5. Risk assessment, safety planning and legal issues

Training topics

A. Introduction
B. Risk assessment
C. Safety planning
D. Legal issues

Participant handouts

Adult intimate partner lethality
Practical resources for safety planning
Safety planning
[If available, county-specific safety planning documents]
Actions I can take to increase the safety of clients dealing with domestic abuse
Restraining orders
Other legal resources
California laws related to domestic violence

Trainer overhead

State v. Oliver 1874

A. Introduction

Presentation

During the process of discussing domestic abuse, a client may reveal information that indicates he or she may be in a crisis. Crisis situations may include use of weapons as part of the domestic abuse, threats or fantasies of suicide or homicide, stalking, threats of hostage taking, actual or threatened physical abuse of children, and isolation of the victim. At that moment, the safety of the client and the client's children is the priority.

The worker may need to respond to the crisis situation before a referral to the domestic abuse specialist can occur. In that case, the worker needs to inquire about the client's perceptions of the situation and its level of risk. This inquiry would also include what the client intends to do for protection. Effective interventions are available to help empower the client in developing a safety plan.

B. Risk assessment

Review and discuss handout

Review handout "Adult intimate partner lethality." Emphasize the following points and connections to previous material:

- past abuse is predictive of future abuse
- as discussed in dynamics section, abusive behavior escalates over time
- reinforce the importance of immediately attending to situations involving weapons, threats or fantasies of suicide or homicide, stalking, threats of hostage taking, actual or threatened abuse of children, and isolation of the victim

Presentation

If the abuser is present or nearby when disclosure of abuse occurs, it is necessary to separate the abuser from the client to assess the level of crisis. When the client is alone, inquire about the possibility of danger to the client at that moment. In this situation workers may need to help the client develop a personalized safety plan about managing the immediate situation and any repercussions, especially if the client intends to return to the residence shared with the abuser. In some circumstances disclosure will precipitate the need for the client to flee, and the worker will need to facilitate whatever

concrete steps might be necessary to ensure the client's safety. These might include making a phone available to call a friend or relative to come for the client, to call law enforcement personnel, to make contact with a shelter or allowing the client to remain in the office until it is safe for the client to leave. The worker must also be aware that the abuser could act out anger or rage toward the worker because of the assistance given to the client. The worker must take appropriate precautions according to the protocols established at the facility.

C. Safety planning

Review and discuss handouts

Review handouts "Practical resources for safety planning" and "Safety planning."

Note: Insert or substitute county-specific documents for safety planning if available.

Explain that safety plans are developed by specialized workers or other staff the agency designates to work intensively with victims of domestic abuse. This information is included here so eligibility staff can be aware of safety issues for clients.

Activity

Divide participants into pairs or small groups. Ask them to discuss the question "What two actions can I take in my work with clients to increase their safety?" and record their responses on the handout "Actions I can take to increase the safety of clients dealing with domestic abuse." Facilitate a large group discussion, recording responses on an easel pad. Encourage participants to record additional ideas on their handout.

D. Legal issues

Presentation and discussion

For the training it is valuable to present a historical perspective because many of us still operate from the notion that domestic abuse should not be treated criminally, but rather as a family affair.

The trainer should stress that staff may provide referrals to legal assistance, for example, explain to a victim who to contact to obtain a restraining order. However, staff should never give a victim legal advice.

On a flip chart, write the words "Domestic abuse is family business." Ask participants to share how we, as a society, support that belief. You should stress that because the abuse occurs within the family, people often shy away from legal involvement. They do not call the police, they protect the abuser, and they blame the victim.

Show the overhead titled "State v. Oliver." After reading the overhead, share the fact that as of 1994, statues in 49 states and in the District of Columbia authorize or mandate warrantless, probable cause arrest for crimes involving physical violence. This change has occurred within the last 30 years. Until the late 1970s, police in all but 14 states were allowed to arrest only if they had probable cause to believe the suspect had committed a felony or if the officer saw the suspect commit a misdemeanor.
In California, police departments, social service agencies, courts and district attorney's offices have increased their abilities to respond quickly, appropriately and supportively through the legal process.

Review and discuss handouts

Review the handout "Restraining orders." Note that procedures for obtaining emergency protective orders vary from county to county. Give participants the name or names of local legal assistance organizations. If law enforcement and legal aid representatives will be included in the presentation on community resources, mention it.

