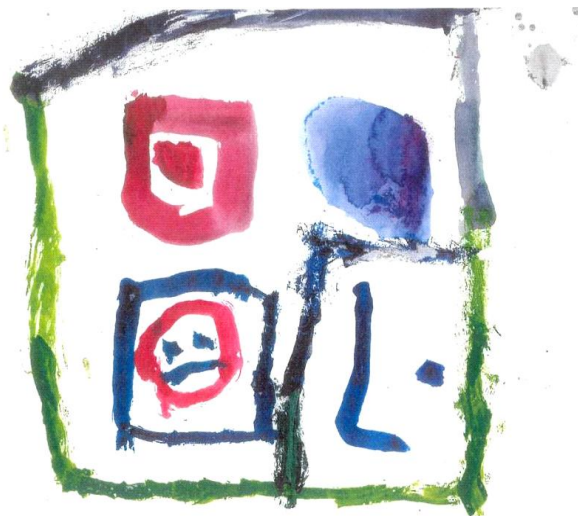


Vermont's Model Protocol:

Law Enforcement Response to Children at the Scene of a Domestic Violence Incident



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Preface

It is our belief that children are influenced by how law enforcement officers respond to domestic violence and that a well-informed sensitive response will benefit children. The intent of this protocol is to assist law enforcement officers in their response to children at the scene of domestic violence incidents. The goals of an effective response include assessing whether children have been harmed, minimizing the impact and repercussions to children who are present, and empowerment of children within the process as much as possible. Finally, the achievement of an effective response to children at the scene would enhance adult victim and child safety, promote offender accountability and expand the community response to domestic violence.

Research has begun to uncover and document the multiple ways that batterers and their behaviors affect children. We know that children can be exposed to battering in a number of ways including direct witnessing of violence, intervening in an assault to protect a parent, overhearing violence, seeing the injuries or bruises on a parent, as well as being harmed intentionally or unintentionally in the course of an assault. We also know that children exposed to battering can experience a range of effects including: sleep disturbances, eating problems, developmental delays, psychosomatic disorders, acting out violently, withdrawing, problems in school, depression and anxiety. (Endnote # 1)

Children experience domestic violence in different ways. Their exposure to battering occurs along a continuum that ranges from children who never see an act of violence to children who witness the murder, attempted murder, or sexual assault of their mother.¹ Similarly the impact of this exposure to battering on children can occur across a wide continuum. Some children experience a mild level of anxiety while other children are severely traumatized. There are many variables which influence/mediate the effects of domestic violence on children, some of these include the severity and frequency of the violence, the age of the child, the resiliency and temperament of the child and the child's relationship with the parent who is battered. (See Appendix A for continuum chart.)

¹ Note: For the purposes of this document, we agree that domestic violence can occur in both heterosexual and same sex intimate relationships and may be perpetrated by men or women. However, at times we have used gender specific language to reflect the overwhelming majority of situations where domestic violence is perpetrated by men against their female partners.

This protocol was developed by a multi disciplinary group including representatives from Law Enforcement, the Vermont Network Against Domestic and Sexual Violence, and the Vermont Department for Children and Families (DCF-Family Services Division) formerly known as the Vermont Department of Social and Rehabilitation Services. (See Appendix B for more information about this process.)

Our discussion generated several key themes:

- *Law Enforcement response to a family is never completely neutral and will always impact every member of the family including children.*
- *Law Enforcement Officers currently experience frustration with the lack of clarity/guidelines about responding to children.*
- *Gathering evidence from children can be both valuable to a case and detrimental to an individual child.*
- *Children are individuals who experience situations differently. In determining how to respond to children, it is important to carefully consider the impact of any action on the child based on the child's age and developmental level as well as the severity and danger of the situation.*
- *Developing an ideal response requires a working knowledge of child development as well as an understanding of the impact batterers and their behaviors have on children.*
- *An ideal response should support the children's connection to the non-offending caretaker.*

Vermont's Model Protocol: Law Enforcement Response to Children at the Scene of a Domestic Violence Incident

Objectives of protocol:

- To assist law enforcement officers to respond effectively to children at the scene of a domestic assault.
- To outline an effective response which includes:
 - ◆ Assessing whether children have been (physically) harmed;
 - ◆ Minimizing the impact and repercussions to children who are present;
 - ◆ Empowering children as much as possible in the process;
 - ◆ Maintaining victim safety; and
 - ◆ Maintaining batterer accountability.

Guiding Themes:

- Law Enforcement Response is never completely neutral and will always impact every member of the family including children;
- Safety for children and adult victims is paramount; and
- There are many variables which impact/mediate the effects of domestic violence on children. (Endnote #2)

Protocol Recommendations:

1. Determining Whether Children Are Present:

A. Officers should determine and document whether there are any children present in the residence (or were present during the incident), their names, ages, demeanor, their relationship to the parties, whether children were present during incident, and whether the child/ren have been physically harmed. (Endnote #3)

B. Officers should be sure to document whether the incident was committed in the presence of a child. This information may be considered by the court in determining sentence.

Enhanced Penalties for committing domestic assault in the presence of a child: Ann. Stat. Tit. 13, § 1047:

When imposing sentence for an offense listed in this subchapter (§ 1042, 1043, 1044), the court may consider whether the offense was committed within the presence of a child. (Added 2007, No. 174 (Adj. Sess.), § 8.)

C. Process for determining whether children are present:

a. In addition to information regarding children provided by the police dispatcher, officers should observe for physical evidence that may indicate the presence of child/ren (i.e.: toys, clothes, etc.).

b. Ask the parties about child/ren, their whereabouts, and whether the child/ren were present and intentionally or accidentally injured in the incident. Explain to the parent/guardian why it is important for officers to check on the child/ren.

c. If the parties are not able to respond to questions about the child/ren's welfare and there is some reason to believe that child/ren may be present, officers should consider whether to look for them.

D. When deciding whether to look for children, officers should consider:

a. Whether there is reason to believe that the child/ren are injured, in danger, or at risk of substantial harm; (See Appendix I for the DCF *Risk Of Harm* Policy; Endnote #4)

b. The severity of the violence;

c. If there would be no adults left to supervise any child/ren left in the house; and

d. Whether there are enough officers present at the scene to do so safely.

