. What is this information on file for? This means deciding what your purpose is in holding onto the information.
2. How much detail is needed to meet that purpose?
3. What is the best method to document it? For example, the best method of documenting information about the actual visits may be filling out a visitation report, but the best method for your staff to share logistical information about the services you are providing to a family may be your daily staff-to-staff work product.
4. How soon should it be destroyed? All information should have a schedule for destruction, but the correct date for destruction is likely to be different for the different buckets of information.
5. Finally, ask whether disclosure of the information would harm the survivor or a child. If the answer is yes, then think carefully about the minimum amount of documentation that can be retained for the minimum amount of time with the maximum amount of protection from forced disclosure.

The answer to this FAQ is essentially a strategy for how you can answer the question locally. We can't give one answer that would be correct in all circumstances across the country. However, we can be available to you to provide technical assistance and guidance as you are working through the answers to this question at a local level.

Inspire Action for Social Change

www.inspireactionforsocialchange.org

info@inspireactionforsocialchange.org

Confidentiality Institute

www.confidentialityinstitute.org

www.confidentialityinstitute.org/contact

FAQ #7: How should we be using releases of information?

If your program is covered by VAWA confidentiality, then you are prohibited from disclosing information that you collected in providing services to survivors and their children unless there is a valid release. A VAWA release must be written, informed, time-limited, and centered on meeting the survivor's needs. If a survivor wants to have their information shared, then you should have a discussion with the survivor about what is in the file of information collected from the survivor and make sure that sharing the information meets the survivor's goal.

Under VAWA, an abusive parent is not allowed to consent to disclosure of information about the child's receipt of services. This is why it is important to keep separate files of information shared with your program by each child and by each of the parents, allowing you to enforce the rules of who gets access to which information and who has power over which information gets shared.

You can find a template for the ROI (available in both Spanish and English as well as one-page or large print format) and instructions for how to use the ROI well at www.techsafety.org/confidentiality-templates. The English template and instructions are also found in Appendix F.

Remember that "getting a signature on the form" is never your goal. Your goal is to help the survivor make their own informed choice about whether & how much to have your program disclose.

FAQ #8: What information are we supposed to share with the parties and the court?

Ideally, the only information that you share with the parties and the court will be your reports documenting visits and exchanges. Because your program is not collecting evidence and is not assessing parenting skills, the only information that is useful or relevant is your documentation reports of visits and exchanges.

Judges have to make difficult decisions around safety with only limited information. Attorneys want to achieve the best outcomes for their clients. Because of this, every piece of information may be viewed as potentially valuable and can explain some of the frustrations visitation centers experience from those in the legal community. This will be less of a problem if you have clear, standardized orders that specify what your program will share – and as we said in FAQ #3, those orders should only require the sharing of the visit or exchange reports. Additionally, as discussed in FAQ #5, those reports should be narrowly tailored to record only information about whether visits happened and whether any harm related to the reason for referral happened during the visit.

If you find that parties or attorneys are demanding more, such as an abusive parent demanding access to the information shared with you by the non-abusive parent, then you may need to seek the help of an attorney for your organization. That attorney can help you negotiate and communicate with the court to prevent burdensome or harassing demands on your organization.

FAQ #9: How do we respond to subpoenas?

Receiving a subpoena can feel alarming, but subpoenas can be managed without throwing your staff into panic mode. The following guidance applies whether the subpoena is for records or for staff testimony.

First, the vast majority of subpoenas are signed by lawyers or court clerks, not judges. While subpoenas should never be ignored, they typically have not been reviewed or signed by any judge. And the judges are the real authorities in court – not the lawyers. Think of subpoenas as a formal invitation (one that cannot be ignored) to have a conversation about whether or not information will be shared.

If the subpoena is seeking information shared with you by the survivor, then you need to find out what the survivor wants you to do. The survivor might want you to share the information, in which case the survivor will complete written, time-limited instructions telling you to share it. If the subpoena is seeking information shared by the children, then you need to find out what the non-abusive parent and (if old enough) the child wants you to do. If they do not want you to share the information, then you will likely be resisting the subpoena.

If you resist the subpoena, then you usually begin by communicating with the lawyer who sent the subpoena. In general, it is a good idea for visitation and exchange programs to work with their own lawyer to develop the organizational strategy in response to subpoenas. You might consider having a lawyer help you develop your best legal argument for not sharing and give the executive director or custodian of records a script they can use to call attorneys who issued the subpoena.

