
Working from Inside and Outside Institutions: How Safety Audits Can Help Courts' Decision Making Around Domestic Violence and Child Maltreatment

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A B S T R A C T

For more than three decades, women's organizations have challenged the U.S. legal and human service systems to better protect women from men who use violence, intimidation, coercion, and other forms of abuse within their intimate relationships (Schechter, 1982; Klein, Campbell, Solar, & Ghez, 1997). Initially, these challenges employed confrontational strategies, including lawsuits, aggressive protests over poorly conceived judicial actions, and the energetic pursuit of legislative changes that would mandate police, jailers, judges, prosecutors, probation officers, and others to take specific protective actions in cases of violence against women.

As systems begin to work collaboratively to address the overlap of domestic violence and child maltreatment, systems-analysis approaches are also being explored to test the effectiveness of collaborative interventions in meeting the needs of victims and their families. The institutional safety audit model is one such approach currently being explored in sites across the country. Under this model, case files of families receiving services are submitted to an analysis that compares the interventions received with the needs that were demonstrated. Though still in a formative stage, the institutional safety audit has the potential to be used by the courts as an innovative information-gathering tool on the effectiveness of court-ordered interventions. This article will provide a detailed overview of the safety audit model, describe how safety audits are currently being used in the field, and discuss how the courts can incorporate safety audit findings into decision-making around domestic violence and child maltreatment.

Women's organizations used the media strategically to expose inadequate interventions that led to women being seriously injured or killed. There were campaigns to replace police chiefs, judges, prosecutors, and others who failed to use their institutional powers to protect women. Evidence suggests that these early confrontational approaches worked (Dobash & Dobash, 1992; Schechter, 1982;

Walker, 1990), but also had limitations.

In more recent years, confrontational tactics have been replaced by a growing interest on the part of domestic violence advocacy programs to work with and within the legal and human service systems.¹ At the

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same time, resistance to change has given way to a general acceptance that the legal system needs to make changes in order to effectively intervene in these cases. Now police chiefs or prosecutors may come to their positions with pre-existing commitments to dealing with domestic violence and their own understanding of how to deal with it. Police officers, prosecutors, judges, and probation officers typically have access to well-developed policies and institutional tools with which to respond to these cases, including specialized domestic violence police, prosecution, and probation units. Many communities have been active in developing some version of a coordinated community response to domestic violence. In every state, there are task forces on domestic violence, coordinating councils, domestic violence death review boards, or other similar kinds of multi-agency bodies organized at local and sometimes at state levels, to enhance communication and intervention strategies in domestic abuse related cases. Overall, protest and confrontational challenges to state institutions and agencies have largely given way to new methods of working for social change (Gamache & Asmus, 1999).

However, the shift toward the institutionalization of anti-domestic violence struggles presented new problems around the possibility of institutional appropriation of the work of the movement (Currie, 1993; Gotell, 1998; Pence, 1996; Walker, 1990). These problems are often more subtle than the hostile resistance to change faced by the earlier community-based activists. As policymakers and allies to change in the system take on leadership roles in the reform effort, the easy distinction of positions between *them* and *us*—between those *in the system* and *us in the community*—is no longer so clear. One will find many practitioners deeply committed to working to protect women at every level within the U.S. legal and human service systems, and one will also find that the work of many community-based advocacy organizations, which were once seen as “outside” the system, has now become deeply institutionalized. Paradoxically, the emerging cooperative relationship between the catalysts for change (women’s advocates) and those policymakers who can institutionalize social change has meant that the grounding of the movement

against domestic violence has become more unstable (Gotell, 1998; Piven & Cloward, 1979).

From Confrontation to Cooperation and Why Audits Help

In the early years of the movement when women’s advocates critiqued the system from outside, positioning themselves with and for battered women was relatively easy and unambiguous. From this position, they could see how a woman experienced the legal and human service systems, and they could appreciate the concrete impact institutional action or inaction had on her life, her safety, and the well-being of her children. In the earlier days of the anti-domestic violence movement, advocates could focus on examining the effectiveness of the relevant institutions in offering women and their children protection, and not on the character of the victim.

Advocates did not wonder whether a woman was a good or bad victim, cooperative or uncooperative, before deciding to act on her behalf, as may now happen when those responsible to protect women are positioned within the legal or human service systems (McMahon & Pence, 2003). The historical shift toward working more collaboratively with these institutions drew advocates into new sets of institutional relevancies and constraints, and they became positioned differently. Such institutional relevancies now insist that, for example, to prove guilt beyond a reasonable doubt, a witness is needed and the victim’s cooperation is required, and to appropriately sentence an offender, a victim impact statement is necessary. In family court, such expectations take on an even more crucial meaning to victims. If a mother is being beaten in the presence of her children and she does not extricate herself from the violence, she is “failing” as a mother, guardian, and parent to protect her children from harm caused by watching the beating of their mother. Therefore, she needs to control her abuser’s acts of violence against her or lose her children to foster care. Gradually and subtly, institutional needs became advocates’ needs. That is, at some point many advocates began advocating the needs of the system to the battered woman (Pence, 2000).

The shifting of focus to institutional needs in the struggle to protect women from domestic violence was neither even nor uncontested. When advocates resisted

taking on the role of persuading women to cooperate with institutional processes, some reform-minded policymakers recruited advocates into their formal agencies to reduce problems of competing loyalties. Although not articulated directly, the implicit message for many advocates, now employed within criminal justice agencies, was, "You work for the department (police, prosecutors' office, or probation department). Your goals are our goals, but your job is to make the processing of our cases as helpful to victims as possible (within our agency mission)." (Gamache & Asmus, 1999).

It has been the loss of advocates' independent political grounds and the confusion of roles, not simply the cooperation between community-based and formal organizations, that has weakened the power of the advocacy movement (Currie, 1993; Gotell, 1998; McMahon & Pence, 2003; Walker, 1990). As leadership of inter-agency projects shifted from women's advocates to receptive policymakers within formal organizations, the inability of community-based groups to retain a strong independent political position in combination with other power differentials between the two resulted in institutional needs subsuming the needs of battered women (Walker, 1990). Throughout the 1990s, there was a shift of leadership in inter-agency collaborations from independent advocacy groups to leaders within the system such as judges, prosecutors, or police administrators, who chaired many of the inter-agency task forces or committees that then dotted the reform landscape. Ironically, as the advocacy agenda was taken up by the system, advocates gradually lost the ability to define the problems and the solutions. Yet, there was no going back.

As institutions began to take up the challenge of protecting victims of abuse, it would have been a strategic error to continue down a path of confrontation. The task for advocacy groups now is to continue to develop new ways of coping with the tensions and contradictions of working with the U.S. legal and human service systems to better protect women from domestic violence. In this endeavor, therefore, the continuity between the work of early and contemporary women's advocates remains strong.

In this article, we discuss the domestic abuse audit ("the audit") as an emerging method of handling the contradictions and complexities of working with formal

organizations and institutions to better protect women from domestic violence. The audit is a method used by domestic violence advocates and institutional representatives to examine an institutional practice in order to determine how and if it centralizes attention on the safety of battered women and their children.

The audit offers a collaborative method in which the impact of the power differential between community-based women's advocates and policymakers is lessened. It can put advocates and policymakers on equal footing as co-investigators of the institutional processes that have such significant consequences in the lives of women who turn to those institutions for help. The audit is an inter-agency accomplishment that makes it possible for policymakers, advocates, and other practitioners to work collaboratively to replace problematic conceptual and administrative procedures with new ones. These new procedures focus on the issues of women's safety and the accountability of both offenders and the institutions to victims of abuse in the intervention process, rather than on institutional case management needs (Sadusky, 1994).

For the past 25 years, activists have developed strategies for coordinating the work of key intervention agencies in order to reach a high level of philosophical and practical coherence in the struggle to protect women from domestic violence. These strategies shift the focus of intervention from managing the victim to monitoring and regulating the abusive actions of the perpetrator who, paradoxically, has been largely ignored by the criminal justice system (Shepard & Pence, 1999; Pope, 1999). Appreciating the significance of this shift is key to understanding the success and national leadership of communities such as Duluth, San Diego, Nashville, and Seattle.² But all of those communities are still recognizing the need to move another step forward in the reform effort.

By using the safety and accountability audit as a method of seeing how unintended and harmful case outcomes are produced in the complex maze of multi-agency interventions, advocates and reform activists have been able to deepen their focus on women's safety. The audit process described below has been developed under the auspices of Praxis International in Duluth.³ It has been used in over 20 communities as a way of advancing their multi-agency reform efforts.

In order to introduce the reader to the Praxis audit, we will provide: 1) a general description of the audit process; 2) a description of its use in addressing our problems in Duluth, showing the audit as an analytical tool, a collaboration tool, and a planning tool; and 3) conclusions about institutional interventions that can be drawn on the basis of safety audits.

A General Description of the Audit Process

The Praxis audit draws on a research method called institutional ethnography as developed in sociology by Dorothy Smith (1987, 1990, 1999). Simply put, the method looks empirically at *how things are done*, in our case at the different sites of multi-agency institutional involvement in a domestic violence case. For example, how does it come about that most arrests for violent assaults by one partner against another results in either no conviction or a conviction for disorderly conduct? Or how does it come about that a woman who has been beaten and abused for years and who eventually responds with violence against her partner's abuse is herself identified as an offender in the criminal justice system, and treated primarily as such, rather than as a victim? What are the different steps in the process that produce these outcomes? How have reform efforts originally designed to protect battered women contributed to their supposed criminality?⁴ The audit process exposes the sources of counterintuitive and contradictory outcomes in systems designed for justice and protection, but which too often fail on both counts.

The audit is set up to focus on an identified problem in case processing. An inter-agency team of practitioners and battered women's advocates is formed to collaborate in the investigation. The team does not evaluate individuals' performances, but examines how the actions of each practitioner involved in the processes to be examined are organized and coordinated as part of the institutional process. The investigation specializes in understanding how institutional ways of doing things either centralize or marginalize attention to community intervention goals such as victim safety or offender accountability.

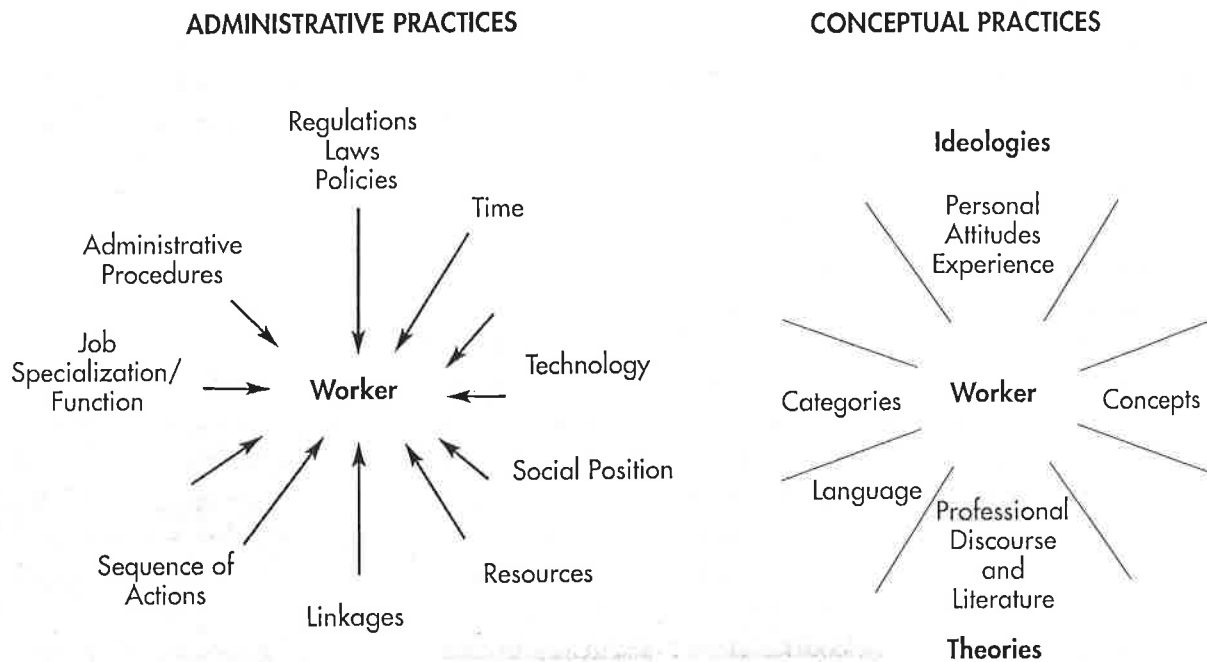
Praxis audits are not interested in describing individual cases or the overall system. Instead, the team asks

specific questions of each phase of case processing from the position of a woman who is being abused. This is its reference point. It focuses on the fit (or lack of fit) between her experience as a victim and the institutions' constructions and re-formulations of her situation as a case to be processed and resolved by those institutions. For example, an audit team may be formed, as it was in Duluth, to examine the problem of battered women being arrested, prosecuted, and convicted of assaulting their abusive partners. The Praxis audit will have a definite starting point in such an examination—the standpoint of battered women. The investigation will be closely focused and will ask, "How in the process of criminal case intervention does a battered woman who uses force against her abuser come to be treated similarly to, if not the same as, her batterer?" Of course, we understand that women sometimes assault their partners. Arrest policies should not and cannot be directed toward a specific gender. There is a valid goal in the criminal justice system to treat similarly situated cases similarly, but the deeper question is really about how dissimilar situations get treated the same.

Adopting a standpoint grounded in the experiences of the battered woman herself diverts the team from the common tendency to want to address the legal, bureaucratic, and professional structures of the organization as a whole or to critique the idiosyncratic actions of individuals in the system. Instead, the team identifies specific institutional processes. It traces institutions as sequences of organizational activity. This is the audit's innovative contribution (Campbell, 1998).

Thus, in the case of battered women being treated like batterers rather than as victims, the team begins its investigation by mapping each and every institutional interchange that occurs in processing a sample of such cases. By *interchange* we mean every action, interaction, or exchange of information that collectively make up the trajectory of a domestic violence case.

A gap between women's experienced reality of violence and institutional reality is potentially produced in each and every case management step in processing a case. The opportunity for institutions to create reality rather than to respond to the empirical social world of victims is great. The audit team watches, interviews, and consults with practitioners who know the system;

FIGURE 1. DETERMINANTS OF WORKERS' ACTIONS

observes how exchanges of information, forms, policies, records, and other institutional texts are operating at each interchange; and examines the process with a specific audit question in mind and from the standpoint of the victim of battering.

Team members also quickly recognize that they must limit the scope of the audit if they are to accomplish anything. Audit team members are encouraged to think about workers as being organized by both bureaucratic and conceptual practices. Figure 1 above illustrates the targets on which the audit teams tend to focus in their investigations of each institutional step. However, the categories in Figure 1 are not meant to limit the audit team in uncovering how a problem is produced in institutional case processing, but instead to direct the attention of the audit team to key determinants of workers' actions in any institution.

In an audit, there is no need to confront, to pit advocate against practitioner, or to judge individuals, because the audit is watching *the process*. The investigation is not of the people involved, but rather of the institutional ways of organizing and coordinating work that far too

often produces unintended outcomes and that might even violate the overall goals of the agencies or institutions themselves.

A More Detailed Description of the Audit Process

There are seven key phases to an audit. The first is to set the audit question. Over the past five years, Praxis has worked with dozens of communities to conduct an audit of some aspect of their work. Audit questions usually start with the word "How." How does a certain problem come about? How are workers organized to think about and act on a particular kind of case in ways that bring about unintended, unfair, or harmful results? How is a woman's safety accounted for in such a process? How are the relationships between children and their parents impacted by the intervention? How do battered women who are not violent to their children lose their children to foster care? How are the services of the visitation centers organized to enhance or impede post-separation parenting in domestic violence cases?

Second, an audit requires inter-agency agreements

about the collection and use of data for the audit team. The audit team will need to watch, interview, and review case files. All of the agreements for providing access to files and interchanges between practitioners and victims or offenders need to be worked out well in advance of the data gathering phase.

The third task is to organize an audit team so that its composition is adequate to its task. One individual could conduct an audit, but this would subvert the potential of the process. By having a multi-agency team conduct the audit with community-based domestic violence advocates, much of the foundational discussions and understandings for new policies and procedures and working relationships are produced in the auditing process itself. The team is trained together and helps determine the scope and schedule of the data collection phase. Members of the team must have, of course, the analytical skills and the political will to question all aspects of institutional intervention. Team members will be required to conduct a number of interviews and participate in anywhere from two to ten observations, depending on the scope of the audit. Team members will likely attend bi-monthly meetings during the course of the audit.

Fourth, the team maps the sequences of actions it intends to analyze and develops a schedule of observations, interviews, and focus groups. The team determines which texts it will initially select to review. Every interchange in the processing of a domestic violence case is mediated and shaped by institutional texts such as the laws, rules, forms, regulations, guidelines, and the categories employed to organize information. The concept of watching the role played by institutional texts is central to the methodology of institutional ethnography.

Fifth, the team collects data. Each interchange in question is observed independently on several occasions by at least two team members. Practitioners are interviewed, and all institutional texts organizing the interchange are gathered. The team will read all of the key regulatory texts: laws, policies, or directives that relate to each interchange, and the corresponding administrative texts, such as forms and matrices. These texts are seen as actors in the process that direct workers to screen, define, categorize, and prioritize cases. The team needs to make some preliminary decisions about the texts it will review. However, an audit is an ongoing process. As

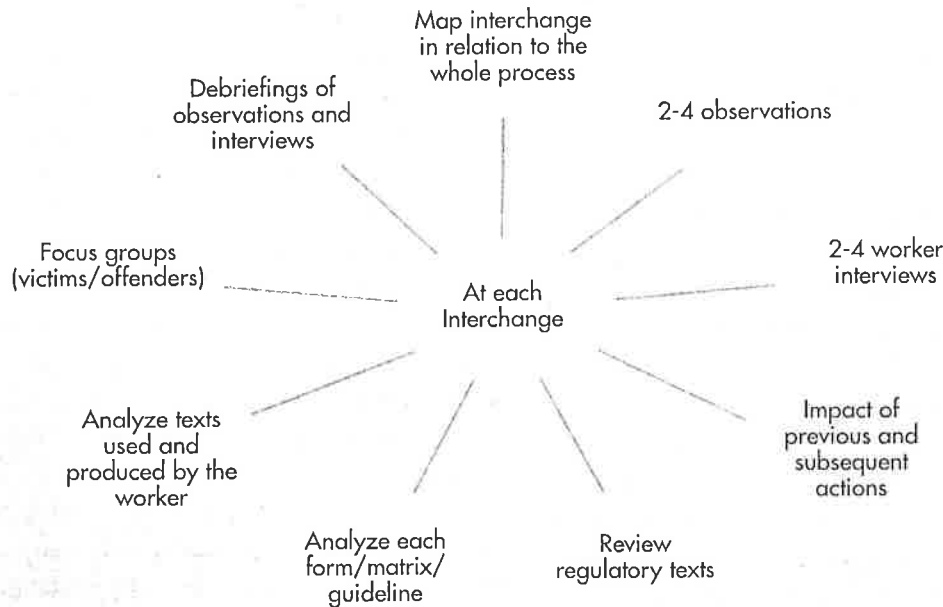
team members conduct observations they see how certain texts that are not initially seen as important to analyze are in fact important in shaping the intervention in the case, and these texts are added to the collection of texts to be examined. When appropriate, focus groups will be used rather than individual interviews in order to solicit a number of viewpoints and experiences on a particular process or interchange. In the data collection phase, the team is conscious of the fact that each interchange between an institutional worker and a person's "case" is only one part of a sequence of institutional actions. Steps before and after each interchange help to determine the worker's actions on a case and shape the reasons behind the actions taken.