E. If officers decide that visual contact with children is appropriate, officers should consider:

a. That the purpose of searching the house for child/ren should be to determine their presence and welfare;

b. Asking the victim parent/guardian to go with the officer to locate the child/ren;

c. The age and developmental level of the child/ren; (Endnote #5)

d. Not waking child/ren who appear to be sleeping-in the absence of other compelling reasons to do so; and

e. Whether or not to announce him/herself to the child/ren as an *officer* based on assessment of officer safety and the child/ren's well being. (Endnote #6)

2. Welfare Checks on Children:

A. If and when officers locate child/ren on the scene, officers should determine whether the child/ren are physically hurt by both visually observing and by asking the child/ren. Officers should make every attempt to comfort the child/ren. (Endnote #7)

B. If child/ren have been injured, officers should:

a. Determine whether the child/ren need medical treatment and arrange for determined medical treatment. Engage the victim parent/guardian in that process if possible.

b. Follow existing child abuse protocols.

c. Follow existing mandated reporting law (*Title 33 V.S.A §4913*) (See Appendix C for Title 33 V.S.A §4911-§4915 sections of the Vermont Child Abuse Statute.) When possible, work with the non-offending parent/guardian to ensure that a report to DCF is made as safely and expeditiously as possible. At a minimum, do your best to convey to the non-offending parent/guardian information about

the report and the typical process and expectations related to a child abuse referral.

3. Excited Utterances:

If child/ren make 'excited utterances' (*Hearsay Exception V.R.E 803 Subsection 2*) about the incident, officers should document them, in quotes, along with observations about the child/ren's demeanor in the officer's report.

4. Talking With Children about the Incident:

A. When deciding whether to go beyond a 'welfare check' and talk to the child/ren about the incident, officers should consider (not listed in priority order):

a. Safety Factors:

- ◆ Whether there are enough officers present at the scene to do so safely;
- ◆ The potential harm to the child/ren resulting from an interview process; (Endnote #8)

b. Comfort of child, parent and officers:

- ◆ The age and developmental level of the child/ren;
- ◆ The emotional state of the child/ren; (Endnote #9)
- ◆ Whether the child/ren are expressing an interest in speaking with an officer;
- ◆ The comfort level of officers in talking with child/ren;
- ◆ The non-offending parent/guardian's preferences as to whether and how to talk with the child/ren; and

c. Evidence collection factors:

- ◆ Whether there exists other corroborative evidence of the crime sufficient to make the arrest decision or support subsequent prosecution;
- ◆ If there is not time for an effective interview, consider arranging a follow-up interview as soon as possible after the incident.
- ◆ Whether hearsay exception *V.R.E. 804a - Children Under Twelve* applies. (See Appendix D for text of hearsay exception.)

B. How to talk to child/ren about the incident:

a. Generally, child/ren should be interviewed outside the presence of the parent/guardian (and other parties), or in a manner that minimizes the influence of the parent/guardian over conversations between officers and child/ren.

b. However, there may be some occasions where child/ren, because of their age, developmental level, and/or emotional state, should be interviewed in the

presence of a non-offending care giving parent/guardian in order to minimize the impact on the child/ren.

C. Who should interview children at the scene?

a. It is recognized that because of the realities of staffing and resources, in most cases and in most jurisdictions, only the initially responding officers will be interacting with the child/ren at the scene of a domestic violence incident. However, if a specifically trained law enforcement officer is available to respond to the scene or for any follow-up interviews, that officer should be utilized. (*Note: training specific to police response to children who witness domestic violence has been developed and is accessible as an elective through the Vermont Police Academy.*)

b. All officers who respond to domestic violence calls should be knowledgeable in and trained in interacting with children on the scene of a domestic. (See Appendix E for *Tips for Talking to Children.*)

5. Interviewing Witnesses in the Presence of Children:

A. Where possible, avoid interviewing parties in the presence of the child/ren so that:

- a.** Parents/adults don't withhold information that they fear will be detrimental to child/ren;
- b.** Child/ren will not hear potentially traumatizing information; and
- c.** Child/ren who may be witnesses will not be influenced by other parties' accounts.

B. When deciding whether or not to interview parties with child/ren present, officers should consider:

- a.** The age, developmental level, and emotional state of the child/ren;
- b.** Whether there is another officer or caregiver available to supervise child/ren separately;
- c.** Officer safety; and
- d.** Time and personnel restraints.

Notes about interpreting:

- Best practice discourages the use of children and other family members as interpreters for people who are Deaf and Hard of Hearing and people with limited English proficiency.
- For people who are Deaf and Hard of Hearing: assure that the department has an updated list of Interpreters that can be contacted directly after hours. To receive a copy of the list and for scheduling interpreters ahead of time contact: the Vermont Interpreter Referral Service at 1-800-639-1519. The emergency list is also available at www.virs.org.

- For people with limited English proficiency: departments can contract with a telephone interpretation service (such as Language Line); and/or contact the Vermont Refugee Resettlement Program for in-person interpretation and document translation services. VRRP can be reached at 802-654-1706 or <http://uscrr.refugees.org/site/PageNavigator/Vermont/InterpretationServices>

6. Subduing or Arresting Someone in the Presence of Children:

- A. Because child/ren may experience a negative impact when witnessing an arrest, whenever possible, officers should avoid:** (Endnote #10)
- a. Subduing an aggressive party in the presence of child/ren; and
 - b. Arresting parties in the presence of child/ren.
- B. Assessing the safety of all present at the scene is a factor when officers are considering subduing or arresting in the presence of children.**
- C. Officers should articulate to all parties present, including children, that they (the officers) are responsible for deciding to make an arrest and deciding who to arrest.**

7. Separating Children from Care Giving Parent/Guardian:

A. Determining dominant aggressor:

Officers should consider the fact that separating child/ren from their primary caregiver parent/guardian can be harmful. In order to avoid separating child/ren from their primary caregiver, officers should consider the context of the violence and investigate for possible self-defense and dominant aggressor issues. (See Appendix F for a sample guideline.)

a. Regarding self defense, every person has the right to use a reasonable amount of force to defend him/herself, if the person reasonably believes the following two things:

- ◆ That s/he is in immediate danger of bodily harm; and
- ◆ That the use of reasonable force is necessary to avoid this harm.

b. Regarding the determination of who is the dominant aggressor, officers should consider:

- ◆ The existence of offensive and defensive injuries and note:
 - The comparative size, physical strength and capability of each party to inflict injury on the other
 - The injuries and if the parties' explanations are consistent with the amount of force reportedly used by each party in response to

