

# Partnership Press

August 2004, Issue 13

## Project Update

This 13<sup>th</sup> (!) edition of the Partnership Press ushers in the fourth (!!!!) round of federal funding for the out-stationed advocacy project (and PSU's work on the Partnership Press.) The money was awarded as yet another continuation grant from the Office on Violence Against Women through its Rural Domestic Violence and Child Victimization program. Additional funding was also secured through DHS from the Office of Child Abuse and Neglect for the sites that previously received Children's Justice Act funding.

The VAWA funds go to three existing sites, Malheur, Union and Douglas, along with a new site, Coos, and fund full-time positions. Lisa Overton, from Women's Safety and Resource Center is the new advocate working at Coos Child Welfare/DHS. Two of the continuing sites have also had staff changes. Marisha Johnson is the new advocate at Battered Person's Advocacy in Douglas, and Lisa Rodgers began last fall as the new advocate at Shelter From the Storm in Union. Finally, Mari Jimenez is continuing as the advocate at Project Dove in Malheur.

The OCAN funding, while crucial to the survival of the project, represents half of the money sites received previously. Currently, a half-time funded position is split between Klamath and Lake counties, and quarter time positions are funded in both Wasco and Lane counties. Mary Donovan continues as the advocate at Lake County Crisis Center and Crystal Moreno holds that position at Klamath Crisis Center. Maria Schaad will continue as the advocate at Womenspace in Lane County and Barbara Blouin is at Haven in Wasco.

Plans are to continue the quarterly workgroup meetings that include both the DV program and DHS/Child Welfare staff from all of the funded sites listed above as well as an array of other community partners from throughout the state. In addition, the Partnership Press will be produced approximately semi-annually.

This edition of the newsletter includes the following articles: "Practice Tips for Conducting TDMs in Cases Involving Domestic Violence," "Highlights from Recent Trainings," and "What Does *Crawford v. Washington* mean for Survivors in Oregon?" We hope you find it useful!

If you have any questions or comments about the information included in this newsletter, please contact Anna Rockhill, at the Child Welfare Partnership, Portland State University, 503-725-8007, or [rockhill@pdx.edu](mailto:rockhill@pdx.edu).

## Practice Tips for Conducting TDMs in Cases Involving Domestic Violence

The sharp increase in the frequency of Team Decision Meetings (TDMs) as a result of the implementation of Annie E. Casey's "Family To Family" initiative has prompted some questions regarding appropriate practice in cases involving domestic violence. As a result, child protective service workers, domestic violence advocates, child welfare supervisors, Team Decision Meeting facilitators and others gathered in May throughout the state in four one-day workshops to examine how to address domestic violence in TDMs. Workshops included breakout sessions where participants were separated by discipline and later by offices, where they brainstormed strategies or "things to consider" when conducting TDMs in cases where domestic violence is present. Vigorous discussions occurred at all four workshops with the results compiled and included below. First are suggestions regarding what to do during different phases of the TDM process. Following that are more general suggestions about working with cases involving domestic violence.

### **Practice Tips for TDMs involving Domestic Violence:**

#### **Before the TDM**

Domestic Violence Advocates should:

- Meet with woman before meeting
  - let her know what will happen at the meeting
  - address her fears and concerns
  - identify needs and safety strategies
  - get permission from her to be at the meeting
- Meet with facilitators and workers ahead of time
- Get information about the situation before meeting
- Make sure decisions about placements or services aren't already made
- Ask if meetings can be rescheduled if needed people aren't able to attend
- Find out how to interrupt or stop the meeting (including having a way to say so in code) if not going well
- Have an area where the advocate can meet with women in private if necessary

Facilitators should:

- Get early notification from worker when possible
- Get enough information about the family from worker before the meeting
- Ask if there are restraining orders and/or no contact orders
- Make sure there are translation services when needed
- Begin with the assumption that the batterer and woman will not both attend the meeting if DV is present, although there can be exceptions. Ask the victim what would be safe for her.
- Meet with victims prior to the meeting—ask her what she needs to be safe, who needs to be there, what family members are supportive and safe. These meetings can be very brief. The role play showed separating the participants as they came into the meeting.