You might also agree to have your agency lawyer reach out to the lawyer who issued the subpoena. Sometimes, you might need your lawyer to go to court on your behalf to discuss the issue with the judge. Have a plan for how you will navigate the conversation about whether information will be shared or not.

As for accessing lawyers to help you, you can budget for legal expenses in your annual budget, or you can seek a pro bono lawyer to volunteer their time. Many lawyers want to help address domestic violence but are not really comfortable representing survivors. Representing an organization like yours on subpoena issues may be a perfect fit for their desire to contribute.

If you have a standardized court order, as we discussed in FAQ #3, you are likely to get fewer subpoenas because the parties will know exactly what to expect from you, and they will know that you are going to send reports pursuant to the court order. If you keep appropriately separate information files, as discussed in FAQ #6, it will be much easier to have a conversation with the subpoenaing lawyer and offer to send them the file on visits and exchanges without having to figure out if anything inappropriate is in the file of visit and exchange reports. If you have done the communication and education discussed in FAQ #1, then it is much less likely that lawyers will think you have anything exciting to share because they will understand that you don't keep any notes evaluating parents and their ability to parent their children.

We hope this document and its contents have provided the information, resources, and support to help you better navigate documentation, record-keeping, court orders, subpoenas, requests for information, and other legal components of operating a supervised visitation and safe exchange program.

We at Inspire Action for Social Change and Confidentiality Institute understand how daunting these processes can be, and we want you to know that you are not alone in your work. Please don't hesitate to reach out to us. We are happy to keep navigating these questions with you.

Finally, we want to thank the Center for Justice Innovation for their review and contributions to this resource.

Inspire Action for Social Change

www.inspireactionforsocialchange.org

info@inspireactionforsocialchange.org

Confidentiality Institute

www.confidentialityinstitute.org

www.confidentialityinstitute.org/contact

Center for Justice Innovation

www.innovatingjustice.org/

www.innovatingjustice.org/about/contact

This project was supported by Grant No. 15JOVW-21-GK-02241-MUMU and Grant No. 15JOVW-23-GK-05165-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

APPENDIX A

Guide for the Development of a Supervised Visitation/Safe Exchange Standard Order Developed by Inspire Action for Social Change and Confidentiality Institute

What Standard Provisions Belong in Supervised Visitation/Exchange Court Orders?

Who are the people involved & their contact information:

- Parents
- Parent ordered to receive supervised visitation
- Children
- Attorneys
- GALs

Why is supervised visitation being ordered:

- Explanation in order
- Existence of other orders or findings (e.g., protective order, order for substance use treatment, required drug testing)

What services are being ordered and any limitations:

- Supervised visits or safe exchanges
- Name/location of supervised visitation program
- Maximum frequency/duration (based on capacity of the supervised visitation program and best interests of the children)
- Any restrictions on implementation of visits (e.g., certain third parties prohibited from attending, anything else specific to the parties that court wants to enforce as a rule for visits.)

What are the responsibilities of parties/attorneys:

- 7-10 days (recommended) to contact the supervised visitation program to schedule orientation
- 7-10 days (recommended) to forward pleadings to supervised visitation program
- Must comply with supervised visitation program rules and policies

What are responsibilities of supervised visitation program:

- Must submit report to court which includes when visits began (or why visits have not begun), how many visits have occurred, and if there have been any behavior/action/situation that poses a risk or safety concern related to the reason for the Courts referral to services
- Date by which report must be completed and sent to Court, parties, attorneys, & GALs

What is the next step with the Court:

- Court should set a next date, whether it is for status or for hearing

APPENDIX B



Alicia L. Aiken, J.D.

Director

Phone: 312-278-1136

www.confidentialityinstitute.org

alicia@confidentialityinstitute.org

Violence Against Women Act 2022:

Universal Grant Conditions Regarding Confidentiality in Provision of Services

Section 3 of VAWA, 34 USC §12291(b)(2) provides, in relevant part:

(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, reveal, or release any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed or otherwise protected; or

(ii) disclose, reveal, or release 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 legal incapacity, a court-appointed 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, incapacitated person, or the abuser of the other parent of the minor.

If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may release information without additional consent.

(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; and

(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.—

(i) 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.

(ii) In no circumstances may –

(I) an adult, youth, or child victim of domestic violence, dating violence, sexual assault, or stalking be required to provide a consent to release his or her personally identifying information as a condition of eligibility for the services provided by the grantee or subgrantee;

(II) any personally identifying information be shared in order to comply with Federal, tribal, or State reporting, evaluation, or data collection requirements, whether for this program or any other Federal, tribal, or State grant program.