- each other's actions
- Whether the amount of force used was an appropriate, reasonable and justifiable response to the threats or force used by one party against the other.
- ◆ Prior history of violence, including but not limited to past incidents (not necessarily charged) that would induce one party to react in fear and cause such injury to the other.
- ◆ Other evidence (physical, circumstantial and officer's observations).
- ◆ Verbal statements from parties involved and other parties present including child/ren. (See page 12, #4 *Talking With Children About the Incident*)

B. In the case of Fatality, Hospitalization or Arrest of Care Giving Parent:

- a. A report should be made to DCF whenever there is a death of a parent or caretaker as a result of domestic violence and the child/ren were reported to have been in the home or on the property when the incident occurred, regardless of the child's exact location.
- b. If the care giving parent is able, she/he should be empowered to make decisions for temporary care of her/his child(ren). If the care giving parent is unable to participate in decision making due to medical incapacitation and no other legal or appropriate caregiver is available, a report to DCF should be made.
- c. Child(ren) should be cared for in a manner that minimizes impact and repercussions to them until a transition to temporary care is finalized.

8. Resources For Children:

- A. In addition to information required by statute for law enforcement agencies to give all victims (*Title 33 V.S.A. §5314*), officers should also offer contact information for local Domestic Violence Programs to victims. (See Appendix G for Network Program List) Domestic Violence Programs offer resources and have referrals that could be helpful for both adult and child victims in accessing emergency services, support, and mental health resources. Officers can offer this contact information to both adult victims and to older children who are interested in accessing support services.
- B. When a report to DCF has been filed, officers should indicate to DCF Centralized Intake that there is also domestic violence in the home and the location of the batterer (i.e. arrested and in jail, moved out, etc.) if known. The officer should also provide information to the victim about the DCF Domestic Violence Unit. (See Appendix H for DCF Domestic Violence Unit contact information.)

9. Department for Children and Families (child protection):

DCF policy states that *exposure to domestic violence does not, in and of itself, constitute child abuse and does not require a report to DCF* in the absence of significant risk of harm to the child. (See Appendix I for the DCF *Risk Of Harm* Policy.) If there is evidence of child abuse, follow existing child abuse protocols and the mandated reporting law (*Title 33 V.S.A §4913*).

Endnotes

Vermont's Model Protocol for: Law Enforcement Response to Children at the Scene of a Domestic Violence Incident

1. Impact of batterers and battering behavior on children:

- *In the past ten years, multiple studies have been published indicating a range of ways that exposure to domestic violence impacts children.*

(Groves, Betsy McAlister 2002, Children Who See Too Much, Beacon Press, Boston MA, pp. 50-78)

(J.L. Edelson, "Children's Witnessing of Adult Domestic Violence," Journal of Interpersonal Violence 14 no. 8 (1999) 839-870)

2. Variables which influence/mediate the impact of domestic violence on children:

- *Children who live in families where domestic violence occurs have varied experiences and are impacted differently depending on a number of factors.*

Factors shown to help children cope with exposure to violence include:

- *A strong caring relationship with an adult (e.g., parent, relative, teacher);*
- *Community safe havens (e.g., schools, community centers, churches);*
- *A child's own internal resources (e.g., intelligence, self-esteem, interpersonal skills)*

(Osofsky, J.D. (1999). The impact of violence on children. In *the Future of Children: Domestic Violence and Children* 9(3), California: The David and Lucile Packard Foundation.)

3. Why should police check on children?

- *Households where domestic violence occurs are more than twice as likely to have children, as US census data predicts.*

(Fantuzzo, J., Boruxh, R., Berianna, A., Atkins, M., & Maracus, S. (1997). Domestic violence and children: Prevalence and risk in five major U.S. cities. *Journal of the American Academy of Child and Adolescent Psychiatry*, 36, 116-122.)

- ***In these households, there is a high likelihood that children living with a batterer will witness the violence.***

(Kolbo, J., Blakely, E., & Engleman, D. (1996). Children who witness domestic violence: A review of empirical literature. *Journal of Interpersonal Violence*, 11 (2), 281-293.)

- ***Children who live with domestic violence are more aware of the violence than their parents realize.***

(Erickson, J., & Henderson, A. (1998). Diverging Realities: Abused women and their children. In J. Campbell (Ed.), *Empowering survivors of abuse: Health care for battered women and their children* (pp. 138-155). Thousand Oaks, CA: Sage.

- ***Police encounter as many as half a million children during domestic violence arrests in the US each year.***

(Kilpatrick, D., & Saunderson, B. (1997). *Prevalence and Consequences of Child Victimization: Results from the National Survey of Adolescents, Final Report*. Research in Brief. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs National Institute of Justice. NJC 181028.)

- ***Exposure to domestic violence increases a child's risk of maltreatment. 30%-60% of families experiencing either domestic violence or child maltreatment, the other form of violence is also present.***

(Edelson, J.L. (1999). The overlap between child maltreatment and woman battering, *Violence Against Women* 5:134-54.)

4. Is there a reason to believe that the children are injured, in danger, or at risk for substantial harm?

- ***Exposure to domestic violence increases a child's risk of maltreatment. 30%-60% of families experiencing either domestic violence or child maltreatment, the other form of violence is also present.***

(Edelson, J.L. (1999). The overlap between child maltreatment and woman battering, *Violence Against Women* 5:134-54.)

5. Why assess child's age and developmental level?

- ***How a child will relate and think about their experiences changes as they grow. We can best understand how a child is affected by exposure to violence and how they might respond to police intervention by considering their stage of development. Knowledge about child development should guide our responses and interventions with children at different ages. Police officers who interface with children should do their best to receive training in the basics of child development.***

6. Why be concerned about how to announce yourself to children if you look for them?

- *Children who experience violence in their homes may have a variety of feelings about police officers. Some children may see police officers as good and helpful. They may feel as though police intervention is good because it can help make the violence in their lives stop. Some children, however, may have ambivalent or even angry feelings towards police officers. If police intervention has not been perceived as helpful in the past, if police are considered “bad” by the child’s family, or if police have taken offending parents, care-giving parents, or children “away” from the home, children might perceive officers as un-friendly. Some children may have been taught that police officers are enemies and dangerous to the family.*

When considering how to approach children, it is suggested that officers consider their own safety in relation to what they know about the children and what they know about the severity of the domestic violence situation at hand.