- Don't overload the meeting with professionals—identify a small group of providers who can help the parents get what they need
- Have representatives from Batterers Intervention Programs at meetings—use SOC funds to pay for this
- Check the physical set up of room and where people sit; victim needs to feel safe

Supervisors should:

- Make sure all necessary players are at meeting
- Be planful about when and where the meeting is held
- Have time to contact necessary people
- Meet with worker and dv advocates ahead of time
- Hold separate meetings for batterers and women, or hold meetings without the batterer present

CPS Workers should:

- Talk to victims alone
- Cast a broad net when considering who to invite: families, friends, DV, Self-Sufficiency case manager, mom's support network, cultural representatives, AOD
- Have someone at meeting who can hold batterer accountable, who will talk to him about his actions, reactions, power and control
- Get family history, police reports
- Gather accurate information about the family before meeting
- Communicate better with LEA—get reports faster
- Ask Mom about what her immediate needs are
- Assess both safety risks and support
- Consult with DV advocate

### **During the TDM**

DV Advocates should:

- Make certain victim is included in decision-making;
- Advocate for the victim and her children
- Reinforce the value of DV services and tools
- Advocate for batterer accountability

Facilitators should:

- Keep victims' confidentiality and trust
- Set the stage during meeting: ground rules, breaks, etc.
- Model appropriate behavior for everyone in meeting (family, workers, other agencies)
- Stop the meeting if necessary for safety either by taking a break or rescheduling
- Slow down—you don't have to do it all right away—you don't have to do whole safety plan—the participants can meet again
- Help the family and community partners be hopeful
- Ask open ended questions
- Keep the process fresh
- Make decisions at the meeting- make progress
- Use co-facilitators

- Focus on child's immediate safety needs, and ask, "can they be met in-home?"
- Look at how the TDM affects the family
- Ask what the financial impact on the family is if the batterer leaves

Supervisors should:

- Be supportive—attend meetings when possible
- Model appropriate decision-making processes

CPS workers should:

- Assess safety risks and support
- Hold folks accountable in a supportive fashion
- Give information and options to women
- Be willing to have decisions made at the meeting
- Watch the dynamics in meeting—don't hesitate to stop the meeting, it may be appropriate to wait to address dv/power and control at a later time
- Stop the meeting if the victim is feeling unsafe then follow-up with victim in a safer way later and/or get more information
- Keep the focus on the immediate safety needs of the child during the meeting
- Be aware of power of CPS/DHS
- Be careful about what information is shared with the batterer, i.e. TDM safety plan

### **Following the TDM**

DV Advocates should:

- Continue to provide support to the women/families after the meeting

Facilitators should:

- Pay attention to what happens after the meeting—how folks leave the room

Supervisors should:

- Make sure all the partners are aware of the plan and timelines
- Share responsibility for success with community partners

CPS Workers should:

- Connect women with team members for support
- Use social control to hold batterer accountable (law enforcement, courts, other family members, etc.)
- Develop a relationship with the women

### **Things to Do When Working with DV Involved Cases Generally:**

DV Advocates should:

- Attend TDMs
- Be present at Juvenile Court and MDT meetings
- Go out with CPS
- Have desks and a consistent physical presence at DHS
- Have space to meet privately with clients at DHS

All agencies should:

- Build relationships and trust with other agencies
- Communicate
- Participate in cross-training to increase understanding of each other's jobs and roles

- Develop protocols with community partners
- Share information in a reasonable and timely fashion
- Learn about community resources
- Develop formal and informal liaisons
- Ask their community partners “how are we doing?”

