

T·E·S·S·A Guidelines: Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing

Introduction

One of the unique benefits that T·E·S·S·A offers to its victims is confidentiality. Many victims would not seek our assistance without the guarantee of confidentiality, and as such, might find themselves in greater peril with fewer supportive resources. Therefore, T·E·S·S·A, and other domestic violence/sexual assault victim services agencies, must protect its confidential privilege so that victims continue to have a confidential option. Although T·E·S·S·A believes that confidential privilege is a benefit, and a right worth sustaining, we often have difficulty communicating with other agencies that don't have similar privilege or don't appreciate the benefits to the victim.

These guidelines are an attempt to provide T·E·S·S·A staff and volunteers with some context and parameters for understanding why we have confidential privilege and how to exercise it appropriately; knowing when and how to break confidentiality, particularly when we suspect child maltreatment; and more generally, how to share information with other community agencies or interested parties. We hope you'll find these guidelines helpful, however, we know that they will not provide all the guidance or answers necessary to work in this complex and evolving field. Therefore, we hope and expect that you'll always take the time to ask questions and clarify your understanding with your supervisor or other managers/directors.

The outline of content:

1. Confidential Privilege
2. Guidelines for Mandatory Reporting of Child Maltreatment
3. Information Sharing
4. Documentation
5. Appendices
 - a. Appendix A: Victim Advocate Privilege
 - b. Appendix B: Colorado Children's Code
 - c. Appendix C: Procedure for Handling a Subpoena
 - d. Appendix D: Legal Issues Associated with Serving Adolescent Clients

Special thanks: We want to thank the Artemis Project of Akron, Ohio. Their guidelines provided a starting point for the development of our own.

Created 2/09/05/updated 10/2006

T·E·S·S·A Guidelines:
Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing

Section I: Confidential Privilege

Victim-Advocate Confidentiality¹

For victim advocates in a domestic violence or rape crisis agency:

- Any person who receives any level of service/information from T·E·S·S·A is considered a client, and is therefore subject to victim-advocate confidential privilege.
- All client information (written, oral) is confidential unless there is a specific written release from the client.
- This means that community-based victim advocates in a rape crisis or “battered women’s shelter” (domestic violence agency) can neither confirm nor deny that a person is a client.
- This victim advocate confidentiality privilege is based on CRS 13-90-107 (1) (k). Please find a copy of the statute in Appendix A. Although the statute is written around who may testify in court, it has been interpreted such that any client information must be held confidential.
- This victim-advocate privilege is similar to that of attorney-client, physician-patient, priest-penitent, and therapist-client privilege.
- This statute applies only to advocates working in battered women’s shelters/domestic violence organizations or rape crisis organizations. It does not apply to victim advocates who work for a law enforcement agency.
- The client may waive this privilege by written informed consent to a disclosure of information. It is critical that the client truly understand how her information may be used by other agencies/people, and to understand that once the information is out of ‘confidential’ hands, the client will have little to no control over how it is used to either help and/or hurt them.
- All people working (paid staff and volunteers) for a battered women’s organization or a rape crisis organization must comply and are covered by this privilege, even if they do not do direct client work.
- This confidentiality lives on after the client’s death (based on interpretation of attorney-client case law). However, the personal representative of the decedent may provide a release of information to waive confidentiality.
- Interpreters have the same confidentiality privilege when working with the advocate to help the client.
- Confidentiality must be broken if the following circumstances present:**
 - Suspicion of child abuse/neglect (CRS 19-3-304)**
 - Duty to warn and protect (CRS 13-21-117)**
 - Danger to self or others, including the gravely disabled**
 - Written release of information by client**

¹ Sources for this Information Sheet: Colorado Revised Statutes: 13-90-107, 19-3-102, 19-3-103, 19-3-304, 13-21-117, 12-43-218, 13-21-115.5 and 115.7; Denis K. Lane, Jr. Esq.; James Franklin, Esq.

T·E·S·S·A Guidelines:
Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing

- ☑ If you break confidentiality due to suspected child abuse/neglect, duty to warn and protect, and/or danger to self or others, including the gravely disabled, you receive immunity (in other words, you cannot be sued for breaking confidentiality).

- ☑ If a T·E·S·S·A victim advocate receives a subpoena to testify or to produce records (a subpoena ducus tecum), alert your manager and the Director of Clinical Services. You will need to appear, as requested by the subpoena (if you were asked to present records, make a copy of the file, do not bring the actual file), however you will provide the court with a copy of the confidentiality statute as the rationale behind not testifying and/or not producing records.

Section II: Guidelines for Mandatory Reporting of Child Maltreatment

Mandatory Reporting

Victim advocates are mandatory reporters of child abuse and/or neglect (CRS 19-3-304). The Children's Code (Title 19) defines abuse and neglect. Please see Appendix B for a copy of The Children's Code. Note, CRS 19-1-102 and 19-1-103 also apply to circumstances or conditions in the home, not simply physical violence and/or neglect. It also includes lack of appropriate supervision (i.e. leaving a young child at home, unattended).