7. Comforting children:

- *Officers can comfort children by asking about and acknowledging children’s feelings, offering help, and answering any questions that children might have. As officers approach children, it is also important for them to keep in mind that children exposed to domestic violence almost always have significant relationships with and are dependent on the adult victim and/or the perpetrator. The strength of these relationships will greatly affect how children perceive the violence, the event, and the presence of police.*

(Baker, L. L., Jaffe, P. G. (2002). Children Exposed to Violence: A Handbook for Police Trainers to Increase Understanding and Improve Community Responses. (p. 512). The David and Lucile Packard Foundation.)

8. Interviews may cause added anxiety and stress for some children:

- *Interviews can be stressful and intimidating situations for children. Children who witness a violent event or who are victims of abuse may be frightened, upset and anxious.*

(Baker, L. L., Jaffe, P. G. (2002). Children Exposed to Violence: A Handbook for Police Trainers to Increase Understanding and Improve Community Responses. (p. 512). The David and Lucile Packard Foundation.)

- *The interview process (which may continue well past the first police response) may cause children anxiety and stress in addition to the stress inherent in the immediate incident.*

9. Emotional state of the children:

- ***Intervention by police authorities may create immense relief and/or additional worries or distress for children (e.g., relief that the violence was stopped but the concern about the non-offending parent's injuries and the offending parent's removal from the home.).***

(Baker, L. L., Jaffe, P. G. (2002). Children Exposed to Violence: A Handbook for Police Trainers to Increase Understanding and Improve Community Responses. (p. 512). The David and Lucile Packard Foundation.)

10. Arresting perpetrators in front of children:

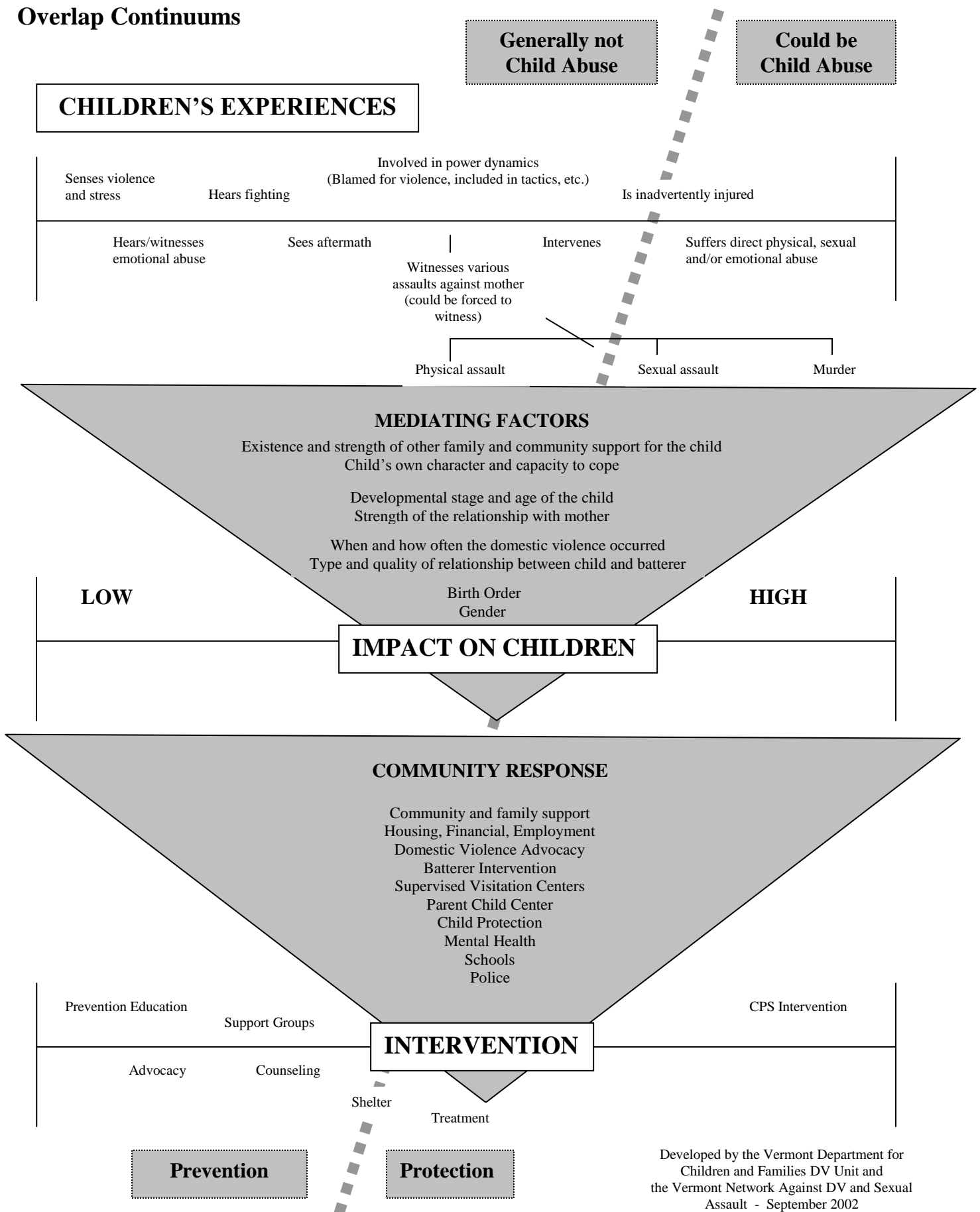
- ***In keeping with the goal of this protocol to minimize the impact and repercussions to children who are present at a domestic violence incident, we assert that best practice would indicate not arresting in front of children. We agreed that arresting a perpetrator of domestic violence in front of children, especially the perpetrator's children, could have a negative impact on children long after an arrest is made.***
- ***However, some professionals practice and train that it is best practice to arrest domestic violence perpetrators in front of children if there are enough officers to fully explain the action to the children. The philosophy behind this practice is that it is important for children, especially boys, to tangibly recognize domestic violence as a criminal act:***

“The training also teaches officers, through written scenarios and a videotape, to arrest the batterer in front of the children, or to privately explain to them why someone is being arrested. This directive may disturb officers until they learn that perhaps their only opportunity to affect that child's life is at that moment.”

(O'Dell, Anne. Breaking Down the Myths of Domestic Violence, *Community Policing Exchange*, Phase V, #17, November/December, 1997, pg 1.)