Team members examine how the activities of practitioners shape individual interchanges and thus the overall outcome of a case. They are looking for anything that serves to standardize worker's actions at each of these interchanges, anything from the use of a category, to the application of a matrix or screening tool, to a law mandating certain responses. When team members read files, reports, and case notes related to cases, they are not trying to count numbers or provide a statistical analysis of how often certain activities occur. Rather, they read files to find out how institutional processes generally work. Figure 2 depicts the data process.

We describe the sixth task as the analysis phase, although every team member has been engaged in ongoing analysis throughout the audit. In this phase, the team works together to make sense of all of the data. Guided by the charts in Figure 1, the team makes visible both the conceptual and bureaucratic processes in operation in the handling of a domestic violence case. Slowly at first, and then more rapidly, the data starts to tell the story. For instance, we can uncover the story of how a sequence of steps in the legal process institutionally transforms women who are victims of domestic violence into batterers and thus predicates an unfounded sense of mutuality regarding the violence.

In the final phase of the audit, an agenda for change emerges from the process of analysis, although not always in a straightforward manner. As our example below shows, audits demonstrate that there is rarely a single reason for unintended or harmful case outcomes. As the team sees how institutional processes produce

FIGURE 2



unintended consequences, they become aware of how easy it would be to put in new procedures or promote new conceptual practices that would become sources of harmful outcomes. Fortunately, the investigation process positions the audit team to craft fresh institutional processes that have the potential to avoid creating a new set of practices with their own inherent problems (Peacock, George, Wilson, Bergstrom, & Pence, 2002; Pence & Lizdas, 2001).

An Example of the Audit Process

Duluth advocates and court practitioners used the audit process to understand how good intentions, new laws, policies, and procedures designed to protect women from violence produced the unintended outcome of an increased number of battered women being arrested and treated almost identically to batterers (Pence & Ritmeester, 1992; McMahon & Pence, 2003). In the analysis of each interchange, the audit team found that the problem began with the dispatch procedures. The team observed and interviewed dispatchers and then listened to and read 9-1-1 reports involving cases of

both arrests of women and double arrests. They found that the dispatcher translated original information such as "Someone is screaming" into "They are fighting" and translated the report "I hear a woman yelling at her husband" into a category: "Domestic... verbal only at this point... woman on man."

Thus, the dispatcher begins a process of translation from what is actually happening to an institutional version of what is happening. In many cases, that misinformation pre-disposed officers to come into the situation with the mistaken idea of "*mutuality*" or "*woman aggressor*" in mind.

When the original operator categorizes the call as "domestic ... verbal only at this point ... woman on man," this version of reality becomes the institutional data and thus the only reality that counts. It may not correspond to what was really happening. In other words, institutional actions do not merely record reality, they work to produce it.

By listening to a number of 9-1-1 tapes in which women were arrested, the team saw how the conversation was largely shaped by how the operator solicited

information from the caller and how easily the case started to shape up as a mutual combat at that point. A few more questions and a more precise translation could have avoided several questionable arrests.

In addition, audit members went on ride-alongs to interview officers and see the conditions under which they were investigating and documenting these cases. They found that about 20% of the arrests seemed to be clearly appropriate given the circumstances of the incident, and the team agreed that if the reports were accurate and the statements credible, the women were definitely the predominant aggressors and did pose a public safety threat. The other 80% were less clear. They found that most officers were making probable cause determinations without considering the totality of circumstances available to them.

The lack of attention to contextual circumstances held not only in the arrests of women, but seemed to be common in all domestic assault cases. Our interviews and observations led us to several conclusions about this. First, officers felt compelled to arrest if there were a claim of assault and any physical evidence. Indeed, the policy required officers to arrest when they had *probable cause* in all domestic cases in which the victim was physically injured. But officers were translating the existence of the injury to mean, "I have probable cause." "He has a bite mark, he says she did it, that's probable cause." In a number of cases, the arrested woman was not interviewed. When we checked this against the arrest of men we found a similar problem: in almost one third of the cases there was no interview with male suspects prior to arresting and mirandizing them.

We want to emphasize here that it was the probation officer, prosecutor, and patrol sergeants, not only the women's advocates on the audit team, who identified these problems as the team worked together, and this made the process of developing solutions far easier. As a result of the Duluth audit whereby all parties were interviewed and self-defense claims considered, the Sheriff's Office and the Duluth Police Department, over a one-year period: a) changed their arrest policies to one of *mandatory arrest only of the pre-dominant aggressor*; b) required that a sergeant approve all double arrests; and c) required supervisor's use of a supervisory oversight form to review all domestic arrests, of men or

women, to ensure that officers had made an appropriate self-defense investigation and had clearly articulated the basis of their probable cause, and to check that their determination was based on the totality of circumstances available to the officer at the scene (St. Louis County Sheriff's Office, 2001).

The Duluth audit team also looked at the prosecution of these cases. It was clear that problematic arrests needed to be addressed. But what about the cases where the woman was the predominant aggressor? What of cases where a woman was being battered, but this night it was she who used violence and he either used no violence or simply reacted to her violence? Should she be arrested, charged, prosecuted, and sentenced on the same basis as those who use violence to dominate and continuously instill fear in a relationship?

In fact, we found that battered women who were charged only once with assaulting their partners were more likely to be convicted for assault than men who had a long history of abusing their partners. Abusive men had a higher dismissal rate, a higher rate of not guilty judgments by juries, and a higher rate of plea-bargaining to a disorderly conduct conviction. The audit located a number of causes for these puzzling findings including a lack of resources available to battered women, poor advocacy strategies, and disconnections and inadequate communication between battered women and their defense attorneys. None of these problems were the direct result of individual practitioners' failures.

Following a series of focus groups and a review of a number of cases in which battered women were prosecuted for assaults against their abusers, a question was posed: Should the city seek convictions in cases where it is confident that a) a person used illegal force, b) a conviction is quite likely, and c) the offender is experiencing ongoing violence from the victim in this case. An ad hoc committee was formed by the city attorney's office to consider the public safety and social justice implications of a special prosecution program for such cases. The entire process and program is thoroughly described by the committee chair, chief prosecutor Mary Asmus, in *At a Crossroads: Domestic Violence Intervention in Duluth and Battered Women Who Use Violence*.⁵ Over a two-year period, the committee developed a program for men or women who are being abused by their part-

ners but who then assault their abusers. Most of them are now diverted from a prosecution to an educational and advocacy program. Participants in this program have a substantially lower re-offense rate than do "batterers," who are court ordered to abuser programs.⁶

The final component of the audit process brought defense attorneys and advocates together to explore why so many cases in which women who had good self-defense claims were convicted for domestic assault. Using the audit as a model, they recognized the primary problem was that arrested women, unlike their male counterparts, rarely made appointments with their defense attorneys prior to pre-trial hearings. Attorneys often met their clients for a few minutes at the arraignment, handed them a card, then a week before a pre-trial hearing sent them a form letter telling the women to be at the hearing and to call for an appointment if they wanted to talk beforehand. Rarely did women make the appointment. Instead, they typically came to the pre-trial hearing, told their attorney that they wanted to "get it over with" and "Yes, I did hit him and I want to plead guilty today."

Unlike cases involving male offenders, the public defender was rarely given an alternative story to the one in the police report. Not only did the audit team find the classic situation of the squeaky wheel gets the grease, but they found a significant problem with the extremely passive advocacy approach to cases where women use violence. It was as though the advocates saw women who strike out against their abusers as definite offenders, and determined that they did not qualify as appropriate victims for their services (McMahon & Pence, 2003).

After considering the prosecution and defense bar roles in the problem, the audit team turned to the sentencing phase of these cases. The team found that the probation department and the bench in Duluth had addressed this issue a number of years earlier and had developed a sentencing matrix for misdemeanor offenses that called for sentencing victims of battering in ways that did not make them more vulnerable to their abusers.⁷ However, they also found that the process had broken down over the years because it had not been effectively institutionalized. The breakdown was primarily linked to the loss of funds to gather comprehensive backgrounds on cases.

After the 1996 audit on sentencing, the audit team designed a new sentencing matrix for probation officers making recommendations to the court. The police, probation, and prosecutor offices had combined to raise funds for a full-time person to work on ensuring that every domestic abuse case in criminal or civil court had a complete file to give probation officers and prosecutors who were negotiating plea agreements ready access to histories of previous police calls, protection orders, records of child abuse cases, and a summary of interviews with victims. This dossier on abusers became the basis for placing someone on the sentencing matrix. By 1999, unfortunately, the money had evaporated and neither the police nor the probation department took the responsibility for the continuation of these new institutional practices. A weak advocacy approach meant that the reform efforts slipped away with no one to object.

Changing the police arrest policy and the prosecution charging practices, and enhancing the advocacy and defense services have significantly decreased the arrest and conviction of battered women using minor violence toward their abusers.

On What Was Accomplished and Words of Caution

The Duluth safety audit was in response to a complex situation that existed in Duluth. While the description herein of how the audit process changed the dynamics in Duluth is meant to highlight the use of the audit process and what it can offer a community, we have oversimplified the process. In reality, the process was fraught with tentativeness and debate and, as one member delicately understated it, "A lot of to-ing and fro-ing has been involved." Several different efforts were going on all at once with different people taking the lead in different aspects of the work at different times.

Praxis and shelter domestic violence activists initially took the lead role when law enforcement practices were examined. When police administrators became more involved and clearly saw the problems, they themselves took on the lead to re-work the policy and organize all the required training for and oversight of the new policy. Praxis took the initiative in uncovering the problem of battered women's convictions, but the chief prosecutor in the city attorney's office chaired the commit-

tee that analyzed and designed the new prosecution approach. The shelter had the responsibility of developing a training and collaboration plan with the defense attorneys. Changes in the dispatch center will not be made until a more comprehensive look at dispatching is completed. The misdemeanor probation unit had long ago taken the lead in changing sentencing practices in these cases.

What has been accomplished? There is a deeper understanding of how treating all acts of violence in intimate relationships the same has led to harmful interventions. By producing the case as one of mutual violence, the courts' ability to promote public safety is undermined, as are the claims for protection of battered women who respond to their abusers with force. The unintended outcome can be state interventions that actually increase batterers' control over their victims. Today, aggressive women who assault their partners are arrested and convicted. If, however, in Duluth, a battered woman or a battered man is violent toward an abusive partner: a) a concerted effort is made to determine if the person acted in self-defense, in which case only their partner will be arrested; b) police will not make a double arrest unless both parties appear to pose a significant threat to the other; c) police officers and deputies write far more detailed reports on their probable cause determinations in all domestic violence related arrests; d) a prosecution deferral program is offered if the person's violence was reactive and minor in comparison to the violence used against him or her; e) a recommendation matrix is in place to require probation officers to differentiate among offenders who use a pattern of intimidation, coercion, and violence to control a partner, from those who use force to confront such control, from those who have assaulted a partner but engage in no ongoing pattern of abuse or threats; and f) an advocacy plan is in place that enhances the chance that victims of battering will receive an aggressive defense.

Other Benefits Audits Bring to Communities

Praxis audits made problematic institutional processes visible, but they also served a number of secondary, yet equally important, functions in court reform efforts.

A. First, they *eliminated the blame factor*. The

audit is a remarkable tool for cutting through the finger pointing and defensiveness that characterizes much of the inter-agency work in this field because the focus is on institutional processes and practices, not on individuals. Specifically, much of what an outside observer may attribute to a worker's poor attitude or lack of knowledge about battering is in fact a practice that is produced in the administrative design of the intervention and in the institutional ideological orientation.

For example, many advocates see as "victim blamers" those child protection workers who document women for neglect or failure to protect because they do not keep their children from being exposed to their abuser's violence. The practice may indeed be victim blaming, but it comes about because of a combination of bureaucratic and conceptual practices that are built into the workers' everyday work routines. If a team explores the ways in which the worker is organized to portray the woman as a neglectful parent, they will discover the source of the problem and the basis of the solution.

It begins with the common practice of opening cases in the primary parent's name, not that of the abusive party. The institutional category of "failure to protect" gives the worker the conceptual basis for looking toward the abused mother as the failing parent. As team members watch the workers use parenting assessment tools, service plan formats, referral sources that are not quite appropriate, they will see that the worker is continuously guided by statutes, policies, resource limitations, and reporting formats that are rooted in theoretical frameworks not peculiar to the worker but to the institution.

B. Second, the audit helps to make visible the various implicit theoretical perspectives operating in a situation. That is, the audit is an excellent tool for allowing inter-agency team members to see the conceptual practices operating in the system and expose the ways in which these create a disjuncture between the manner in which women experience violence and ways in which intervening agencies take up those experiences as cases to be processed. Recently, Praxis worked with two communities that wanted to see how Child Protection System (CPS) interventions, designed to protect children who witness violence against their mothers, succeeded or failed to make the mother's safety a central priority.

In the first community, the audit team began by

obtaining four complete case files involving battered women who were not themselves violent toward their children, but whose children were placed in foster care because of their continued exposure to violence against their mothers. Twenty-five advocates, CPS case workers and supervisors, children's advocates, and batterer treatment providers spent two days analyzing the four files and conducting interviews with those present who could explain how the CPS processes work.

In the second community, a CPS supervisor pulled the last three files she could recall where there was a co-occurrence, as she put it, of child abuse and domestic violence (woman abuse). Three team members read these files and discussed the cases with a larger inter-agency group as they mapped each step of the child protection process.

In both of these communities the preliminary audit team asked the question: What theories are operative here? Implicit theories were operative everywhere—theories about violence, families, mothering, parenting, safety, risk, harm, responsibility for children's safety. There were theories embedded in processes, forms, risk assessments, parenting evaluation checklists, psychological exams, laws, regulations, and case worker documentation practices. In both communities, practitioners and advocates found themselves for the first time explicating and scrutinizing implicit theoretical assumptions embedded in their work without the all too common "*I have it right and you have it wrong*" mentality. The process forced them to be more interested in asking, "How is the worker organized to think about, observe, and highlight events in this case?" Next they asked, "And with what consequence for the relationship between the mother and child and the safety of both?"

Two days of discussion and analysis followed the reading of the files. It was a beginning process with no observations or focus groups, but the text analysis alone produced crucial information about how gaps are produced between what victims of abuse experience and how institutions intervene in their lives.

In this process, a number of problems were found with certain instruments regularly used in CPS case processing, including parenting assessment evaluations, psychological testing, safety planning, service plans, and referral to mental health services. None of these case management tools and processes centralized the violence

experienced by the woman as a problem to be addressed as part of the effort to protect children. Furthermore, CPS case management and evaluation tools over-generalized and homogenized their clients, thus reducing women and children from complex, situated social beings to what could be called universal victims or universal clients. These tools did not allow the workers to account for a woman's (or child's) race, class, gender, immigration status, religion, or extended family, nor did the tools offer specifics about a woman's social position within her family and community.

Similarly, the child protection institutional tools would not allow one to construct an adequate profile of the children these interventions were created to protect. After reading an entire file, team members typically found that they could not tell specifically what any of the children involved had experienced, how they were affected, how and whether they were helped by the services into which they were directed, or how, if at all, any of the interventions affected their safety.

Further, in all four files, the men whose violence was the source of the need for protection literally went missing. None of the problems uncovered was due to an inept worker. Few of them would have been solved by giving the worker more training on domestic violence. They were the outcome of child protection processes and of the ways in which interchanges and total intervention that constitute a case are constructed, conceptualized, organized, and disconnected from other legal interventions. This entire process is documented in a Praxis report entitled *Building Safety for Battered Women and Their Children into the Child Protection System*.⁸

C. Finally, the audit provides a planning tool. We see how inter-agency teams can investigate processes to see how problems are produced in the conceptual and bureaucratic processes of case management. It follows, then, that the same process can be used while designing new programs to avoid the kinds of practices that create a disjuncture between ways in which women experience violence and institutions take up their situations as cases to be managed.

A careful consideration of the ways in which institutional workers are organized to address the complexities of battered women's situations will avoid many of the problems that have emerged from well-intended reform

efforts. Using the charts in Figure 1 and paying attention to how the inherent features of institutions can produce poor case outcomes, planners can map out procedures and design guiding principles, connections to other agencies, texts, and training programs that minimize the risk of creating processes that do more harm than good.

What Does This Mean to Judges

Judges sit at a bench. They are in many ways tied to that bench. They do not go out and investigate. They do not see victims, abusers, and children in their homes. They do not conduct assessments or make observations outside the courtroom. Their ability to act is limited. They see only what comes before them. As such, they are made effective or ineffective by the information provided, processes, procedures, and practices of others.

Despite having much formal independence, their ability to act is what might be described as "over-determined." The dispatcher, for example, has more leeway in parts of his or her job. He or she is charged with quickly gaining and distilling information from callers into a brief report to provide to responding officers. The quality of the exchange with an individual caller can shape how the dispatcher does his or her job in that case. Similarly, a responding patrol officer is in charge of the crime scene investigation. He or she gets the story, can seek out new information and explore possibilities, and takes action based on the totality of circumstances available at the time.

Unlike judges, police officers have more opportunities to gather information on the complexity and particularity of a case. They come into closer contact with the abused individual's experience, and the data available to them has been less institutionally processed. They can work more inductively, and their work is grounded far more immediately and directly in the details of what happened. They rely on the work of the dispatcher, but they have the ability to shape the nature of an investigation.

As the case moves through the system, those involved in later stages of the process have their work increasingly determined by the work done by those who came before. The prosecutor is severely constrained by an inadequate police report, and the probation officer conducting a pre-sentence investigation is limited by what police and prosecutors have done. It is paradoxical, but no practitioner's work is more constrained by the

actions of other practitioners in the criminal justice system and other agencies than the judge's. The judge who receives a parenting evaluation in a child protection case relies on the professional judgment of the evaluator. The judge who receives a pre-sentence investigation cannot consider circumstances about which he or she has not been apprised. No one can go back to the night of the violence and ask questions about what happened, how did it feel, what did it look like, who was afraid, who was there? Because judges' work is so deeply dependent on the quality of the work of all those who have been involved in the process before the case comes before them, judges' own work stands to benefit most from reforming those earlier interventions so that they better meet the goals of concern for public safety, fairness, accuracy, and relevance to the needs of victims.

In this sense, the audit has the greatest potential use for judges simply because their work is so highly institutionally over-determined in ways not always visible to them.⁹ Initially the audit process promotes a way of thinking that explicates ideological practices used in the processing of cases. The kinds of probing questions an audit produces can only enhance a judge's ability to be a fair arbitrator of the facts. Judges can, by the demands they make on others, such as CPS workers, probation officers, and custody evaluators, push for changes that will produce a more accurate or useful picture of "what is going on." A system that can produce an institutional version of a case that most closely reflects what actually happened and is happening is one that stands the best chance of fulfilling the promise of the U.S. legal system to justice, fairness, and protection.

