

**Guidance for the Creation of Memoranda of
Understanding to Meet Requirements for
Restorative Justice Programming for Domestic
and Sexual Violence Cases in Vermont's Act 11
(2023)**

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Introduction

This document is intended to provide guidance for the development of memoranda of understanding between Vermont’s Community Justice Centers, member organizations of the Vermont Network Against Domestic and Sexual Violence, and other community-based organizations and stakeholders as they collaborate in the creation of programs to address domestic and sexual violence using restorative justice practices, and approaches.

In 2023, Vermont enacted Act 11 (H.41). Act 11 allows cases involving domestic and sexual violence to be referred to Community Justice Centers (CJCs) after they have a Memorandum of Understanding (MOU) with a local Vermont Network Against Domestic and Sexual Violence (the Network) organization, and the MOU has been approved by the AGO’s Community Justice Unit. If a CJC intends to accept case referrals directly from police or prosecutors, the MOU must also include law enforcement and/or the State’s Attorney. [Act 11](#) amends [24 V.S.A. § 1967](#), which used to prohibit CJCs from receiving domestic violence and sexual violence (DV/SV) case referrals.

This guidance is to help Community Justice Centers and Network members develop MOUs regarding how programs will operate and how CJCs may accept referrals of DV/SV cases. In accordance with statute, Act 11 does not implicate other restorative justice organizations or programs, but nothing prevents other organizations from following this guidance as well.

Act 11 **does not** allow stalking cases to be referred to CJCs. Stalking is defined in Vermont law in [12 V.S.A. § 5131](#) as it relates to protection orders (*see also* [12 V.S.A. § 5133](#)) and in [13 V.S.A. § 1061](#) as it relates to criminal charges (*see also* [13 V.S.A. § 1062-1063](#)). Elements of stalking can be present in intimate partner violence cases and the statutory definitions mirror those of domestic and intimate partner violence. Restorative justice programs should work with member organizations of the Vermont Network and other domestic and sexual violence experts to distinguish and exclude those cases where stalking is a primary or significant element.

Act 11 does not mandate that CJCs begin offering new programming nor that jurisdictions refer DV or SV cases to their local CJC. Act 11 also does not mandate that victims or survivors engage in restorative processes if those services are made available.

The intent of Act 11 is to create a framework for CJCs and Network member organizations to work together to create community-based, victim-centered DV/SV programming that fosters healing and encourages agency and accountability. In this way, survivors, their family members, and whole communities all stand to benefit from Act 11.

The Legislature’s webpage for Act 11 (which can be found [here](#)) includes the law as enacted, as well as helpful legislative history, such as witness documents, survivor testimony,

and the [Act 146 Study Committee's Report from 2019](#), which was an important step toward the passage of Act 11.

Act 11 requires MOUs to address eight protocols that guide programs to do the following:

- establish an evidence-based or promising program approach,
- prioritize victim safety,
- include voluntary referral and participation of parties,
- require initial and annual training,
- establish organizational roles,
- establish confidentiality standards,
- establish data collection standards, and
- establish annual evaluation and quality improvement plans.

See [24 V.S.A. § 1968\(c\)\(1\)-\(8\)](#).

The guidance in this document is designed to assist MOU authors and those developing programming with a greater understanding of how to interpret and comply with these protocols, as well as how to successfully address them in MOUs.

This guidance will be updated regularly, as we learn more about the practical experience of communities and organizations who choose to create MOUs and programming. We are all learning as we take on this important work and we recognize that the process of operationalizing the guidance will further inform a statewide approach. As a result, we intend for this document to be responsive and iterative.

This guidance was developed collectively by a steering committee of staff of the Vermont Attorney General's Community Justice Unit, the Vermont Network Against Domestic and Sexual Violence, and the Vermont Center for Crime Victim Services. An advisory group was developed with a representation of Vermont restorative justice practitioners, domestic and/or sexual violence service providers, staff at the Department for Children and Families, and other allied professionals, including individuals with expertise in anti-racism and anti-discrimination. Organizations represented included Steps to End Domestic Violence, Umbrella, the Essex Community Justice Center, the Burlington Community Justice Center, the Newport Community Justice Center, WISE, Youth Services, Inc. (now Interaction), the Vermont Human Rights Commission, the Vermont Department for Children and Families, and the Vermont Network Against Domestic and Sexual Violence. The advisory board provided feedback to the guidance on each protocol as it was developed and shared their thoughts on an initial draft of this document.

