



Fatality Review Bulletin

Editor's Introduction

By: Kathleen Ferraro

This issue of the NDVFRI newsletter includes a detailed analysis of confidentiality issues provided by Nina Zollo of the Florida Coalition Against Domestic Violence. Zollo's article describes how advocates have grappled with the issues and their rationale for maintaining strict adherence to Florida's confidentiality statute. She provides a clear understanding of why Florida has chosen to maintain its focus on survivor rights which should prove useful to other teams struggling with questions about confidentiality. The second article is a report by the Ontario Domestic Violence Death Review Committee. As other countries begin to adopt domestic violence fatality reviews it is helpful to share information about processes and compare notes about findings. We hope the opportunity for such comparisons expands as the fatality review process is implemented in other nations.

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Honoring the Domestic Violence Survivor's Right to Confidentiality in Fatality Review

By: Nina Zollo

Florida certified domestic violence centers are key participants on local and statewide fatality review teams. Experienced and knowledgeable center advocates provide important insights in the review of fatal and near fatal incidents of domestic violence, and make recommendations for training, early intervention, and collaborative community responses to prevent future homicides.

A tension arises, however, when a survivor who has received services from a certified domestic violence center is a victim of homicide. What, if any, information may the center provide to the fatality review team about this victim? This question is currently the subject of statewide discussion in Florida among the center members of the Florida Coalition Against Domestic Violence (FCADV).

Florida domestic violence centers and the domestic violence survivors they serve benefit from strong statutory protections relating to confidentiality and privilege. Centers are prohibited from releasing any information about survivors without their written consent, except in certain circumstances. The circumstances include medical and fire emergencies, child abuse reporting, a survivor's commission of or threat to commit a crime on the premises of the center, and when law enforcement presents a search or arrest warrant relating to a survivor at the center. Section 39.908, Fla.Stat. (2007). Florida's Attorney General has interpreted this law narrowly, and opined that domestic violence centers may release information without a survivor's written consent only in those circumstances set forth in the statute. Fla. AGO 98-10, 1998 WL 57089 (Fla.A.G.)

Florida's domestic violence advocate-victim privilege law allows a survivor to refuse to disclose, and to prevent any other person from disclosing, confidential communications made by the survivor to a domestic violence advocate, or any record made in the course of advising or assisting the survivor. The authority of the domestic violence advocate to claim the privilege on behalf of the survivor is presumed in the absence of evidence to the contrary. Section 90.5036, Fla. Stat. (2007).

Domestic violence centers thus promise survivors that they will not reveal any information about them without their consent, except in certain circumstances. These statutes are critical to ensuring survivor safety and trust, and centers and survivors routinely rely on these laws to deny batterers and others access to information, including whether the survivor has sought services from the center.

The power to consent to the release of confidential and privileged information belongs to the survivor, and not to the center. Consequently, it is critical that domestic violence centers are scrupulous in complying with the confidentiality and privilege statutes to empower and protect the rights of survivors. Moreover, if the centers do not follow the statutes to the letter of the law, it makes it difficult to demand that others respect the statutes, and to ask courts to enforce them.

Notably, there is no exception in the confidentiality or privilege statutes for the release of information to fatality review teams if there is a homicide. To do so, the center must have written consent from the survivor. This requirement has been a source of frustration for fatality review teams and domestic violence center advocates when the center may have in its possession information about the survivor that could assist with the fatality review.

Some members of fatality review teams believe that because the fatality review team is charged with keeping information received confidential, domestic violence centers may release the information to the team without the consent of the victim. Section 741.316, Fla. Stat. (2007). Florida law also exempts certain information obtained by fatality review teams from the state's public records. Section 741.3165, Fla. Stat. (2007).

While the statutes governing fatality review teams do provide for confidentiality, the confidentiality is not absolute. For example, it is possible that information shared with a fatality review team by a domestic violence center would be subject to discovery in a criminal trial.

Is this possibility a problem? Don't centers want to assist in the prosecution of batterers or help fatality review teams prevent future homicides?

It is FCADV's position that these questions are not relevant to the analysis. First, even if the fatality review team statutes provided that all information received was confidential in every circumstance, domestic violence centers would still need the survivor's consent to release the information. The focus of the inquiry is on the promise the centers made to the survivor not to reveal information to anyone except in certain circumstances. It does not matter that those persons receiving the information are themselves charged with keeping the information confidential.