Domestic Violence and Child Abuse Overlap Continuums

Appendix A



Appendix A: Domestic Violence and Child Abuse Overlap Continuums

After several years of cross training between systems and coordination of services, the Vermont Department for Children and Families Domestic Violence Unit and the Vermont Network Against Domestic and Sexual Violence developed this *Domestic Violence and Child Abuse Overlap Continuum*. This visual aid helps to illustrate how the issues of domestic violence and child abuse overlap and how we should approach a preferred response to children who experience domestic violence.

Children's Experiences

Children's experiences of domestic violence are varied and unique. Their experiences can range from sensing or hearing the violence, seeing the aftermath of the violence, through witnessing acts of violence directed at their mothers, to the more severe situations of children being injured while intervening in fights or suffering abuse directed at them.

Mediating Factors

Mediating factors are environmental factors in a child's life that can be either a *source of strength* or a *source of risk* in determining how the violence will impact his/her life. For example, if a baby senses and hears violence for a year of his/her life, that child will be impacted differently, probably less, than a child who experiences domestic violence over many years stretching from infancy through middle childhood. A different child might witness severe domestic violence yet be impacted on the low end of the continuum. This might happen because the child has environmental factors in his/her life that provide a source of strength for that child- such as a strong relationship with his/her mother and/or other family and community support.

Impact On Children

Each child will experience a unique impact from living in a home with domestic violence. The impact is based on what the child experienced **and** the mediating factors in his/her life. The impact that domestic violence can have on children can range from low to severe.

Community Response & Intervention

Considering that all children's experiences are different and their impact varied, it follows that children will require a range of community responses from a range of community responders. A preferred community response would include responses that support battered women and their children and hold batterers accountable for the violence. Interventions and responses to children should be based on individual needs and range from prevention and advocacy to, in cases of determined child abuse, child protection intervention.

The Dotted Line

Stretching across the diagram diagonally is a dotted line. This line represents a *gray* line that might be helpful in determining if a child who experiences domestic violence could also be considered *abused*. On the left side of the line are situations that are generally **not considered** child abuse. Situations that appear on the right side of the line are ones that **could be considered** child abuse. Generally, children who witness the abuse of their mother are not considered victims of child abuse unless their experiences- filtered through the mediating factors in their lives- lead them to a more severe impact on the right side of the continuum.

In Vermont, our child protection system, DCF, does not include *child witnessing of domestic violence* in their definition of child abuse. DCF will not accept a report of child abuse solely on the basis of the child having been exposed to domestic violence. DCF will accept reports that indicate a possible risk of physical harm to a child due to domestic violence.

A Preferred Response to Children Who Experience Domestic Violence would...

- Consider each child's situation as unique to him or her.
- Respond to each child based on his/her individual experiences, level of impact, and needs.
- Consider the existence and strength of mediating factors in each child's life.
- Consider the impact that our interventions will have on the safety of the family.
- Work toward a comprehensive coordinated community response to domestic violence.

Appendix B: How This Protocol Was Developed

In the spring of 2001 the Family Violence Training Coordinator for the Vermont Criminal Justice Training Council began meeting with representatives from the Vermont Network Against Domestic and Sexual Violence and the DCF (Department for Children and Families) Domestic Violence Unit for the purpose of improving the way law enforcement officers respond to children at the scene of a domestic incident. The goal of the group was to develop a law enforcement training curriculum and best practice recommendations for a police response to children at the scene of a domestic incident. As the group began meeting, we discovered that there were a variety of opinions and options for an ideal police response. Research on initiatives in other communities revealed a similar range of practices. While individuals in the domestic violence or law enforcement fields in other states have developed protocols, the Vermont group was unable to find documentation of best practice recommendations or protocols that were developed collaboratively drawing on broad community expertise.

In response to this gap, we contacted Loretta Fredrick, attorney and community consultant from the Battered Woman's Justice Project in Minneapolis, Minnesota. Loretta agreed to facilitate a forum bringing together Vermont experts with the goal of developing a law enforcement curriculum and protocol specific to Vermont. In the fall of 2002 a cross section of 21 people including police officers, domestic violence program advocates, and the Department for Children and Families Domestic Violence Unit attended a one-day forum to discuss best practice recommendations for Vermont (see acknowledgements page for list of participants). Immediately following the one-day forum, a small work group met to finalize into document form the decisions reached during the forum. When completed a final draft of the document was then sent to the original group for feedback and final approval. The Best Practice Protocol Recommendations contained in this document are the product of that multidisciplinary group.

Revisions were made and approved by a similar multidisciplinary group in July 2007. Revisions reflect policy and contact information changes as well as include response in cases of fatality or incapacitation and clear dominant aggressor language.

Appendix C: Vermont Statutes on Abuse of Children

TITLE 33. VERMONT STATUTES ANNOTATED

CHAPTER 49. CHILD WELFARE SERVICES

SUBCHAPTER 2. REPORTING ABUSE OF CHILDREN

§ 4911. Purpose

The purpose of this subchapter is to:

- (1) Protect children whose health and welfare may be adversely affected through abuse or neglect.
- (2) Strengthen the family and make the home safe for children whenever possible by enhancing the parental capacity for good child care.
- (3) Provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes require the reporting of suspected child abuse and neglect, an assessment or investigation of such reports and provision of services, when needed, to such child and family.
- (4) Establish a range of responses to child abuse and neglect that take into account different degrees of child abuse or neglect and which recognize that child offenders should be treated differently from adults.
- (5) Establish a tiered child protection registry that balances the need to protect children and the potential employment consequences of a registry record for persons who are substantiated for child abuse and neglect. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 2007, No. 168 (Adj. Sess.), § 1.)

§ 4912. Definitions

As used in this subchapter:

- (1) "Child" means an individual under the age of majority.
- (2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person.
- (3) "Harm" can occur by:

(A) Physical injury or emotional maltreatment;

(B) Failure to supply the child with adequate food, clothing, shelter, or health care. For the purposes of this subchapter, "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law. Notwithstanding that a child might be found to be without proper parental care under chapter 55 of Title 33, a parent or other person responsible for a child's care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone; or

(C) Abandonment of the child.

(4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.

(5) "A person responsible for a child's welfare" includes the child's parent; guardian; foster parent; any other adult residing in the child's home who serves in a parental role; an employee of a public or private residential home, institution or agency; or other person responsible for the child's welfare while in a residential, educational, or child care setting, including any staff person.