General guidance

Equity

Equitable access to programs developed in response to Act 11 is important. Program models should be informed by the lived experience of people from marginalized communities. Consider what partners are needed to ensure that this programming is available to all community members, regardless of factors such as race or ethnicity, gender identity or sexual orientation, socioeconomic status, language, or disabilities. Communities are encouraged to build relationships with individuals and community-based organizations who can provide insight into how to develop programming that addresses the needs of historically marginalized communities. These conversations should be ongoing and include regular mechanisms for feedback. Building real relationships prior to extracting information from partners is key to effective and sustainable partnerships. Including identity-based organizations as equal partners in MOUs and program models will strengthen accessibility and overall quality of programming.

As programs develop processes to address harm, it will be important to acknowledge how identity intersects with the experience of all participants, including individuals who have experienced harm and people responsible for harm. Individual accountability is an important component of restorative justice. Community accountability and restoration will also need to recognize the harms that systems and communities have caused. Programs should consider how they will address these realities in MOUs, program design, staffing, and ongoing training.

Addressing issues of equity in Act 11 programming will occur on a spectrum. Programs are encouraged to think about how to continuously evolve and improve their abilities to center equitable access and to respond to issues of identity-based harms in restorative processes.

Centering survivors

An emphasis on centering survivors in MOUs and program design will help programs to effectively address the required protocols and will ensure restorative practices. For example, centering survivors is critical for ensuring safety and voluntary participation. Even when a survivor does not choose to participate directly in a process, the experience of survivors and victims can be centered. Programs that have a range of approaches and options, rather than a “one size fits all” model, will be positioned to be most responsive to survivors’ needs.

Language

In the DV/SV world, people responsible for causing harm have historically been referred to as “abusers,” “perpetrators” or “batterers.” In recent years, this language has changed to be less centered in legal proceedings and today, DV/SV advocates may refer to people as “harm doers” or “people who cause harm.” This language continues to evolve. In the restorative justice arena, common language is “responsible party or person” and “person who was harmed.”

Communities are encouraged to standardize language through their MOU. This guidance uses language to describe participants as “people who have caused harm, “people who have experienced harm,” as well as victims and survivors. We recognize that this binary characterization of participants’ roles and experiences may not apply to all situations.

Continuum of Practice

In *The Little Book of Restorative Justice*, Howard Zehr recognizes that restorative justice practices often exist along a continuum, from fully restorative to pseudo- or non-restorative practices. Zehr describes the degrees along this continuum as:

Fully restorative <-> Mostly restorative <-> Partially restorative <->
Potentially restorative <-> Pseudo- or non-restorative

He goes on to itemize several questions that can be used to help analyze restorative models in the context of this continuum:

- Does the model address harm, needs, and causes for all involved?
- Is it adequately oriented to the needs of those who have been harmed?
- Are those who offended encouraged to take responsibility?
- Are all relevant stakeholders involved?
- Is there an opportunity for dialogue and participation and decision-making?
- Is the model respectful to all people?
- Does the model treat all equally, maintaining awareness of and addressing imbalances of power?¹

Programs should consider where their proposed model(s) fall along this continuum and address this in the MOU. The more fully restorative a program model is, the more it will address the needs of all participants, center survivors, and ensure participation that is free of coercion.

¹ Howard Zehr, *The Little Book of Restorative Justice*, Revised and Updated (New York: Good Books, 2015), 70-71.

Guidance on addressing protocols

Protocol 1: Establish a defined approach based on evidence or an established, promising program

What does this mean?

While restorative approaches to domestic and sexual violence ought to be responsive to their communities and contexts, it is equally important that these approaches be planful and coherent in design and implementation. Act 11 requires that the approach developed by communities draws on research and/or approaches already being implemented that demonstrate benefits. This protocol was established to encourage communities to draw upon the canon of approaches that have been developed, implemented, and assessed in other jurisdictions and communities and/or to articulate which elements of an original program design are informed by research or evaluation findings. Communities can either replicate an existing model or develop their own based on evidence.