Facilitators should:

- Become knowledgeable about resources relevant to DV survivors
- Be well-trained on DV
- Involve survivors of DV in development of meeting protocols
- Be dedicated and knowledgeable

Families should:

- Receive help navigating the system
- Be asked what they need
- Be involved in the development of meeting protocols (especially dv survivors)

Additional Issues

Training:

- CPS workers should receive training on domestic violence, interviewing skills, engagement, trust building and issues related to TDMs and other meetings
- Judicial system needs training on dv issues and TDMs

Working with Batterers:

- Hold batterers accountable and order batterers to appropriate services
- Find ways to hold non-legal dads accountable
- Bring legal system on board to hold batterer accountable
- Work with BIPS to find ways to contract for services while still holding batterers accountable

Services:

- Look for flexible funds (IV-E, SOC, contracts) for services
- Use supervised visitation for batterers
- Immediate access to assessment and intervention programs for batterers
- Consider using Juvenile Court Restraining Orders

Additional resources:

- Have a DV specialist within CPS who is a DHS employee
- Develop Emergency DV response team
- Form a child welfare committee of DV Councils
- Use immediate go-out team that includes LEA, CPS, DV

The workshops were led by Susan Kelly, a Casey Family to Family Coordinator from Michigan. Ms. Kelly has worked with both domestic violence and child welfare issues. She was involved in the Family Violence Prevention Fund’s first curriculum on Domestic Violence and Family Preservation. She was also a contributor to In the Moment Strategies, a guide to domestic violence and TDMs from the Annie E. Casey Foundation, available at <http://www.aecf.org/initiatives/familytofamily/tools.htm>. Another resource that may be of interest is the Family Violence Prevention Fund’s “Family Team Conferences in DV cases: Guidelines for Practice.” This is available on-line at <http://endabuse.org>.

## Highlights from Recent Trainings

Project staff have attended a number of national trainings and tele-conferences during the past six months. Here are a few short write-ups of highlights to be shared with interested staff from child welfare, dv agencies and other community partners.

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### Coordinated Community Response Training

Lisa Overton  
Women's Safety and Resource Center  
North Bend, Oregon

In March, 2004 we attended a training in San Diego by Praxis International. The focus was advocacy and coordinated community response. The first day was a large multi-disciplinary group including advocates, probation, law enforcement, attorneys, a few from child welfare, and batterers' intervention programs. The second day we broke up into our prospective groups. Overall the training was quite beneficial. I photocopied and sent the handouts from the training to Bonnie. If you would like copies please let her know.

Several things stood out for me from the training. The first was the idea that all domestic violence is not the same. The term has become too broad to encompass something so complicated. Ellen Pence, the trainer from Praxis, presented four types of domestic violence: battering, reactive violence, situational violence, and pathological violence. Battering what is generally described when people talk about domestic violence. It's about power and control and a sense of entitlement by the abuser. Reactive violence is when a person who has been battered reacts to the violence with violence. This is different than self defense because the person may use violence against the batterer even when the batterer is not at that moment being physically threatening or violent toward them. A lot of times this results in the victim being prosecuted for assault. The third type of violence is situational violence which is an isolated incident based on a situation. For example, a man cheats on his wife, when she finds out she assaults him out of hurt and anger. The fourth type is pathological which is the term used for violence used by people with mental illness or pathological issues. The value of determining which type of domestic violence is being used is that the appropriate intervention and/or consequence can be applied. For example, a battered woman who becomes violent with her abuser should not be prosecuted the same way a batterer should.

Another key point from the training is that the system often is very unconnected. When a woman is assaulted it starts a chain reaction, getting many people and agencies involved. Each person has their own focus and purpose and no one is overseeing the entire system to make sure there are no gaps. For example, a 911 operator's focus is what the situation is, who is there, where is the incident, what responders does she need to send, etc. When

an officer responds, his focus is whether or not there is probable cause for an arrest. The prosecutor's focus is proving the case. Child protective service's focus is if the kids are safe and protected from harm. And the list of people and agencies that is now involved with the family goes on and on. The biggest problem is that no one is overseeing this process unless you have a coordinated community response in your community helping to coordinate the effort of each community partner. The training really emphasized how to create and maintain a community coordinated response.

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Tribal Legal Issues: Audio-conferencing Training

Nancylee Stewart  
Child Welfare Program Manager  
Coos/Curry Counties

The May 11<sup>th</sup> Teleconference, “Public Law 280 and the Safety of Native Women,” was helpful in learning that some states are mandatory under this law, and some states are optional. Oregon is a mandatory state in all Indian country, except the Warm Springs Reservation. The May 13<sup>th</sup> Teleconference was on Tribal Responses to Domestic Sexual Assault. The May 18<sup>th</sup> teleconference was on developing a Tribal Coordinated Community Response (CCR), and the May 20<sup>th</sup> teleconference was on “Developing Tribal Codes: What an Advocate Should Know.”