How do we define what constitutes child abuse and/or neglect? Simply put, we are beholden to follow the Children's Code. However, following the Children's Code is not simple. It still requires your own assessment and judgment. You must factor in the behaviors/actions, the severity, the level of child involvement, and many other considerations. The following is a set of child protective services referral guidelines for victim advocates.

Referral Guidelines for Domestic Violence Victim Advocate Professionals

Children who live in homes where there is domestic violence are at greater risk for physical injury, emotional harm, neglect, and sexual abuse than children who live in homes without violence. Therefore, it is necessary for T·E·S·S·A staff/volunteers to follow guidelines for reporting child maltreatment (suspected or observed) to the El Paso County Department of Human Services Child Protective Services, hereafter referred to as CPS. **Keep in mind that even if the referral meets the following guidelines, it does not guarantee that the referral will be investigated by CPS. Investigation is based upon CPS's consideration of multiple factors.**

The following guidelines provide only a framework for decision-making. They do not, nor could they, address every possible situation that you may encounter. When in doubt, consult your supervisor or, using hypothetical statements, call CPS and consult about the case. Discussing the risk factors with another person can lead to joint decision-making on how to proceed in ways that will promote child safety without compromising the safety of the non-offending parent. Note: All T·E·S·S·A staff and volunteers have confidentiality. You can feel free to discuss the specifics of the case with any T·E·S·S·A staff/volunteer without breach of confidentiality. This includes the T·E·S·S·A staff who are assigned to DVERT, DHS, or other locations.

The referral guidelines are organized under six broad categories:

- 1. Physical Injury**
- 2. Emotional Maltreatment**
- 3. Adequacy of Medical Care**
- 4. Securing of Basic Needs**
- 5. Adequacy of Supervision**
- 6. Sexual Abuse**

Items #3 through #5 are categories of the broader concept called 'Neglect.'

**T·E·S·S·A Guidelines:
Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing**

If you see more than one of the following behaviors in children living in a violent home, you may wish to *consider* making a referral. However, a referral on these grounds should be discussed with your supervisor first:

Children Living in a Violent Home

IMPORTANT NOTE:	Consider a Referral to CPS
<p><i>These behaviors are symptoms of trauma that may indicate abuse, neglect, emotional harm, or sexual abuse. They could also have nothing to do with trauma/abuse. Consider a referral if a child exhibits SEVERAL of the following behaviors, <u>and</u> there are other factors that would suggest imminent risk of harm to the child. When deciding whether or not to make the referral, consider the child's developmental level and the severity and frequency of the domestic violence in the child's home.</i></p>	<ul style="list-style-type: none"> ◇ Hyper-vigilance, difficulty concentrating on tasks, exaggerated startle response ◇ Restrictive affect, avoids dealing with feelings or decreased ability to express feelings appropriately ◇ Overweight, underweight, eating problems or disorders ◇ Self-abusive behaviors (i.e. cutting, hitting self) ◇ References to 'secrets' ◇ Reluctance to participate in recreational activities ◇ Somatic complaints (i.e. frequent stomach aches, headaches) ◇ Poor peer relationships ◇ Sudden change in behavior ◇ Regressive behaviors such as thumb sucking, bed wetting, fear of dark, reattachment to favorite toy ◇ Recurrent nightmares or disturbed sleep patterns ◇ Sudden decline in school performance ◇ Increased anxiety or acting out behaviors before or after visitation ◇ Aggression, delinquency, truancy, or chronic running away ◇ Drug use

**T·E·S·S·A Guidelines:
Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing**

Physical Injury Referral Guidelines

Make a Referral to CPS	Do Not Refer to CPS
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> A child has physical injuries that are known to be the result of physical abuse. <input checked="" type="checkbox"/> A child has physical injuries that are suspected to be the result of physical abuse. For example, a child has burns or broken bones that are not logically or consistently explained, or that occur in places unlikely to be accidental (e.g. broken bones other than a leg or arm). <input checked="" type="checkbox"/> A child received inappropriate physical discipline, which injures the child or places the child at high risk for physical injury. Inappropriate physical discipline includes: <ul style="list-style-type: none"> o Using physical discipline (e.g. spanking, slapping, shaking) with a child who is chronologically or developmentally less than 13 months old; o Administering physical discipline to the face, head, neck, abdomen, or genitals; o Whipping/hitting a child anywhere on the body with a dangerous object such as with a belt, paddle, bat, or board; o Whipping/hitting a child on the buttocks leaving lasting injuries such as bruises, cuts, or lacerations; o Administering physical discipline for normal childhood behaviors (e.g. toddler spilling food or having toileting accidents) <input checked="" type="checkbox"/> Someone who has access to a child threatens to kill or seriously harm the child (e.g. verbal threats or physical acts such as holding a weapon to a child, putting that child at risk for physical injury). <input checked="" type="checkbox"/> A child is at risk of a physical injury during a domestic violence incident(s). The child may have attempted to intervene in the incident, the child was in the adult victim's arms or lap, or otherwise was in the path of blows/throw objects during the incident. <input checked="" type="checkbox"/> A child was in the home while the batterer threatened adult victim with a weapon. 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> A school age child has been hit inappropriately (e.g. slapped across the face) but has sustained no injuries, and it was an isolated incident. <input checked="" type="checkbox"/> A child was "whipped" with a belt, on the buttocks, leaving no lasting marks other than momentary redness. <input checked="" type="checkbox"/> A child witnesses domestic violence (was in the same room) but there were no weapons involved, the child was not physically hurt, and the child was not in the path of blows/throw objects. If, however, you suspect the child suffered severe emotional harm from the experience, consider referring such an incident. <i>See the section on Emotional Harm for further referral guidelines.</i>