(6) "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

(7) "Emotional maltreatment" means a pattern of malicious behavior which results in impaired psychological growth and development.

(8) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.

(9) "Multidisciplinary team" means a group of professionals, paraprofessionals, and other appropriate individuals, empanelled by the commissioner under this chapter, for the purpose of assisting in the identification and review of cases of child abuse and neglect, coordinating treatment services for abused and neglected children and their families, and promoting child abuse prevention.

(10) "Substantiated report" means that the commissioner or the commissioner's designee has determined after investigation that a report is based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected.

(11) [Repealed.]

(12) "Member of the clergy" means a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, nun, brother, ordained or licensed minister, leader of any church or religious body, or accredited Christian Science practitioner.

(13) "Redacted investigation file" means the intake report, the investigation activities summary, and case determination report that are amended in accordance with confidentiality requirements set forth in subsection 4913(d) of this title.

(14) "Child protection registry" means a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.

(15) "Registry record" means an entry in the child protection registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.

(16) "Investigation" means a response to a report of child abuse or neglect that begins with the systematic gathering of information to determine whether the abuse or neglect has occurred and, if so, the appropriate response. An investigation shall result in a formal determination as to whether the reported abuse or neglect has occurred.

(17) "Assessment" means a response to a report of child abuse or neglect that focuses on the identification of the strengths and support needs of the child and the family, and any services they may require to improve or restore their well-being and to reduce the risk of future harm. The child and family assessment does not result in a formal determination as to whether the reported abuse or neglect has occurred. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1985, No. 211 (Adj. Sess.), §§ 1, 2; 1989, No. 295 (Adj. Sess.), §§ 1, 2; 1991, No. 141 (Adj. Sess.), § 1; 1995, No. 145 (Adj. Sess.), § 5; 2001, No. 135 (Adj. Sess.), § 15, eff. June 13, 2002; 2003, No. 43, § 2, eff. May 27, 2003; 2003, No. 66, § 136a; 2007, No. 77, § 1, eff. June 7, 2007; 2007, No. 168 (Adj. Sess.), § 2; No. 172 (Adj. Sess.), § 18.)

§ 4913. Reporting child abuse and neglect; remedial action

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in subdivision 2651(6) of Title 24, dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, school teacher, school librarian, school principal, school guidance counselor, and any other individual who is regularly employed by a school district, or who is contracted and paid by a school

district to provide student services for five or more hours per week during the school year, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the agency of human services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

(b) The commissioner shall inform the person who made the report under subsection (a) of this section:

(1) whether the report was accepted as a valid allegation of abuse or neglect;

(2) whether an assessment was conducted and, if so, whether a need for services was found; and

(3) whether an investigation was conducted and, if so, whether it resulted in a substantiation.

(c) Any other concerned person not listed in subsection (a) of this section who has reasonable cause to believe that any child has been abused or neglected may report or cause a report to be made in accordance with the provisions of section 4914 of this title.

(d)(1) Any person other than a person suspected of child abuse, who in good faith makes a report to the department shall be immune from any civil or criminal liability which might otherwise be incurred or imposed as a result of making a report.

(2) An employer or supervisor shall not discharge; demote; transfer; reduce pay, benefits, or work privileges; prepare a negative work performance evaluation; or take any other action detrimental to any employee because that employee filed a good faith report in accordance with the provisions of this subchapter. Any person making a report under this subchapter shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of his or her making a report.

(e) The name of and any identifying information about either the person making the report or any person mentioned in the report shall be confidential unless:

(1) the person making the report specifically allows disclosure;

(2) a human services board proceeding or a judicial proceeding results there from;

(3) a court, after a hearing, finds probable cause to believe that the report was not made in good faith and orders the department to make the name of the reporter available; or

(4) a review has been requested pursuant to section 4916a of this title, and the department has determined that identifying information can be provided without compromising the safety of the reporter or the persons mentioned in the report.

(f)(1) A person who violates subsection (a) of this section shall be fined not more than \$500.00.

(2) A person who violates subsection (a) of this section with the intent to conceal abuse or neglect of a child shall be imprisoned not more than six months or fined not more than \$1,000.00, or both.

(3) This section shall not be construed to prohibit a prosecution under any other provision of law.

(g) Except as provided in subsection (h) of this section, a person may not refuse to make a report required by this section on the grounds that making the report would violate a privilege or disclose a confidential communication.

(h) A member of the clergy shall not be required to make a report under this section if the report would be based upon information received in a communication which is:

(1) made to a member of the clergy acting in his or her capacity as spiritual advisor;

(2) intended by the parties to be confidential at the time the communication is made;

(3) intended by the communicant to be an act of contrition or a matter of conscience; and

(4) required to be confidential by religious law, doctrine, or tenet.

(i) When a member of the clergy receives information about abuse or neglect of a child in a manner other than as described in subsection (h) of this section, he or she is required to report on the basis of that information even though he or she may have also received a report of abuse or neglect about the same person or incident in the manner described in subsection (h) of this section. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1983, No. 169 (Adj. Sess.), § 1; 1985, No. 208 (Adj. Sess.), § 19, eff. June 30, 1986; 1989, No. 295 (Adj. Sess.), § 3; 1993, No. 156 (Adj. Sess.), § 1; 2003, No. 43, § 3, eff. May 27, 2003; 2005, No. 101 (Adj. Sess.), § 2; 2007, No. 77, § 1, eff. June 7, 2007; 2007, No. 168 (Adj. Sess.), § 3, eff. Jan. 1, 2009; No. 172 (Adj. Sess.), § 19; 2009, No. 1, § 45.)

§ 4914. Nature and content of report; to whom made

A report shall be made orally or in writing to the commissioner or designee. The commissioner or designee shall request the reporter to follow the oral report with a written report, unless the reporter is anonymous. Reports shall contain the name and address or other contact information of the reporter as well as the names and addresses of the child and the parents or other persons responsible for the child's care, if known; the age of the child; the nature and extent of the child's injuries together with any evidence of previous abuse and neglect of the child or the child's siblings; and any other information that the reporter believes might be helpful in establishing the cause of the injuries or reasons for the neglect as well as in protecting the child and assisting the family. If a report of child abuse or neglect involves the acts or omissions of the commissioner or employees of the department, then the report shall be directed to the secretary of the agency of human services who shall cause the report to be investigated by other appropriate agency staff. If the report is substantiated, services shall be offered to the child and to his or her family or caretaker according to the requirements of section 4915b of this title. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1989, No. 187 (Adj. Sess.), § 5; No. 295 (Adj. Sess.), § 4; 1995, No. 174 (Adj. Sess.), § 3; 2005, No. 174 (Adj. Sess.), § 120; 2007, No. 77, § 1, eff. June 1, 2007; 2007, No. 168 (Adj. Sess.), § 4.)

