

# Family Law Toolkit for Mental Health Service Providers

## The Domestic Violence & Mental Health Collaboration Project

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### Domestic Violence Documentation Tips

As a mental health service provider, you are able to make a real difference in the lives of domestic violence survivors with mental health concerns. You can help survivors to transform their lives by screening for domestic violence, compassionately supporting survivors as they work to regain their autonomy and self determination, and connecting them to domestic violence advocacy services.

Your documentation practices can also impact the safety and wellbeing of people who have experienced domestic violence. This handout provides practical tips for documenting domestic violence in a manner that is mindful of survivor safety and consistent with trauma-informed care practices.

*When a batterer's attorney requests a survivor's records, I have to spend hours reviewing the records and I worry that the information could be used against my client. This handout provides clear guidelines to reduce the likelihood of harm to a survivor who is involved in a custody dispute. It is a relief to have this information.*

- A mental health service provider

### Good Documentation Practices:

1. Are important for continuity of care
2. Are necessary to comply with funding requirements
3. May help domestic violence survivors take legal action against those who have abused them
4. May help immigrant domestic violence survivors legally stay in the United States
5. May help safeguard domestic violence survivors from legal action perpetrated against them by their abusive partners

## Questions to Consider When Documenting Domestic Violence:

- Do my notes give a clear picture of what the domestic violence survivor experienced and who caused the harm?
- Do I describe the impact of the domestic violence on the survivor's mental health?
- Can my notes be misconstrued or used to harm the survivor if they are used in a legal proceeding or will they be helpful?
- If survivors review their records, will they find them accurate and respectful?

## Mental Health Records and Legal Proceedings Related to Domestic Violence

### Protection Orders or Criminal Cases

Survivors may be able to use their mental health records as evidence that they have experienced domestic violence if they are seeking a protection order or if they wish to cooperate with criminal prosecution of their abusive partners. If they have other sources of evidence (e.g., police reports), it is probably preferable to use those instead in order to safeguard the privacy of their mental health records. However, mental health records may be the only source available for some survivors. To learn more see our [Domestic Violence Protection Orders](#) handout.

### Family Law

The court *must* limit residential time and decision-making authority if a parent has perpetrated domestic violence against the other parent. The court *may* limit parenting time and decision-making authority if a parent has a long-term mental illness that interferes with their parenting. Parenting or mental health evaluators might seek the parent's mental health records to determine if there has been domestic violence, if there is a long-term mental illness, and if that mental illness interferes with the person's parenting. Attorneys or opposing parties (if they are representing themselves in court) might also seek survivors' mental health records to try to discredit survivors' credibility or their fitness to parent. To learn more see our [Parenting Resources](#) handout and [Preparing Domestic Violence Survivors for Custody Evaluations: A Guide for Mental Health Service Providers](#).

It is important to talk with survivors about the potential risks and benefits of releasing their records, if they wish to do so. If you receive a subpoena for mental health records, we recommend reading the [National Center on Domestic Violence, Trauma & Mental Health's Subpoena Response Toolkit](#) and discussing the request

with the client and the client’s domestic violence advocate, if the client has one and gives you permission to share information.

**Immigration**

Survivors who are trying to remain in the United States by seeking a U-Visa or by self-petitioning for a VAWA Visa may need their mental health records to show that they have experienced domestic violence and/or that the domestic violence affected their mental health. To learn more see our [Immigration FAQs](#) handout.

**Documenting Do’s, Do Not’s, and Why**

Documenting Do’s	Do Not’s	Why
The client states or reports...	The client claims or alleges...	One is neutral while the other suggests a judgment or mistrust of the information.
The client experienced domestic violence perpetrated by_____.	The client was involved in a domestic dispute OR patient shared abuse history.	One clearly describes who was harmed and who did the harm (relationship to client and name), when, where, and provides some details about the impact while the other minimizes the harm or leaves the source of the harm unclear. It is preferable to document specifics if you can.
Client reports that her partner, _____, strangled her last Tuesday in their bedroom after she objected to his yelling at their children. Red marks are visible on her neck and her voice sounds raspy.	The client was strangled.	
Client has positive coping skills including doing yoga to help with the stress caused by abuse from _____.	Client does yoga.	Records should reflect client’s strengths and indicate the source of the client’s distress.
	Client does yoga at the ___ yoga studio.	Records should not include details that could jeopardize the client’s safety if the abusive partner gained access to the records.