**T·E·S·S·A Guidelines:
Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing**

Emotional Maltreatment Referral Guidelines

Refer to CPS	Do not Refer to CPS
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> There is a history of verbal abuse to the child, the child shows evidence of psychological trauma, such as suicidal or homicidal ideation, and the adult caregiver is unwilling or unable to ensure that the child receives therapy for the emotional trauma. <input checked="" type="checkbox"/> A mental health professional (e.g. psychiatrist, psychologist, licensed social worker, licensed professional counselor) assesses a child as having impaired psychological functioning, provides specific behavioral indicators of the psychological impairment, <u>and</u> the adult caregiver is unwilling or unable to ensure that the child receives therapy for the emotional trauma. 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> There is a history of verbal abuse to the child, however, the child shows minimal evidence of psychological trauma (no suicidal or homicidal ideation, no self-mutilation) or the adult caregiver is willing and able to ensure that the child receives therapy/treatment for the emotional trauma. <input checked="" type="checkbox"/> There is a history/tradition of threats to harm or kill, but they are a regular form of communication and they are assessed as not being an indicator of lethality, (e.g. there is no history or indicator that the threats have been or will be acted upon). The threats are the way the family communications (e.g. "I'm going to blister your butt," "I'm going to tan your hide," "I'm going to kill you if you ever do that again"). <input checked="" type="checkbox"/> There is a history of verbal abuse to the child, but the child is able to cope with the situation and shows <u>no</u> evidence of psychological trauma, such as suicidal or homicidal ideation.

**T·E·S·S·A Guidelines:
Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing**

Adequacy of Medical Care

Refer to CPS	Do Not Refer to CPS
<input checked="" type="checkbox"/> A medically needy child is prevented from receiving necessary medical care. <input checked="" type="checkbox"/> A child reports a lack of food and/or is assessed by a health care professional as being malnourished/underweight <u>and</u> the caregiver is unwilling or unable to ensure that the child receives proper nourishment.	<input checked="" type="checkbox"/> A caregiver generally sees that a child receives adequate routine and crisis medical care. Any lapse in the provision of medical care for the child is an infrequent or one time event. <input checked="" type="checkbox"/> The child has not received immunizations.

**T·E·S·S·A Guidelines:
Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing**

Adequacy of Supervision

Refer to CPS	Do Not Refer to CPS
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> A child under 10 years old is left home alone. El Paso County's community standard is 10 years old, however we should still report if children 10-12 are left alone for extensive periods of time, left to care for younger children, or are age 10 (or older) but not emotionally or developmentally mature enough to be alone. <input checked="" type="checkbox"/> Consider the following when deciding whether or not to refer such a case: <ul style="list-style-type: none"> ○ The child's developmental level ○ The duration of time left alone ○ The time of day the child is left alone (mid-afternoon vs. midnight) ○ Any responsibilities that the child is given while alone (e.g. care for younger siblings) ○ Adequacy of safety plans that are in place for the child (e.g. child is capable of using the telephone; phone numbers are left for child; child is instructed to go to neighbors for help) <input checked="" type="checkbox"/> There is a pattern of a caregiver's lack of supervision, which places a child at risk of harm. <input checked="" type="checkbox"/> There is a pattern of a child being exposed to pornography or to the sexual behaviors of adults in the household (<i>See section on Sexual Abuse for additional referral guidelines</i>). 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> A child between the ages of 10-12 is left alone for a short period of time and seems developmentally mature enough to care for themselves.

**T·E·S·S·A Guidelines:
Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing**

Securing of Basic Needs

Refer to CPS	Do Not Refer to CPS
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Children are living in a condemned housing unit, or are living without utilities (given seasonal considerations), and there is no plan in place to move to safer housing. <input checked="" type="checkbox"/> Children are living in an unsafe home due to <i>extreme</i> filth (e.g. feces on floor/furniture, bugs, spoiled food, and other potentially unsafe conditions) that pose a real risk to the child's well-being. <input checked="" type="checkbox"/> A child is dressed in a manner that does not protect him or her from extreme weather, which poses a danger to the child's health or safety. <input checked="" type="checkbox"/> There is no food, and no plan in place to secure adequate food. <input checked="" type="checkbox"/> A child exhibits non-organic failure to thrive syndrome. <input checked="" type="checkbox"/> A caregiver neglects a child's hygiene to the point that it poses a danger to the child's physical health or presents a barrier to the child's healthy social/emotional development. <input checked="" type="checkbox"/> The child is not in a structured learning environment (not enrolled and/or attending school, to include organized home-schooling) <u>and</u> the caregiver is not allowing or helping the child access education. 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> A family is having great difficulty meeting the physical need of child(ren), such as insufficient money to buy food or pay utilities bills, <u>but</u> is using family or community agency help and has a plan of action in place to address the need. <input checked="" type="checkbox"/> A family is having great difficulty keeping its home clean, however, the state of the home is not a threat to the household members. <i>(Note: Whether something is clean or not is often a matter of subjective judgment. It's not a crime to be messy or dirty).</i>