(E) STATUTORILY MANDATED REPORTS OF ABUSE OR NEGLECT – Nothing in this section prohibits a grantee or subgrantee from reporting suspected abuse or neglect, as those terms are defined and specifically mandated by the State or tribe involved.

(F) OVERSIGHT. Nothing in this paragraph shall prevent the Attorney General from disclosing grant activities authorized in this Act to the chairman and ranking members of the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate exercising Congressional oversight authority. All disclosures shall protect confidentiality and omit personally identifying information, including location information about individuals.

(G) CONFIDENTIALITY ASSESSMENT AND ASSURANCES – Grantees and subgrantees must document their compliance with the confidentiality and privacy provisions required under this section.

*(H) DEATH OF THE PARTY WHOSE PRIVACY HAD BEEN PROTECTED.—In the event of the death of any victim whose confidentiality and privacy is required to be protected under this subsection, grantees and subgrantees may share personally identifying information or individual information that is collected about deceased victims being sought for a fatality review to the extent permitted by their jurisdiction’s law and only if the following conditions are met:

(i) The underlying objectives of the fatality review are to prevent future deaths, enhance victim safety, and increase offender accountability.

(ii) The fatality review includes policies and protocols to protect identifying information, including identifying information about the victim's children, from further release outside the fatality review team.

(iii) The grantee or subgrantee makes a reasonable effort to get a release from the victim's personal representative (if one has been appointed) and from any surviving minor children or the guardian of such children (but not if the guardian is the abuser of the deceased parent), if the children are not capable of knowingly consenting.

(iv) The information released is limited to that which is necessary for the purposes of the fatality review.

**VAWA 2022 amended §12291(b)(2) to add paragraph H, which incorporates the substantially similar provision previously found in regulation 28 CFR 90.4(b)(4).*

**Violence Against Women Act 2022:
Definitions Relevant to Confidentiality & Victim Services or Services**

“Personally identifying information or personal information” is generally defined in VAWA 2022, 34 USC §12291(a)(25)* as:

(a)(25) 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, regardless of whether the information is encoded, encrypted, hashed or otherwise protected, including—

- (A) a first and last name;
- (B) a home or other physical address;
- (C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);
- (D) a social security number, driver license number, passport number, or student identification number; and
- (E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.

**VAWA was amended in 2022. This definition is now found in paragraph (a)(25), but no substantive changes were made to the language previously found in paragraph (a)(20) of the earlier version of the statute.*

“Victim Services” is generally defined in VAWA 2017, 34 USC §12291(a)(51)* as:

(a)(51) VICTIM SERVICES OR SERVICES —The terms “victim services” and “services” means services provided to victims of domestic violence, dating violence, sexual assault, or stalking, including telephonic or web-based hotlines, legal assistance and legal advocacy, economic advocacy, emergency and transitional shelter, accompaniment and advocacy through medical, civil or criminal justice, immigration, and social support systems, crisis intervention, short-term individual and group support services, information and referrals, culturally specific services, population specific services, and other related supportive services.

**VAWA was amended in 2022. This definition is now found in paragraph (a)(51), and was substantively changed to include “legal assistance” in the definition of “victim services or services”.*

APPENDIX C

Sample Guide for Discussion: Intended for Training Purposes
Developed by Inspire Action for Social Change and Confidentiality Institute

Sample Guide: Supervised Visitation/Safe Exchange Status Summary

Date status summary was prepared:

Family/Case Name:

Court Case Number:

Name of Parent 1:

Relationship to the Child(ren):

Name of Parent 2:

Relationship to the Child(ren):

Name & DOB of Children:

--	--	--	--

The reason services have been ordered, recommended, or agreed upon:

--

Parent 1	Parent 2
<input type="checkbox"/> Initiated Contact to Begin Services	<input type="checkbox"/> Initiated Contact to Begin Services
<input type="checkbox"/> Completed the Registration Process	<input type="checkbox"/> Completed the Registration Process
<input type="checkbox"/> Completed the Orientation Process	<input type="checkbox"/> Completed the Orientation Process

☐ Visitation Program Staff Completed the Orientation with the Each Child

Supervised Visitation Services	Safe Exchange Services
<input type="checkbox"/> Services Have Not Yet Started Brief Explanation:	<input type="checkbox"/> Services Have Not Yet Started Brief Explanation:
Number of Scheduled Visits:	Number of Scheduled Exchanges:
Number of Completed Visits:	Number of Completed Exchanges:
Schedule Details (frequency, duration):	Schedule Details:

continued on next page

continued from previous page

Current Status

- ☐ Family continues to receive services
- ☐ Services have been suspended / discontinued / terminated

Brief explanation:

Cc: [Names this report was provided to]

**SUPERVISED VISITATION DOCUMENTATION DECISION TREE****PURPOSE:** *Make visible behavior that poses a risk or safety concern.***STEP 1****Consider...**

- Why is this family using services? What have the courts, the parent needing protection, and/or the child asked you to pay attention to?
- Who is in need of protection and from whom?
- What are the general safety risks for the person/people needing protection?