Documenting Do's	Do Not's	Why
Client reports her spouse, _____, is attempting to use client's immigration status to maintain control of her.	Client is undocumented.	Immigration status only needs to be mentioned in the context of abusive tactics and even then, the actual status should not be recorded.
Client stated that she missed appointment because abusive partner hid the couple's car keys.	Client missed appointment.	If the client is missing appointments or not following treatment recommendations, note if it is due to the abuser's coercive control. This may make a difference if a parenting evaluator or judicial officer reviews the records.
Client states he needs a refill before he is due for one because his abusive partner has been taking his pills. The client reports his symptoms have worsened as a result of not having access to his medication.	Client needs a refill before he is due for one.	The context provided in the first column may help show a pattern of domestic violence and explain severity of symptoms. The second column could imply drug-seeking behavior and could be used against a survivor in court.
This writer observed the client looking anxiously at her watch. When asked, client responded, "I am afraid that ____ is going to get home before I do and that I'll get in trouble." ____ is client's abusive partner.	Client appeared distracted, had difficulty focusing.	Trauma-informed care emphasizes making connections between observed behaviors and symptoms and the trauma clients have experienced.
Client reported feeling anxious due to the threats made by _____, the child's other parent.	Client is anxious.	It is important to make the connection between the abuse and its impact on the client's symptoms, if that is the case.

Documenting Do's	Do Not's	Why
<p>Client reports having stomachaches that do not appear related to diet or medical issues. The stomachaches are usually preceded by thoughts about being found by her abusive ex _____.</p>	<p>Client reports a lot of somatic symptoms.</p>	<p>It is important to document the client's voice as to what is happening to them and to include the context and your assessment of the situation.</p>
<p>This clinician explored with the client her cultural beliefs around marriage and disclosing abuse to outsiders. Client believes she will face community retaliation if she reports her husband's violence to the police.</p>	<p>Client refuses to make a police report.</p>	<p>Documentation should include the impact of the client's cultural identity on the choices available to them and potential consequences related to those choices.</p>
<p>Client appears distressed. She described that her phone went missing from the nightstand where she keeps it and then re-appeared today. She said her boyfriend ____ denied taking it. She suspects that he did this to make her doubt her own sanity. This is a pattern the client has described many times.</p>	<p>Client feels like she is going crazy and losing things.</p>	<p>It is common for people who are abusive to try to undermine their partners' confidence and emotional stability. Providing examples of this can demonstrate that there is a pattern of abuse or coercive control.</p>
<p>Despite the trauma the client has experienced, she reports taking good care of her children, assisting them with their homework, and helping them cope with the trauma they have experienced as a result of seeing their father, _____, assault her.</p>	<p>Client's children are having a hard time because of the abuse.</p>	<p>One describes the client's strengths as a parent and the impact of the domestic violence on the children while also naming who has been abusive. The other is vague and could imply that the children's difficulties are the client's fault.</p>

Documenting Do's	Do Not's	Why
<p>We discussed safety and I referred her to a domestic violence program for further safety planning and support.</p>	<p>Gave client a referral for help</p>	<p>The “do” column shows that you addressed safety and made a specific referral. It would enable another clinician to follow up on whether the referral worked. The “do not” column does not state if safety was addressed or what referral was given.</p> <p>If the client has a reason why the referral is not safe or will not work, you can document that to show that the client is not failing to follow through.</p>
<p>Client stated she was arrested after she scratched her girlfriend ____ in response to her girlfriend strangling her.</p>	<p>Client was arrested for assaulting her girlfriend.</p>	<p>It is not unusual for survivors to use violence. It is important to document why they used violence, if this happens.</p>
<p>Client has a protection order against _____. Client's abusive partner is also receiving services from this organization, but is only allowed to be at the _____ location from ___ to ___ on these days_____.</p>	<p><i>Nothing documented</i></p>	<p>If there are specific security measures in place at your organization related to the abuser's behavior, they should be documented.</p>
<p>Client's depression and anxiety resulted from domestic violence perpetrated by her ex, _____. Symptoms will likely improve if client's contact with abusive ex, _____, is diminished. Client is re-traumatized every time she has contact with him.</p>	<p>Client's depression and anxiety will likely improve with continued treatment.</p>	<p>If client's mental health concerns have resulted from being abused, then it is important to acknowledge the role that increased safety will play in improving client's mental health. This can have implications for parenting plan decisions.</p>

We would like to acknowledge the National Center on Domestic Violence, Trauma & Mental Health for their work on documenting domestic violence in mental health records. Their tips on documentation can be found in their publication, “*Responding to Domestic Violence: Tools for Mental Health Providers*” available at [www.nationalcenterdvtraumamh.org/publications-products/responding-to-domestic-violence-tools-and-forms-for-mental-health-providers/](http://www.nationalcenterdvtraumamh.org/publications-products/responding-to-domestic-violence-tools-and-forms-for-mental-health-providers/).

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