**T·E·S·S·A Guidelines:
Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing**

Suspected Sexual Abuse

Refer to CPS	Consider a Referral to CPS if Several of these Factors are Present	Do Not Refer to CPS
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> A report is received that an adult or another child forced, coerced, or enticed a child to engage in or watch sexual activity. Refer this even if the event occurred in the past. <input checked="" type="checkbox"/> Any forced touching of genitals. <input checked="" type="checkbox"/> Simulating intercourse with peers <u>with clothes off.</u> <input checked="" type="checkbox"/> Oral, vaginal, anal penetration of dolls, children, animals. <input checked="" type="checkbox"/> Any genital injury or bleeding not explained by accidental cause. 	<p>Yellow Flags:</p> <ul style="list-style-type: none"> ◊ Preoccupation with sexual themes (especially sexually aggressive) ◊ Attempting to expose others' genitals ◊ Sexually explicit conversation with peers ◊ Precocious sexual knowledge ◊ Single occurrence of peeping/exposing/obscenities/pornographic interest ◊ Preoccupation with masturbation ◊ Mutual or group masturbation ◊ Simulating foreplay with dolls or peers with clothing on (petting, French kissing) <p>Red Flags:</p> <ul style="list-style-type: none"> ◊ Sexually explicit conversation with significant age difference ◊ Touching genitals of others ◊ Forced exposure of other's genitals ◊ Inducing fear, or threats of force ◊ Sexually explicit proposals or threats ◊ Repeated or chronic peeping/exposing/obscenities/pornographic interests ◊ Compulsive masturbation/task interruption to masturbate ◊ Female masturbation including vaginal penetration ◊ Simulating intercourse with dolls, peers, animals <p><i>Please note: While no one sign or behavior can be considered absolute proof that sexual assault has occurred and some of these behaviors may have other explanations, you should consider the possibility of sexual abuse when one or several of these signs or behaviors are present.</i></p> <p><i>The age of consent in Colorado is 15. A child age 15 can consent to sex with someone up to 5 years older. Children age 16 can consent to sex with someone up to 10 years older. If a child is under the age of 15, and the person they had sex with is over 4 years older, it is reportable.</i></p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Genital or reproduction conversations with peers or similar age siblings <input checked="" type="checkbox"/> "Show me yours, I'll show you mine" with peers <input checked="" type="checkbox"/> Playing "doctor" <input checked="" type="checkbox"/> Occasional masturbation without penetration <input checked="" type="checkbox"/> Imitating seduction (i.e. flirting, kissing) <input checked="" type="checkbox"/> Dirty words or jokes within cultural or peer group norm

Additional Information on Mandated Reporting:

T·E·S·S·A Guidelines: Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing

Again, **if you are not sure whether to report, seek supervision.** Speak with your manager or a director. Talk to her/him about the situation, and get her/his input on making a referral. In either case (referral or not), document that you've sought supervision and your decision to report/not report.

The Unintended Consequences of Reporting: Some people want to “err on the side of safety” when it comes to reporting suspected child maltreatment. However, it is important to remember that there are unintended consequences to reporting suspicions and incidents that don't meet the above guidelines:

1. In Colorado, three reports to the Child Abuse Hotline within two years, (if the previous two were not investigated), generates an automatic investigation by CPS. This process may inadvertently, and in some cases, inappropriately, engage a family in the CPS system, which is not good unless the child(ren) are truly endangered.
2. If we flood the system with inappropriate referrals, CPS will have fewer resources to devote to the serious child maltreatment cases, which may result in more children being harmed than made safer.

Will the person I'm reporting on know my name? Will I get sued if I report?: When you phone in a child maltreatment report to CPS, you will be asked for a lot of information, including your name. However, they will not reveal the reporting party if/when they contact the family in question. When you report suspected child abuse or neglect, you receive **immunity** (CRS 18.8.115). Immunity means that when the report is made in good faith, even if it turns out not to be confirmed, you cannot be sued for reporting suspected or observed child maltreatment.

How should I involve the client in reporting child maltreatment in their own family/home?

When you determine that the situation warrants reporting to the Department of Human Services, you are asserting that, in your professional judgment, there is risk to the safety and well-being of the child (per the Children's Code). As such, you must break confidentiality and provide the Department of Human Services and/or law enforcement with information to assist in their investigation. You should work with your client to determine whether s/he is willing to report (more empowering for the client than T·E·S·S·A reporting). However, if the client is unwilling to report, and you feel that the risk meets the Children's Code threshold, you must report, by law and by T·E·S·S·A policy.

