

Stronger State Domestic Violence Laws – Confidentiality Programs

Last April HUD proposed new regulations implementing VAWA 2013, including *inter alia*, a proposed new model notice of rights, emergency transfer plan, and certification form. See 80 FR 17548 (4/1/15), accessible online at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-01/pdf/2015-06781.pdf>

PHAs must not only follow VAWA, but must obey state domestic laws, as well. So, be sure that your focus is not only on VAWA, but any other state or local requirements that may exist in your jurisdiction. In that regard, I'd like to make you aware that recently the State of Florida's domestic relations laws have been revised to provide more domestic violence protections. HDLI has many Florida members, but I believe the new DV provisions are instructive for all of our members nationwide, given Congress and HUD's renewed focus on domestic violence in assisted housing programs (e.g., enhanced VAWA protections). While perhaps not required by your local laws, some of Florida's protections may be helpful to your residents nonetheless.

Florida's domestic violence laws are found in Chapter 741 of Title XLIII, Sections 325 – 465.1, and are accessible online at http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0741/0741.html

Here are highlights from the Florida state law domestic violence provisions:

- **Address Confidentiality Program For Victims (§§741.403 et seq.) – These are new provisions.** An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated can apply to the Attorney General to have an address designated by the Attorney General serve as the person's address or the address of the minor or incapacitated person. The process is free – no filing fee. The new address or addresses that the applicant requests must not be disclosed. (I am told that the new provisions go into effect tomorrow, October 1, 2015.)

At least 36 states have launched address confidentiality programs and laws vary from state to state. Some states have procedures that allow victims to vote and perform other functions without creating a public record. See a list of state programs posted by the Stalking Resource Center at: <https://www.victimsofcrime.org/our-programs/stalking-resource-center/help-for-victims/address-confidentiality-programs>

You should check to see if your state has such a program. If so, be sure to train your staff and residents on how to use the program.

Here's how the program works in Florida. The victim/applicant must submit a sworn statement by the applicant that the applicant has good reason to believe that the applicant, or the minor or incapacitated person is a victim of domestic violence, and

that the applicant fears for his or her safety or his or her children's safety or the safety of the minor or incapacitated person.

The Attorney General is designated as agent for purposes of service of process and for the purpose of receipt of mail. The applicant provides the AG with a mailing address and phone number where the applicant can be contacted by the AG.

Applicants are certified for 4 years following the date of filing, unless the certification is withdrawn or invalidated before that date. The new law compels the AG to establish a renewal procedure.

A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety, or who knowingly provides false or incorrect information upon making an application, commits a misdemeanor of the second degree. The Attorney General must cancel certification of a program participant who supplies false information.

PHA Use of Designated Address as Substitute Address - A program participant may request that state and local agencies or other governmental entities use the address designated by the Attorney General as his or her address. When creating a new public record, state and local agencies or other governmental entities must accept the address designated by the Attorney General as a program participant's substitute address.

Exceptions - If the Attorney General has determined that an agency has a bona fide statutory or administrative requirement for the use of the address that would otherwise be confidential and, inter alia, the agency or entity has explained how its acceptance of a substitute address will prevent the agency from meeting its obligations under the law and why it cannot meet its statutory or administrative obligation by a change in its internal procedures. Are there any bases under which a PHA would have a *bona fide* basis for a waiver?

The Office of the Attorney General must forward *all first class mail* to the appropriate program participants at no charge. The law does not address certified or other forms of mail. PHAs sometimes send eviction and other important notices by certified mail, so this might be a hick-up.

Public Records Exemption - The addresses, corresponding telephone numbers, and social security numbers of program participants in the Address Confidentiality Program for Victims are exempt from the state public records laws. However, there are exceptions. The information may be disclosed under the following circumstances: 1) to a law enforcement agency for purposes of assisting in the execution of a valid arrest warrant; 2) if directed by a court order, to a person identified in the order; or 3) if the certification has been canceled.