Some of the best things we learned from the conference were the different approaches tribes are using to resolve issues important to their communities. We found it very helpful to hear from folks across the country and were able to identify with some of their successes and struggles in dealing with issues related to women and their communities. The written packets of information helped provide a framework for the discussions. Also important was that, for most of these teleconferences, someone from each of our two local federally recognized Indian Tribes (Coquille Indian Tribe and Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians) were able to attend along with Child Welfare staff and Women’s Safety & Resource Center staff. This allowed for our own discussion and information sharing. These were a great opportunity to enhance local relationships and systems.

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“Strengthening Advocacy for Children Conference”

Lisa Rodgers  
Shelter From the Storm  
La Grande, Oregon

May 19<sup>th</sup> - May 21<sup>st</sup>, I was awarded the opportunity to make the DV Advocate’s Pilgrimage to Duluth, Minnesota for the Strengthening Advocacy for Children Conference. While all of the speakers were informative, the pieces that I tucked away in my brain for future reference were more random confirmation bits to the work we do rather than new training information.

\* Parenting classes are one of the least useful tools we have for offering our families that are affected by domestic violence. The classes don't necessarily address the issue of what is affecting the relationship between a mother and child. Additionally, in DV cases where the mom (or dad) may be abusing the child, parenting classes are ineffective in that the child abuse stems not from lack of parenting skills, but rather from the parent's expectations and sense of entitlement of the child - the child becomes property instead of a person with rights.

\* CPS tools and forms shape the CPS worker. Many risk assessment forms existed before our knowledge of domestic violence and some forms are ill equipped to adequately address domestic violence in the home. Additionally, most risk assessment forms are directed towards the primary caregiver - usually the battered woman - and may be ill equipped to hold the batterer responsible for his abusive behavior. This form that has been in existence for a while can shape the later case plan and the tools CPS workers have available to work with the family. Thus, a large part of our work can (and does) include giving CPS workers more tools, options and resources for the abused woman, the children and the abuser.

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One of the components of the VAWA funded grant is the availability of technical assistance from Praxis, International, an organization of domestic violence trainers and consultants. Praxis produces an array of institutes, conferences and audio- and tele-conferencing sessions. Grantees are eligible to participate in these activities, either by simply signing up for a tele-conference, for example, or by spending grant funds for travel to a training. Thus far this year, staff from Coos Child Welfare and Women's Safety and Resource Center along with a staff member from Battered Persons Advocacy in Roseburg, attended the "Coordinated Community Response" training in San Diego; staff from Coos Child Welfare and Women's Safety and Resource Center took part in teleconferences on Public Law 280 and the safety of Native women; and staff from Shelter From the Storm in La Grande attended the "Strengthening Advocacy for Children" training in Duluth. Over the next year, staff from the other project sites, and perhaps a few work group members, will be able to participate in the Praxis offerings.

## What Does *Crawford v. Washington* mean for Survivors in Oregon?

By Rebecca Gandy, staff attorney  
OCADSV

In March of this year, the U.S. Supreme Court handed down a new decision which will have major implications for criminal prosecutions. While it is still early to know the complete ramifications of this watershed case, it is important for advocates to be aware that *Crawford* has already changed the landscape for certain prosecutions.

*Crawford v. Washington* involved an attempted murder and assault case where the defendant confronted a man who allegedly tried to rape the defendant's wife. The defendant claimed self-defense, and the prosecutor offered taped out-of-court testimony by the wife who was unavailable at trial because of the spousal privilege.

The Supreme Court determined that the Constitution's confrontation clause requires that a defendant be able to cross examine his "testimonial" accusers. Prosecutors who want to introduce "testimonial" evidence must produce the witness so the defendant may have that opportunity, or show that the defendant had a previous opportunity for cross-examination if the witness is unavailable.

It is not clear what "testimonial" means exactly. The Supreme Court did not make a clear definition but rather described scenarios in which the confrontation clause would require the declarant be produced. Certain "hearsay" (out of court statements offered for the truth of the matter asserted) will not be admissible if the witness is not produced at trial.