It is our job to ensure that clients clearly understand confidentiality and privilege and the consequences of disclosing information that advocates are duty bound to report. If you believe a client is about to give you information that you must report, stop the client and tell her/him that you are a mandated reporter, explaining all of the ramifications of disclosing information. We do not want the client to be taken by surprise that ALL of their information is not protected. This way they can make an informed decision as to whether or not to disclose certain information or to waive their privilege. The issue of mandatory reporting is on T·E·S·S·A's intake in numerous places. Please take this opportunity to talk about it with your clients.

Am I a Mandatory Reporter All the Time? You are not a mandatory reporter in your personal life (off the job), although you may choose to report out of a moral/ethical obligation to the child's safety.

Section III: Information Sharing

T·E·S·S·A Guidelines: Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing

Client Information

There are three circumstances under which we will release client information (outside of mandated reporting of child abuse):

1. We have a signed release of information from the client for a specific agency or person;
2. We have a verbal release of information from the client, and the verbal release was witnessed by one other staff member or volunteer. This verbal release must be documented, signed by both staff members (or staff member & volunteer), and placed in the client file;
3. We have a copy of a signed release from another agency or professional. The client signature and the date of the release must be verified (e.g. check the signature on the other agency's release against the client's signature in our files to ensure it's the same signature).

When client information is requested, the standard response is:

“By state law and T·E·S·S·A policy, we never confirm or deny whether anyone is or has been a TESSA client. I'll check, and if we have served the client and we have a release of information from that client for you, I will be happy to provide you with the information you are requesting.”

If they persist:

“The state statute [13-90-107] prohibits private victim advocacy organizations from divulging client information without a written release. If I give you that information, I could be held legally liable.” (See Appendix A)

Procedure when client information is requested:

- The T·E·S·S·A staff member must attempt to contact the client to inform her/him of the request
- Give the client the option to rescind the release [or sign a new release adding someone/an agency]
- Let the client know that s/he can specify exactly what information can be shared, and what information cannot be shared
- Be clear about what type of information can be released and to whom, and the implications of releasing information
- The staff member should honor the verified release if time is of the essence, even if she was unable to contact the client
- Inform the department supervisor of the request
- Document what information was given on a progress note and attach a copy of the release
- **Only staff members may release client information**

Subpoenas

If you are subpoenaed to court, you must appear, whether or not you'll testify. Please see appendix C for our procedure for handling subpoenas.

Search/arrest warrants

T·E·S·S·A Guidelines:
Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing

If Law Enforcement presents with an **arrest** warrant for a client at the Safehouse, they should be instructed to come to the main office and we can contact the client and notify them about the warrant and their options (note: do not disclose whether or not the client is a) a client or b) at the Safehouse to Law Enforcement). If Law Enforcement has a **search** warrant, we must let them in the Safehouse.

Providing Information on Yourself (Personal Information)

When you are working in the community (i.e. hospital, courthouse, etc), remember that you are an ambassador for T·E·S·S·A. Always offer your name, title and contact information to other professionals, **UNLESS YOU HAVE A CONCERN FOR YOUR SAFETY**. You are also welcome to provide them with your supervisor's name/contact information.

Section IV: Documentation

Because T•E•S•S•A has several different departments/programs in which staff interact at different levels with clients, each department has developed their own policies and procedures for client documentation and file management.

Please refer to each specific department for their protocols.

Appendix A: CRS 13-90-107 (k) (1)

Victim Advocate Privilege

CRS 13-90-107, subsection (k), paragraph (I) states:

A victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of **domestic violence**, as defined in section 18-6-800.3 (1), C.R.S., or a victim of **sexual assault**, as described in sections 18-3-401 to 18-3-405.5, 18-6-301, and 18-6-302, C.R.S., in person or through the media of written records or reports without the consent of the victim.

(k) (II) For purposes of this paragraph (k), a "victim's advocate" means a person at a battered women's shelter or rape crisis organization or a comparable community-based advocacy program for victims of **domestic violence** or sexual assault and does not include an advocate employed by any law enforcement agency:

(A) Whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault; and

(B) Who has undergone not less than fifteen hours of training as a victim's advocate or, with respect to an advocate who assists victims of sexual assault, not less than thirty hours of training as a sexual assault victim's advocate; and

(C) Who supervises employees of the program, administers the program, or who works under the direction of a supervisor of the program.

CRS 13-90-107, subsection (g)

A licensed psychologist, professional counselor, marriage and family therapist, or social worker shall not be examined without the consent of such licensee's client as to any communication made by the client to such licensee or such licensee's advice given thereon in the course of professional employment; nor shall any secretary, stenographer or clerk employed by a Licensed psychologist, professional counselor, marriage and family therapist, or social worker be examined without the consent of the employer of such secretary, stenographer, or clerk concerning any fact, the knowledge of which such employee has acquired in such capacity; nor shall any person who has participated in any psychotherapy, conducted under the supervision of a person authorized by law to conduct such therapy, including but not limited to group therapy sessions, be examined concerning any knowledge gained during the course of such therapy without the consent of the person to whom the testimony sought relates.