Some Final Thoughts

Praxis is working with an increasing number of communities conducting audits of institutional responses to battered women. From these audits and from the more general experience of working from within and from without to change how institutions work, Praxis has come to recognize perennial and problematic features of how institutions work and how human experience becomes an object of institutional management. For example, in every aspect of managing cases, workers are directed to act based on the use of *categories*; i.e., to bunch situations together in ways that transform a particular set of events into a representation of that type of

event. Categories like misdemeanor, felony, recanting witness, and parenting groups are used in ways that overhomogenize experience and individuals, desensitize practitioners to context and specificities, and distort reality.

We have consistently found that lived time is supplanted by an institutional time frame that can have devastating effects in cases in which a person's willingness and tendency to use violence and intimidation are an ongoing feature of the case. We continually see how texts are used to standardize workers' actions, often precluding workers from using common sense or their best professional judgment on a case.

There is an absence of dialogue (the give and take of communication) between representatives of the institutions and the people whose lives are being managed. Information is produced and translated into exclusively institutionally recognizable and actionable frameworks, thereby masking and replacing the contextual realities of individual cases. We noted in every audit how a key tool in the institutional production of reality is the imposition of a reductive universal personhood on the people to be managed, a kind of "monocultured" individual devoid of gender, age, ethnicity, class status, sexual orientation, and embodied existence. Although these are problematic potential features of many modern institutions, audit teams need to pay particular attention to the ways in which these features inadvertently sub-

vert the goals of ensuring public safety. Each audit either adds to or refines the list of features or helps to better understand how they are operative in a problem.¹⁰ The awareness of these features should not be used to limit our inquiry or set a boundary around our investigation that will prevent us from seeing what there is to see. Like Blumer's (1969) notion of sensitizing concepts, they become like pointers to the team: "Watch out for this." "How is the use of categories operating here?" "How are people's voices, stories, and accounts being shaped and managed here?" "What about time?" "How has the institutional time frame clashed with the lived time of the people involved in the case?"

In summary, audits can make a major contribution to institutional reform by shifting the gaze from the idiosyncratic actions of individuals to institutional processes. The audit is a tool for social change in a world where, as Dorothy Smith¹¹ reminds us, the ideological and bureaucratic work of modern institutions are conducted and brought about largely through the use of texts, which tend to standardize how workers think about and act on the cases before them. The formation of an audit team allows the investigation of each interchange between the institution and the people involved. It initiates a collective process of changing practices to help close the gap between the ways in which people experience their lives and the ways in which institutions manage their situations as cases.

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END NOTES

- 1 While mainstream advocacy programs are moving more toward working with institutions, there is a voice within the battered women's movement that questions such collaborative relationships and indeed the use of legal reform efforts at all as an effective tool to protect women from battering.
- 2 Currently, communities in Michigan are using the audit process to plan the formation of visitation centers that adequately address families in which there is a history of domestic violence. In New Zealand, an audit is being used to plan a domestic violence police unit; in St. Louis, it is being used to design a court referral program for batterers as parents.
- 3 For more information, contact ruralta@praxisinternational.org.
- 4 One of the unintended outcomes of the institutionalization of anti-domestic violence work has been the disturbing trend toward arresting victims of violence. This unintended outcome will often be used as a concrete example in this article because it was the orientating question in a recent audit.
- 5 This paper will soon be available from Praxis International at ruralta@praxisinternational.org and the Battered Women's Justice Project at crimjust@bwjp.org.
- 6 We use the term batterer to mean a person who uses a pattern of intimidation, violence, and coercion to dominate or control an intimate partner.
- 7 The sentencing matrix was developed as part of the first audit conducted in any court in the country. This is how the audit was created. A small part of that was a commitment to not treat all cases the same but base the sentencing on the danger level to the victim.
- 8 The entire report can be downloaded from our Web site, at www.praxisinternational.org.
- 9 Currently, the Battered Women's Justice Project (BWJP) and the Hennepin County bench are conducting an audit of the decisions made by judges assigned to the domestic violence court related to setting bail, conditions of release, plea negotiations, and risk assessment. The audit is looking into questions of how are judges institutionally organized to make those decisions, and how are judges organized to think about and act on cases in relationship to victim safety. For more information, contact Connie Sponsler at the Battered Women's Justice Project, 800-903-0111, www.bwjp.org.
- 10 A full list of the features can be found on our Web site, www.praxisinternational.org.
- 11 As stated previously in this article, Dorothy Smith developed a sociological research method called institutional ethnography from which the Praxis audit is drawn.

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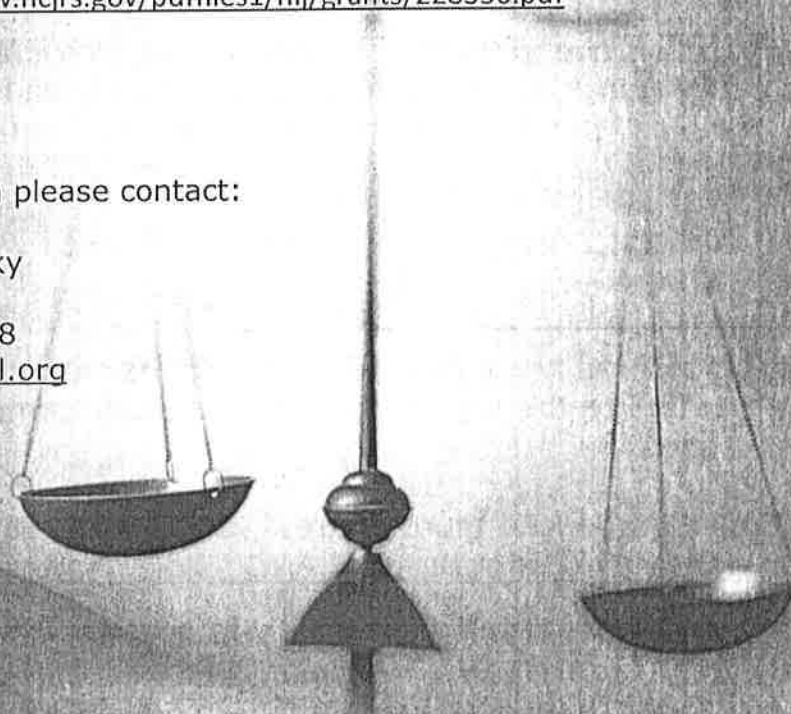
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Civil Protective Orders: Improved Safety for Victims & Cost Effective for State Governments

New Research Findings on Effectiveness

This research was supported by the National Institute of Justice (Grant No. 2005WGBX0008). The statements expressed in this article are those of the authors and do not necessarily reflect the view or policies of the National Institute of Justice or the U.S. Department of Justice. The full report can be obtained at: <http://www.ncjrs.gov/pdffiles1/nij/grants/228350.pdf>

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FINDINGS ON CIVIL PROTECTIVE ORDER EFFECTIVENESS

- Civil protective orders **do work** for many victims:

- Half (50%) of victims experienced ***no violations*** of the DVO during the 6 month follow-up period.
- For those victims who did experience violations, every single type of violence and abuse was ***significantly reduced*** during the 6 month follow up period compared to the 6 months before the protective order was issued.

- Many victims appreciated the civil protective order and the help they received from the justice system:

- Victims' fear of future harm was significantly reduced during the 6 months after the order was issued.
- The vast majority of victims thought the protective order was fairly or extremely effective (77%-95%) 6 months after the order was issued.
- Only 4% of victims requested to drop the protective order during the 6 months after the protective order was issued.

- Protective orders were **less effective for stalking victims**:

- Being stalked by the violent partner in the 6 months before the protective order was ***strongly predictive of protective order violations*** after the order was issued.
- Women who were stalked after the protective order was issued were more afraid of future harm, experienced more distress related to the abuse, endured more property damage and other kinds of violence, and were less confident in the order than were women who were not stalked.
- ***Stalking after the protective order was associated with almost every other kind of violence*** and abuse suggesting those who stalk are more violent and more resistant to court intervention.

- Civil protective orders were **as effective in the rural areas as in the urban areas; however, there were some important differences:**

- Victims living in rural areas experienced more barriers to obtaining the orders and more barriers to the enforcement of the order compared to victims living in the urban area.
- Rural victims experienced more distress, sleep loss, and fear of future harm from their violent partner at baseline AND follow up.

Enforcement of the protective order plays a critical role in public safety

- The majority of those with protective orders against them had prior charges (78% with an average of 9 charges) and convictions (63% with an average of 7 convictions) suggesting that partner violence is a part of a larger pattern of criminal conduct. For example, 57% had prior substance-related charges and 53% had substance-related convictions.
- The majority of victims who did not experience violations believed the effectiveness was because the respondent was afraid of going to jail; however, overall arrest rates and official charges for reported violations were low.
- Enforcement is clearly an important component of protective orders for those who experience violations - **but there is a need for more assertive court action** - especially for stalking cases, cases when the offender flees the scene, and cases where the primary aggressor is difficult to ascertain.

What about the cost and cost-benefit of protective orders?

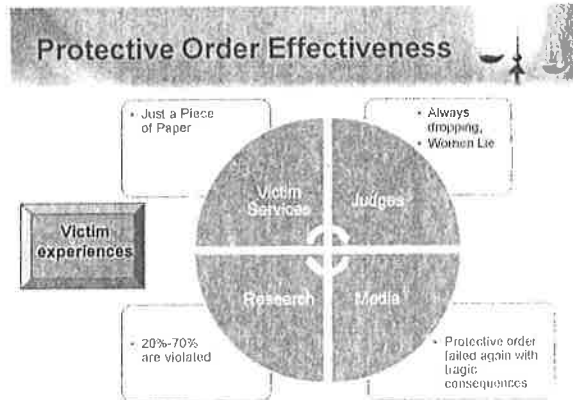
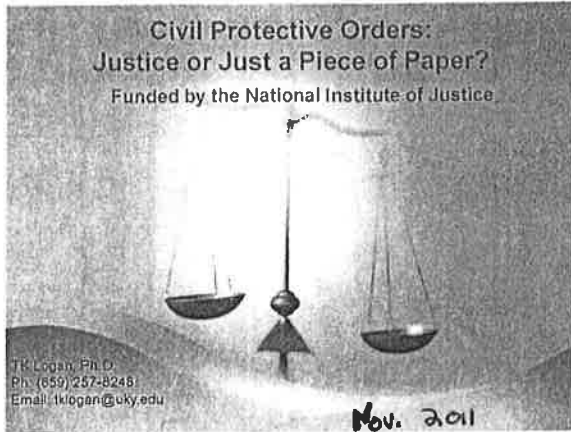
- Overall, **protective orders saved one state at least \$85 million** each year in costs that would have been incurred if the protective order had not stopped or reduced the violence and abuse.
- Protective orders cost very little in comparison to the suffering and costs of victims.
- **Stalking is predictive of ongoing violence, victim distress, and much higher costs to the state.**

What are the areas for improvement?

- Develop more effective interventions to address partner stalking.
- Strengthening enforcement when violations occur.
- Create systems of feedback and accountability for every step of the protective order process.

For example-by jurisdiction:

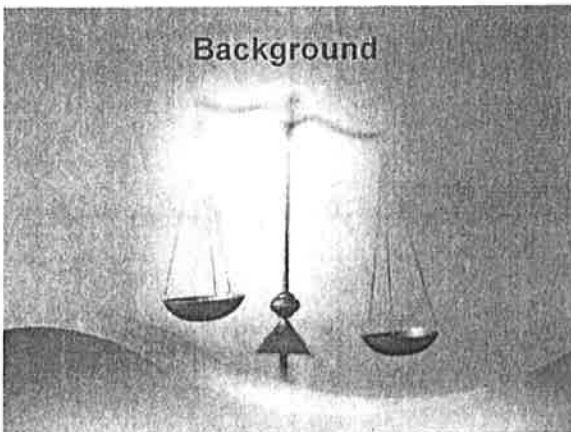
- Develop a tracking system for all civil protective order petitions denied and the reason they were denied.
- Track the number of protective orders granted and for how long.
- Track protective order violation charges and dispositions.



Kentucky Civil Protective Order Process and Terminology

- Three Phase Process
 1. EPO (Emergency protective order/Temporary protective order) good for 2 weeks
 2. Non-service
 3. DVO (Domestic violence order/full or permanent order up to 3 years)
 - Preponderance of the evidence of abuse/no abuse
- Type of order: No Contact vs. No Violent Contact
- Eligibility
 - 51% married or ex-spouses
 - 49% boyfriend or ex-boyfriend
 - 48% had children in common
- Women voluntarily sought this order

Understanding Protective Order Effectiveness: Study Methods



Characteristics of victims and offenders

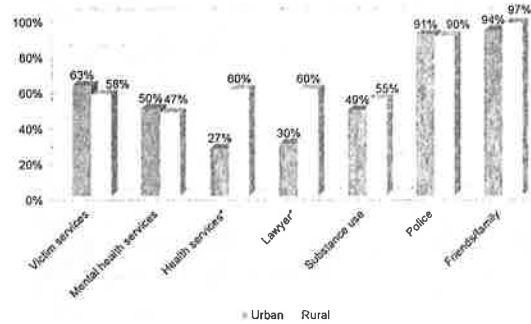
	Victims	Offenders
Age	33	35
White	99% rural 73% urban	98% rural 52% urban

For full report/study, see: TK Logan, PhD, et al. (2009) "The Kentucky Civil Protection Order Study: A Rural & Urban Multiple Perspective Study of P.O. Violation Consequences, Responses, and costs." National Institute of Justice. Accessible online at:
<http://www.ncjrs.gov/pdffiles1/nij/grants/228350.pdf>

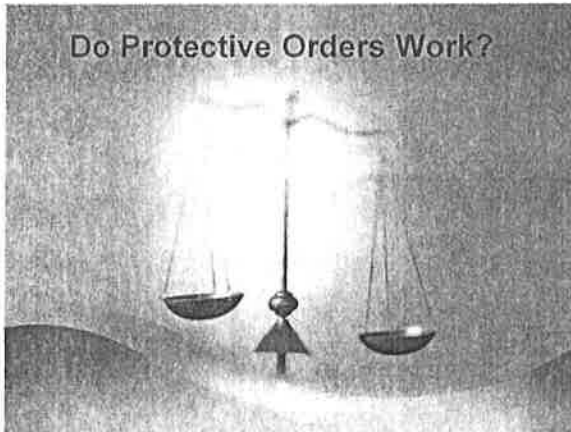
Characteristics of offenders

	Victim	Offender
Before 6 months before the PO:		
Prior charges		73% (11)
Prior convictions		87% (7)
Of those with any charges before 6 months before PO		
Substance related charges		75% (5)
Substance-related convictions		93% (4)
Prior DVOs against other victims		16%

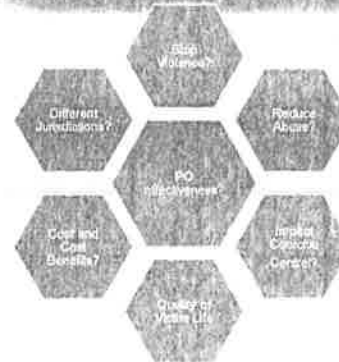
Coping with partner violence past year



Do Protective Orders Work?



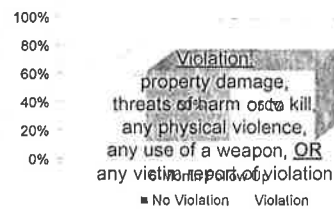
Do Civil Protective Orders Work?



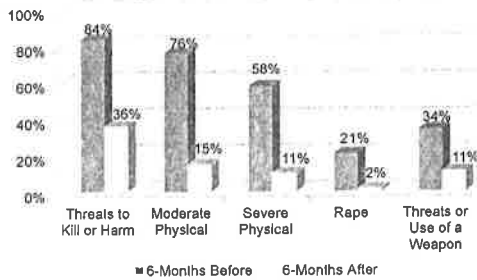
Do civil protective orders "work"?

- How do protective orders impact violence and abuse?
 - Do civil protective orders stop the violence?
 - Do civil protective orders reduce violence and abuse?
 - Do civil protective orders reduce coercive control?

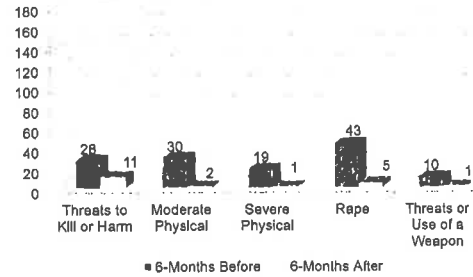
Do they stop violence?



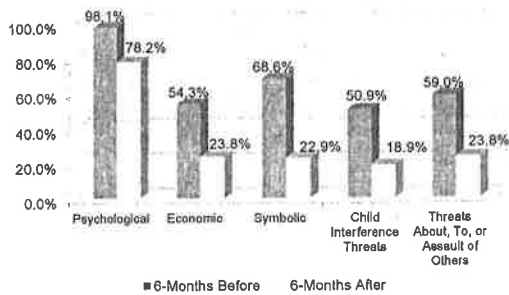
Do they reduce violence?



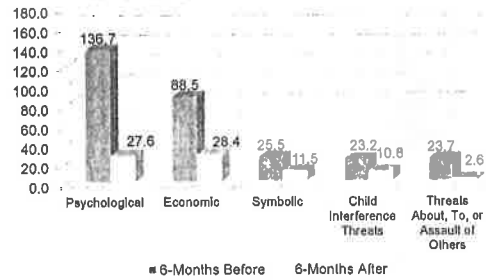
Do they reduce violence?



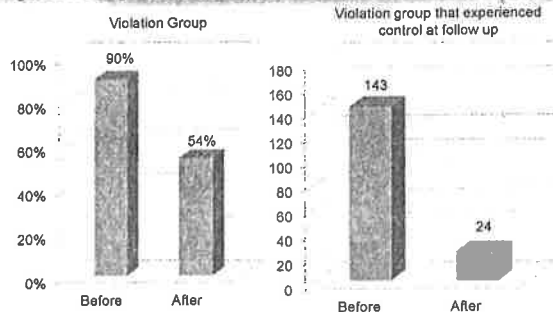
Do they reduce abuse?



Do they reduce abuse?



Do they reduce experiences of jealousy and control?

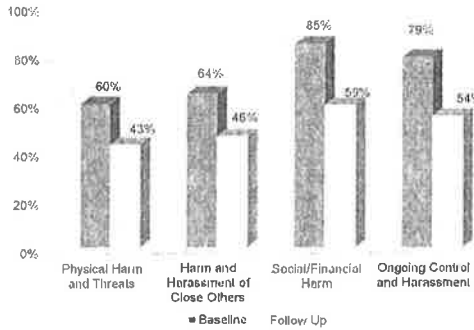


Do civil protective orders "work"?

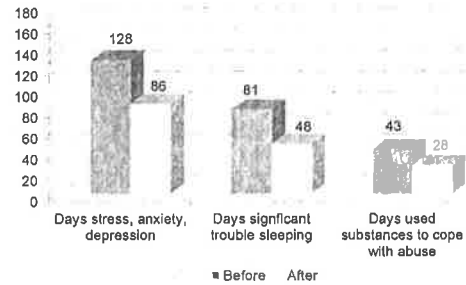
2. What are victim perspectives on protective order effectiveness?

