

Confidentiality Considerations for Risk Assessment Protocols

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Communities use a variety of risk assessment tools in an attempt to gauge the likelihood that a particular person will commit harm or be harmed by someone else. For communities working to reduce intimate partner violence and prevent fatalities, risk assessments are a particularly popular tool. But they are tools that must be used with care, and with attention to privacy and confidentiality for the survivor of violence.

Many popular risk assessment tools depend on survivors of intimate partner violence to share information about past abuse, often with law enforcement officers. And the risk assessment tools can ask for highly sensitive information, such as whether there have been attempts to strangle, assaults during pregnancy, suicide attempts or sexual violence. Once information like that has been collected and recorded, a big question looms: what is the officer going to do with the information? Who else is going to see it, use it, and make decisions about the abuser (or the survivor or the children) based on that information?

To ensure that risk assessments are respectful of the autonomy and dignity of violence survivors, as well as the humanity and rights of their partners who use violence, communities must be transparent about how risk assessment information will be used and be respectful of confidentiality boundaries where they exist.

Here are some important questions that communities should consider around how survivor information will be collected and shared so that survivors can make informed decisions about how to participate in risk assessments:

- Who is collecting the risk assessment information from survivors?
 - The choice of which professional collects the information impacts the legal protections and mandates around the information, as well as the social context for survivors being asked to share sensitive information.

- What control will survivors have over future use & disclosure of their answers to risk assessment questions?
 - When a confidential professional collects information, then the survivor gets to decide whether to share it further (and whether a High Risk Team or court or probation officer get to see it at all).
 - When a law enforcement officer collects information, then the survivor likely won't have any control over how it gets shared. And there are likely rules which require further disclosure, such as a requirements to disclose to criminal defendants.

- How exactly does the community plan to use the risk assessment information?
 - Community collaborations should decide in advance how they expect to use risk assessment responses.
 - Will it be routinely shared with a collaborative team? With survivor services? With courts? With child welfare? With probation or parole officers?

- Are there any potential adverse consequences to a survivor, based on how they answer risk assessment questions?
 - Will child welfare rely on the answers to determine whether a survivor should be subjected to child abuse/neglect interventions?
 - Are there risks of negative consequences to survivors if their answers to the questions are later deemed to be untruthful?

- What is best practice for supporting survivor choice about whether or not to answer risk assessment questions?
 - Any professional conducting a risk assessment with a survivor must be trained to communicate that participation is voluntary, and to do so without implicitly (or explicitly) coercing survivors to answer questions.

- How will survivors be informed about the future use of their information?
 - If the risk assessment information will be part of the police record, criminal discovery, or information shared with the court or any other government

systems, then survivors must be told that *before* they decide whether to participate.

- How will inter-disciplinary teams responding to high risk cases work together with respect for different confidentiality and information-sharing rules?
 - Collaborative teams must work through the guardrails of how each member will or will not share survivor information with the team.
 - Confidential professionals are still required to respect survivor confidentiality, even when they join an inter-disciplinary team.
 - Confidential professionals do not have the power to waive their client's confidentiality through a Memorandum of Understanding.
 - Law enforcement and other public officials do not have the power to waive their disclosure and reporting duties through a Memorandum of Understanding.

Survivor confidentiality should never be seen as a barrier to helping survivors, and it should never be treated as merely a "hoop to be jumped through." Confidentiality with some professionals is a vital part of connecting with services and charting one's own path to safety. And transparency with survivors about how their information will be used is a vital part of building trust that the system will treat the survivor and their family with respect.

If your community is working through your risk assessment protocol and looking for technical assistance on confidentiality and collaboration best practices, please reach out to Alicia Aiken at Confidentiality Institute – alicia@confidentialityinstitute.org for help.