What is an established, promising program?

An established, promising program is a restorative response to domestic and sexual violence that has been implemented elsewhere and that has shown at least preliminary positive outcomes. This could be an approach that is used anywhere along a continuum of responses (preventative, interventive or reparative). A list of established, promising programs can be found in [Appendix A](#).

What is an approach based on evidence?

An approach based on evidence uses existing restorative processes that have been researched or evaluated as the basis for an original restorative approach to domestic and/or sexual violence that includes evidence-based components. A program that is built of research-based components is also considered “evidence-based”. An approach can be an original or novel program, as long as its components are based on evidence.

How to address this protocol in MOUs:

In MOUs, communities should name what approach is being proposed.

If communities are replicating an established, promising program:

- Include links or references to information about where the approach is currently being used, including any evaluation reports, if available.

- Consider what elements of success exist in the community where the program is being implemented, and whether elements of readiness are present in your own community.
- Consider whether there are cultural or other localized differences between the communities where the program is currently being offered and your own community and address these differences.
- Describe why this approach meets the needs of your community.

If communities are proposing an original approach based on evidence:

- Identify what components of the approach are based on evidence and include links or references.
- Explain how you plan to incorporate and build upon that evidence in the new approach.
- Describe why this approach meets the needs of your community.

See also:

- [Appendix A](#): Established Promising and Evidence-based Programs
This brief appendix provides a non-comprehensive list of existing programs that use restorative justice approaches in instances of DV/SV.

Protocol 2: Prioritize victim safety

What does this mean?

Existing interventions and responses to DV/SV do not always center victim safety as the primary goal. These interventions may narrowly define the victim as one individual directly harmed or may fail to identify victims in a broader context – both in relation to specific relationships and in historic and systemic contexts. It is the intent and expectation that restorative approaches to domestic and sexual violence developed by communities will center victim safety both in their design *and* processes. This will require an ongoing and intentional commitment to victim safety throughout planning and all stages of implementation. Restorative responses should also take into account those harmed within a family or community and identity-based victimization.

Prioritizing victim safety means that the processes and procedures for understanding the risks faced by the victim and supporting safety are attended to throughout a restorative option. Prioritizing victim safety also means that safety must be held in higher esteem than other considerations, such as the timeline of the restorative process or the expressed wishes of the responsible person or other stakeholders in the process.

Jill Davies writes, “For survivors of violence, safety is a broad concept, not one limited to reducing physical violence or a partner’s controlling behavior. Like all of us, victims and their

children need food, shelter, and other essential resources to live. The spiritual social, and emotional aspects of our humanity are also necessary for survival.”

She goes on to note that this broader view of safety requires “no violence, basic human needs, social and emotional well-being.”²

Programs that prioritize victim safety will:

- Center victim safety both in design and processes.
- Create processes and procedures for understanding safety risks and ensuring that safety for all participants is attended to throughout a restorative option
- Ensure that victim safety considerations are weighted heavily against other considerations.

How to address this protocol in MOUs:

- Outline the staffing approach including who will serve as the primary point of contact for the victim(s) and how that staff person will work with other staff involved in the restorative process. This person should plan to serve in this role for the entirety of the victim’s engagement.
- Detail processes the program will use to understand safety and risk, including for participants beyond the “named victim,” before initiating a restorative engagement.
- Describe processes the program will use to ensure and monitor ongoing safety of victim(s).
- Describe how programs will address the needs of people responsible for harm who have also often experienced trauma and oppression.
- Explain processes around providing and maintaining physical safety for victims during restorative engagements, including additional planning if the restorative model includes direct contact between victims and people responsible for harm.
- Name what safety needs or risks will disqualify people from participation.
- Describe practices to identify whether a case has elements of stalking so as to preclude those cases consistent with Act 11, which does not allow stalking cases to be referred.