- How do civil protective orders impact fear of future harm?
- How do civil protective orders impact quality of life?
- How effective do victims think the protective order was?
- How many drop the order?

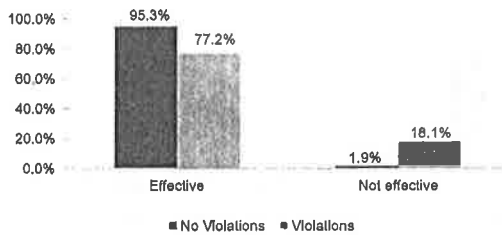
Fear of future harm



Quality of life



Perceived effectiveness



- Only 4% dropped the order during the 6 month follow up

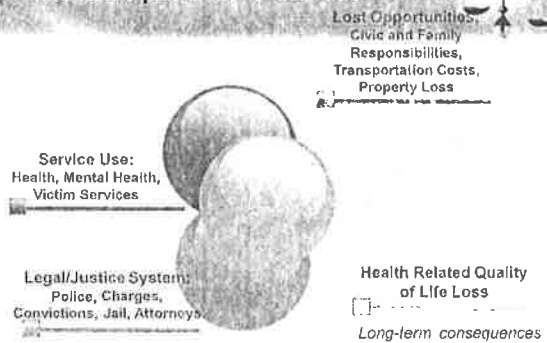
Victim voices

- "I ended my abusive relationship after I filed for the protective order and I have not seen or heard from him since I filed for the protective order."
- "[The protective order was] extremely effective. It got him out of my life, out of my house and the violence stopped."
- "For the first time, he took me seriously and realized that I was not going to put up with the abuse. The protective order successfully alerted him that the abuse had to stop or there would be consequences."

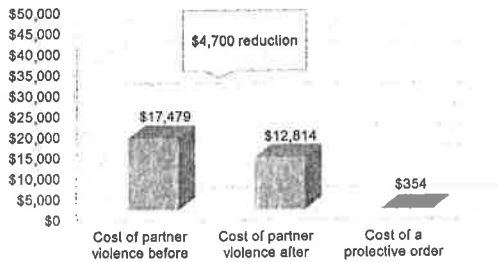
Do civil protective orders "work"

3. What are the costs and cost-benefits of civil protective orders?

Costs of partner violence



Costs of partner violence and cost of a civil protective order

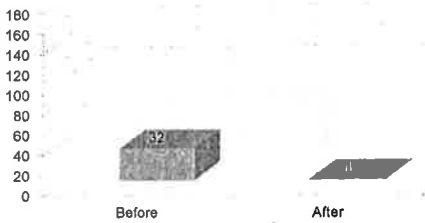


Cost and cost-benefit of civil protective orders

- Overall,
 - For every dollar spent on the PO intervention there is **\$30.75** in avoided costs to society per petitioner (costs from partner violence that would have been expected had there been no protective order)
- Cost-Benefit to the State
 - Extrapolation to civil protective orders issued in 2007 statewide n=11,212 (adjusted 15%, n=9,531)
 - Civil protective orders saved the state **\$85 million** in costs that would have been expected from partner violence had there been no civil protective order issued.

Secondary impact: impact on children (of those with children under 18 years old):

Days children witness violence



Do civil protective orders "work"?

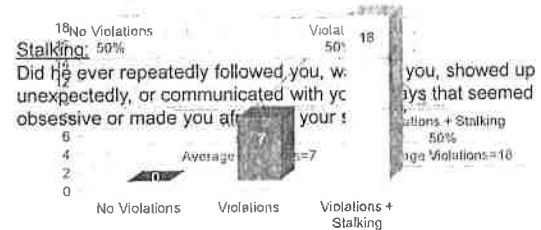
4. Whom do protective orders work best for and under what circumstances?

Factors to consider

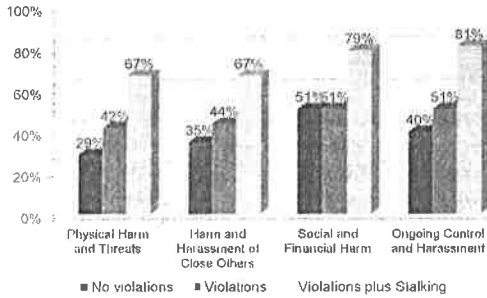
- Area and PO History Characteristics**: Area, age, race, # misdemeanor and felony charges 6-months before
- Relationship Characteristics**: Married to PO partner, number of years in relationship, kids in home, days in relationship after PO
- Violence History**: Physical abuse severity, sexual abuse severity, stalking 6-months before



Violations and Stalking

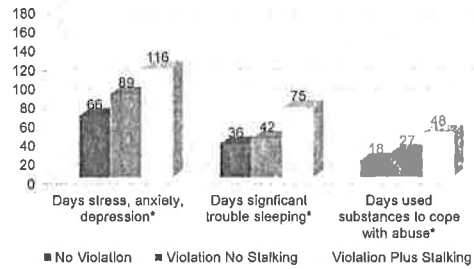


Fear of Future Harm at Follow Up

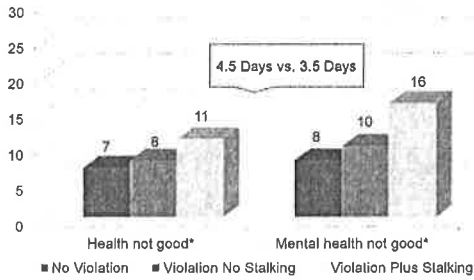


Days in the past 6 months:*

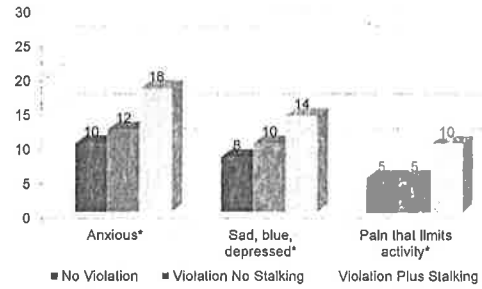
(Means adjusted for time in relationship after PO, major history of FIU, and history of physical and sexual violence severity)



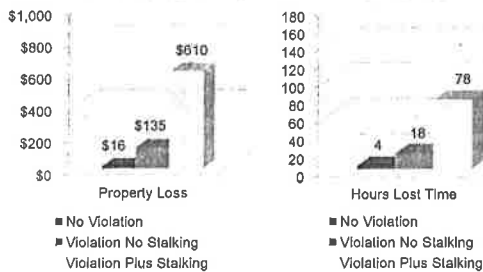
How many days in the past 30:



Days in the past 30:*



Tangible Losses by Group*



Avoided costs per petitioner

• Overall,

– For every dollar spent on the PO intervention there is **\$30.75** in avoided costs to society per petitioner (costs from partner violence that would have been expected had there been no protective order)

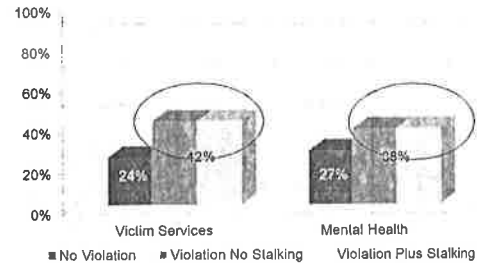


Secondary impact: impact on children by group (of those with children under 18):

Days children witness violence*



Use of Victim and Mental Health Services 6 Months After PO



Do Civil Protective Orders Work?

5. Do they work differently in different jurisdictions?

Rural versus urban jurisdictional differences

- Rates of partner violence do not differ
- Civil protective order effectiveness does not differ
 - Victims lives are improved regardless of area
- Overall costs and cost benefits do not differ
- Victims experience numerous barriers to obtaining protective order regardless of jurisdiction
 - Credibility/not being believed
 - Personal barriers like embarrassment and fear of not being believed
 - Gatekeeper discouragement

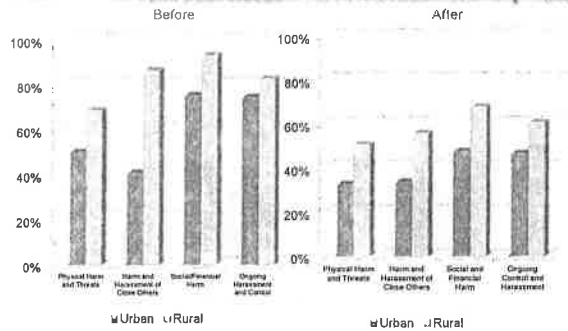
Rural versus urban jurisdictional differences

- Experiences of partner violence and the civil protective order process and enforcement do seem to differ
 1. Life circumstances
 - Relationship status
 - Quality of life
 2. System Barriers

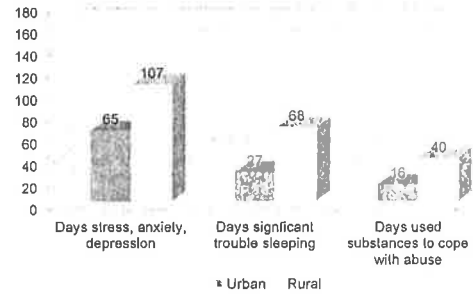
Life circumstances: Relationship status

- Rural women were more entrenched in the relationship
 - Married: 66% versus 36%
 - Longer relationships: 7 years versus 5 years
 - Children in common: 58% versus 39%
 - Unemployed: 59% vs. 37%
- By the time rural women sought protective orders, more of them were done with the violent partner!
 - Not living with PO partner at EPO incident: 75% versus 40%
 - Time in the relationship after PO: 20% vs. 34%
 - of those who spent time in the relationship after the PO, rural women spent less time

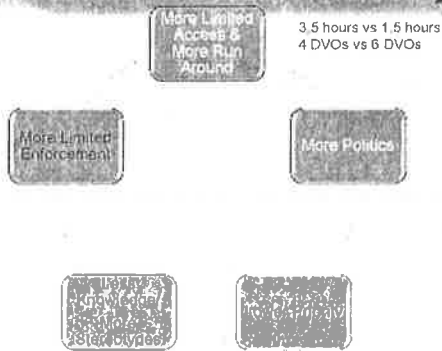
Quality of life: Fear of future harm



Quality of life: Distress at follow up

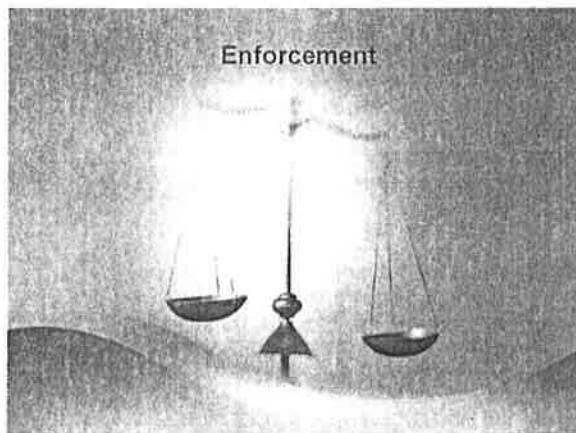


System barriers



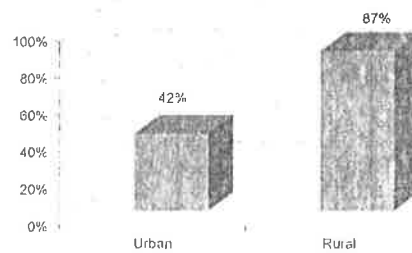
Rural versus urban jurisdictional differences

- Civil protective order effectiveness does not differ
 - Victims lives are improved regardless of area
- Overall costs and cost benefits do not differ



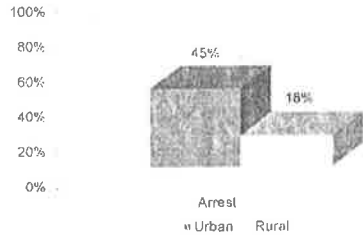
Enforcement barriers: Primary Aggressor

If difficulty determining primary aggressor-both will be arrest

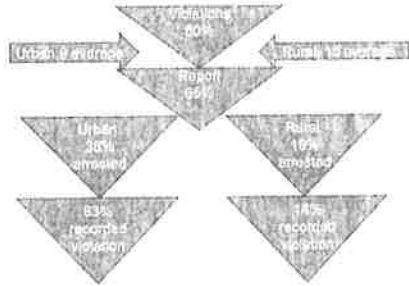


Enforcement at EPO incident

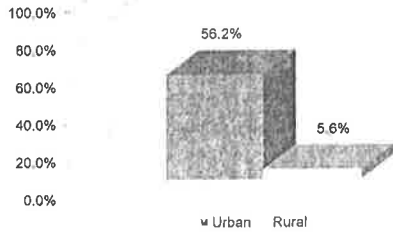
Of the 74% who talked to the police about the EPO incident



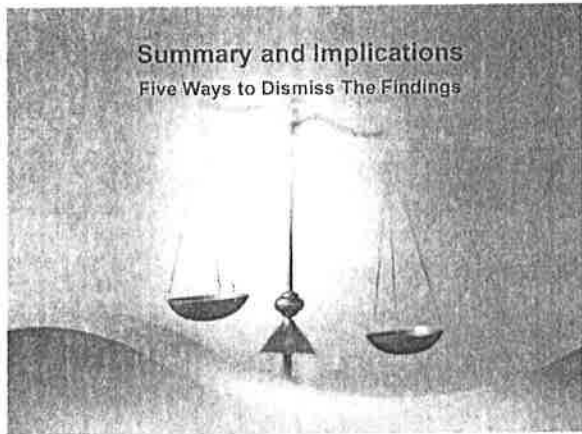
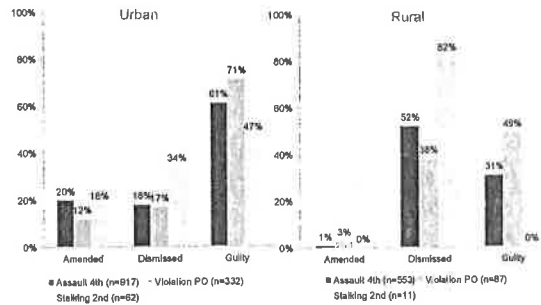
Enforcement after the DVO



For those who reported violations DV-related charges:



Court data: dispositions 5-years collapsed



1. Protective orders just don't "work"

1. Protective orders stop and reduce violence and abuse for many victims and their children!
2. Victims appreciate the order
3. Protective orders cost very little yet save victims AND society substantial \$\$\$\$ (\$85 million)
4. Findings are robust and consistent
 - Replication of earlier study
 - Consistent with other research
 - Meta analysis 40% are violated (2002)

Protective Orders Don't Work

- All or nothing thinking
 - No, a protective order is not a silver bullet
- Afraid to give up old thought patterns and schemas
 - This is not new news; but the framing is "new"
- Failure to consider the bigger picture
 - "My sister had a protective order and her husband violated it over and over and no judge did anything."

The Big Picture



2. Women who get protective orders are "different"

- Those who do try to obtain one must:
 - Persistent
 - Face embarrassment
 - Willing to risk their safety
 - Delusional to believe the justice system can actually help them!

Women who get protective orders are "different"

- The one thing we all have in common is that we are all different
- How are they different?
 - ?
 - What we DO know
 - Not all victims of partner violence need or want a protective order
 - 30%-40% seek POs. 45%-77% report to police
 - Of those who do obtain one, there is a range of victimization experiences
 - Frequency, severity, and duration of abuse
 - There is a group of victims who want or need a protective order but will not get one

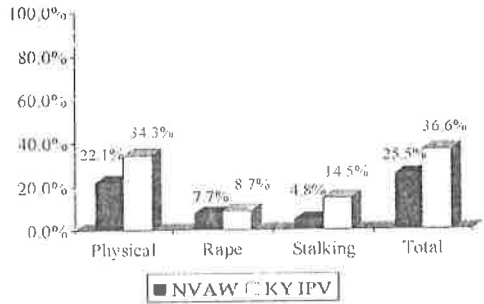
3. No control group with random assignment

- Why the results have value even without random assignment
 - Results are too strong to be coincidental
 - Results are robust and consistent
 - There is a very nice linear relationship with offender behavior and outcomes: No violations; violations; violations + stalking
- Yes, there is a black box
 - Although we are beginning to know a lot more about who they are most effective for and under what circumstances
 - Stalking, place, and enforcement play key roles

4. Stalking does not matter

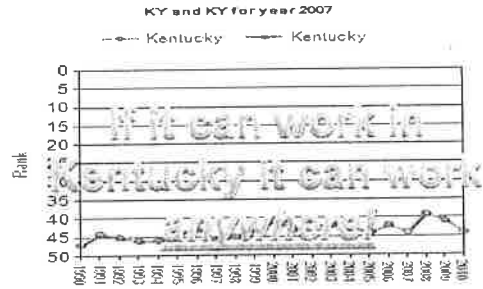
- Stalking is a good heads up of nothing good in a domestic violence situation
- Three things to keep in mind
 1. 2/3 vs 1/3
 2. Even most of those persistently stalked saw some relief
 3. Persistent stalkers are dangerous!

Kentucky has higher rates of partner violence



Kentucky: How low can you go?

CDC Overall Health Rankings:
<http://www.americashealthrankings.org/>



Model Policy For Prosecutors and Judges on Imposing, Modifying and Lifting Criminal No Contact Orders

Jennifer G. Long
Christopher Mallios
Sandra Tibbetts Murphy



ÆQUITAS

THE PROSECUTORS' RESOURCE
ON VIOLENCE AGAINST WOMEN

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INTRODUCTION

The goals of the criminal justice system in a domestic violence case are to seek justice, protect the victim and the community, hold the offender accountable for his crimes, prevent and deter future crime, and rehabilitate the abuser. Criminal no contact orders are an effective tool to help protect victims of domestic violence during the pendency of criminal prosecution.⁴ Such no contact orders are designed to prevent individuals who have been arrested for domestic violence from contacting the victim and they are commonly used as restrictions placed on defendants prior to the final case disposition.⁵ No contact orders are intended to protect the victim, her⁶ family (where applicable) and the community. They are also imposed to prevent the offender from committing additional crimes while the domestic violence case is pending. Such an order only exists while the criminal case is open and can also be extended during the post-conviction sentence of incarceration, probation or parole. If the domestic abuse charges are dismissed, or if the batterer is acquitted, any concomitant no contact order ends. Violations of such no contact orders, or conditions of release, can be prosecuted as contempt or as additional crimes. Commonly, judges impose no contact orders at a defendant's initial appearance or arraignment, much like release conditions, although some jurisdictions may require the prosecutor to ask the court to issue a no contact order.⁷ Additionally, such orders can be modified by a judge upon motion of the prosecutor or the batterer's attorney, or upon decision of the court.

Unlike their civil counterpart, however, criminal no contact orders generally are not victim-initiated; rather, the order is imposed *sua sponte* by the court or upon request of the prosecution. Such orders are increasingly viewed by both prosecution and courts as an appropriate response to criminal domestic violence.⁸ The filing of criminal charges and issues of criminal no contact orders (NCOs) alone, however, do not keep victims safe.⁹ In fact, one study showed that 51% of defendants charged with domestic violence felonies were rearrested before their criminal cases were concluded.¹⁰ These challenges require that prosecutors and judges consider various factors, in addition to the wishes of a particular victim, when determining whether to impose or maintain a criminal no contact order or release condition.