While not necessarily new, here are some other instructive provisions of Florida's domestic violence law:

- *Court-ordered Batterers' Intervention Program*. If a perpetrator is found guilty of, has adjudication withheld on, or pleads *nolo contendere* to a crime of domestic violence, the court must order them to a minimum term of 1 year's probation and the court must order that the defendant attend a batterers' intervention program as a condition of probation, unless inappropriate or the defendant doesn't qualify.

The program applies to the perpetration of violence between intimate partners, spouses, ex-spouses, or those who share a child in common or who are cohabitants in intimate relationships for the purpose of exercising power and control by one over the other.

The batterers' intervention program addresses tactics of power and control by one person over another, and must last at least 29 weeks in length and include 24 weekly sessions, plus appropriate intake, assessment, and orientation programming.

- *Definition of DV* - The definition of "domestic violence" in Florida is "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, ***kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.***"

A "family or household member" consists of spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

- *Jail Time*. The imposition of probation does not preclude the court from imposing prison time. The minimum term of imprisonment for domestic violence where a person has intentionally caused bodily harm to another person is a minimum of 5 days in the county jail as part of the sentence imposed, unless the court sentences the person to a non-suspended period of incarceration in a state correctional facility. Courts also can award probation, community control, or an additional period of incarceration.
- *Victim Assistance* - Investigating officers must assist the victim to obtain medical treatment if such is required and shall advise the victim that there is a domestic violence center from which the victim may receive services using a standard form provided in both English and Spanish.

- Mandatory Filing of Police Report - Whether or not an arrest is made, the officer shall make a written police report that is complete and clearly indicates the alleged offense was an incident of domestic violence. The report must be furnished to the domestic violence center and must include a narrative description of the domestic violence incident. The report also must be given to the officer's supervisor and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled. The report must include:

A description of (a) physical injuries observed, if any.
 If a law (b) enforcement officer decides not to make an arrest or decides to arrest two or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two or more parties.
 A statement which (c) indicates that a copy of the legal rights and remedies notice was given to the victim.

- Victim & Witness Statements - Whenever possible, the law enforcement officer must obtain a written statement from the victim and witnesses concerning the alleged domestic violence. The officer must send a copy of the initial police report, as well as any subsequent, supplemental, or related report, which excludes victim/witness statements or other materials that are part of an active criminal investigation and are exempt to the nearest locally certified domestic violence center within 24 hours after the agency's receipt of the report.
- Arrests - Whenever a law enforcement officer determines upon probable cause that an act of domestic violence has been committed within the jurisdiction the officer may arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime. The decision to arrest and charge does not require consent of the victim, or consideration of the relationship of the parties.

The law states that arrest is the preferred response only with respect to the primary aggressor and not the preferred response with respect to a person who acts in a reasonable manner to protect or defend oneself or another family or household member from domestic violence.

- Special Domestic Violence States Attorneys - Each state attorney has to develop special units or assign prosecutors to specialize in the prosecution of domestic violence cases who shall receive training in domestic violence issues.
- Pro-Prosecution Policy – The law states that it is the intent of the Legislature that domestic violence be treated as a criminal act, rather than a private matter. Criminal prosecution is the favored method of enforcing compliance with injunctions for protection against domestic violence as both length and severity of sentence for those found to have committed the crime of domestic violence can be greater, thus providing greater protection to victims and better accountability of perpetrators.

- No Need for Victim's Consent - The filing, nonfiling, or diversion of criminal charges, and the prosecution of violations of injunctions for protection against domestic violence by the state attorney, is determined by these specialized prosecutors over the objection of the victim, if necessary.
- Removal of Perpetrator - With respect to injunctions for protection against domestic violence, the court must recognize that the petitioner's safety may require immediate removal of the respondent from their joint residence and that there can be inherent danger in permitting the respondent partial or periodic access to the residence.
- Injunctions – A petition for a DV injunction may be sought by family or household members. No person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse. The court is prohibited from issuing mutual orders of protection. This does not preclude the court from issuing separate injunctions for protection against domestic violence where each party has complied with the provisions of this section.