STEP 2**Evaluate...**

Consider the behavior/action/situation using the following process:

1**DID THE BEHAVIOR/ACTION/SITUATION COMPROMISE THE SAFETY OF ANYONE INVOLVED?****YES****2****How was safety compromised and for whom?****3****Who needs to know about this incident? Why?****ARE YOUR RESPONSES TO #2 AND #3 RELATED TO WHAT YOU FIRST CONSIDERED IN A-C?****YES**

- Have you consulted with a supervisor, team, and/or the person needing protection?
- Will this documentation support safety based on the reason this family is using services and not create further risk?
- Can you articulate the decision-making cues that have guided this decision?
- Is documenting this behavior/action/situation in line with why your program exists?

YES to ALL**-> DOCUMENT****UNSURE**

- Take a minute
- Talk to a supervisor
- Consult with the person who is at risk
- Talk to your team

NO**Do not document****NO****UNSURE****GO BACK TO UNSURE****NO to ANY**

APPENDIX E

Sample Guide for Discussion: Intended for Training Purposes
Developed by Inspire Action for Social Change and Confidentiality Institute

Sample Guide - Supervised Visitation Report Form

Date of Supervised Visit: xx/xx/xxxx

Family/Case Name:

Court Case Number:

☐ Scheduled Supervised Visitation Occurred

☐ Scheduled Supervised Visitation Occurred with Modification

Brief notes regarding modification (e.g., child refusal, shortened visitation time, program determined visitation could not occur safely without modification):

☐ Scheduled Supervised Visitation Did Not Occur

Brief notes regarding cancellation (e.g., child refusal, program determined visitation could not occur safely, parent canceled, parent did not arrive):

Description of any behavior or action that posed a safety concern or violation of a program policy (if there were no safety concerns this section will be left blank):

Important Note: The absence of harmful behavior is not evidence that the risk which gave rise to supervised visits has been reduced or eliminated.

Sample Guide for Disucssion: Intended for Training Purposes
Developed by Inspire Action for Social Change and Confidentiality Institute

Sample Guide - Safe Exchange Report Form

Date of Safe Exchange: xx/xx/xxxx

Family/Case Name:

Court Case Number:

During this exchange:

The child(ren) left the care of (name of parent):

The child(ren) were placed in the care of (name of parent):

☐ Scheduled Exchange Occurred

☐ Scheduled Exchange Occurred with Modification

Brief notes regarding modification (e.g., child refusal, modified schedule, program determined exchange could not occur safely):

☐ Scheduled Exchange Did Not Occur

Brief notes regarding cancellation (e.g., child refusal, program determined visitation could not occur safely, parent canceled, parent did not arrive):

Description of any behavior or action that posed a safety concern or violation of a program policy (if there were no safety concerns this section will be left blank):

Important Note: The absence of harmful behavior is not evidence that the risk which gave rise to supervised visits has been reduced or eliminated.

APPENDIX F

Template: Limited Release of Information Form

READ FIRST: [Program] must keep information about you private. The only time your personal information should be shared is when you want us to for specific services or if we are compelled by law or court order.

- You never have to agree to share your information. We will still help you and provide our services.
- If you do want [Program/Agency Name] to share some information about you, use this form to give instructions about what you do and don't want shared, and with whom you want it shared.
- Before you sign this, someone at [Program/Agency Name] will discuss your goals/needs, your choices for how to meet those, and the pros and cons of having us share the information for you.
- You can change your mind about what you want shared at any time, and we will update this form to reflect your decision.

These are my instructions for [Program/Agency Name] to share my information:

I want this information about me shared:	<i>(Be as specific as possible. A few examples include: my name, dates I got help, documents about me)</i>	
I want the information shared with this person or agency:		
I want the information shared:	in person by fax by email by other method: _____	by phone by mail by text
Sharing this information helps me because:		

continued on next page

I know that once the information is shared by [Program/Agency Name]:

- Others will know that I have worked with [Program/Agency Name],
- Others might try to get more information about me from [Program/Agency Name], and
- The person/agency receiving my information might share it without asking me first.