Appendix B: Colorado Children's Code

Physical Abuse 19-1-103 (1)(a)(I): Any case in which a child (under the age of 18) exhibits evidence of skin bruising, bleeding, fracture of any bone, subdural hematoma, soft tissue swelling or death and either such condition of death is not justifiably explained.

Physical Neglect 19-1-103 (1)(a)(III): Any case in which a child (under the age of 18) is a child in need of services because the child's parents, legal guardian, or custodian fails to take the same actions to provide adequate food, clothing, shelter, medical care or supervision that a prudent parent would take.

Emotional Abuse 19-1-103 (1)(a)(IV): Is an identifiable and substantial impairment of the child's intellectual or psychological functioning or development or a substantial risk of impairment of the child's intellectual or psychological functioning or development

Sexual Abuse 19-1-103 (1)(a)(II): Any case in which a child is subject to sexual assault or molestation, sexual exploitation or prostitution.

CRS 19-3-307 Reporting procedures.

- (1) Reports of known or suspected child abuse or neglect made pursuant to this article shall be made immediately to the county department or the local law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The county department shall forward a copy of its own report of confirmed child abuse or neglect within sixty days of receipt of the report to the central registry on forms supplied by the state department.
- (2) Such reports, when possible, shall include the following information:
 - a. The name, address, age, sex and race of the child;
 - b. The name and address of the person responsible for the suspected abuse or neglect;
 - c. The nature and extent of the child's injuries, including any evidence or previous cases of known or suspected abuse or neglect of the child or the child's sibling;
 - d. The names and addresses of the persons responsible for the suspected abuse or neglect, if known;
 - e. The family composition
 - f. The source of the report and the name, address, and occupation of the person making the report;
 - g. Any action taken by the reporting source;
 - h. Any other information that the person making the report believes may be helpful in furthering the purposes of this part.

(2.5) notwithstanding the requirements set forth in subsection (2) of this section, any officer or employee of a local department of health or state department of public health and environment who makes a report pursuant to section 25-1-122 (4) (d) or 25-4-1404 (1) (d), C.R.S., shall include only the information described in said sections.

(3) a copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the county department to the district attorney's office and to the local law enforcement agency.

(4) a written report from persons or officials required by this part 3 to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding relating to child abuse, subject to the limitations of section 19-1-120.

***If you have any further questions or need clarification, please ask the Director of Advocacy Services for a copy of the entire Children's Code.**

Appendix C: Procedure for Handling a Subpoena to Provide Case-specific Testimony

(Note: this does not apply to Expert Witness Testimony)
Per Dave Johnson, Esq. 3/12/04

**No matter what...
if you are subpoenaed to court, you must appear, whether or not you'll
testify and/or produce records.**

- Apprise your manager and the Executive Director of the subpoena, in particular the date, the name of the case/client, type of case, division, and the name of the subpoenaing party.
- When we receive a subpoena, check internal records to see if we have a release to discuss case on public record. If we do not have one, immediately call the person/organization who issued the subpoena and request a signed release for testimony. Follow this phone call up with a written request of same.
- Call the client to let her/him know you have received a subpoena. Discuss the implications of your testimony and give them the opportunity to rescind any release they may have signed.
- If we receive a signed release for testimony by client, you are safe to appear at court on the assigned date & testify.
- If we do not receive a signed release to testify, you still must appear in court. When called to testify, you must decline based on Colorado Revised Statute (CRS 13-90-107(k)), and provide judge with copy of the statute.
- If the judge asks you to testify anyway and the client is in the courtroom, ask the judge to have the client state on the court record whether s/he waives the confidentiality privilege. If the client waives it, you are safe to testify. If not, you have the choice of following the judge's orders or refusing to testify. The latter is generally considered contempt, and may result in actions up to/including jail (though this is unlikely, it is a possibility).
- If the judge asks you to testify and the client is NOT in the courtroom, but another party says that they have a release (e.g. a case worker), then you should ask the judge to have the other party produce a copy of the release for the court in order to ensure that confidentiality is not being violated. If the release can be produced, you are safe to testify. If not, you have the choice of following the judge's orders or refusing to testify. The latter is generally considered contempt, and may result in actions up to/including jail (though this is unlikely, it is a possibility).
- In all cases, please let your manager and the Executive Director know the outcome of the case. Were you forced to testify, and if so, under what circumstances? We will track this and take it up with our attorney and/or the Chief Judge.