No contact provisions, whether in specific and separate orders or as conditions of release, are valid protective tools based on the fact that the defendant has been arrested for a crime against the victim, a crime which has at least threatened or caused her some bodily harm. Unfortunately, such no contact provisions may not always increase a particular victim's safety. Significantly, research has shown that, in some cases, a victim's separation from an abuser actually increases the risk of lethality.¹¹ The decision by the prosecutor or the court to restrict contact between a batterer and his victim does not always achieve the system's goal of victim protection and safety.

Prosecutors and judges face even greater challenges, however, when they must decide whether to issue or maintain no contact provisions over the objection of a particular victim. Unlike civil protection order proceedings, the victim in a prosecution for domestic violence is not a party to the criminal case. Although the prosecutor advocates for the safety of the victim and community, the prosecutor does not legally represent the victim. The prosecutor represents the government against the abuser because a violation of the criminal code – even one that occurs in private or within a family – is an offense against the peace and dignity of the

jurisdiction in which it occurs. The prosecutor's role as attorney for the community, and not the victim, can give rise to conflicts when the prosecutor's decisions about how to proceed with the case conflict with the victim's wishes.¹²

Some victims leave, but then return; some victims do not want to end contact with the defendant but simply want the violence to end.¹³ Some victims object to no contact orders because of negative collateral consequences the order may bring her.¹⁴ Other victims object to no contact orders out of fear of the defendant or due to actual threats and intimidation by the defendant.¹⁵ In some cases, victims have determined that no contact provisions may actually increase the violence to dangerous and deadly levels.¹⁶

Participants in the criminal justice system must understand the competing factors that make these decisions so important. Although the victim is not a party and the prosecutor does not represent her, her wishes must be considered – along with other factors – when deciding to impose or maintain a criminal no contact order. In order to maximize victim safety and offender accountability, while minimizing the potential collateral consequences to a victim, prosecutors and judges must develop and implement a process to gather timely and accurate information about risk and lethality, a particular victim's wishes and motivations, and possible negative consequences in order to best determine when to impose or maintain a no contact order in the face of a victim's opposition.

VICTIM SAFETY

Victim safety is the ultimate factor behind the decision to issue a no contact order in a criminal domestic violence case. As mentioned earlier, however, victim safety is not always enhanced by the imposition of a no contact order.¹⁷ Prosecutors and judges must recognize that “[w]omen are most at risk of violence after ending, or while trying to end, an abusive relationship.”¹⁸ In many situations, the imposition of criminal charges and no contact orders is viewed by batterers as a step towards that separation. While criminal charges are pending, batterers often attempt to prevent their victims from leaving the relationship, retaliate for her efforts to separate or force her to return to the relationship.¹⁹ According to one study, offenders who were subject to no contact orders were more likely to commit further abuse than offenders whose no contact orders or conditions of release permitted some contact with the victim.²⁰ Because of the prevalence and real likelihood of “separation assault,”²¹ a victim's decision to maintain contact with her batterer may be a calculated strategy of resistance and survival.²² Thus, a victim's request to terminate or modify a no contact order, often viewed by the criminal justice system as a symptom of weakness or psychological impairment, may actually be a rational assessment of her danger.²³

Accurately assessing a victim's safety in any given domestic violence case is complicated by several issues. Many victims face an increased risk of violence simply by revealing to prosecutors and judges the nature and extent of the abuse and their fear.²⁴ Additionally, while domestic violence victims are very accurate reporters of risk and lethality indicators, they often underestimate their partner's actual level of danger.²⁵ Often, prosecutors and judges are asked to make decisions about the status of a no contact order with incomplete or even inaccurate information, in the midst of crowded and rushed courtrooms and dockets.

Recognizing that a docket of domestic violence cases takes longer to complete than other types of cases, judges should still strive to create conditions that encourage meaningful discussions between prosecutors and victims in the courthouse. Ideally, this would include allowing sufficient time and a private place for prosecutors to meet with victims and establish the rapport needed to obtain valuable safety information. Victims should also be permitted to involve family, friends and community-based advocates in these discussions as a means of additional support and assistance to provide full information about collateral consequences associated with the criminal charge or no contact order.

Legal interventions on behalf of domestic violence victims are most successful when they are integrated with each other (civil and criminal), as well as with non-legal, community resources.²⁶ For this reason, it is vital that prosecutors and courts participate in an ongoing collaboration with advocacy groups, police, probation and social service agencies in fashioning a coordinated community response to domestic violence.²⁷ The arrest of a batterer brings a victim into the criminal justice system, but in a coordinated community response, it also brings her into a realm of other services and assistance. An effective interagency approach recognizes that “a domestic violence crime is rarely fully resolved with the first intervention,”²⁸ and that victims need various kinds of assistance from different agencies at different times.

Judges and prosecutors should understand that the resolution of the case before them is not necessarily going to end the abuse in the victim’s relationship with the defendant. This is especially so if the victim decides to not cooperate with the prosecution and there is insufficient evidence to proceed without her direct testimony. In such a case, even though the charges are ultimately withdrawn or dismissed, the nature of the victim’s interaction with each practitioner in the criminal justice system will impact her future willingness to seek such protections.

IDENTIFYING VICTIM MOTIVATIONS

For a substantial number of women who find themselves in abusive relationships, the ideal outcome is the elimination of the violence while maintaining the relationship. A victim such as this may wish to modify a no contact order to permit some contact between her and the batterer, or she may wish to have the no contact rescinded entirely. On the other hand, many victims ask prosecutors and judges to lift or modify no contact orders due to fear, because they have been threatened or intimidated by their abusers. In this situation, granting an abuser greater access to the victim could place her in greater danger. It is important, therefore, that prosecutors and judges obtain accurate information to determine a victim’s motivations in seeking the termination or modification of a no contact order.

The victim's perception of her risk of further abuse is one of the most important predictors of future violence.²⁹ The most significant step that prosecutors and judges can take to improve victim safety is to ensure that victims have access to confidential advocates with whom they can work to identify the risks of their current situation and to develop safety plans to complement any court orders.³⁰ Ideally, such advocates are present in courtrooms and available for consultation with victims, and to facilitate disclosure and respect any rules or statutes regarding confidentiality, there should be private space in which advocates and victims can meet.³¹

In order to gather information about a victim's situation and concerns, it is vital that prosecutors make all efforts to meet with victims, preferably while their abusers are still in custody. Practitioners must recognize that victims are often attempting to cope with the numerous ways in which the battering affects and threatens their lives, not only the threat of physical violence.³² An examination of the collateral consequences to the victim of the criminal prosecution and imposition of the no contact order should take into account the victim's financial and child care needs specifically. It is also vital to know whether the victim lost other forms of support, such as help from the defendant's family, after his arrest.

RECOGNIZING VICTIM INTIMIDATION

Intimidation of victims is a crime designed to procure their silence and thwart the efforts of the criminal justice system.³³ A three-state study of domestic violence prosecutions in five jurisdictions found that fear of retaliation by the abuser was the most common barrier to victim participation with prosecution.³⁴ Batterers often know that the right to confrontation requires the victim to testify in court, and that the failure of a victim to appear in court can result in dismissal of the charges, or other outcomes in his favor.³⁵ This intimidation can take many forms, including direct contact by the perpetrator, telephone calls or emails, or contact through other people. Undetected, such tactics re-victimize the abused and reward the batterer with impunity from the justice system.³⁶ Recognition of such intimidation tactics can be especially crucial when a victim seeks to terminate or modify a no contact order, and represent a valuable opportunity for prosecutors to explore with victims whether such is happening.

An abuser may pressure the victim to seek termination of the no contact order, perhaps to test her loyalty to him, as well as to make it easier to gain access to the victim. Prosecutors must ask about intimidation tactics when obtaining a victim's input regarding the no contact order and the charges. It might be appropriate to ask if she has been threatened and if the batterer has contacted her directly or through a third party. But in addition to asking victims about such intimidation, prosecutors should actively look for evidence of such. With prison call logs, prosecutors can determine whether the abuser has called the victim while in custody, and if recordings of those calls are available, police or prosecutors should review the calls for possible evidence of intimidation. Prison visitor logs will show if the victim has visited the defendant in jail, thereby providing an opportunity for face-to-face intimidation.

ASSESSING RISK AND LETHALITY

According to the FBI, approximately one-third of female murder victims are killed by an intimate partner.³⁷ Prosecutors and judges, therefore, struggle to determine which victims are at the most risk for lethal violence. Such assessment is an important aspect of safety planning with a victim. While there are many lethality assessment tools available³⁸, it is important that practitioners use the tools to foster a conversation with the victim, rather than as a checklist or a collection of discrete data.³⁹ Most assessments consider prior victimization, a batterer's drug and alcohol problems, a batterer's obsessive-possessive behavior and excessive jealousy, a batterer's threats to kill the victim or children, a batterer's possession of, access to, familiarity with and degree of fascination with guns, a batterer's use of violence in settings outside the home, any stalking behavior, a batterer's suicidal ideations, plans, threats and past attempts, the status of the relationship (separated or separating, estranged), or whether the victim is in the process of fleeing. Engaging a victim in a discussion of these risks and dangers improves the information available to prosecutors and judges, not just by learning the simple facts that certain events or behaviors took place, but by filling in the larger context and pattern in which this particular incident occurred. When reviewing the victim's responses, however, it is critical to remember that, while victims are accurate reporters of risk factors for lethality, they consistently underestimate their own risk for future assaults.⁴⁰

EXPLORING MODIFIED NO CONTACT ORDERS

Although many victims will request termination of the no contact order, it is very useful for prosecutors and judges to explore the possibility of various modifications, rather than termination, especially when serious safety concerns are evident. Partial no contact orders, or orders which allow limited contact, may provide an important tool to allow prosecutors to respond to a victim's various concerns about the consequences of the order in her life, while still providing some measure of protection.⁴¹ Partial no contact orders do offer some benefits for victims: contact can be limited to public areas; specific behaviors can be prohibited, such as assault, stalking, threats; provisions can mirror custody orders (if there are children involved) to facilitate visitation and other matters. Of course, with interaction, even defined and limited interaction, comes risk. Physical proximity presents opportunities for physical violence, while batterers may exploit other allowed means of contact for purposes of intimidation, coercion and psychological mistreatment.⁴² Of practical concern, such partial no contact orders are more complicated to enforce; violations are more difficult to investigate and prove.⁴³ An order which accounts for the specific challenges in a victim's life may help victims view the criminal justice system as a safe and effective response, thus making a victim more willing to participate in the prosecution of the charges.⁴⁴

CONCLUSION

The decision to obtain or maintain a no contact order in the prosecution of a domestic violence case can have a significant impact on the victim's safety, life and family. Prosecutors and judges often must balance the need to protect the victim and the community and hold the offender accountable against the particular wishes of the victim. There is no universal approach to this issue; rather prosecutors and judges must seek to make thoughtful, fair and beneficial decisions for all of the parties involved. "Applying a single treatment to [all domestic violence cases] inhibits meaningful intervention for victims and perpetrators."⁴⁵ Every case is different, and prosecutors and judges must obtain as much relevant information as possible in order to achieve justice, protect victims and hold offenders accountable. Engaging in such a practice will encourage victim participation in the court process, prevent and deter future crimes, and help to rehabilitate abusers who enter the criminal justice system.

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ENDNOTES

- ¹ Jennifer G. Long is the Director of Æquitas: The Prosecutors' Resource on Violence Against Women, Washington, D.C.
- ² Christopher Mallios serves with Æquitas as an Attorney Advisor for the Northeast Region.
- ³ Sandra Tibbetts Murphy is an Attorney Advisor with the Battered Women's Justice Project, Minneapolis, MN.
- ⁴ See, e.g., R. Brame et al., Impact of Proactive Enforcement of No-contact orders on Victim Safety and Repeat Victimization, Nat'l Institute of Justice, grant no. 2004-WG-BX-0007, U.S. Dep't of Justice, Washington, DC (Aug. 2009), available at <http://www.ncjr.gov/pdf/files1/nij/grants/228003.pdf> (stating "No-contact orders may offer swifter relief than criminal actions by serving as an immediate remedy to the continued threat of violence, prohibition contact by a woman's abusive partner, and serving as a symbolic threat of the criminal justice system.").
- ⁵ *Id.* at 8.
- ⁶ Because research has shown that the overwhelming number of victims of domestic violence are female, and offenders male, this paper refers to victims as female and defendants/batterers as male. See INTIMATE PARTNER VIOLENCE IN THE U.S. (1993-2004), U.S. Dep't of Justice, Office of Justice Pgms., Bureau of Justice Statistics, available at <http://www.ojp.usdoj.gov/bjs/intimate/htm> (indicating that, in 2004, 96.9% of victims of intimate partner violence were female where offender was male).
- ⁷ See, e.g., I.C.A. §664A.3 (2008), which requires magistrates in Iowa to issue no contact orders at the defendant's initial appearance in a criminal domestic violence case if contact with the defendant would pose a risk to the victim or her family.
- ⁸ Brame at al., *supra* n. 3, at 23.
- ⁹ In order to maximize victim safety, victim advocates in community-based agencies should work with victims to identify and address risk and lethality indicators and to develop and monitor safety plans. Victim safety is further enhanced when prosecutors and judges monitor defendants' compliance with such orders and impose immediate sanctions upon violation.
- ¹⁰ L. NEWMARK, M. REMPEL, K. DIFFILY, AND K. KANE, SPECIALIZED FELONY DOMESTIC VIOLENCE COURT: LESSONS ON IMPLEMENTATION AND IMPACTS FROM THE KINGS COUNTY EXPERIENCE, Final report for National Institute of Justice, grant number 97-WT-VX-0005. Washington, DC: U.S. Dept. of Justice, Nat'l Institute of Justice, October 2001 (NCJ 191861) and 2004 (NCJ 199723); available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=191861> and <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=199723>.

- ¹¹ J. Campbell et al., Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study, *AM. J. PUBLIC HEALTH*, vol. 93, no. 7 (July 2003). See also, T.K. Logan & R. Walker, Separation as a Risk Factor for Victims of Intimate Partner Violence: A Response to Campbell, J. *INTERPERSONAL VIOL.*, vol. 19, issue 12 (Dec. 2004) (noting that women separating in the context of victimization are also at high risk for stress, mental and physical health problems; have increased conflict over the children and concern for child safety; and have economic, structural, psychological and social barriers to help seeking).
- ¹² S. F. Goldfarb, Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?, 29 *CARDOZO L. REV.* 1487 (2008) (stating, “The legal system must confront the tension between legal rules that assume that the only solution to domestic violence is to dissolve the relationship and the wishes of many battered women to maintain the relationship in a non-abusive form.”).
- ¹³ *Id.* at 1499.
- ¹⁴ Domestic violence victims may face significant financial consequences, loss of housing and other necessary support due to a no contact order. See, e.g., *Id.* at 1499 (stating “Victims have many reasons for staying with or returning to violent partners, including financial dependency, fear of retaliation, social isolation, community pressure, and concern about losing custody of the children.”).
- ¹⁵ Brame et al., *supra* n. 3, at 24-25; J.L. GREIP & R.L. MARTINSON, Monograph: Witness Intimidation, *ÆQUITAS: The Prosecutors’ Resource on Violence Against Women*, Washington, DC: (forthcoming 2010).
- ¹⁶ Goldfarb, *supra* n. 12 at 1520 (protection order that purports to terminate contact between the parties may be the trigger for an intensification of abuse).
- ¹⁷ See, e.g., A.R. KLEIN, PRACTICAL IMPLICATIONS OF CURRENT DOMESTIC VIOLENCE RESEARCH: FOR LAW ENFORCEMENT, PROSECUTORS AND JUDGES, SPECIAL REPORT FOR THE NATIONAL INSTITUTE OF JUSTICE, Washington, DC: U.S. Dept. of Justice, Nat’l Inst. of Justice (June 2006) (NCJ 225722) (stating “Studies agree that for those abusers who reoffend, a majority do so relatively soon after their arrest. In states where courts automatically impose no-contact orders after an arrest for domestic violence, re-arrests for order violations begin to occur immediately upon the defendant’s release from custody. In both a Massachusetts misdemeanor arrest study and a Brooklyn, N.Y., felony arrest study, the majority of defendants rearrested for new crimes of abuse were arrested while their initial abuse cases were still pending in the court.” (citing, E. BUZAWA, G. HOTALING, A. KLEIN, & J. BYRNES, RESPONSE TO DOMESTIC VIOLENCE IN A PRO-ACTIVE COURT SETTING, Final report for National Institute of Justice, grant number 95-IJ-CX-0027. Washington, DC: U.S. Dept. of Justice, Nat’l Institute of Justice, July 1999, NCJ 181427, available at <http://www.ncjrs.gov/App/Publications/abstracts.aspx?ID=181427>; and L. NEWMARK, M. REMPEL, K. DIFFILY, & K. KANE, SPECIALIZED FELONY DOMESTIC VIOLENCE COURT: LESSONS ON IMPLEMENTATION AND IMPACTS FROM THE KINGS COUNTY EXPERIENCE, Final report for the National Institute of Justice, grant number 97-WT-VX-0005. Washington, DC: U.S. Dept. of Justice, Nat’l Institute of Justice, October 2001, NCJ 191861, and 2004, NCJ 199723; available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=191861> and <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=199723>)).

- ¹⁸ Goldfarb, *supra* n. 12 at 1520; M. R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 MICH. L. REV. 1 (1991); P. TJADEN & N. THOENNES, PREVALENCE, INCIDENCE AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, NCJ 172837. Washington, DC: U.S. Dept. of Justice (1998); P. TJADEN & N. THOENNES, EXTENT, NATURE AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY. Washington, DC: U.S. Dept. of Justice, Nat'l Institute of Justice (2000).
- ¹⁹ See e.g., K. Murphy Healey, Victim and Witness Intimidation: New Developments and Emerging Responses, NAT'L INST. OF JUSTICE RESEARCH IN ACTION, U.S. Dept. of Justice, Washington, DC (October 1995); N. Cline et al., Prosecuting Witness Tampering, Bail Jumping and Battering From Behind Bars, ENHANCING RESPONSES TO DOMESTIC VIOLENCE: PROMISING PRACTICES FROM THE JUDICIAL OVERSIGHT DEMONSTRATION INITIATIVE, Vera Inst. of Justice (2006).
- ²⁰ Goldfarb, *supra* n. 12 at 1520.
- ²¹ See generally Mahoney, *supra* n. 16; R. E. Fleury et al., When Ending the Relationship Does Not End the Violence: Women's Experiences of Violence by Former Partners, 6 VIOLENCE AGAINST WOMEN 1363 (2000).
- ²² Goldfarb, *supra* n. 12 at 1502 ("Battered women's acts of resistance can take many forms, including protecting their children, seeking help from formal and informal sources, carving out opportunities for safety, and ending the relationship temporarily or permanently. ... [A] decision to continue the relationship may itself be a carefully calculated strategy of resistance to violence." (citations omitted)).
- ²³ *Id.*
- ²⁴ PRAXIS INTERNATIONAL ET AL., THE ST. PAUL BLUEPRINT FOR SAFETY: AN INTERAGENCY RESPONSE TO DOMESTIC VIOLENCE CRIMES, 61 (2009).
- ²⁵ See L. Bennett Cattaneo & L. A. Goodman, New Directions in Risk Assessment – An Empowerment Approach to Risk Management, in INTIMATE PARTNER VIOLENCE, 1-10 (Kathleen A. Kendall-Tackett & Sarah M. Giacomoni eds., 2007); A. N. Weisz et al., Assessing the Risk of Severe Domestic Violence: The Importance of Survivors' Predictions, 15 J. INTERPERSONAL VIOLENCE 75, at 87 (2000).
- ²⁶ P. FINN & S. COLSON, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT, U.S. Dep't of Justice at 63 (1990).
- ²⁷ See generally COORDINATING COMMUNITY RESPONSES TO DOMESTIC VIOLENCE: LESSONS FROM DULUTH AND BEYOND (Melanie F. Shepard & Ellen L Pence, eds., 1999).
- ²⁸ THE ST. PAUL BLUEPRINT FOR SAFETY, *supra* n. 22, at 5 (2009).
- ²⁹ See, Cattaneo & Goodman, *supra* n. 25; J. CAMPBELL, PSYCHOMETRIC DATA: DANGER ASSESSMENT, available at <http://www.dangerassessment.org/WebApplication1/pages/psychometric.aspx>.