See also:

- Jill Davies. *Victim Defined Advocacy Beyond Leaving: Safer Through Strategies to Reduce Violence Behavior*. National Resource Center on Domestic Violence, October 2019. Available at https://vawnet.org/sites/default/files/assets/files/2020-05/NRC DV_VictimDefinedAdvocacyBeyondLeaving-Oct2019.pdf

² Jille Davies, “Victim-Defines Safety Planning: A Summary,” Greater Hartford Legal Aid, 2017. Available <https://vawnet.org/sites/default/files/assets/files/2018-07/Victim-Defined-Safety-Planning.1-17.pdf>.

Protocol 3: Include voluntary referral and participation by parties

What does this mean?

The UK-based Restorative Justice Council defines voluntarism as a principle of restorative justice and notes that “participation in restorative justice is voluntary and based on open, informed and ongoing choice and consent. Everyone has the right to withdraw at any point.”³

Voluntary participation can be difficult to define and assess. People’s motivation to engage in a restorative process is influenced by many factors, some of which may raise questions regarding the ‘voluntary’ nature of engagement.

For example, a person harmed may feel pressured in subtle – or not so subtle – ways to participate, and a person responsible for harm may choose to participate hoping to avoid a punitive response. Key elements to consider when striving for voluntary participation include consideration of victim safety, who is referring or suggesting that a participant engage in the restorative approach, age of the people involved, whether the criminal/legal system is involved, and the provision of information and resources to ensure people make informed choices.

A keen understanding of trauma and availability of trauma-responsive services is an important foundation when planning voluntary participation. The continuum of practice framework developed by Howard Zehr and described in the proceeding section of this document on general guidance can also help programs to assess to what degree their model supports voluntary participation.

The intent of Act 11 is to create a true restorative option for people outside the criminal/legal system. The legislation is not intended to be used as a diversion from the criminal/legal system, in lieu of prosecution, or as a component of sentencing. Programming designed around referrals from law enforcement, prosecutors, and/or corrections and child protection systems should consider obtaining certification as a Domestic Violence Accountability Program (DVAP).

For more information on Vermont’s DVAPs and accompanying standards, see <https://www.vtdvcouncil.org/dvap>.

Some guiding principles:

- Participants (people who have been harmed, those who caused harm, and other affected people) access restorative justice services voluntarily.

³ Restorative Justice Council. “RJC Principles of Restorative Practice,” n.d. Available at: <https://restorativejustice.org.uk/sites/default/files/The%20RJC%27s%20Principles%20of%20Restorative%20Practice.pdf>

- Participants are not required to meet conditions in order to participate.
- There is no requirement that all parties (people who caused harm or who were harmed) participate. The person who was harmed does not have to participate for the person who caused harm to participate ... or vice versa.
- Clear information that is easily understood is needed for all people to make informed decisions about their participation in a restorative process.
- A restorative process does not always have to involve the primary responsible person; it can also take the form of a process involving individuals who have indirectly contributed to harm.

Trauma-informed practices:

The concept of trauma-informed services is tied to voluntary participation. According to the Substance Abuse and Mental Health Services Administration (SAMHSA), trauma-informed approaches include those which

- realize the widespread impact of trauma and understand potential paths for recovery;
- recognize the signs and symptoms of trauma in those directly served, their families, staff and others involved in the service system;
- respond by fully integrating knowledge about trauma into policies, procedures and practices; and
- seek to actively resist re-traumatization.

Voluntary participation in services is one trauma-informed strategy. Trauma-informed services are applicable to both the person(s) harmed as well as the person responsible for the harm.

Voluntary participation by the person harmed

The person who was harmed has no obligation to participate. They may voluntarily participate in a restorative process to the degree they wish, or not at all. Their participation can change over time. If a person who was harmed changes their mind, decides to opt out, place boundaries around their participation, or another configuration of these choices, there should be no attendant consequence for the person who caused the harm. It is important to honor the choices of the person harmed and for those choices to not directly affect the obligations of the person who caused the harm.

Ideally, no restorative process should be considered without the expressed consent of the person harmed, even when that person opts out of any participation. That said, contacting a survivor may not always reflect a survivor-centered approach or be possible. Training and expertise will help programs and facilitators to navigate these dynamics on a case-by-case basis.