Procedure When/If You Receive A *Subpoena Duces Tecum*

A *Subpoena Duces Tecum* is a subpoena for T·E·S·S·A to provide written records to the court (including the prosecution and/or the defense counsel). The Colorado state mental health state and the confidential victim advocacy statute cover records as well as any interpersonal interactions, and therefore, our records should be protected from this sort of subpoena. Here are the steps you should follow if/when you receive a Subpoena Duces Tecum:

1. If/when you receive a subpoena Duces Tecum, immediately inform your director. Your director should immediately inform Dave Johnson of Kane, Donley & Johnson, (TESSA's attorney) that we have received a Subpoena Duces Tecum and that we (the director) will be corresponding with the attorney requesting the subpoena and the client in short order. Dave's number is 719-471-1650.
2. Prepare a letter to the attorney issuing the subpoena. Attached, please find an example. This letter should outline the statutory confidentiality that our staff/volunteers have. Ensure that you copy our attorney, Dave Johnson, on the correspondence to the other attorney. Send the letter immediately; keep a copy for our files.
3. At the same time, attempt to contact the client who is connected with the case. Speak to the client to determine whether or not the client wishes to have part/all of her/his records released, and take the time to discuss the implications of such a release (once the documents are released, they are public, and could end up in anyone's hands.) If the client wishes to release part or all of her records, we must obtain a written release to this effect prior to turning over part/all of the records. If part/all of the records are to be turned over to the courts, per the client's written release, make a copy of the records for the court, and take them to the court at the appointed date/time.
4. If the client does not want part/all of her records released OR we cannot make contact with the client, your director should request that Dave Johnson (719.471-1650) prepare a "Motion to Quash" the subpoena and appear in court on TESSA's behalf.
5. Dave (or one of his colleagues) will prepare this motion, and appear in court on TESSA's behalf at the appointed date/time. TESSA also needs to have a representative present, and generally, this should be a director-level person. The Director should ask Dave whether the TESSA representative needs to bring the records with her/him to court.

If you have any questions about this protocol, please ask your Director or the Executive Director.

Created: 2/21/06 by Cari Davis, Executive Director

**T•E•S•S•A Guidelines:
Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing**

Sample Letter to Attorney Issuing the Subpoena Duces Tecum:

[date]

[attorney name]
[attorney firm]
[street address]
[city, state zip]

Re: [case name, e.g. The People of the State of Colorado vs John Doe]

[Attorney Name]:

I am responding in writing to the Subpoena Duces Tecum sent to our office.

Per Colorado Mental Health Statute 12-43-218. Disclosure of confidential information. (1) A licensee, licensed or certified school psychologist, registrant, or unlicensed psychotherapist shall not disclose, without the consent of the client, any confidential communications made by the client, or advice given thereon, in the course of professional employment; nor shall a licensee's, licensed or certified school psychologist's, registrant's, or unlicensed psychotherapist's employee or associate, whether clerical or professional, disclose any knowledge of said communications acquired in such capacity; nor shall any person who has participated in any therapy conducted under the supervision of a licensee, licensed or certified school psychologist, registrant, or unlicensed psychotherapist, including, but not limited to, group therapy session, disclose any knowledge gained during the course of such therapy without the consent of the person to whom the knowledge relates.

C.R.S. 13-90-107 (k):

“(I) A victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of domestic violence, as defined in Section 18-6-800.3 (1), C.R.S., or a victim of sexual assault,, as described in sections 18-3-401 to 18-3-405.5, 18-6-302, C.R.S., in person or through the media of written records or reports without the consent of the victim.”

“(II) For the purposes of this paragraph (k), a “victim's advocate” means a person at a battered women's shelter or rape crisis organization or a comparable community based advocacy program for victims of domestic violence or sexual assault and does not include an advocate employed by any law enforcement agency.”

I am sorry, but we cannot offer you any assistance in this matter. Should you require any additional information, T•E•S•S•A's attorney is Dave Johnson. You can reach Mr. Johnson at (719) 471-1650.

Cordially,

[staff name and qualifications]
[title]

cc: David Johnson

Appendix D: Legal Issues Associated with Serving Adolescent Clients (Opinion from Attorney Denis Lane)

DENIS K. LANE, JR., ESQ., CENTER FOR ETHICAL STUDIES
329 Manitou Avenue, Suite 101, Manitou Springs, CO 80829
DKLaneAttv@Qwest.net, 719/636-1017; 719-635-4571 (fax)
Website: centerforethicalstudies.com

This communication will provide my legal opinion concerning the questions posed in your email dated 6/05/06 regarding adolescent clients. For purposes of my legal analysis and opinions, we will be discussing cases involving adolescents, under the age of 18, whose parents have not been informed that their minor child has come to TESSA for information or referrals; and that we are not considering or discussing the provision of healthcare services. As you know, pursuant to C.R.S. 27-10-103, mental health professionals may provide services to adolescents, 15 years of age or older after obtaining consent from the adolescent, without parental consent. If a minor is under the age of 15, then parental consent or the consent of the minor's legal representative must be obtained before mental health treatment can be provided.

A. STATUTORY PROVISIONS REGARDING MEDICAL SERVICES TO MINORS

The following statutes are significant to the extent that they establish the public policy of the State of Colorado and provide a context for our analysis, as well as general information for TESSA staff in making referrals of minors or in answering their questions.

