

May 28, 2008 Violence Against Women Act

Kari E. Brandenburg
Second Judicial District Attorney
520 Lomas Blvd. NW
Albuquerque, NM 87102-2118

Re: Opinion Request--Violence Against Women Act

Dear Ms. Brandenburg:

You have requested our opinion regarding whether, when a conflict arises between domestic violence shelters and police agencies attempting to investigate a possible crime involving a child who may be residing at a domestic violence shelter, the child abuse reporting provision of the Children's Code, NMSA 1978, § 32A-4-3 (2005) takes precedence over the confidentiality provisions of the federal Violence Against Women Act ("VAWA").

Based on our examination of the relevant New Mexico statutes, federal statutes, opinions and case law authorities, and on the information available to us at this time, we conclude that, generally, and subject to any specific requirements applicable to a specific program under which a shelter presumably operates, the child abuse reporting provision of the Children's Code, NMSA 1978, § 32A-4-3 (2005), takes precedence over the confidentiality provisions of the VAWA. This is because federal law permits the release of this information pursuant to New Mexico's statutory requirements.

Your correspondence indicates that situations have arisen in which the police are called upon to investigate a possible child abuse case and have reason to believe that the child in question may be residing with a parent at a domestic violence shelter. When the police attempt to confirm the location of the child or gain access to the child, they are sometimes refused that information or access by the domestic violence shelter. The shelters are concerned that to give out any information or assistance would violate the provisions of the Violence Against Women Act. The police, however, believe that investigation of possible child abuse takes precedence over confidentiality issues in the Violence Against Women Act.

The Children's Code requires reporting and investigation of suspected child abuse or neglect. Specifically, Section 32A-4-3 provides, in part:

- A. Every person ... who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:
- (1) a local law enforcement agency....

....

C. The recipient of a report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. A local law enforcement officer trained in the investigation of child abuse and neglect is responsible for investigating reports of alleged child abuse and neglect at schools, daycare facilities or child care facilities.

....

E. A law enforcement agency ... shall have access to any of the records pertaining to a child abuse or neglect case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in the Abuse and Neglect Act.

F. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

In addition to the required reporting to law enforcement of suspected child abuse, law enforcement is excepted from confidentiality provisions of the Abuse and Neglect Act, NMSA 1978, §§ 32A-4-1 to -34 (1993, as amended). See NMSA 1978, § 32A-4-3 (E) (2005). The Act's provisions generally accord privacy with respect to information about persons who report suspected abuse and about the parties involved. See NMSA 1978, § 32A-4-4 (A) (2005) (name and information regarding the person reporting suspected abuse shall not be disclosed absent the consent of the informant or a court order); NMSA 1978, § 32A-4-4 (B) (2005) (CYFD must advise a party that is the subject of an investigation of the reports or allegations made "in a manner that is consistent with laws protecting the rights of the informant"); NMSA 1978, § 32A-4-5 (D) (2005) (investigations must be conducted in a manner that will protect the privacy of the child and the family, with the paramount consideration being the safety of the child"); NMSA 1978, § 32A-4-33 (A) (2005) (providing for confidentiality of all records and information concerning a party to a neglect or abuse proceeding). However, the Act allows disclosure of otherwise confidential records to law enforcement officials, except in circumstances involving use immunity. NMSA 1978, § 32A-4-33 (B) (2005).

Additionally, the Victim Counselor Confidentiality Act, NMSA 1978, §§ 31-25-1 to -6 (1987) establishes, as a paramount state interest, the required reporting of suspected child abuse and neglect. Section 31-25-5 of that Act provides, in part: "The Victim Counselor Confidentiality Act shall not be construed to relieve a victim counselor of a duty to report suspected child abuse or neglect pursuant to Section 32-1-15 NMSA 1978 [now Section 32A-4-3]...."

VAWA, Pub.L. 103-322, Title IV, includes several federal grant programs designed to provide assistance to adult and child victims of domestic violence, which may have

differing confidentiality requirements pursuant to those specific authorizing statutes and grant application requirements. We assume that the shelters involved in your question are grantees under one or more of those federal grant programs. Our answer to your question, therefore, necessarily involves a general description of some of the statutes that may apply. To the extent that those shelters operate under programs that are governed by different laws, an examination of those other laws would be necessary.

One federal statute that may apply is 42 USC Section 13925, which provides for federal grants under VAWA. Under that statute, law enforcement takes precedence over confidentiality. That precedence is reflected in the grant conditions of paragraph C, which acknowledge that grantees may be obliged by statute to release otherwise confidential information. 42 USC Section 13925 (b)(2) provides, in part:

- (A) In general. In order to ensure the safety of adult, youth, and child victims of domestic violence ... grantees and subgrantees under this title [VAWA] shall protect the confidentiality and privacy of persons receiving services.
- (B) Nondisclosure. Subject to subparagraphs (C) and (D), grantees and subgrantees shall not--
 - (i) disclose any personally identifying information or individual information collected in connection with services requested, utilized or denied through grantees' and subgrantees' programs; or
 - (ii) reveal individual client information without the informed, written, reasonably time-limited consent of the person....
- (C) Release. If release of information described in (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. Grantees and subgrantees may share ... law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

The information sharing provision of paragraph D reflects the important interest of law enforcement. Under paragraph C of 42 USC Section 13925 (b)(2), release of information may be compelled by statutory mandate. State law, specifically, the Child Abuse and Neglect Act and the reporting requirements imposed by that Act would, therefore, take precedence in the context of your question.[1]

The state law exception is found in other federal provisions. In the area of public housing, grants to eligible entities may be made to combat violence against women. Grant application requirements include a provision that “[a]ll information provided to any housing agency ... including the fact that an individual is a victim of domestic violence ... shall be retained in confidence ... except to the extent that disclosure is ... otherwise required by applicable law.” 42 USC § 14043e-4 (e)(4). This statute would except from confidentiality disclosure that is required by the Child Abuse and Neglect Act.

Your request to us was for a formal Attorney General Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General’s Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

ANDREA R. BUZZARD
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General

[1] A grant program to combat domestic violence, dating violence, sexual assault and stalking in the middle and high schools contains a similarly worded provision that permits the release of confidential information in circumstances where the release is compelled by statute or court mandate. See 42 USC § 14043c-3 (e).