Facilitators of the restorative justice process should collaborate with domestic and sexual violence experts in their communities to understand and mitigate risks of harm when a responsible party uses coercion and/or other tactics of power and control within any

relationship. The training required in [Protocol 4](#) should also address this. These dynamics can threaten voluntary participation by one or more parties.

Participation of the person harmed

- should not be dependent on accessing other services or participating in any legal action,
- can change over time,
- is not linked to whether the person who caused harmed participates,
- focuses on the needs of the person harmed,
- includes safety planning, and
- is trauma-informed.

According to the Family Violence Prevention and Services Act (FVPSA), domestic and sexual violence service providers who receive FVPSA funding (100% of Vermont's services providers) must operate by offering all people who seek services the right to voluntarily receive those services.

This means that people can access services without being required to participate in any services outside of those which they define as desirable. These services can change over time as the person wishes. Agencies and providers cannot place conditions of the receipt of services (i.e., you cannot stay in the shelter unless you participate in support groups). Additionally, people can opt in and out of services as they wish and as those services are available. Programs should have clearly defined avenues for survivors to express their wishes throughout a process that include points of contact and support.

Voluntary participation by the person who caused harm:

In a fully restorative process, the person who has caused harm participates voluntarily. When the criminal/legal system is involved, consideration of possible system outcomes and system pressures will likely influence a person's decision whether to participate in a restorative process, such as through diversion, or affect how fully they engage in a post-adjudication process.

Key to voluntary participation is the person's understanding that they are ready to actively accept responsibility for the harm they caused. A responsible person's participation is not linked to whether the person harmed participates.

Voluntary Participation when the Criminal/Legal System is involved:

- In situations where the criminal/legal system (e.g., police, State Attorneys, courts) is involved, the principles of voluntary participation should be strictly followed, with particular attention paid to how people responsible for harm can make informed decisions whether to participate.

- The person harmed has the right to participate in any criminal/legal process to the extent that they wish, and that level of participation can include no participation at all and/or it can change over time.
- No criminal/legal system actor or agent will impose consequences to any person harmed if the choices of the person harmed do not align with the goals of the criminal/legal system.
 - No member of the criminal/legal system will alter the agreements made during the restorative justice process.
- No member of the criminal/legal system should engage in actions that require persons harmed to participate in any legal proceedings in relationship to that person's willingness or ability to participate in a restorative justice process or to access domestic or sexual violence services.

How to address this protocol in MOUs

- Create clear descriptions of what will constitute voluntary participation in the context of the program model, including how all people will be informed about restorative justice processes.
- Enumerate the responsibilities of the local DV/SV organization and the CJC in ensuring voluntariness.
- Include training on voluntary participation for all MOU partners.

See also:

- National Network to End Domestic Violence, in partnership with the Office on Violence Against Women. *The Basics of the Voluntary Services Approach*, August 2013. Available at: https://safehousingpartnerships.org/sites/default/files/2017-01/Basics_VoluntaryServicesApproach.pdf.
- [Appendix C](#): DVAP and Act 11 program intersections and differences
Appendix C explores the differences between programming that is likely to emerge under Vermont's Act 11, the landscape of Vermont's certified DVAPs, and the intersection between DV accountability programming and restorative justice approaches to DV/SV.

Protocol 4: Require initial and annual training for relevant community justice center staff, facilitators, and volunteers and relevant law enforcement and prosecutors on the dynamics involving domestic violence and sexual violence, needs of marginalized and oppressed communities, trauma-informed approaches, and restorative justice principles

What does this mean?

The importance of training before CJs start working with cases involving DV and SV is widely recognized. Those associated with CJs, Network members, law enforcement, and prosecutors have varying degrees of knowledge, understanding, and experience of restorative justice and of DV and SV. Few people have understanding about, or experience with, the intersection between RJ and gender-based violence. Training is the first step in developing knowledge and understanding of these topics and must be recurring and iterative. Collective training practices for all program partners can ensure that all parties have shared understanding and can create opportunities for relationship-building among community partners.

Successful training will

- engage all participants,
- create opportunities for discussion,
- build upon expertise among participants,
- repeat and build upon previous training,
- create a learning collaborative among community partners, and
- include a process for gathering feedback to inform future training.