- ³⁰ A. HARRELL, J. CASTRO, L. NEWMARK, & C. VISHER, FINAL REPORT ON THE EVALUATION OF THE JUDICIAL OVERSIGHT DEMONSTRATION: EXECUTIVE SUMMARY, Final Report for the National Institute of Justice, grant number 99-WT-VX-K005. Washington, DC: U.S. Dept. of Justice, Nat'l Institute of Justice and The Urban Institute, June 2007, NCJ 219386, available at <http://www.urban.org/publications/411498.html> (three-state study showed that victims' fear of retaliation was reduced in jurisdictions with specialized domestic violence prosecution units, increased victim advocacy, and specialized domestic violence courts.). In developing a safety plan, an advocate assists a victim to identify the options and resources available and to outline how she will protect herself and her children in a variety of settings and circumstances. See generally, J. DAVIES ET AL., SAFETY PLANNING WITH BATTERED WOMEN, 73-92 (1998).
- ³¹ For additional information on the role of confidentiality when working with battered women, and the obligations of victim advocates to help protect it, see J. KUNCE FIELD ET AL., CONFIDENTIALITY: AN ADVOCATE'S GUIDE, Battered Women's Justice Project, Minneapolis, MN (rev'd Sept. 2007).
- ³² S. HAMBY WITH A. BIBLE, BATTERED WOMEN'S PROTECTIVE STRATEGIES, VAWNet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence, Harrisburg, PA (July 2009), available at <http://www.vawnet.org>.
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- ³⁴ A. HARRELL, J. CASTRO, L. NEWMARK, AND C. VISHER, FINAL REPORT ON THE EVALUATION OF THE JUDICIAL OVERSIGHT DEMONSTRATION: EXECUTIVE SUMMARY, Final report for the National Institute of Justice, grant number 99-WT-VX-K005. Washington, DC: U.S. Dept. of Justice, Nat'l Institute of Justice and The Urban Institute, June 2007, NCJ 219386, available at www.urban.org/publications/411498.html.
- ³⁵ See *Crawford v. Washington*, 541 U.S. 36 (2004); *Davis v. Washington/Hammon v. Indiana*, 547 U.S. 813 (2006); and *Giles v. California*, 128 S.Ct. 2678 (2008). See also, THE ST. PAUL BLUEPRINT, *supra* n. 22 at 9 ("abusers discourage victims' participation and reinforce the message that interveners cannot or will not help").
- ³⁶ GREIP & MARTINSON, *supra* n. 15.
- ³⁷ Bureau of Justice Statistics, INTIMATE PARTNER HOMICIDE: HOMICIDE TRENDS IN THE U.S., available at <http://www.bjs.ojp.usdoj.gov/content/homicide/intimates.cfm#intprop>. However, a 1998 report indicates that, when looking at city- and State-specific databases, rather than the federal homicide data, intimate partner homicides make up 40 to 50 percent of all murders of women in the United States. J. Campbell et al., Assessing Risk Factors for Intimate Partner Homicide, NIJ JOURNAL, No. 250, 15-19 (2003), available at <http://www.ncrjs.gov/pdffiles1/jr000250e.pdf> (citing J. Campbell, If I Can't Have You, No One Can: Power and Control in Homicide of Female Partners, in FEMICIDE: THE POLITICS OF WOMAN KILLING, (ed. Jill Radford & Diana E.H. Russell, eds., New York: Twayne Publishers, 1992) 99-113; and Linda Langford, Nancy Isaac & Stacey Kabat, Homicides Related to Intimate Partner Violence in Massachusetts, HOMICIDE STUDIES 2(4) (1998): 353-377.).

- ³⁸ See, e.g., J. Campbell, Assessing Risk Factors, *supra* n. 37; P.R. Kropp, Intimate Partner Violence Risk Assessment and Management, *VIOLENCE AND VICTIMS* 23(2), 202-20 (2008); J. ROEHL ET AL., INTIMATE PARTNER VIOLENCE RISK ASSESSMENT VALIDATION STUDY, FINAL REPORT, Nat'l Inst. of Justice (2005), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/209731.pdf>; N. WEBSDALE, LETHALITY ASSESSMENT TOOLS: A CRITICAL ANALYSIS, VAWNet: a partnership of the Nat'l Resource Ctr. on Domestic Violence/PA Coal. Agst. Domestic Violence (2000), available at http://www.vawnet.org/category/Main_Doc.php?docid=387.
- ³⁹ THE ST. PAUL BLUEPRINT, *supra* n. 22 at 6 (“engage in a dialogue with the victim rather than treating her or him as a data point”).
- ⁴⁰ Cattaneo & Goodman, *supra* n.25; Campbell, *supra* n. 38.
- ⁴¹ Goldfarb, *supra* n. 12 at 1521 (Other harms to victims may include: loss of access to the abuser’s income and subsequent poverty, loss of batterer’s assistance with child care which may result in victim losing her job, and loss of support from extended family and community.).
- ⁴² *Id.* at 1538. Several studies show that psychological abuse is more common than physical abuse after a protection order is issued. A. HARRELL AT AL., THE URBAN INST., COURT PROCESSING AND THE EFFECTS OF RESTRAINING ORDERS FOR DOMESTIC VIOLENCE VICTIMS, 50 (1993); S. L. KEILITZ ET AL., NAT'L CTR. FOR STATE COURTS, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE, 38-39 (1997); J. PTACEK, BATTERED WOMEN IN THE COURTROOM, 163-64 (1999); J. Grau et al., Restraining Orders for Battered Women: Issues of Access and Efficacy, in *CRIMINAL JUSTICE POLITICS AND WOMEN: THE AFTERMATH OF LEGALLY MANDATED CHANGE*, 22-23 (Claudine Sch Weber & Clarice Feinman eds., 1985); V. L. Holt et al., Civil Protection Orders and Risk of Subsequent Police-Reported Violence, 288 *J. AM. MED. ASS'N.* 593 (2002).
- ⁴³ See, e.g., J. Suk, Criminal Law Comes Home, 116 *YALE L.J.* 2, 18-22 (2006) (provisions prohibiting contact with the victim and presence in the victim’s home make it easy for prosecutors to obtain evidence of violations).
- ⁴⁴ THE ST. PAUL BLUEPRINT, *supra* n. 22, at 123; E.S. Buzawa & C.G. Buzawa, *DOMESTIC VIOLENCE: THE CHANGING CRIMINAL JUSTICE RESPONSE*, 3rd ed. (2003); J. Belknap & D.L. R. Graham, Factors related to domestic violence court dispositions in a large urban area, *DOMESTIC VIOLENCE RESEARCH: SUMMARIES FOR JUSTICE PROFESSIONALS*, 11-14 (B.E. Smith ed.). Washington, DC: Nat'l Inst. of Justice (2003), available at <http://www.ncjrs.gov/pdffiles1/nij/202564.pdf>; C.S. O’SULLIVAN ET AL., A COMPARISON OF TWO PROSECUTION POLICIES IN CASES OF INTIMATE PARTNER VIOLENCE. Washington, DC: Nat'l Inst. of Justice (2007), available at http://www.courtinnovation.org/_uploads/documents/Case_Processing_Report.pdf.
- ⁴⁵ THE ST. PAUL BLUEPRINT, *supra* n. 22 at 4.

Prosecutor Analysis on Imposing, Modifying and Terminating Criminal No Contact Orders

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1. Victim safety is paramount.
2. Consider each request to modify or terminate a no contact order individually. Analyze the request using all available information and make each decision based upon a totality of the circumstances. Make every effort to speak with the victim – in person or by phone if necessary – while the defendant is still in custody following his arrest.
 - Determine whether the victim’s request is based on fear of defendant.¹
 - *Is there information that indicates or suggests the defendant is engaging in ongoing intimidation, coercion² or violence towards the victim?³ Sources for such information may include:*
 - Police reports of the current offense;
 - Additional information obtained from officers/investigators;
 - 911 calls and Computer Aided Dispatch (C.A.D.) reports;
 - Jail calls;
 - Past police reports involving the same defendant;
 - Prior arrests and convictions of the same defendant;
 - Input from victim or victim advocate if the victim has given the advocate permission;⁴
 - Petitions for civil protection orders and any supporting documents;
 - Prior pre-sentence investigation reports; and
 - Any probation status and/or compliance.
 - Encourage the victim to meet with a community-based advocate prior to modifying or terminating the no contact order as a means of linking the victim with appropriate assistance and helping her assess the level of risk she may be facing.
 - Consider input from the victim or, if the victim has given the advocate permission, the advocate to assist in determining: circumstances of the case; context and severity of the offense; and bail/pretrial release conditions most likely to ensure the safety of the victim, witnesses, their families and the public.
 - *Use all available sources of background information (as listed earlier) to understand the severity of the offense and danger that defendant poses to the victim.⁵*
 - *Do not require the advocate to provide testimony or information to the court about the victim or the case.⁶*

3. In some circumstances, terminating or modifying the no contact order may not be advisable, despite a victim's objections. The following factors⁷ indicate a case/defendant that poses an increased risk to the safety of the victim, suggesting that the no contact order should remain in place.

o **Severity of Offense Alleged**

- Nature of violence/injury to victim
 - Strangulation
 - Burning
 - Permanent physical damage
 - Head injuries
 - Weapons involved
- Nature of threats⁸
 - Threats of future injury or death (the more specific the threat, the greater the risk)
 - Threats to use a weapon
 - Threats of child abduction or denial of visitation rights
 - Threats made openly and in presence of others
- Child abuse
 - Child injured during the incident
 - Children witness offense
 - Other violence or threats made in the presence of children
- Evidence of escalating violence
 - Use of weapon
 - Sexual abuse
 - Animal abuse
 - Property damage or threats of future property damage
 - Stalking
 - Hostage-taking
 - Recency of any such conduct
 - Victim's increased vulnerability due to age, disability, pregnancy

- **Severity of Defendant's Other Conduct**
 - Prior criminal history
 - History of violence in prior relationships
 - Other pending charges
 - Previous DV charges dismissed
 - Previous DV contacts with police or prosecutor's office
 - Other evidence of violence or threats to victim or others

- **Defendant's Proclivity to Respect Court Rules**
 - Record of violation of court orders
 - Record of failure to follow pretrial release or probation rules
 - Previous participation in batterer treatment program

- **Other Background Factors of Defendant**
 - Evidence of suicide threats
 - Evidence of depression
 - Evidence of paranoid thinking
 - History of mental health or emotional problems
 - Substance abuse
 - Availability of weapons

- **Situational Factors**
 - Imminent break-up, separation or divorce initiated by victim
 - Imminent change in child custody
 - Imminent change in victim's residence
 - Imminent change in victim's employment
 - Defendant's loss of employment

4. Guidelines for Modifications

- Consider adjusting the duration of the no contact order to provide for victim safety while reducing collateral burdens on the victim.
 - *A short no contact order (10 - 30 days) may enable a victim to file for a civil protection order if she wishes, to locate alternative housing, and to make decisions about the charges and no contact order without influence from the defendant.*

- If a victim requests contact, consider the request, keeping in mind that, in some cases, a prolonged no contact order may result in hardship for the victim.⁹
 - *Obtain specific information about the victim and implications of the no contact order on the victim and her family.*¹⁰
 - *Evaluate the case in context while considering the totality of circumstances, including victim opposition, economic impact, offender intimidation, victim fear, and danger posed by defendant.*¹¹
 - *Be sensitive to victim's reliance on defendant for child care, transportation or income and collaborate closely with advocates/agencies to fill gaps created by restrictions on contact with defendant in order to provide victim with necessary resources and assistance.*
- Consider options that allow contact under limited conditions in cases where risk factors indicate minimal risk, the victim has requested contact and there is no evidence of coercion or intimidation.¹² At an absolute minimum, an order should preclude defendants from abusing, harassing, intimidating, retaliating against/tampering with or committing any other crimes or acts against any victim or witness in a criminal domestic violence case.¹³
 - *Contact should be limited and monitored; communication could be limited to email, letters or phone calls (subject to recording if possible) or to public places.*
 - *Topics of communication could be limited, e.g., discussions about children.*
 - *Prohibit assaultive, harassing, threatening and stalking behaviors and communication.*
 - *Prohibit firearms possession.*
 - *Request random drug testing when abuse is indicated.*
 - *Request compliance with batterer treatment and/or alcohol treatment programs.*
 - *Allow contact but exclude defendant from victim's residence.*
- Victim presence in court. Any modification of the no contact order should only be considered when a victim is present in court and requests modification. However, as any statements made in open court may be designed to protect or mollify the defendant, the best information about the victim's wishes and needs will be obtained by victim/witness staff or the prosecutor and presented to the court.
- Amendments in writing. All changes to existing no contact orders should be done in writing in clear, simple language to ensure certainty, fairness and predictability for all parties. All parties should receive a copy of any modifications to court orders.

5. No Contact Order Enforcement

- Defendants should not be eligible for bond/bail until personally advised by court of any conditions to be imposed, which may include a criminal no contact order. Defendants must acknowledge an understanding of any conditions imposed.
- Take prompt action upon report of any violation
 - *Seek commitment of defendant to jail pending any hearing.*
 - *Argue for imposition of greater restrictions on any release.*
 - *Seek revocation of any bail/bond posted.*
- Appear at all criminal proceedings to address any violations of the no contact order and to argue for imposition of greater sanctions in all cases involving new threats or acts of abuse.¹⁴
 - *Revoke any pretrial release or probation.*
 - *File any new criminal charges appropriate.*

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ENDNOTES

- ¹ PRAXIS INTERNATIONAL ET AL., THE ST. PAUL BLUEPRINT FOR SAFETY: AN INTERAGENCY RESPONSE TO DOMESTIC VIOLENCE CRIMES, 82 (2009); J.L. GREIPP & R.L. MARTINSON, Monograph: Witness Intimidation, *Æquitas: The Prosecutors' Resource on Violence Against Women*, Washington, DC: (forthcoming 2010).
- ² See, T. Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much is Too Much*, 22 BERKELEY J. GENDER, L. & JUST. 2 (2007) (discussing batterers' coercion of domestic violence victims seeking protection orders).
- ³ GREIPP & MARTINSON, supra n. 1.
- ⁴ Due to confidentiality requirements, an advocate from a community-based domestic violence program may only speak with a prosecutor upon the informed consent of the victim. Prosecutors should not, as a general rule, attempt to force advocates to share information obtained from a victim. For more information, see J. KUNCE FIELD ET AL., CONFIDENTIALITY: AN ADVOCATE'S GUIDE, Battered Women's Justice Project, Minneapolis, MN (rev'd Sept. 2007).
- ⁵ THE ST. PAUL BLUEPRINT, supra n. 1, 82.
- ⁶ See, KUNCE FIELD ET AL, supra n. 5; REPORT TO CONGRESS: THE CONFIDENTIALITY OF COMMUNICATIONS BETWEEN SEXUAL ASSAULT OR DOMESTIC VIOLENCE VICTIMS AND THEIR COUNSELORS, FINDINGS AND MODEL LEGISLATION, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=169588> (discussing the importance of victim advocate confidentiality).
- ⁷ Adapted from Milwaukee, WI District Court, GUIDELINES GOVERNING IMPOSITION OF NO CONTACT ORDERS IN MISDEMEANOR DOMESTIC VIOLENCE CASES (2007) (on file with the authors).
- ⁸ GREIPP & MARTINSON, supra n. 1.
- ⁹ THE ST. PAUL BLUEPRINT, supra n. 1, 82.
- ¹⁰ *Id.* at 86.
- ¹¹ *Id.*
- ¹² *Id.*
- ¹³ Such "protection only" orders still provide for rapid enforcement (i.e., mandatory arrest) and comparatively quick sanctioning by contempt powers, as compared to proceeding with any such acts as traditional criminal charges.
- ¹⁴ *Id.*

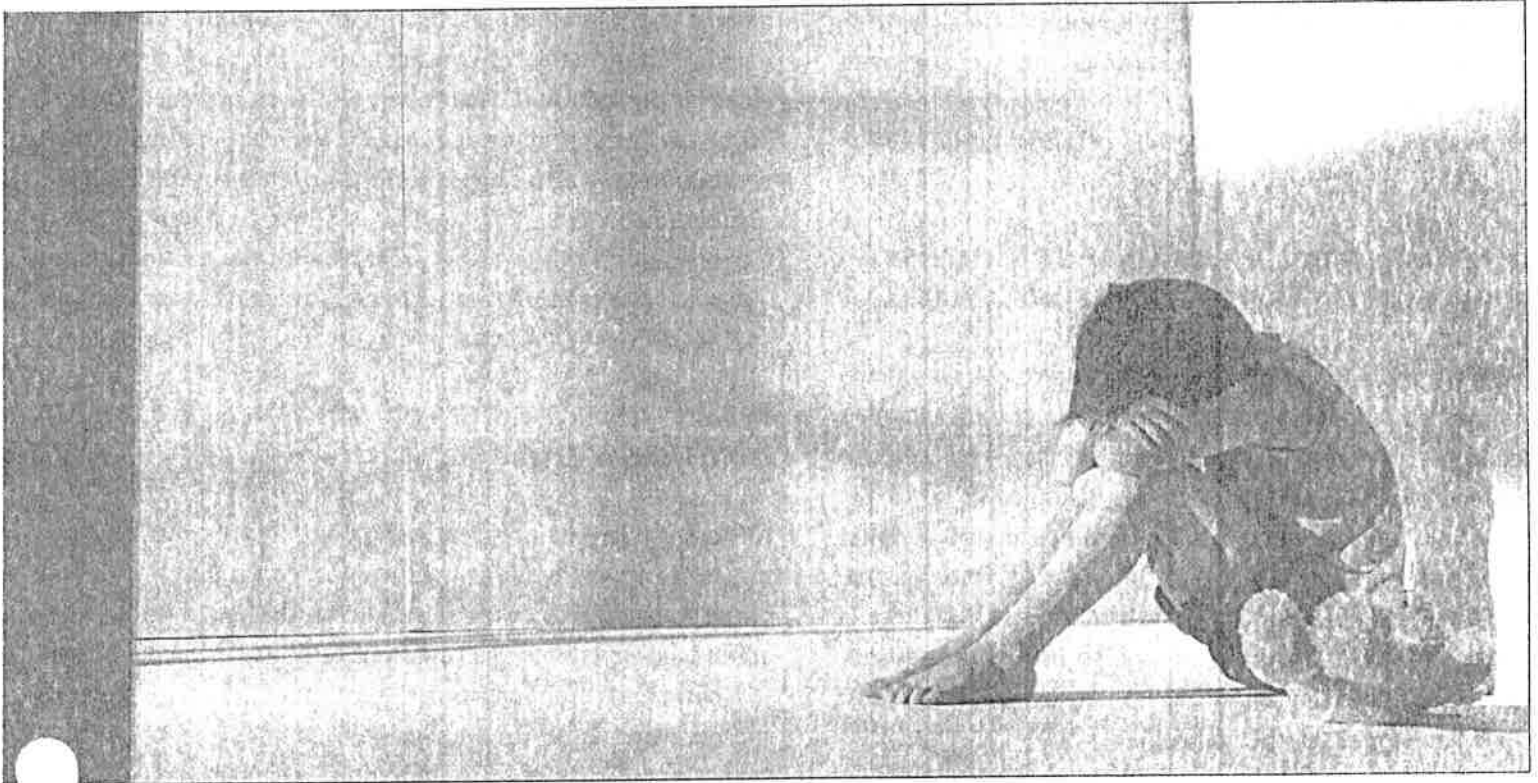
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QUITAS

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PROTECTING CHILDREN OF DOMESTIC VIOLENCE VICTIMS WITH CRIMINAL NO-CONTACT ORDERS

BY TOOLSII GOWIN MEISNER AND DIANA KORN¹

DOMESTIC VIOLENCE INVOLVING CHILDREN

Domestic violence has multiple, seriously detrimental effects on children whether they are directly abused, the indirect target of violence, or exposed to domestic violence in the home.² Research indicates that 80 to 90 percent of children living in homes where domestic violence occurs are aware of the violence.³ In fact, studies⁴ demonstrate that in 30 to 60 percent of cases where a male partner is violent towards his spouse, children are also direct victims of physical or sexual violence.⁵ Approximately three to ten million children are exposed to some form of domestic violence annually.⁶

Despite widespread acceptance of the growing body of evidence that domestic violence committed against adults is detrimental to children, courts frequently fail to identify and consider the impact of domestic violence on the safety and well being of children. Courts often do not provide adequate safety protections in court orders, even where a

history of substantiated violence is known to exist.⁷ It is incumbent upon prosecutors, therefore, to help courts recognize when children in homes with domestic violence are at risk of continued harm and request courts to extend protective orders to these children during the pendency of a domestic violence case and any period of offender monitoring. Prosecutors should be aware of the laws available to them to keep children safe as well as the research supporting arguments they can make before judges. Prosecutors may also need to properly determine whether they should bring additional charges, argue to increase bail or sentences based on aggravators, and/or file forfeiture by wrongdoing motions to address any ongoing intimidation and harassment by a defendant.