Second, these questions focus on a desired result; the centers are revealing information for a "good cause." Any number of other entities seeking information about survivors can and do make similar arguments as to why domestic violence centers should disclose information to those entities without survivor consent. Yet centers consistently and correctly stand by the confidentiality and privilege statutes as a reason why they cannot produce the information.

Most importantly, these questions do not focus on what the individual survivor may want in her individual situation. The power to consent to release confidential and privileged information belongs to the survivor. There are survivors who do not want information about them provided to others, even if it would help prosecute the batterer. These survivors may want to protect their children or other family members, or simply do not want the details of their lives shared. On the other hand, there are survivors who may want the center to disclose information to a fatality review team.

Should centers give survivors the opportunity to consent to disclosure of information if they are the victim of a homicide? Some advocates expressed discomfort with discussing this option with survivors. Others thought it was important to give survivors the choice.

FCADV asked members of its Battered and Formerly Battered Women's Caucus for feedback. The general consensus from the Caucus was that survivors would want to have the option of signing a consent form authorizing centers to release information to fatality review teams if the survivor was murdered.

Members of the Caucus expressed concern, however, about the potential use of the information released. As one member explained:

"It should not be a blanket release. By this I will explain with an example. Hypothetically say we have a case that the woman was abused for many years by the father of her children. They finally get a divorce and he moved to another state. She has two children to raise and on very little income does so but is having difficulty taking care of her children due to her work hours. DCF becomes involved and father has moved on and is not interested in the kids. He lives in another state. Some allegations are founded and some are not. The mother has one abusive relationship after another and at times seems to choose her current boyfriend "over the welfare of her kids". Kids are now grown,

not in the home, and she lives with a very abusive, controlling and violent person. She keeps going back and forth with him. Finally she decides to get away for good and he ends up murdering her and killing himself. The fatality review teams often interview surviving family members and examines her entire life – the family she grew up in and all along the way – how could she have been helped? So I think that all the information that the Fatality Review Team brings up should not necessarily be given to the courts and Law Enforcement. The fact that she wasn't the greatest Mom in the world should not be public knowledge – has no bearing on the murder/suicide. Does this hypothetical case explain what should be released and what should not? Could the Fatality Team be allowed to give only the information surrounding the last abusive partner and the relationship to the murderer? If so, how could this be handled?"

This Caucus member's thoughtful response demonstrates that the decision to offer a consent form to a survivor to release information to a fatality review team does not in and of itself resolve the issue. Further discussion and analysis is necessary to address her questions, and other concerns, including:

- Can the survivor limit the extent of information released to the fatality review team?
- Even if a survivor limits the type of information released to the fatality review team, could a court later determine that a criminal defendant has a right to access all information the center has about the victim?
- To be effective, the consent form would have no expiration date on it. Domestic violence centers always put expiration dates on releases to protect the survivor in the event she changes her mind or she leaves the center. An open-ended release is contrary to well-established protocol and may not withstand a legal challenge.
- What type of training should the advocates receive on how to sensitively discuss the consent form with a survivor? Centers who have used such consent forms in the past reported that advocates who had worked with survivors who were victims of homicides were more likely to obtain the consent of survivors.
- When should centers discuss the consent form with survivors? At the initial intake, or later?
- What information should the center provide to the survivor to ensure informed consent? Should the advocate inform the survivor of the identity of each of the agencies who are members of the fatality review team?

As the domestic violence community in Florida struggles with the complexities of participation in fatality review teams, it is critical both that the voices of survivors remain at the center of the discussion, and that the centers honor the confidentiality and privilege laws. Domestic violence advocates fought hard to create confidentiality and privilege protections for survivors at their request. Disclosing a survivor's information without her written consent would effectively dismantle 30 years worth of advocacy.

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An Overview of the Ontario (Canada) Domestic Violence Death Review Committee (DVDRC)

By: William J. Lucas, MD, CCFP, Peter Jaffe PhD, and Marcie Campbell MEd

Ontario is the only Canadian province with a domestic violence fatality review committee. Ontario's "Domestic Violence Death Review Committee" (DVDRC) is a multi-disciplinary advisory committee of experts that was established in 2002 in response to recommendations made from two major inquests into the deaths of Arlene May and Randy Iles (1998) as well as Gillian and Ralph Hadley (2002). The mandate of the DVDRC is to assist the Office of the Chief Coroner with the investigation and review of deaths involving domestic violence with a view to making recommendations aimed at preventing deaths in similar circumstances and reducing domestic violence in general. The DVDRC defines domestic homicide cases as all homicides that involve the death of a person, and/or his/her child(ren) committed by the person's partner or ex-partner from an intimate relationship.