How to address this protocol in MOUs:

Present a training plan that addresses the following points:

- Assess the knowledge of the various community partners who will be part of the proposed approach. Training should build upon partners existing knowledge and be designed to develop needed knowledge, skills, and attitudes. Willingness and capacity to engage in training are important; without participation in training, the proposed approach may not be viable.
- Consider the following content and topics in the training plan
 - domestic violence, sexual violence, stalking⁴,

⁴ Act 11 does not allow referrals of stalking, so an understanding of stalking is important to ensure stalking is not included.

- survivor-centered approaches and the importance of victim voice and choice,
- restorative justice principles and processes,
- trauma, including identity-based trauma, and resilience,
- racism and structural oppressions,
- shared values and objectives,
- confidentiality policies and procedures (see [Protocol 6](#)), and
- information about state and local resources related to these topics.
- Decide how to provide separate opportunities for people to develop baseline knowledge as well as joint training for people to share and further their understanding and build common agreements about this work.
- Additional factors to review when developing the training plan include:
 - Scheduling sessions that ensure participation. For example, great participation is likely if sessions last only a few hours. Avoid all-day events. Plan a mix of in-person and on-line events.
 - Obtaining written commitment from all partners to participate in training.
 - Planning how to bring new staff and stakeholders on board.
 - Considering ways to ensure interest and participation, such as using the phrase ‘community conversations’ as opposed to training.
 - Thinking about whether to develop a local or regional learning collaborative.
- Decide how both initial and annual training will be provided.

Protocol 5: Establish roles and participation of the community justice center, the local domestic and sexual violence organization, and other community partners as needed

What does this mean?

- The roles and responsibilities of participating organizations, entities or individuals should be clearly outlined in writing.
- MOUs should include every organization or entity required for successful implementation of the model.
- Roles and responsibilities should include primary partners (CJC and DV/SV organization staff and volunteers) and other partner organizations specific to this initiative.

How can communities begin to identify roles and participation?

- Enact community planning processes that identify the needs of survivors and what role a restorative option might serve in meeting those needs.
- Identify existing restorative models and explore new or emergent models based on evidence or an established promising program. (see [Protocol 1](#))
- Consider what partners are needed for successful implementation. These may include systems-based partners or community-based or culturally specific partners.

- Ensure that organizations and individuals who understand identity-based and access needs (e.g., language access) in your community are meaningful partners in your program design and implementation.
- Discuss willingness and capacity of primary partners and secondary partners.
- Develop contingency plan for how to address instances where one or more partners are not meeting the terms of the MOU.

How to address this protocol in MOUs:

- Connect the roles and participation of partners to your community needs and program design (see [Protocol 1](#)). Who is needed to meet those needs and implement the restorative approach?
- Enumerate in writing the roles and participation of all partners in the restorative approach.
- Include a plan for ongoing communication between partners. In addition to the required evaluation (see [Protocol 8](#)), outline how participating organizations communicate and check in on an ongoing basis?

See also:

- [Appendix B](#): Culturally Specific Services and Language Access Resources

This appendix provides a directory of Vermont identity-based organizations and local resources related to local anti-discrimination, anti-racism, LGBTQ+, and language access work. It is both important to work with culturally-specific and responsive organizations and to ensure that all partners share goals and values about their approach to domestic and sexual violence.

Protocol 6: Establish written confidentiality standards that ensure constitutional protections and the privacy of participants⁵

What does this mean?

Ensuring the confidentiality of participants in these restorative justice processes is critical to fostering privacy and trust. Confidentiality can be both particularly important to survivors and hard to ensure in many current systems responding to domestic and sexual violence.

Think of “confidentiality” as a clear explanation of how partners will and won’t disclose information. Do not assume that the word “confidentiality” has a commonly understood meaning. While everyone generally understands the idea, each partner will likely have a

⁵ Guidance for this protocol was developed with assistance from The Confidentiality Institute, an organization dedicated to helping anti-violence professionals to protect the privacy and security of individuals who have experienced harm.

different set of confidentiality rules and exceptions for when confidential information may be disclosed. The MOU is an opportunity to make clear what the CJC and its partners should expect from each other regarding protection and disclosure of information received during programming. Be careful that the MOU agreements comply with existing legal duties for any partners; MOUs cannot be used to change any partner's legal responsibility to protect or disclose information.