This issue will provide an overview of the statutory authority upon which prosecutors may rely to include children in no-contact orders or to bring additional charges – where appropriate – against a domestic abuser where the safety of a child is at risk. It will also provide suggested research upon

which prosecutors, who are proactively seeking to protect children at risk of further harm, may rely when practicing before judges who may not be inclined to extend no-contact orders to the children of domestic violence victims. In addition, this issue will specifically examine common scenarios in which children may be affected by domestic violence and offer strategies to protect children in criminal domestic violence prosecutions.

DOMESTIC VIOLENCE NO-CONTACT ORDERS: AN INSTRUMENT OF PROTECTION FOR CHILDREN

In most jurisdictions, where there has been a charge involving domestic violence, a criminal no-contact order is often issued as a condition of the defendant's pre-trial release. At first appearance, and prior to the issuance of bond, the prosecution may present a motion for a no-contact order in its presentation of evidence of a defendant's prior wrongdoings, including facts of the current and past instances of domestic violence. The court may also impose conditions of pre-trial release that include a no-contact order upon its own motion to protect the victim.

State laws addressing pre-trial no-contact orders in domestic violence criminal cases fall into two categories: (1) states that *mandate*⁸ or *permit*⁹ a court to issue a protective order prohibiting a defendant charged with domestic violence from contacting the victim and (2) states that permit a court to issue a protective order to cover the victim and any children that may be affected.¹⁰ Although state laws in the first category do not expressly permit inclusion of a victim's children, courts within those states have nevertheless been able to extend no-contact orders to the children.¹¹ Further, while the statutory language in the second category of states often focus solely on the safety of the victim, some of those states require that the court, before setting bail, consider the victim's children, family, and any other household member that may be affected by the domestic violence;¹² in these jurisdictions, children have been routinely included in criminal protective orders as well as other persons who may be in danger.¹³

A court may also issue a protective order during the pendency of a criminal proceeding, where the court has reasonable grounds to believe that harassment of a victim or witness in a criminal case exists, or that such order is necessary to prevent harm to a victim or witness.¹⁴ A protective order is-

sued on behalf of a victim or witness in a criminal proceeding is limited to the duration of the criminal proceeding and may also be re-issued at sentencing to include the period of time that the offender is incarcerated or on probation or parole. Thus, many no-contact orders will terminate at the close of the criminal case to which it was attached, for example by conviction or acquittal.¹⁵ Victims seeking further protection may also file petitions for domestic violence civil protection orders. Certain states allow an advocate from a prosecutor's office to be present with the victim during any court proceeding related to an injunction for protection against domestic violence, including civil proceedings.¹⁶

WHEN THE DOMESTIC VIOLENCE INCIDENT INVOLVES A CHILD

Although it seems obvious that a child injured during a domestic violence incident is in need of continued protection while the criminal cases arising from that incident is prosecuted, some courts are reluctant to limit a parent's access to a child and often overlook the extent of the seriousness of the resulting injury to a child. Unfortunately, as the earlier statistics indicate, children are often present during domestic violence incidents and these incidents too often involve some direct harm upon a child too - whether the harm is intentional or incidental.¹⁷

For example, some domestic violence defendants may intentionally injure children in an effort to further harm, intimidate, and control their adult victim. Children may be intentionally hurt while being used as an actual "weapon" against a victim,¹⁸ or more frequently, when they attempt to intervene in an assault to protect their non-abusive parent. This direct, intentional injury may result from threats or actual physical, emotional,¹⁹ or neglectful abuse. Usually, it constitutes a separate crime against the child, to which prosecutors may respond by filing additional charges of endangerment, abuse, or neglect. In these situations, it is logical to argue to a judge that the child or children of a domestic violence victim should be covered within a protective order for the pendency of the domestic violence criminal case.

Sometimes the injuries to children occur without the specific intent to harm the child. This also often occurs when children intervene to protect their parents from abuse, or

when the offender's method of assault puts the children at risk of injury.²⁰ For example, objects thrown with the intent to injure the victim may mistakenly injure the child.²¹ Injuries to children often result when the attack occurs while the victim is holding a child.

Criminal statutes permit prosecutors to file separate child abuse or endangerment charges²² to protect children from these common scenarios and hold offenders accountable for abuses towards the children. In most jurisdictions, prosecution under child abuse statutes does not require that the defendant deliberately intended to injure the child²³ nor that the defendant is the child's biological parent.²⁴ In these cases, prosecutors may have few challenges to their request for the issuance --or extension-- of a protection order to cover the child when presenting the facts that lead to a child's injury. Other scenarios, however, are not as clear, and may require persuasive argument and case law in order to provide the child with protection during the pending domestic violence criminal case. These will be discussed in more detail below.

V IN THE CHILD WITNESSES OR IS EXPOSED TO THE AFTERMATH OF THE DOMESTIC VIOLENCE

Charging the commission of domestic violence in the presence of a child

State law varies in how prosecutors can respond in scenarios where a child has witnessed or is exposed to the aftermath of domestic violence, but was not physically injured during the incident. In a handful of states, including Delaware, Georgia, North Carolina, Oklahoma, and Utah, committing an act of domestic violence in the presence of a child constitutes a crime that can be charged separately from the underlying domestic violence incident.²⁵ While other states may not explicitly criminalize the commission of domestic violence in the presence of a child, per se, charging under child endangerment statutes may be necessary to hold offenders accountable for their acts. Child endangerment statutes are comprised of diverse language addressing conduct detrimental to a child's health and welfare²⁶ or "mental or moral welfare."²⁷ For example, in *People v. Smith*,²⁸ the defendant pointed a gun at the victim while her two young children stood behind her. The court found the defendant's conduct to be injurious to the health of the victim's children and noted that it "takes little imagination . . . to be aware

that pointing a gun at a person with the threat of using it will also endanger, frighten and traumatize a child standing alongside."²⁹ In another case, *People v. Parr*,³⁰ the court found that the defendant knowingly endangered the welfare of a child where the defendant anally raped a victim in front of her five-year-old child.

While prosecutors are encouraged to utilize these statutes to hold domestic violence offenders accountable for the negative impact their violent actions have on children present during an incident, careful analysis is also necessary to ensure that a non-abusive parent is not mistakenly charged. Just as courts might have difficulty assessing and differentiating between different forms of violence used between parties, law enforcement may also have mistaken force used in self-defense to be aggressive violence or battering. Thus, distinguishing a victim's single use of violence from a batterer's use of violence over many years requires responders to further consider the fear and actual impact an individual's use of violence has on a family. To ensure more accurate assessment of cases, law enforcement and prosecutors are encouraged to apply a predominant aggressor analysis and to properly determine whether the violence committed in the presence of a child was self-defense.³¹ In some instances, victims act in self-defense or defense of their children and therefore it is not appropriate to charge the victim with committing domestic violence in the presence of children or endangering the welfare of children types of crimes. In these instances, however, it may still be necessary to provide the child with an advocate to support and protect him or her.

In some instances, it may be necessary to provide advocate support and protection to the child, but may not be effective to further traumatize a victim by charging additional charges involving the children that the victim may have been attempting to protect.

Treating the commission of domestic violence in the presence of a child as an enhancer

In many states, domestic violence committed in the presence of a child is treated as an "aggravating circumstance" that can be considered at sentencing following a domestic violence conviction.³² As an "aggravating circumstance," a defendant convicted of a domestic violence crime that occurred in the presence of a child may face more severe pen-

alties including increased periods of incarceration and/or fines.³³ In addition to these increased penalties, some states will require the convicted defendant to undergo counseling and/or pay for any counseling that a child may require.³⁴ Even if this type of reimbursement is not specifically provided for by statute, a court might be able to order it pursuant to other restitution laws. Aggravating circumstances that would tend to call for a more severe sentence should logically be considered as aggravating factors in setting the amount and conditions of bail as well. In those jurisdictions recognizing domestic violence committed in the presence of a child as an aggravated circumstance, prosecutors can also argue that this factor warrants inclusion of the child in a protective order for the victim.

Arguing the effects of witnessing domestic violence in order to cover children in protective orders

There is substantial empirical research that exposure to domestic violence has a negative impact on children and leads them to "suffer deep and profound harms."³⁵ Children exposed to domestic violence often experience the same range of emotional and behavioral problems, including aggressive, fearful, anxious and depressed behavior,³⁶ trauma symptoms, including nightmares, flashbacks, hyper-vigilance, depression, and regression to earlier stages of development; and compromised social and academic development as children who are directly physically and sexually abused.³⁷ Studies on children who have witnessed domestic violence show that they are more likely to use violence when confronted with a problem.³⁸

"Specific problems vary depending on the age of the children, but exposure to violence has a developmental impact at every stage of a child's life, including: interruption of brain development (birth-3 years), inappropriate messages that violence is a tool (3-6 years), rationalizing of violence and difficulty forming peer relationships (6-12 years), use of violence in dating relationships, risk-taking behavior and drug use (12+ years)."³⁹ These children display higher rates of post-traumatic stress disorder symptoms⁴⁰ and also often exhibit adult depression, low self-esteem, and low social adjustment.⁴¹ Children may also have an increased risk of health problems, including but not limited to insomnia, headaches, stomachaches, diarrhea, asthma, and peptic ulcers.⁴²

In response to the growing awareness of the effects that witnessing domestic violence can have on children, jurisdictions have created specialized courts to address the crossover of these issues. Many judges serving in these courts are trained in the dynamics of domestic violence and can more appropriately respond to children who witness domestic violence. Unfortunately, many judges who lack training in domestic violence and its effect on children may not fully appreciate just how detrimental exposure to this violence is to children and do not clearly see the need to extend protective orders to a victim's children. These judges may even be inclined to make special arrangements within the protective orders to ensure that children still have contact with defendants pending a domestic violence trial, unaware of the potential harm that this situation may pose.

It is especially critical for prosecutors practicing before these tribunals to be prepared to specifically articulate the effects of domestic violence on children in order to persuade judges to extend protective orders for victims of domestic violence to their children too. Where relevant, prosecutors should identify additional acts of the defendant, whether charged or uncharged, that involve the child as a victim of abuse by the defendant. If provided with this information, and an explanation of the social science research on the effects of witnessing domestic violence on children, a court may be more likely to issue a protective order for the safety of the victim and the victim's children.

WHEN THE CHILD WAS NOT EXPOSED TO DOMESTIC VIOLENCE, BUT THE DEFENDANT STILL POSES A RISK TO THE CHILD AND THE VICTIM

Even where children were not present during or exposed to the aftermath of domestic violence, the defendant may continue to use children as instruments to further exert coercive control over the victim, exposing the children to violence, conflict, and stress.⁴³ Individuals who batter tend to be highly manipulative people⁴⁴ and may attempt to use the criminal justice system to control a victim as well. For example, domestic violence offenders often use the interaction required to facilitate a parenting time or visitation order as an opportunity to assault or intimidate the victim. An offender will often use children to relay threats or harass their adult victim as well as threaten child custody litigation in order to gain compliance from the victim.⁴⁶ These offend-

ers also frequently engage in emotionally abusive behavior, use scare tactics or "mind games"⁴⁷ and often subjecting children to negative comments about the other parent or about the child.⁴⁸ Prosecutors should be prepared to argue that these communications could adversely impact a child's self-worth⁴⁹ in situations where a court is refusing to extend a no-contact order to a child or even requiring the child to have contact with the defendant.

Where courts are reluctant to limit a defendant's access to the children, prosecutors may need to educate the court that while it is not ideal to restrict a parent's time with his or her child, a defendant's violence against the child's parent must be taken into consideration. Further, even in households where a child has not been the direct victim of physical abuse, the potential for the child's victimization at the hands of a domestic violence abuser remains; there also are risks that the child will not be parented in a healthy manner. In these cases, prosecutors may cite to research demonstrating that physical violence against children may actually increase upon separation from the victim and that domestic violence offenders often parent in a controlling manner.

The research shows that domestic violence offenders tend toward neglectful and verbally abusive parenting.⁵⁰ They often parent in an authoritarian manner⁵¹ and may attempt to control the child to an unhealthy degree.⁵² In fact, domestic violence offenders may employ a variety of cruel and controlling behaviors in their parenting that often mirrors efforts to control their victim.⁵³ For example, they may not allow children to play or may confine them to certain areas of the home.⁵⁴ Domestic violence offenders may use intimidation tactics to control the children, including holding children and the non-abusive parent hostage, constantly staring at them, depriving children of sleep, telling children's friends not to talk to them, and stalking.⁵⁵

Courts that issue no-contact orders for victims of domestic violence sometimes deliberately include exceptions in order to facilitate a defendant's visitation with a child. Prosecutors should remind these courts of the potential dangers that arrangement may present. During visitation, five percent of abusive fathers threaten to kill the mother, thirty-four percent threaten to kidnap their children, and twenty-five percent threaten to hurt their children.⁵⁶ Regardless of whether an abuser carries out these threats, they create

anxiety and fear in children.

Continued contact with a domestic violence offender may have negative outcomes for children because the arrangement prolongs children's exposure to violence.⁵⁷ Domestic violence offenders generally continue their abuse and violence and, if they lack access to the victim, children often become the main conduit for violence.⁵⁸ For this and similar reasons, many states have adopted presumptions *against* joint physical custody if domestic violence is present.⁵⁹

Research also indicates that domestic violence often begins and frequently escalates at the time of separation, not only for the victim, but also the children. When there is a pending criminal case, the pretrial phase can be an especially dangerous time for the victim and the child. This is often a time when the victim decides to leave the relationship.⁶⁰ Separation increases the risk to a victim⁶¹ and may increase the risk to the child as well due to the child's close relationship with and proximity to the victim. In fact, even if the child did not witness the violence or become the subject of violence during prior episodes, he or she is not necessarily safe during a pending domestic violence criminal case. Children who are not directly abused may face a higher risk of being so at the time of parental separation.⁶² Violent interactions are likely to increase if the defendant feels a loss of control.⁶³ Some states' laws acknowledge the increased period of danger for the victim immediately following separation and specifically enumerate "separation" as a factor for the court to consider in deciding whether to issue a no-contact order.⁶⁴ Prosecutors in these jurisdictions may argue that logically if there is an increased level of danger to the victim such that a no-contact order is required, there is also an increased level of danger to the child and so the no-contact order should include any children in the home. In light of the increased risks posed by separation, it is critical that advocates work closely with domestic violence victims to create a safety plan for them and their children.

CONCLUSION

Because children so often are direct victims of and exposed to domestic violence, and because children are also used by defendants to manipulate the victim during the pendency of trial, it is incumbent upon the prosecutors and other allied professionals working within the criminal justice system to protect the children who are at risk for such violence,

exposure, and manipulation. Prosecutors are in a critical position to seek added protection for children of victims of domestic violence by requesting that courts include children in no-contact orders that are already being imposed in these cases. With no-contact orders covering both the victim and any children at risk of violence, courts are in a powerful position to prevent a defendant from manipulating the court to ease access to a child in order to intimidate or harm them. In fact, judges that impose no-contact orders covering children have the ability to swiftly punish these exact tactics employed by defendants and more effectively hold them accountable for such behavior.

Prosecutors are encouraged to contact AEquitas for sample motions or advice on how to include children in no-contact orders for victims of domestic violence. AEquitas has sample motions that include the above referenced arguments and research and may serve as effective tools to persuade courts reluctant to extend such protection. An AEquitas Attorney Advisor can also assist in tailoring the motion to a specific jurisdiction, with applicable caselaw and statutory provisions.

(Endnotes)

1 Toolsi Gowin Meisner is an Attorney Advisor for AEquitas: The Prosecutors' Resource on Violence Against Women. Diana Korn is a Certified Legal Intern in the Intimate Partner Violence Assistance Clinic at the University of Florida, Levin College of Law.

2 Brief of Battered Women's Legal Advocacy Project and Battered Women's Justice Project as Amici Curiae Supporting Appellant, Connery v. Connery, 2011 WL 206139 (Min. Ct. App. Jan 25, 2011) (No. A100-531) citing Wolfe, D.W. et al., *The Effects of Exposure to Domestic Violence on Children: A Meta-Analysis and Critique*, 6 CLINICAL CHILD AND FAMILY PSYCHOLOGY REVIEW, 171-187 (2003).

3 Pagelow, M.D., *Effects of Domestic Violence on Children and their Consequences for Custody and Visitation Agreements*, 7(4) CONFLICT RESOLUTION QUARTERLY, 347-363(2007).