____ (initial)

I want [Program/Agency Name] to stop sharing the information above on _____
(date)

I know that I can change my mind and tell [Program/Agency Name] to stop sharing
sooner than the date above. ____ (initial)

***Non-abusive parent/guardian
signature (if required):***

Signed: _____

Signed: _____

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____

Extending the Release

To help meet my goals, I want [Program/Agency Name] to keep sharing the
information above for longer. I want them to stop sharing on _____ (new date).

Signed _____ Date: _____

Non-abusive parent/guardian signature (if required)

Signed _____ Date: _____



How to Work with Survivors Regarding the Release of Personal Information

Have A Conversation

Before starting the written release process, you should have a conversation with the survivor. Releases should only be used to meet the survivor's goals, not the program's. When you talk with a survivor about the possibility of releasing their personal information, the focus should be on helping the survivor:

- identify their goals
- generate ideas for meeting those goals
- consider if having the program share information helps meet those goals
- consider current or future risks that may arise if the program releases their information
- consider alternative ways for the information to be shared (For instance, they could share it themselves or have someone not associated with the program share it. This helps keep the support they are receiving from the program private.)

If the survivor determines they want to have the program release their information, begin drafting the release.

But First!

Before moving forward, a good way to determine if the release of information is survivor-centered is to ask yourself to name the personal goal that the survivor is meeting. If you can name it, then it is likely a survivor-centered release. If the goal is a programmatic goal, then it's not survivor-centered. Here's an example:

- NOT SURVIVOR-CENTERED: Offering every survivor your agency works with a written release that gives the agency permission to share their information with a funder for reporting and evaluation.
- SURVIVOR-CENTERED: Posting a notice that a funder wants honest feedback about the agency, and inviting survivors to let an advocate know if they are interested in participating and having information shared about their services from the agency.

Draft the Release

1) Discuss:

- What specific content they're considering sharing. (If the survivor wants to share their whole file, you must first give them the opportunity to read the file so that they know exactly what will be shared.)
- What benefit they're hoping to receive from having you share the information.
- The minimum amount of information you'll need to share in order to meet the survivor's goal.
- The rules (or absence of rules) controlling how the person or organization who is receiving the information can use it.
- The amount of time that it will take your program to share the information (**Note: you should not use a standard time frame across all releases. The expiration date of the release should be determined by the survivor and based on how long it will take the program to act on their behalf.**)
- The survivor's right to revoke releases at any time. Note that once the information has been shared as instructed, the program will not be able to retrieve it.

2) Fill in the blanks on the release based on your discussions with **this particular survivor (not based on standardized practice or habit).**

3) Determine the correct person to sign this release. The following rules apply to Violence Against Women Act (VAWA) and Victim of Crime Act (VOCA) victim services grantees. Local laws may also apply to your work. Program managers should provide signature instructions based on local law.

- **Adults** sign the release for themselves.
- **Adults with legal guardians:**
 - **If the person can get services without guardian permission:** Only adult survivor needs to sign.
 - **If the person needs guardian permission to receive services:** Only guardian needs to sign.

- **Minors:**

- **If the minor can get services without parent's permission:** Only minor needs to sign.
- **If minor needs parent's / legal guardian's permission for services:** Minor AND non-abusive parent / legal guardian need to sign. (*Note: Abuse to either child or other parent means a parent is abusive and cannot sign.*)
- **If minor is incapable of knowingly consenting (in the judgment of the program):** Non-abusive parent / legal guardian signature only.

© 2018 National Network to End Domestic Violence, Safety Net Project.

Supported by Grant No. 2016-TA-AX-K064 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

We update our materials frequently. Please visit TechSafety.org for the latest version of this and other materials.

Documentation, Record-Keeping, Subpoenas, & Court Engagement Practices

Guidance for Supervised Visitation and Safe Exchange Programs When Serving Families Who Have Experienced Intimate Partner Abuse

Written in partnership:
Alicia Aiken, Confidentiality Institute
Beth McNamara, Jennifer Rose, Amrita Hanjrah, & Sarah
Capdeville, Inspire Action for Social Change

This document and its contents provide the information, resources, and support to help you better navigate documentation, record-keeping, court orders, subpoenas, requests for information, and other legal components of operating a supervised visitation and safe exchange program. It is organized into nine frequently asked questions around these topics, and includes an appendix of sample guides, templates, and further information.

This project was supported by Grant No. 15JOVW-21-GK-02241-MUMU and Grant No. 15JOVW-23-GK-05165-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