The main objectives of the DVDRC are: to provide and coordinate a confidential multi-disciplinary review of domestic violence deaths; to offer expert opinion to the Chief Coroner regarding the circumstances of the event leading to the death in the individual cases reviewed; to create and maintain a comprehensive database about the victims and perpetrators of domestic violence fatalities and their circumstances; to help identify the presence or absence of systemic issues, problems, gaps, or shortcomings of each case to facilitate appropriate recommendations for prevention; to help identify trends, risk factors, and patterns from the cases reviewed to make recommendations for effective intervention and prevention strategies; to conduct and promote research where appropriate; to stimulate educational activities through the recognition of systemic issues or problems; to stimulate referrals to appropriate agencies for action and assist in the development of protocols with a view to prevention; to disseminate educational information; and to report annually to the Chief Coroner the trends, risk factors, and patterns identified and appropriate recommendations for preventing deaths in similar circumstances based on the aggregate data collected from the Domestic Violence Death Reviews.

The DVDRC consists of representatives with expertise in domestic violence from law enforcement, criminal justice system, healthcare sector, social services and other public safety agencies and organizations. By conducting a thorough and detailed examination and analysis of facts within individual cases, the DVDRC strives to develop a comprehensive understanding of why domestic homicides occur and how they might be prevented. Information considered within this examination includes the history, circumstances and conduct of the abusers/perpetrators, the victims and their respective families. Community and systemic responses are examined to determine primary risk factors and to identify possible points of intervention that could assist with the prevention of similar deaths in the future.

The DVDRC collected data on all domestic homicides that occurred between 2002 and 2005 in Ontario (approx. population of 12 million). The statistics revealed that there have been a total of 113 domestic homicide incidents which resulted in the deaths of 99 women, 48 men (41 being the death of the perpetrator) and nine children. It should be noted that comparison with other data sources should be done cautiously as different organizations may have differing criteria for defining domestic homicides. For example, Statistics Canada publishes data on homicides based on police reports that are not modified

after subsequent court proceedings or revised coroner's findings. Over half of the 113 incidences were homicide cases (63%) and one quarter of the incidences were homicide-suicide cases (25%). The main cause of death in these cases was stabbing (33%), followed by gunshot wounds (26%), beating/assault (16%), and strangulation/smothering (14%). This pattern is the reverse of findings in the United States where more than half of domestic violence fatalities were caused by firearms. This difference between Canada and the U.S. may be in part due to the different laws and regulations surrounding the licensing and purchasing of firearms and general overall access to firearms.^[1] Statistics also revealed that in 95% of the cases, the perpetrator was male and the victim was female.

Between 2003 and 2006 the DVDRC completed a comprehensive review of 47 cases that involved a total of 75 deaths. The major findings from these reviews continue to echo other published data in terms of the circumstances of the homicide and the risk factors identified. The main cause of death in the 47 reviewed cases is again stabbing (38%) followed by gunshot wounds (30%), beating/assault (7%), strangulation (7%), poisoning (2%), and burns (2%). This trend is similar to the statistical findings from all the 113 cases that occurred in Ontario between 2002 and 2005. Additionally, the majority of the victims in the reviewed cases were female (93%) and the majority of perpetrators were male (94%).

To provide further insight into possible risk factors for domestic homicides, the characteristics of the victims and the perpetrators were compared. Statistics indicated that a high percentage of perpetrators had a criminal history (55%) while the opposite was true for victims (11%). More than half of the perpetrators had threatened or attempted suicide in the past (55%), and a high percentage of victims (59%) and perpetrators (89%) had experienced significant life changes (e.g., separation or pending divorce, major medical problem, financial difficulties) prior to the domestic homicide. All in all, the statistics indicated that in approximately two thirds of the cases reviewed (72%) over ten risk factors were present.

Consistent with past DVDRC reports and research, the most common risk factor involved with a domestic homicide case was found to be an actual or pending separation (81%). Perpetrators commonly become more controlling of their partners when facing a pending or actual separation.^[2] A history of domestic violence (77%) was found to be the second most common risk factor associated with perpetrators of domestic homicide, followed by non-diagnosed reports of depression (68%), escalation of violence (60%), and obsessive behaviour (60%).