§ 4915. Assessment and investigation

(a) Upon receipt of a report of abuse or neglect, the department shall promptly determine whether it constitutes an allegation of child abuse or neglect as defined in section 4912 of this title. The department shall respond to reports of alleged neglect or abuse that occurred in Vermont and to out-of-state conduct when the child is a resident of or is present in Vermont.

(b) If the report is accepted as a valid allegation of abuse or neglect, the department shall determine whether to conduct an assessment as provided for in section 4915a of this title or to conduct an investigation as provided for in section 4915b of this title. The department shall begin either an assessment or an investigation within 72 hours after the receipt of a report made pursuant to section 4914 of this title, provided that it has sufficient information to proceed. The commissioner may waive the 72-hour requirement only when necessary to locate the child who is the subject of the allegation or to ensure the safety of the child or social worker.

(c) The decision to conduct an assessment shall include consideration of the following factors:

- (1) the nature of the conduct and the extent of the child's injury, if any;
- (2) the accused person's prior history of child abuse or neglect, or lack thereof; and
- (3) the accused person's willingness or lack thereof to accept responsibility for the conduct and cooperate in remediation.

(d) The department shall conduct an investigation when an accepted report involves allegations indicating substantial child endangerment. For purposes of this section, "substantial child endangerment" includes conduct by an adult involving or resulting in sexual abuse, and conduct by a person responsible for a child's welfare involving or resulting in abandonment, child fatality, malicious punishment, or abuse or neglect that causes serious physical injury. The department may conduct an investigation of any report.

(e) The department shall begin an immediate investigation if, at any time during an assessment, it appears that an investigation is appropriate.

(f) The department may collaborate with child protection, law enforcement, and other departments and agencies in Vermont and other jurisdictions to evaluate risk to a child and to determine the service needs of the child and family. The department may enter into reciprocal agreements with other jurisdictions to further the purposes of this subchapter. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1995, No. 178 (Adj. Sess.), § 300; 1999, No. 78 (Adj. Sess.), § 1; 2007, No. 77, § 1, eff. June 7, 2007; 2007, No. 168 (Adj. Sess.), § 5.)

Appendix D: Vermont Hearsay Exception

Rule 804a. Hearsay Exception; Putative Victim Age 12 or Under; Person with a Mental Illness or Developmental Disability

(a) Statements by a person who is a child 12 years of age or under or who is a person with a mental illness as defined in [18 V.S.A. § 7101\(14\)](#) or developmental disability as defined in [18 V.S.A. § 8722\(2\)](#) at the time the statements were made are not excluded by the hearsay rule if the court specifically finds at the time they are offered that:

(1) the statements are offered in a civil, criminal, or administrative proceeding in which the child or person with a mental illness or developmental disability is a putative victim of sexual assault under [13 V.S.A. § 3252](#), aggravated sexual assault under [13 V.S.A. § 3253](#), aggravated sexual assault of a child under [13 V.S.A. § 3253a](#), lewd or lascivious conduct under [13 V.S.A. § 2601](#), lewd or lascivious conduct with a child under [13 V.S.A. § 2602](#), incest under [13 V.S.A. § 205](#), abuse, neglect, or exploitation under [33 V.S.A. § 6913](#), sexual abuse of a vulnerable adult under [13 V.S.A. § 1379](#), or wrongful sexual activity and the statements concern the alleged crime or the wrongful sexual activity; or the statements are offered in a juvenile proceeding under [chapter 52](#) of [Title 33](#) involving a delinquent act alleged to have been committed against a child 13 years of age or under or a person with a mental illness or developmental disability if the delinquent act would be an offense listed herein if committed by an adult and the statements concern the alleged delinquent act; or the child is the subject of a petition alleging that the child is in need of care or supervision under [chapter 53](#) of [Title 33](#), and the statement relates to the sexual abuse of the child;

(2) the statements were not taken in preparation for a legal proceeding and, if a criminal or delinquency proceeding has been initiated, the statements were made prior to the defendant's initial appearance before a judicial officer under [Rule 5](#) of the Vermont Rules of Criminal Procedure;

(3) the child or person with a mental illness or developmental disability is available to testify in court or under [Rule 807](#); and

(4) the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(b) Upon motion of either party in a criminal or delinquency proceeding, the court shall require the child or person with a mental illness or developmental disability to testify for the state.

Added 1985, No. 82, § 2, eff. July 1, 1985; amended Oct. 30, 1986, eff. March 1, 1987; 1993, No. 100, § 11; Oct. 23, 2002, eff. Jan. 1, 2003; 2009, No. 1, § 28, eff. July 1, 2009; No. 58, § 22, eff. July 2, 2009.

Appendix E: Dealing with Children

Tips for Talking With Children

- Address the child at eye level.
- Use simple, direct, age-appropriate language.
- If the child does not understand your role, explain it in terms that are easily understood.
- Allow the child to have something familiar and comforting to hold while being interviewed.
- Discuss confidentiality and its limits.
- Honor a child's loyalty to an abusive parent. Do not criticize or demean the abusive parent.
- Acknowledge a child's right *not* to speak. Do not coerce a child to talk if he/she is not comfortable doing so.
- Don't make promises you can't keep.
- Communicate your concern about the safety of the child.

Key Factors in Interviewing Children

- When possible, obtain information about the child's family situation, abilities, activities, and special needs.
- Introduce yourself and describe your role in simple terms.
- Explain the purpose of the interview.
- Sit at the child's physical level.
- Use the child's name.
- Explain that you were not present and need help to understand what happened.
- Give the child permission to tell you when he/she does not know the answer or does not understand a word or question.
- Make no assumptions about the child's knowledge base or abilities.
- Use simple words and short sentences.
- Ask one question at a time.
- Avoid double negatives.
- Ensure the child understands your question (e.g., "I need to make sure you understand my question, What do I want you to tell me?").
- Continually clarify your understanding of the child's response (e.g., "Do you mean ____?; Would you explain ____?; Tell me more.").
- Avoid rushing the child. Wait for him/her to listen to your question, to think about it, and to respond to it.
- Ask open-ended questions (e.g., "Tell me about ____; What happened when ____?; How did ____?").
- Avoid using "why" questions. "Why" questions may imply blame.
- Observe a child's non-verbal communication.
- Limit the use of questions that require a yes/no answer.