Advocates at Vermont's DV/SV organizations operate under three federal laws: the Violence Against Women Act, the Victims of Crime Act and the Family Violence Prevention and Service Act, all of which require specific confidentiality practices. Under this legislation, victims need to provide specific time limited releases in writing.

Additionally, Vermont Network member organizations operate under the State Crisis Worker Privilege Law (see [12 V.S.A. § 1614](#)). This law provides a victim receiving direct services from a crisis worker "the privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the victim to the crisis worker, including any record made in the course of providing support, counseling, or assistance to the victim." The complete language in the State Victim and crisis worker privilege law, including definitions of the terms "crisis worker" and "confidential communication," is at [12 V.S.A. § 1614](#).

How to address this protocol in MOUs:

Write Clear Explanations of How Partners Disclose Information to the CJC

Because CJs will be partnering with members of the Vermont Network to receive referrals, it is important that the MOU describe the strict protections on information that members of the Vermont Network follow when they are working with domestic and sexual violence survivors. The goal of the MOU language is to help the CJC and other partners understand those strict protections and understand how they center victim choice about when information will be shared. That will help the CJC to understand that the amount of information in a referral is controlled by the victim and that the Network member partner may not have permission to disclose or answer follow-up questions.

While this guidance highlights relevant state and federal confidentiality requirements for CJs and Vermont Network member organizations, CJs and Network member organizations may also be partnering with other community organizations and stakeholders, such as health care providers, community-based organizations, educational entities, and/or law enforcement and prosecutors. These entities may have important principles or legal standards of their own that inform their approaches to confidentiality and disclosure of information. The MOU should have a clear explanation of how all community partners will meet the confidentiality protocol requirements, including how they will disclose information to the CJC and what standards will be used to decide whether information can be disclosed to the CJC, either in the referral or in response to follow-up questions.

These sections of the MOU should be written by or with the relevant partners to ensure that the language is complete and accurate. Partners should review the language together to ensure everyone understands their obligations.

Write Clear Explanations of How the CJC Protects and May Disclose Information to Partners and Others

The MOU should describe how the CJC protects information collected from participants, including an explanation of how the CJC will respond to informal requests for information about any participant or about the programming specific to a case, and how the CJC will respond to formal requests, such as a subpoena or court order. Restorative justice processes in CJC settings are not subject to Vermont Open Meeting law. (see [24 V.S.A. § 1964\(b\)](#)).

Vermont law makes clear that information related to any offense that a person divulges while participating in CJC programming shall not be used against that person in any investigation, prosecution, or case for any purpose. (See [24 V.S.A. § 1968\(f\)](#)).

Subsection (f) of the law also describes four circumstances when a CJC may disclose information. (See [24 V.S.A. § 1968\(f\)](#)). To fully understand the implications of the exceptions listed in subsection (f) and below, consider training and consultation with local partners. The MOU should describe how the CJC will handle making these allowed disclosures, including who will be given notice that the disclosure is being made.

[24 V.S.A. § 1968\(f\)](#)

Information related to any offense that a person divulges in preparation for, during, or as a follow-up to the provision of programming pursuant to this section shall not be used against the person in any criminal, civil, family, or juvenile investigation, prosecution, or case for any purpose, including impeachment or cross-examination. This subsection shall not be construed to prohibit the limited disclosure or use of information to specific persons in the following circumstances:

(1) Where there is a threat or statement of a plan that a person may reasonably believe is likely to result in death or bodily injury to themselves or others or damage to the property of another person.

(2) When disclosure is necessary to report bodily harm any party causes another during the restorative justice programming.

(3) Where there is a reasonable suspicion of abuse or neglect of a child or vulnerable adult and a report is made in accordance with the provisions of [33 V.S.A. § 4914](#) or [33 V.S.A. § 6903](#) or to comply with another law.