As the DVDRC reviews domestic homicide cases and makes recommendations to prevent similar tragedies in the future, major themes and trends are identified. One major theme identified is the need for education and awareness for the general public and professionals. The DVDRC has noted that the majority of domestic homicides may have been prevented, with the benefits of hindsight, if professionals and/or the public were more aware of the dynamics of domestic violence and the risk for lethality. The Committee has made several recommendations surrounding enhanced awareness and education of the general public and professionals. Recommendations have been targeted to frontline workers, healthcare providers, police, lawyers, judges, child protection services, educators, and the general public. More specifically, the DVDRC has recommended the creation of public education campaigns, training programs in risk assessment and knowledge of referral

and support services for professionals, curriculum-based healthy relationship programs in schools which include education on the dynamics of domestic violence, and training programs in the justice system that use examples of high-risk domestic homicide cases.

Another major theme identified within the recommendations made by the committee is need for risk assessment, risk management and strategic interventions. The importance of risk assessment involving both the victim and perpetrator has been a central issue with the DVDRC in the prevention of domestic homicides. The committee has recommended that all professionals (frontline workers, healthcare providers, police, lawyers, mental health workers, child protection workers) use standardized risk assessment tools to thoroughly assess and manage the potential risk for the victim and the danger of the perpetrator. Many professionals are well placed to gather critical information after victims or perpetrators present with physical injuries or mental distress.

The DVDRC has recommended several forms of interventions to prevent further abuse and potential domestic homicides. These recommendations include: safety planning whenever abuse is disclosed by a victim to services for abused persons; case conferencing to share information and action plans between justice partners, health professionals, and counselors when dealing with “high risk” cases; establishing a protocol with the police and Crown Counsel (prosecutors) to ensure persons proposed as surety are properly investigated and informed of their responsibilities and establishing a protocol for immediately entering restraining orders into the CPIC (Canadian Police Information Centre) system; workplaces designing and implementing a policy to address domestic violence as it relates to the workplace; health and social service professionals identifying and assessing childhood histories of exposure to domestic violence and developing intervention strategies that recognize this factor as part of an overall treatment plan; and restricting access to firearms in appropriate circumstances.

All the above recommendations address the lack of programming and services with the recognition that they require the necessary resources to become operational to ensure victim safety and reduce perpetrator risks. Another major theme identified by the committee is the need for resources to implement all the above recommendations and to provide support to the victim and her family, and provide access to domestic violence services for people living in rural and remote communities. Further resources are also required to adequately investigate domestic violence fatalities that involve both homicide and suicide.

Finally, a major theme identified within the recommendations is issues related to children. The DVDRC has made several recommendations for the change of provincial legislation to ensure that domestic violence is given a prominent role in the judicial decision-making when considering child custody. Additionally, the committee recommended that the province develop a discussion paper and inter-ministerial guidelines for all cases involving domestic violence, children and custody or access disputes which will encourage enhanced coordinated practices and protocols within and between the family and criminal courts, as well as court-related services. Other recommendations involving the safety of children included encouraging child protection agencies to screen for domestic violence in all cases.

There has been considerable progress made in the field of domestic violence in Ontario partly in response to the recommendations made by the DVDRC. The final chapter of the Domestic Violence Death Review Committee 2006 Annual Report details encouraging progress reports from across Ontario. Some potential future issues for the committee to

consider include examining the relationship between male depression and domestic homicides and/or domestic homicide-suicides and looking into the potential for recommending development of a screening tool for men to assess their use of abuse. In light of recommendations from a recent inquest in the province, the committee will continue to examine the issue of domestic violence in the workplace and the potential role of enhanced awareness and workplace policies. In 2008 the DVDRC will be discussing several new topics including the suggestion that the provincial government develop an audit process to review the implementation of past recommendations and consider the potential benefits of implementing local fatality reviews in the community where the homicide occurred. Review committees in the US, such as Washington State's Domestic Violence Fatality Review Board, have implemented local review panels in combination with centralized review panels to create a more thorough and accurate review process of domestic homicides that occur in that particular state. Many of these ideas will be beyond the mandate and funding of the Office of the Chief Coroner and will require engagement of various community and government partners.

DVDRC annual reports are available on-line at
http://www.mcscs.jus.gov.on.ca/english/publications/comm_safety/DVDRC_2006.pdf.

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