Appendix F: A Sample Guideline for Determining Dominant Aggressor

In the determination of who is the dominant aggressor officers should consider:

1. Existence of offensive and defensive injuries:

- Consider the comparative size, physical strength and capability of each party to inflict injury on the other.
- Consider if the injuries and the parties' explanations are consistent with the amount of force reportedly used by each party in response to the other's actions.
- Consider whether the amount of force used was an appropriate, reasonable and justifiable response to the threats or force used by one party against the other.

2. Prior history of violence, including but not limited to, past incidents (not necessarily charged) that would induce one party to react in fear and cause such injury to the other.

3. Other evidence (physical, circumstantial and officers' observations).

4. Verbal statements from parties involved and other parties present, including children.

Adapted from a document developed by the Chittenden County Domestic Violence Task Force sub-committee on "Women As Defendants",
December 2000

Appendix G: Vermont Network Against Domestic and Sexual Violence

Statewide Office:

*P.O. Box 405, Montpelier VT 05601 Phone: (802) 223-1302 FAX: (802)223-6943
TTY: 223-1115 VtNetwork@vtnetwork.org*

Statewide Hotline Numbers:

Domestic Violence: 1-800-228-7395

Sexual Violence: 1-800-489-7273

VERMONT NETWORK AGAINST DOMESTIC AND SEXUAL VIOLENCE

Network Member Programs and Hotlines Numbers

AWARE (Domestic/Sexual Violence) Hardwick area	472-6463
Battered Women's Services and Shelter (Domestic Violence shelter and services) Barre/Montpelier area	1-877-543-9498
Clarina Howard Nichols Center (Domestic/Sexual Violence shelter and services) Morrisville area	888-5256
New Beginnings (Domestic/Sexual Violence) Springfield area	885-2050
PAVE (Domestic/Sexual Violence) Bennington area	442-2111
Rutland County Women's Network (Domestic/Sexual Violence shelter and services) Rutland area	775-3232

VERMONT NETWORK AGAINST DOMESTIC AND SEXUAL VIOLENCE

Network Member Programs and Hotline Numbers Continued

Sexual Assault Crisis Team (Sexual Violence shelter and services) Barre/Montpelier area	479-5577
Safeline (Domestic/Sexual Violence) Orange and N./Windsor Co.	1-800-639-7233
The Advocacy Program at Umbrella (Domestic/Sexual Violence) Newport area	334-0148
The Advocacy Program at Umbrella (Domestic/Sexual Violence) St. Johnsbury area	748-8141
Voices Against Violence/Laurie's House (Domestic/Sexual Violence shelter and services) St. Albans/Franklin & Grand Isle area	524-6575
WomenSafe (Domestic/Sexual Violence) Addison County and the Town of Rochester	388-4205 or 1-800-388-4205
WISE-Women's Information Service (Domestic/Sexual Violence shelter and services) White River Junction, VT area/Lebanon, NH	1-866-348-WISE (9473)
Women Helping Battered Women (Domestic Violence shelter and services) Burlington/Chittenden Co. area	658-1996
Women's Crisis Center (Domestic/Sexual Violence shelter and services) Brattleboro area	1-800-773-0689
Women's Rape Crisis Center (Sexual Violence) Burlington/Chittenden Co. area	863-1236

Appendix H:

Domestic Violence Unit

(Agency of Human Services, Dept. For Children & Families, Family Services Division)

Domestic Violence Unit of VT Department For Children and Families (DCF) offer consultation to child protection staff and service providers when concerns about domestic violence and child maltreatment coexist. The DV Unit has limited capacity to provide direct advocacy services to victims, but works closely with VT Network Against Domestic and Sexual Violence programs to make referrals, do systems advocacy and collaborate in Vermont's Coordinated Community Response to domestic violence. They accept referrals from local community programs, other advocates, counselors, and service users.

Domestic Violence Unit

State of Vermont

Department of Children and Families (DCF) www.dcf.state.vt.us/fsd/dv.html

For more information contact:

Ellie Breitmaier, Coordinator

Central Office, Waterbury

(802)241-1206

ellie.breitmaier@ahs.state.vt.

Appendix I: DCF Family Services Policy 51 Child Safety Interventions, section Risk of Physical Harm Policy section (f)

Taken from Family Services Policy Manual:

(For the complete policy go to http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/policies/51_Screen_Reports_CAN_interim_7-1-09_2.pdf)

f) There are allegations that there is significant risk of serious physical harm to a child due to domestic violence in the home. In considering whether a child is at significant risk, the following issues should be considered:

- Past history of substantiation(s) or conviction(s) or reported history of child maltreatment.
- Criminal history of domestic-violence related crimes.
- Proximity of the children to the domestic violence as well as the nature of the violence or crime; including when a child physically intervenes in a domestic assault or is forced to participate in a domestic assault.
- Use of weapons or objects that could cause harm in the presence of children in the context of domestic violence. Issues related to who is the dominant aggressor and whether the person is acting in self defense will be taken into consideration as part of the case determination.
- In the context of domestic violence, presence of direct threats (including verbal threats) of serious bodily injury or death to or regarding the child or other children of the family or in the household.

The division shall consider a report valid, regardless of the above issues, when:

- There is a death of a parent or caretaker as a result of domestic violence and the child was reported to have been in the home or on the property when the incident occurred, regardless of the child's exact location; and/or
- A gun is discharged inside a home when the child(ren) are also in the home regardless of where the child(ren) are physically in the home.

The division does not intervene in situations in which the sole concern is that parents or caretakers fail to:

- Install smoke detectors;
- Use car seats for young children;
- Use seatbelts for children;
- Ensure the use of bicycle or motorcycle helmets by children;
- Ensure the child receives recommended immunizations; or, Ensure the child receives recommended newborn prophylaxis (Vitamin K, newborn hearing screen).
- The only allegation is that a child has witnessed or been exposed to domestic violence.