Review handout "Other legal resources."

Refer participants to the handout "California laws related to domestic violence." This is included for their reference.

Participant Handouts

Adult intimate partner lethality

Past behavior is most predictive of future behavior.

Abusive behavior escalates from one incident to the next and from one partner to the next.

These factors are associated with severe assault and homicide

- Generalized aggression
- Alcohol abuse
- Severity of childhood abuse of the perpetrator
- Antisocial personality

Other factors that appear in the research are

- Weapons in the home
- Use of weapons in prior incidents
- Threats or fantasies of homicide
- Life-threatening injury in prior abusive incidents
- Suicide risk—threats or fantasies
- Frequency or cycle of violence
- Isolation
- Proximity of victim and offender
- Attitudes toward violence
- Obsessiveness about partner
- Rage
- Depression
- Three or more incidents of violence in previous year
- Victim needed medical treatment as a result of abuse
- Law enforcement involvement
- Physical abuse of child
- Dominance or attempts at dominance of the victim
- Physically forced sex
- Threatens or actually injures or kills a pet
- Hostage taking, stalking
- Negative consequences of violence have been ineffective or no longer have significance

Sources:
Saunders, D.G. (1995). Prediction of wife assault. In J.C. Campbell (Ed.), Assessing dangerousness. Thousand Oaks, CA: Sage.
Campbell, J.C. (1995). Prediction of homicide of and by battered women. In J.C. Campbell (Ed.), Assessing dangerousness. Thousand Oaks, CA: Sage.
Ganley, A.L., & Schechter, S. (1996). Domestic violence: A national curriculum for child protective services. San Francisco: Family Violence Prevention Fund.

Practical resources for client safety planning

Environmental

- Remove all weapons
- Change locks
- Add deadbolts, peepholes, window locks
- Plan escape routes
- Change phone numbers

Personal

- Change schedules
- Vary routes to routine destinations
- Personal safety training
- Consider moving
- Be vigilant
- Take all threats seriously
- Pagers
- Cellular phones
- Advise schools, work places

Support system

- Friends
- Relatives
- Neighbors
- Coworkers

Community support

- Shelters
- Victim counseling
- Law enforcement
- Restraining orders

Safety planning

THESE ARE EXAMPLES OF THE KINDS OF ISSUES ADDRESSED BY STAFF WHO WORK INTENSIVELY WITH VICTIMS OF DOMESTIC ABUSE. THIS INFORMATION IS INCLUDED SO CALWORKS STAFF CAN BE AWARE OF SAFETY ISSUES.

If the client has separated from the perpetrator and is residing in the home, suggest:

- Change locks on doors and windows.
- Install security systems such as an alarm, smoke detectors, fire extinguisher, window bars, additional deadbolt locks.
- Teach children to call police or run to a neighbor if perpetrator enters the home.
- Talk to the school or childcare personnel about who has permission to pick up the children.
- Obtain an order of protection (restraining order) and distribute to all law enforcement agencies in any jurisdiction of work, children's school or childcare.
- File the appropriate legal documents that seek divorce, custody, supervised visitation.
- Have duplicates of documents in a safe place (safety deposit box, at friend's or family member's home).
- If affordable, obtain cellular phone to have at all times.
- Ask neighbors to tell about seeing perpetrator in the neighborhood or at the house.
- Ask neighbors to summon police if anything suspicious occurs.
- Find alternate routes to drive to work, shopping, children's school, other known places.
- Have an alternate plan set up if living in the home becomes unsafe.

If the client has separated from the perpetrator and is residing in a shelter, suggest:

- Consider obtaining an order of protection (restraining order) and distribute to all law enforcement agencies in any jurisdiction of work, children's school or childcare.
- File the appropriate legal documents that seek divorce, custody of children or supervised visitation.
- Arrange for shelter personnel to take children to and from school, if possible.
- Arrange for independent schooling for children temporarily.
- Work with shelter counselors to remain hidden from perpetrator.
- Consider relocation to another community.
- Find alternate routes to work or other frequented places.
- Consider leave of absence from work and other activities that may be known to perpetrator.