In Oregon we have special hearsay exceptions for abuse victim's statements. It is questionable whether this evidence will continue to be admissible in criminal cases where the defendant is not given the opportunity to cross examine. At issue will be the purpose for which the statement was made and the role of the person hearing the statement, as well as the purpose for introducing the statement at trial.

The *Crawford* case is essential for advocates to understand since many abuse survivors cannot, or do not wish to testify, for a myriad of reasons. While accountability for abusers is important for community safety, it is the survivors who will take safety risks to ensure accountability. *Crawford* means that legal advocacy on behalf of abuse survivors is more crucial than ever. If advocacy can be offered to the survivor, it is far more likely that she will feel safe and supported enough to risk participating in the process.

*The following is excerpted from a handout from the Attorney General's Sexual Assault Task Force SART conference manual, June, 2004: "Crawford v. Washington Questions and Answers" from Attorney General Hardy Myers. Prepared by: Jonathan H. Fussner, Attorney in Charge, Criminal Appeals; and Jennifer S. Lloyd, Assistant Solicitor General, Appellate Division; and Michael J. Slauson, Assistant Attorney General, Criminal Justice Division.*

**Where *Crawford* is most likely to apply.** The issue of what is a “testimonial statement” when the declarant does not testify may rise in any number of contexts you will encounter. Here are some examples, and our best guess as to how *Crawford* applies in these situations. . . .

**Excited utterances under Oregon Evidence Code 803 (2).** Excited utterances, even when made to a police officer, should not constitute “testimonial statements.” Legislative commentary makes clear that the theory behind the admissibility of excited utterances is that there is a “condition of excitement which temporarily stills the capacity for reflection and produces utterances free of conscious fabrication.” Statements that fall within that category generally would not fall within the dictionary definition for “testimony,” *viz* a “solemn declaration or affirmation made for the purpose of establishing or proving some fact.” In addition, it would be difficult to say that true excited utterances (Help! He’s hurting her!) that are not prompted by any significant or structured police questioning are the “functional equivalent” of police interrogation.

Some statements that qualify as “excited utterances” because of a declarant’s emotional state are in fact made in response to police questioning. Those will be much less likely to be “non-testimonial,” and, in making the decision whether to offer questionable statements at trial, prosecutors should consider the risk of reversal on appeal and its effects on victims and witnesses, as well as the risk that retrial will not be possible.

**Statements made for the purpose of medical diagnosis or treatment under OEC 803 (4).** Prosecutors should argue that statements made for those purposes *do not* constitute testimonial statements, because they necessarily are made for a non-prosecutorial purpose. There will, however, commonly be situations in which this type of interview will have mixed purposes. The clearest example is a CARES interview, the purposes of which are both to diagnose and treat, and to record statements that may be used in prosecution. Because of the lack of certainty as to the scope of *Crawford*, prosecutors should make a careful evaluation as to how necessary the evidence is, and should take into account the risks of having to retry the case years later in the event of a reversal on appeal.

The current process for conducting a CARES interview is likely to change in light of *Crawford*. However, prosecutors will have to handle the many pending cases in which the CARES interview was done according to the current process, and in which criminal defendants will be raising a Confrontation Clause claim under *Crawford*. To attempt to demonstrate that the statements made in the CARES interview are not the equivalent of *ex parte* testimony, prosecutors should make a record regarding the nature, setting, and purposes of those interviews. Relevant factors are likely to include: whether the interview is conducted at the request of law enforcement; whether police officers were present, and in what role; whether it was conducted in a neutral location and in a setting that an interviewee would not perceive as dominated by law enforcement; what is the role of the interviewer, and how is that role described to the declarant; and how is the purpose of the interview described to the declarant. It is important that you do not

assume the trial judges (or future appellate judges) will have sufficient experience with the CARES process to know what the interview entails.

**Statements about domestic violence under OEC 803(26).** The provision permits the admission of statements describing a DV incident if the statement is recorded or reported to a peace officer, corrections or probation officer, or EMT or firefighter. In practice, these will almost invariably be “testimonial statements” because they usually are made to a police officer who is investigating the crime.