1. C.R.S. 12-22-202 provides: "Any physician licensed to practice in this state . . . may examine, prescribe for, and treat a minor patient for addiction to or use of drugs without the consent of or notification to the parent, parents or legal guardian of such minor patient".
2. C.R.S. 12-22-103 provides that a minor 15 years of age or older who is living separate and apart from his or her parents or legal guardian and is managing his or her own financial affairs, or any minor who has contracted a legal marriage may give consent to "hospital, medical, dental, emergency health, and surgical care" without the need for parental consent.
3. C.R.S. 12-22-105 states, "Birth control procedures, supplies, and information may be furnished by physicians . . . to any minor who is pregnant, or a parent, or married, or who has the consent of her parent or legal guardian, or who has been referred for such services by another physician, a clergyman, a family planning clinic, a school or institution of higher education, or any agency or instrumentality of this state or any subdivision thereof, or who requests and is in need of birth control procedures, supplies, or information."
4. C.R.S. 13-22-106 provides that "Any physician licensed to practice in this state, upon consultation by a minor as a patient who indicates that he or she was the victim of a sexual offense . . . with the consent of such a minor patient, may perform customary and necessary examinations to obtain evidence of the sexual offense". This statute requires that "prior to examining or treating a minor, a physician shall make a reasonable effort to notify the parents, legal guardian, or any other person having custody or decision-making responsibility with regard to the medical care of such minor of the sexual offense."

T·E·S·S·A Guidelines: Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing

B. APPLICABILITY OF THE VICTIM'S ADVOCATE-VICTIM PRIVILEGE

C.R.S. 13-90-107(1)(k)(l) states: "A victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of domestic violence, or a victim of sexual assault". This Statute, therefore, renders any information obtained by TESSA in confidence from a victim of a sexual offense or of domestic violence as being confidential, including records or reports in the possession of TESSA. All such information cannot be released without the consent of the victim and is privileged. The customary exceptions to privilege, however, do apply, when required to report child abuse or neglect pursuant to C.R.S. 19-3-304. A victim's advocate is a mandated reporter of child abuse or neglect whenever s/he "has reasonable cause to know or suspect that a child has been subjected to abuse or neglect".

In order to protect the privacy of victims, TESSA may not disclose to a victim's parents information concerning assistance that is given by TESSA in the possession of a victim's advocate without the consent of the victim.

Keep in mind that for purposes of reporting suspected child abuse or neglect, the generally accepted practice in Colorado is to report all suspected child abuse or neglect of any person under the age of 18 years that has not been previously reported. Child abuse, of course, includes any injury to a child or sexual abuse. Neglect includes failure of a parent to provide the food, clothing, shelter, medical care, or supervision customarily provided by a "prudent parent".

Therefore, if a parent of an adolescent who has reported abuse or neglect requests any information from TESSA regarding your client, your legal duty is to protect the privilege and the privacy of information in your possession. However, so long as the client's parents or custodian are not suspected of abuse or neglect, it will be a matter of TESSA policy as to whether you encourage your client to authorize you to provide information to a parent for purposes of providing additional support to your client, or for purposes of providing any needed medical, mental health, or other services.

C. CRIMINAL STATUTES REGARDING SEXUAL ASSAULT ON A CHILD

1. C.R.S. 18-3-405 provides:

Sexual assault on a child. (1) any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child if the victim is less than 15 years of age and the actor is at least 4 years older than the victim.

Therefore, any non-consensual sexual contact with a person under the age of 18 is a crime, and should be reported as child abuse if it has not been previously reported to DHS or to law enforcement.

2. C.R.S. 18-3-405.3 Sexual Assault on a Child by One in a Position of Trust. This statute provides that any person who occupies a position of trust in relation to a child under the age of 18 and who subjects that individual to sexual contact commits sexual assault on a child by one in a position of trust. As you are aware, a person in a position of trust may be a teacher, coach, attorney for a victim, minister, or other person in a similar type of relationship with the victim. Considering the definitions contained in this Statute, any sexual assault on a child by a person in a position of trust must be reported as child abuse.

T·E·S·S·A Guidelines:
Confidentiality, Mandated Reporting of Child Abuse, and Information Sharing

D. GENERAL PRINCIPLES FOR PROVISION OF SERVICES TO MINORS AT TESSA WITHOUT PARENTAL CONSENT

In view of the fact that an adolescent 15 years of age or older can consent to a psychiatric hospitalization or mental health treatment, no question exists concerning TESSA's ability to provide educational information, support, and referrals to such adolescents. If a minor who is under the age of 15 comes to TESSA for receipt of information or referrals and not mental health services, there is no requirement that you must obtain parental consent in order to provide information or referrals requested or needed by the minor. In consultation with C.S.P.D. Youth & Victim Services (YVS), I have been informed of the practice followed by the police department in contacting, interviewing, and providing support for child victims. When YVS receives a call from a school regarding an outcry made by a child, YVS will respond to the school and interview the child. In such a case, if a family member is the alleged perpetrator of abuse, the parents are not notified. However, if the suspected perpetrator of abuse is someone other than a family member, then the child's parent or guardian is contacted in order to elicit support needed by the child and to inform the parent of the situation.

Based upon my experience and the review of statutes which I have conducted in order to analyze these issues, I am aware of no legal requirement whereby TESSA must obtain parental consent for a minor under the age of 15 before you can provide information. As you know, no mental health services can be provided to a minor under the age of 15, without the consent of a parent or legal representative.