If client is leaving the perpetrator in the near future or currently in the process, suggest:

- How and when can the client safely leave? Does the client have money, transportation, a safe place to go?
- Is the client comfortable calling the police, if necessary, to escort him or her out of the house at the moment he or she plans to leave?
- Who will know about leaving? Does client disclose this information at work?
- What can client and others do so that he or she will not be found by perpetrator?
- Who in client's support network can help protect client and client's children?
- What community shelter and legal resources will help client stay safe? Write down addresses and telephone numbers.
- How the client can file for an order of protection or other legal documents.

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If client is staying with perpetrator, suggest:

- Who can the client call in a crisis?
- If affordable, obtain a cell phone to have at all times.
- Work out a signal with the children or neighbors that the abuse is happening and police need to be called.
- If the client needs to flee temporarily, where can he or she go? Have several places written down that are possibilities.
- Does the client know alternate escape routes out of the house?
- Identify dangerous locations in the house and advise client to avoid being trapped in these places (i.e., bathrooms, attics, basements).
- If there are weapons in the house, explore ways to have these removed or locked up.
- Advise client to have extra sets of car keys and hide some money in case of an emergency.
- Support the clients in trusting his or her own judgement in an emergency and in doing anything that works to keep client and children safe.
- Advise clients to have duplicates of documents in safe places (safety deposit box, friends, family members, work location).

Check list of items to have if leaving
(documents should be duplicated and placed in a safe location)

- Birth certificates
- Social Security cards
- Marriage, driver's licenses, and car title
- Bank account numbers, credit and ATM cards, other financial documents
- Lease/rental agreements, house deed, mortgage papers

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- Insurance information and documents
- School and health records of children
- Doctors' phone numbers
- Welfare and/or immigration documents
- Phone numbers and addresses of family, friends and community agencies
- Phone number of shelter
- Extra clothing and comfort items for client and children
- Extra keys to home, car, other things
- Money
- Medications

[If available, county-specific safety planning documents]

Actions I can take to increase the safety of clients dealing with domestic abuse

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Restraining orders

A restraining order restrains a person from a particular act or acts. Domestic abuse can be perpetrated against a spouse or former spouse, dating or ex-dating partner, mother or father of child, cohabitant or former cohabitant, or relative by blood, marriage or adoption (mother, father, child, aunt, uncle, sibling, grandparent, in-law). Abuse simply means the person to be restrained has physically injured, attempted to injure, or threatened the victim. Abuse can be physical, verbal or emotional. The victim can request orders to accomplish the following:

- Restrain the abuser from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, telephoning, or otherwise disturbing the peace of the victim or other family members.
- Direct the abuser to immediately move from and not return to the residence.
- Prevent the abuser from going to the residence, school, or place of employment of the victim.
- Award the victim or the other parent custody of or visitation with minor children.
- Direct the party not granted custody to pay support for minor children.
- Give the victim possession of community property, with proof of necessity.
- Direct that either or both parties participate in counseling.

Domestic Violence Prevention Restraining Order (DVRO). Restraining orders are civil orders. Temporary restraining orders issued under the Domestic Violence Act are granted for protection from violence. Permanent orders can be granted at a hearing scheduled within 25 days from the date temporary orders are granted. Permanent orders are good for up to three years. **There is no fee to file this order.**

Emergency Protective Orders (EPO). An EPO is obtained when a law enforcement officer believes a victim of domestic violence is in immediate and present danger based upon a recent incident of abuse or a threat of abuse. An EPO is intended as an immediate, temporary measure of protection until a Temporary Restraining Order (TRO) can be obtained. EPOs are available 24 hours a day, seven days a week from on-call judges who determine the suitability of the EPO. They are valid up to five court days. Although it is up to the victim to request an EPO, the officer is supposed to advise the victim of the existence and availability of the order. Officers are required to make a reasonable attempt to serve the restrained party.

Criminal Stay Away Protective Orders. Orders issued by the criminal court in a domestic violence-related case in which there is a likelihood of harassment of the victim by the defendant. A criminal stay-away order may remain in effect as long as the defendant is under a court's jurisdiction, including any sentence or probationary period.

Other legal resources

Harassment Orders: Enjoin harassment—conduct that seriously alarms, annoys or harasses and serves no legitimate purpose.

Workplace Violence Orders: Obtained by an employer when an employee has suffered unlawful violence or a credible threat of violence—including assault, battery and stalking—that can be or has been carried out in the workplace.

Post-conviction Stalking Orders: Issued by courts or parole agents if the offense involved abuse, harassment or violence.