(4) Where a court or administrative tribunal determines that the materials were submitted by a participant to the program for the purpose of avoiding discovery of the material in a court or administrative proceeding. If a participant wishes to avail themselves of this provision, the participant may disclose this information in camera to a judicial officer for the purposes of seeking such a ruling. (Added 2023, No. 11, § 3, eff. May 8, 2023.)

See also:

- The Confidentiality Institute <https://www.confidentialityinstitute.org/>.
- Safety Net Project. “Confidentiality in VAWA, FPSA, and VOCA,” 2016. Available at <https://www.techsafety.org/confidentiality-in-vawa-fvpsa>.

Protocol 7: Establish universal data collection standards developed by the Community Justice Unit

What does this mean?

The legislature directed the Attorney General Office’s Community Justice Unit to identify data that should be collected across programs providing DV/SV services in CJC settings. Programs with approved MOUs will be asked to track common data elements and provide them to the Community Justice Unit on a quarterly basis. Once aggregated, these data will inform legislative requirements on the implementation of Act 11 as required by statute.

Data elements to be tracked will be finalized in the coming months and likely include the following.

Data about participants:

- Role in the process (e.g., victim/survivor, person who caused harm, family member, support person, staff member, volunteer)
- Demographic information about primary participants:
 - Race
 - Ethnicity
 - Gender
 - Sexual Orientation
 - Language
 - Income levels

Data about cases:

- Referral source (e.g., self, family member, community agency, law enforcement)
- Type of harm (e.g., sexual, intimate partner, other forms of domestic violence)
- Whether the case has also been addressed in a criminal/legal setting
- Case status (e.g., open, closed)
- Number of staff and volunteer hours

Qualitative Data

The AGO Community Justice Unit, in collaboration with the Vermont Network, and the Center for Crime Victim Services will work with an initial cohort of programs with approved MOUs on how to gather qualitative feedback from program participants. This feedback will focus on whether participants' goals or needs were met during the process.

CJCs may choose to track and provide additional information. Data collection and reporting should adhere to confidentiality requirements and should be reported in an aggregate form, without identifying information.

How to address this protocol in MOUs:

- Express a clear commitment to tracking and reporting these data and identify any other data that will be collected.
- Name any tools and/or training needed to achieve this requirement.
- Ensure that responsibility for tracking and reporting data is addressed in the roles and responsibilities section of the MOU (see [Protocol 5](#)).

Protocol 8: Establish written annual evaluation and quality improvement plans and processes that engage community and system stakeholders

What does this mean?

Programs will develop nimble, achievable processes for evaluating their work on an annual basis and identifying any areas for change or improvement, along with steps to achieve any desired change.

Programs are required to develop processes for engaging community and system stakeholders in this work. This engagement could be as simple as bringing the evaluation to the local Domestic Violence Task Force for feedback or as complex as pulling together a review team explicitly designed for this purpose. It is important to include organizations and/or individuals that can speak to the perspectives of different identities that are present in the community, including historically marginalized individuals and groups.

How to address this protocol in MOUs:

- Describe the evaluation framework that will be used.
- Describe the community and system stakeholders who will be consulted and plans to engage them.
- Ensure that responsibility for annual evaluation is addressed in the description of roles and responsibilities (see [Protocol 5](#)).

- Describe the plan to integrate feedback and potential program revisions.
- Address how participants in the restorative process will be given the opportunity to raise concerns about their experience.
- Describe how community stakeholders will be given the opportunity to raise concerns about adherence to the MOU and Act 11
- Explain how MOU partners will address any concerns.

Appendices – Forthcoming

Appendix A: Established Promising Programs and Evidence

Appendix A will provide a non-comprehensive list of existing programs that use restorative justice approaches to address needs for harm, responsibility, reparation, and healing in instances of DV/SV.

Appendix B: Culturally Specific Services and Language Access Resources

Appendix B will provide a directory of Vermont identity-based organizations and local resources related to local anti-discrimination, anti-racism, and language access work.

Appendix C: DVAP and Act 11 program intersections and differences

Appendix C will explore the differences between programming that is likely to emerge under Vermont’s Act 11, the landscape of Vermont’s certified DVAPs, and the intersection between DV accountability programming and restorative justice approaches to DV/DV.