Stalking

Follows a predictable pattern

- Starts as a public behavior
- Goes underground
- Becomes public again just before a violent act

Stalking and harassment can be significant physical threats and barriers to job retention.

California laws related to domestic violence

Definition of domestic violence

- Section 3700 P.C. of the California Penal Code states that "Domestic Violence is abuse against an adult or fully emancipated minor who is the spouse, former spouse, cohabitant or former cohabitant, or a person with whom the suspect has had a child or has a past or present dating or engagement relationship."

- The term "abuse" as defined under Penal Code section 13700 P.C. has two distinct parts. The first, "intentionally or recklessly causing or attempting to cause bodily injury," refers to actual batteries. The second part deals with "placing another person in reasonable apprehension of imminent, serious bodily injury to himself or another." This refers to *threats* made by the suspect and *fear* perceived by the victim.

- Each of these situations requires a report by law enforcement. Other essential steps should also be taken to properly control the domestic violence situation.

Specific relationships and applicable charges

- Domestic violence is abuse committed against an adult or fully emancipated minor within one of the specified relationships. The common thread that runs through all these relationships, which creates the "domestic violence" situation, is the present or past intimate nature of the relationship. This should not be confused with sexual involvement as a required element of domestic violence. You can verify that a relationship falls within the domestic violence category even through there is no current sexual involvement.

- Charges must be specific in domestic violence cases according to the nature of the relationship. When an injury to the victim has occurred, the relationship between the suspect and the victim may dictate the seriousness of the charge.

- 273.5 P.C. (spousal abuse) is a felony charge that can be used whenever any visible injury, significant complaint of pain, or documented type of injury is present. The following relationships must be present to use the spousal abuse section:

  1. Spouse

  2. Cohabitants: Cohabitant means two unrelated adult persons (either heterosexual

or same sex couples) living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to:

A. Sexual relations between the parties while sharing the same living quarters;
B. Sharing of income or expenses;
C. Joint use or ownership of property;
D. Whether the parties hold themselves out as husband and wife;
E. The continuity of the relationship;
F. The length of the relationship.

3. **A person with whom the suspect has had a child:** no marriage or current ongoing relationship is necessary.

The charge of 243 (d) P.C. should be used in felony cases in which the victim has sustained serious injuries at the hands of the suspect, but because of the nature of the relationship does not qualify for the spousal abuse section. Note that the injury standard for this felony section is quite a bit greater than the injury criteria for the spousal abuse. The charge of 243(d) P.C. can be used in the following cases:

A. Dating relationship (past or present) as defined in 243(f)(5) P.C. This means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial consideration.
B. Former spouses with no children between them.

When documenting domestic violence incidents, officers should articulate in the report which relationship the participants are involved in and any relevant facts as to the current status of the relationship.

Laws concerning domestic violence violations

A situation involving domestic violence may result in a violation of one or more of the following sections of the California Penal Code:

273.5 PC	Spousal abuse or inflicting corporal injury upon member of opposite sex with whom the suspect is cohabiting or is the mother or father of their child
242 PC	Simple battery
243(b) PC	Battery on a police officer
243(d) PC	Battery—felony
243(e) PC	Battery—misdemeanor
240 PC	Assault

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166.4 PC	Contempt of a court order
148 PC	Resisting arrest
12020(a) PC	Possession of a dangerous weapon
12025(a) PC	Possession of a loaded firearm
12031 PC	Possession of a loaded firearm
647(f) PC	Public drunkenness
602.5 PC	Trespassing
594(b) PC	Vandalism (even if community property)
591 PC	Malicious destruction of a telephone
418 PC	Forceful entry in the home of another
417(a) PC	Brandishing a knife or gun
273.6 PC	Violation of any domestic violence restraining order
136.1 PC	Preventing or dissuading victim from reporting
245(a)(1) PC	Assault with a deadly weapon or force likely to produce great bodily injury
422 PC	Terrorist threats
646.9 PC	Stalking a victim
597 PC	Cruelty to animals (implication is that the victim will suffer the same fate as animal)
203 PC	Mayhem
207 PC	Kidnapping
236/237 PC	False imprisonment
27.262 PC	Spousal rape
28.653m PC	Threatening or harassing phone calls

Trainer Overheads

State v. Oliver 1874

"If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze and leave the parties to forget and forgive."