4 Gabrielle Davis, J.D. et al., *The Dangers of Presumptive Joint Physical Custody*, THE BATTERED WOMEN'S JUSTICE PROJECT (May 2010) citing C. McGEE, CHILDHOOD EXPERIENCES OF DOMESTIC VIOLENCE, 15 (Jessica Kinglsey Publishers 2000) (one of only a handful of studies designed specifically to study children's experiences of domestic violence, McGee interviewed 54 children and 48 abused mothers, 64 finding that in 41 of the families (85%) children were eyewitnesses to violence, 65 in 25 of the families (52%) children were physically abused, in 6 families (11%) children were sexually abused, in 29 families (60%) were emotionally abused, 15 families (31%) experienced controlling behavior, and in 28 families (58%), children overheard violence).

5 Jeffrey E. Edelson, *The Overlap Between Child Maltreatment and Woman Battering*, 5 VIOLENCE AGAINST WOMEN 134 (1999); Clare Dalton et al., *High Conflict Divorce, Violence, and Abuse*, 54 JUV. & FAM. CT. J. 11, 17 (2003)(providing information that more than 50% of batterers also abuse their children).

6 United States Department of Veterans Affairs <http://www.ptsd.va.gov> (2010); More recent studies indicate an increase to 3.3 million America Bar Association, online survey of recent statistics, <http://nabanet.org/domesticviolence/Pages/Statistics.aspx> (citing Sharn..., Lawrence, National Center for Children in Poverty, Domestic Violence and Welfare Policy: *Research Findings That Can Inform Policies on Marriage and Child Well-Being* 5 (2002)); Bonnie Carlson *Children exposed to intimate partner violence: Research findings and implications for intervention*, 1 TRAUMA, VIOLENCE, AND ABUSE 321, 321-342 (2000) (research indicates that between 10 to 20 percent of children are exposed to domestic violence annually).

7 Silverman, J.G., *Child Custody Determinations in Cases Involving Intimate Partner Violence: A Human Rights Analysis*, 94 AMERICAN JOURNAL OF PUBLIC HEALTH 951 (2004) (courts frequently fail to consider documentation of domestic violence in custody determinations); Kernic, M.A., et al., *Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Violence*, 11 VIOLENCE AGAINST WOMEN 991 (2005)(courts frequently fail to identify domestic violence and provide adequate safety protections in court orders, even where a history of substantiated violence is known to exist).

8 NEB. REV. STAT. §42-929 (court shall issue an order prohibiting contact with the victim); R.I. GEN. LAWS § 12-29-4(a)(1)(2010) (condition for pretrial release requires no contact with the victim); UTAH CODE § 77-36-2.5 (2010) (no pretrial release unless suspect consents to or the court orders no contact with the victim); 725 ILL COMP. STAT. 5/110-10(d)(2010)(bail conditioned on no contact with victim); COLO. REV. STAT 18-1-1001 (2010) (MANDATORY PROTECTION ORDER FOR ANY SUSPECT CHARGED WITH A CRIME INVOLVING DOMESTIC VIOLENCE); WIS. STAT. ANN. § 968.075 (2010)(suspect upon release shall not contact the victim).

9 N.C. GEN. STAT. § 15A-534.1 (2010) (authorizes the pretrial tainment of persons charged with crimes of domestic violence); 18 PA. CONS. STAT. § 2711(c)(2) (in determining bail the court shall consider the safety of the victim); MISS. CODE ANN. § 99-5-37 (2010); TEX. CODE CRIM. PROC. ARTS. §§ 17.15 & 17.152 (2010); N.J. STAT. ANN. § 2C:25-26(a)(2010) (the court may issue a No-Contact Order as a condition for bail); 2009 N.D. ALS 134, 1 (the court shall consider and may issue a protection order prohibiting contact with the victim; OR. REV. STAT. § 107.720(4)(2010); WASH. REV. CODE ANN. § 10.99.040(2)(2010)(the court authorizing release may issue a No-Contact Order).

10 See e.g., FLA. STAT. § 741.2901 (2010); CAL. PENAL CODE § 273.75 ALASKA STAT. § 12.30.027 (2010); MINN. STAT. §629.72 (2009); GA. CODE ANN. § 17-6-1 (f)(2)(2010); OHIO REV. CODE ANN. § 2919.25(B)(4); W. VA. CODE §§ 48-27-1002; CONN. GEN. STAT. § 54-64a.

11 See e.g. State v. Rodman, 94 Wash. App. 930 (Wash. Ct. App. 1999) (in a jurisdiction where a statute *permits* a court to issue a no-contact order as a condition of pretrial release from a charge involving domestic violence, and that statute is *silent* as to the victim's children, courts have relied on such a statute to *also* include the victim's children in the no-contact order, and a defendant violates such an order if defendant contacts the victim, or the victim's children, regardless of whether defendant is in jail).

12 See e.g., FLA. STAT. § 741.2901 (2010) (court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released); CAL. PENAL CODE § 273.75 (the "court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released"); ALASKA STAT. § 12.30.027 (2010) (the court shall consider the safety of the victim and the safety of the other household members); MINN. STAT. §629.72 (2009) (providing for conditions of release in cases of domestic assault or harassment to protect the victim or other household member); GA. CODE ANN. § 17-6-1 (f)(2)(2010) (no contact between victim and any member of victim's family); OHIO REV. CODE

ANN. § 2919.25(B)(4) (the court should consider the threat posed to a person); W. VA. CODE §§ 48-27-1002 (a domestic violence arrest is effective if the "accused constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail"); CONN. GEN. STAT. § 54-64a (pretrial release conditions shall assure the safety of any person).

13 See e.g. CAL. PENAL CODE § 273.75(a) (2009); FLA. STAT. § 741.28(3) (2010); See also statutes listed in FN 11, which are states in which children are routinely added in no-contact orders.

14 FLA. STAT. § 914.24; See also, CAL. PENAL CODE § 136.2 (2010) (during the pendency of a criminal proceeding when the court has a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, the court is authorized to issue a restraining order).

15 But see, TEX. FAM. CODE § 85.025(a) (Texas provisions allowing a no-contact order to extend beyond a criminal trial and allowing for a permanent protective order to stay in effect for the time period stated in the order up to a maximum of 2 years); TEX. FAM. CODE § 85.025(c) (allowing the protective order to be extended for one more year from the date of an abuser's release from prison if the abuser is in prison on the date that the protective order is set to expire).

16 See e.g., FLA. STAT. 741.30.

17 *Supra* note 4, 19 (referring to the study where "physical abuse was present in more than half of the families in the study. Hitting the children was the most common form of reported physical abuse, followed by throwing the children, throwing objects at children, and pushing children who were trying to protect their mothers out of the way." Other physically abusive behaviors included shaking a baby, strapping a child to a car seat with a belt, pushing a child's head into a dirty dishwasher, and dragging a child down stairs.)

18 For example, in some domestic violence incidents, abusers throw the children at the victim in efforts to injure either or both.

19 *Supra* note 4, 19 (Examples of emotional abuse that children reported include calling the child a "little slut;" telling the child they "should have been an abortion;" abusing the children's pets; deliberately breaking the children's toys; threatening to burn the house down; telling the children their mother/grandmother doesn't love them; telling the children the mother was having an affair, had AIDS and was dying, and was a drug user.)

20 Judith G. Greenberg, *Domestic Violence and the Danger of Joint Custody Presumptions*, 25 N. ILL. U. L. REV. 403, 414 (2005).

21 *Supra* note 4, 19 (Study found that children were injured incidentally to the abuser's attack against the mother, including a child who was burned when the abuser threw a kettle of boiling water at the mother.)

22 CAL. PENAL CODE § 273a (2010); N.Y. PENAL LAW §260.10 (2010); GA. CODE ANN. § 16-5-70 (2010); N.J. STATE. ANN. § 2C:24-4 (2010); IDAHO CODE § 18-1501 (2010); NEV. REV. STAT. § 200.508 (2010); MICH. COMP. LAWS ANN. § 750.136b (2010); DEL. CODE ANN. tit. 11, § 1102 (2010); ARK. CODE ANN. § 5-27-206 (2010); TEX. PENAL CODE ANN. § 22.041 (2010); MO. REV. STAT. § 568.045 (2010); TENN. CODE ANN. 9-15-401 (2010); IND. CODE § 35-46-1-4 (2010).

23 See e.g. *People v. Campbell*, 23 Cal. App. 4th 1488 (3d DCA 1994) (general intent satisfies the requirement of the statute).

24 See e.g. *People v. Dallas*, 165 Cal. App. 4th 940, 942-943 (4th DCA 2008).

25 DEL. CODE ANN. TIT. 11, § 1102 (2010); GA. CODE ANN. § 16-5-70; N.C. GEN. STAT. ANN. § 14-33 (WEST 2010); OKLA. STAT. ANN. TIT. 21, § 644 (WEST 2010); UTAH CODE ANN. § 76-5-109.1 (2010).

26 See WYO. STAT. ANN. § 6-4-403 (2010); N.J. STAT. ANN. § 2C:24-4 (2010); MONT. CODE ANN. § 45-5-622 (2010); N.H. REV. STAT. ANN. §

639:3 (2010); 18 PA. CONS. STAT. ANN. § 4304 (2010); HAW. REV. STAT. ANN. § 709-904 (2010); MO. REV. STAT. § 568.045 (2010); TENN. CODE ANN. § 39-15-401 (2010); IND. CODE § 35-46-1-4 (2010).

27 See IDAHO CODE § 18-1501 (2010); NEV. REV. STAT. § 200.508 (2010); MICH. COMP. LAWS ANN. § 750.136b (2010); CAL. PENAL CODE § 273A (2010); DEL. CODE ANN. tit. 11 § 1102 (2010); MINN. STAT. § 609.378 (2010); ARK. CODE ANN. § 5-27-206 (2010); TEX. PENAL CODE ANN. § 22.041 (2010).

28 *People v. Smith*, 1995 N.Y. Misc. LEXIS 715 (N.Y. Crim. Ct. 1995).

29 *Smith*, N.Y. Misc. LEXIS at *715 (quoting *People v. Alexander*, 149 Misc. 2d 361 (N.Y. Crim. Ct. 1990)).

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31 Jeffrey P. Greipp, Toolsi G. Meisner & Douglas Miles, *Intimate Partner Violence Victims Charged with Crimes Against Their Batterers: Justice and Accountability for Victims who Use Violence Against Their Batterer*, AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN (Dec. 2010).

32 ALASKA STAT. § 12.55.155 (2010); ARIZ. REV. STAT. § 13-702(C) (2010); CAL. PENAL CODE 1170.76 (2010); HAW. REV. STAT. ANN. 706-606.4 (2010); MISS. ANN. CODE § 97-3-7(3), (4) (2010); MONT. ANN. CODE § 45-5-206(v) (2010); OHIO REV. CODE ANN. 2929.12 (2010); REV. CODE WASH. (ARCW) § 9.94A.535 (2010). In Arkansas, Florida, Idaho, Louisiana, and Oregon a defendant who commits an offense of domestic violence in the presence of a child may receive a harsher sentence. ARK. ANN. CODE § 5-4-702 (2010); FLA. STAT. ANN. 921.0024 (2010); IDAHO CODE 18-918 (2010); LA. REV. STAT. ANN. § 14:35.3 (2010); OR. REV. STAT. 163.160 (2010).

33 See , ALASKA STAT. § 12.55.155 (2010); ARIZ. REV. STAT. § 13-702(C) (2010); ARK. ANN. CODE § 5-4-702 (2010); CAL. PENAL CODE 1170.76 (2010); FLA. STAT. ANN. 921.0024 (2010); HAW. REV. STAT. ANN. 706-606.4 (2010); IDAHO CODE 18-918 (2010); ILL. COMP. STAT. 720 § 5/12-3.2 (2010); MISS. ANN. CODE § 97-3-7(3), (4) (2010); MONT. ANN. CODE § 45-5-206(v) (2010); N.C. GEN. STAT. § 14-33(d) (2010); OHIO REV. CODE ANN. 2929.12 (2010); OKLA. STAT. ANN. tit. 21 § 644 (2010); OR. REV. STAT. 163.160 (2010); 8 P.R. LAWS ANN. 632 (2010); REV. CODE WASH. (ARCW) § 9.94A.535 (2010).

34 See e.g. 720 ILL. COMP. STAT. ANN. 5/12-3.2; NEV. REV. STAT. ANN. § 200.485 (WEST 2010); OHIO REV. CODE ANN. §§ 2929.12, 2929.17 (WEST 2010); OKLA. STAT. ANN. tit. 21 § 644 (WEST 2010).

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41 Alan Tomkins et al., *The Plight of Children Who Witness Woman Battering: Psychological Knowledge and Policy Implications*, 18 L. & PSYCHOL. REV. 137, 149-50 (1994).

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45 *See Id.*

46 *Supra* note 37, GREENBURG, at 411- 412.

47 Power and Control Wheel, <http://www.theduluthmodel.org/wheel/gallery.php>.

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49 *Supra* note 37, GREENBURG, at 403, 412.

50 *See generally* BANCROFT, *supra* note 43.

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52 *Id.*; Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. GENDER SOC. POL'Y & L. 657, 691 (2003) (citing LUNDY BANCROFT & JAY G. SILVERMAN, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (Sage Publications 2002)).

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59 *Supra* note 4, n. 50 citing MIN. STAT. 518.17(2)(d) ("...the court shall use a rebuttable presumption that joint legal or physical custody is not in the best interests of the child if domestic abuse...has occurred between the parents.").

60 *People v. Gutierrez*, 171 Cal. App. 3d 944, 949 (Cal. Dist. Ct. App. 1985) ("separation among spouses often times heightens the potential for angry confrontation. . . the need for special protection is well documented in the literature, both for spouses and for children") Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65-66 (1991); Clare Dalton et al., *High Conflict Divorce, Violence, and Abuse*, 54 JUV. & FAM. CT. J. 11, 17; Judith G. Greenberg, *Domestic Violence and the Danger of Joint Custody Presumptions* 25 N. ILL. U. L. REV. 403, 412 (2005).

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64 OHIO REV. CODE ANN. § 2919.251(B)(8); 725 ILL COMP. STAT. 5/110-5.1 (B)(8); 2010 OK. ALS 116.

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Safety • Stability • Well Being

Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence

INTRODUCTION

Judges need information and tools to both guide them in holding perpetrators of domestic violence accountable for their abusive behavior and to ensure that efforts to reach perpetrators¹ do not cause unintended consequences or further harm to victims of domestic violence and their children. This *Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence (Accountability Checklist)* will help dependency judges intervene with those who use violence in ways that promote accountability and maximize the safety and well-being of children and victim parents. It provides a framework to help the court leverage its authority to hold perpetrators accountable, provide appropriate services, and improve judicial decision-making.

This *Accountability Checklist* complements the *Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence*² (*Reasonable Efforts Checklist*) by providing specialized information to hold perpetrators of domestic violence accountable in child protection cases. Much of the narrative accompanying the *Reasonable Efforts Checklist* is also applicable to this *Accountability Checklist*.

This *Accountability Checklist* will help judges:

- Gather information needed to enhance decision-making on accountability issues;
- Assess the risk posed by perpetrators to lessen perpetrator-generated safety threats to children and victim parents;
- Review and tailor service plans to hold perpetrators accountable in ways that promote safety and compliance with orders;
- Evaluate treatment options to enhance perpetrators' capacity to change;
- Strengthen judicial decision-making about placement and visitation of children to increase the safety of children and victim parents; and

- Craft judicial policies and practices that promote the accountability of perpetrators and the safety of victim parents and children.

DEFINITIONS OF DOMESTIC VIOLENCE

For purposes of this tool, we define domestic violence as a pattern of assaultive and coercive behaviors that operate at a variety of levels – physical, psychological, emotional, financial, or sexual – that one parent uses against the other parent. The pattern of behaviors is neither impulsive nor “out of control,” but is purposeful and instrumental in order to gain compliance or control. It can include assault, destruction of property, isolation, and acts or threats of abuse against the victim parent, children, and pets. Abuse is likely to increase at the time of separation.

Perpetrators often use court proceedings or threats of court proceedings and non-compliance with court orders to continue control over the victim parent and children. If courts focus exclusively on the legal definitions of domestic violence (usually assault and violation of protection orders) the underlying pattern of abusive behavior may not be apparent. Understanding the underlying pattern of fear, control, intimidation, and psychological abuse is essential to understanding the impact of domestic violence on victim parents and children. These same patterns of coercive control are often evident in the perpetrator's behaviors with child protection and supervised visitation personnel.

Major sources used to compile the information contained in this *Accountability Checklist* include: Lundy Bancroft, National Council of Juvenile and Family Court Judges, *The Batterer as Parent*, 6 SYNERGY (Winter 2002); Lundy Bancroft & Jay Silverman, *ASSESSING RISK TO CHILDREN FROM BATTERERS* (2002); Leigh Goodmark, *Achieving Batterer Accountability in the Child Protection System*, 93 Ky. L.J. 613 (2004); Leigh Goodmark, National Council of Juvenile and Family Court Judges, *REASONABLE EFFORTS CHECKLIST FOR DEPENDENCY CASES INVOLVING DOMESTIC VIOLENCE* (2009); Margaret Hobart, Washington State Coalition Against Domestic Violence, *BATTERER ACCOUNTABILITY: RESPONDING TO CHILD MALTREATMENT AND DOMESTIC VIOLENCE* (2008); Peter Jaffe, Claire Crooks & Francis Wong, *Parenting Arrangements After Domestic Violence*, 6 J. CTR. FAM. CHILDREN & CTS. (2005); Fernando Mederos, Family Violence Prevention Fund, *ACCOUNTABILITY AND CONNECTION WITH ABUSIVE MEN* (2004).

¹ Statistically, the mother is at far greater risk of being abused by the child's father than he is by her. See BUREAU JUST. STAT., U.S. DEP'T JUST., *FAMILY VIOLENCE STATISTICS ON STRANGERS AND ACQUAINTANCES* 1 (2005), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=828> (finding that females were 75 percent of spouse abuse victims, 86 percent of victims of spouse abuse by a boyfriend or girlfriend, and 58 percent of family murder victims). For the purposes of this publication, victims of domestic violence will be referred to as female perpetrators as male.

² Available online at <http://www.ncjfcj.org>.

GATHERING INFORMATION

- Did the child protection agency (agency) gather information about the perpetrator and his violence from the following sources?
 - ✓ The perpetrator
 - ✓ The perpetrator's
 - Medical records
 - Substance abuse records
 - Criminal records
 - Probation and parole officers
 - Treatment providers
 - ✓ Past partners of the perpetrator
 - ✓ Court records
 - ✓ Police reports, including previous domestic violence calls and arrest reports
 - ✓ Agency reports and reports of child abuse
 - ✓ School records and personnel
 - ✓ Witnesses to relevant events, including the pattern of coercive control
 - ✓ Affidavits in past court cases
 - ✓ Victim parent(s)³
 - ✓ Children⁴
- Did the agency:
 - ✓ Thoroughly document findings of abuse of the children and victim parent, including the ongoing pattern of control?
 - ✓ Provide language in its report that affirms the perpetrator's role in harming the children and avoids blaming the victim parent?
 - ✓ Provide timely and complete documentation of the perpetrator's compliance or lack thereof to the case plan?

ASSESSMENT

Failure to identify domestic violence does not mean that it does not exist. Assessments are snapshots in time. As such, they should be fluid and ongoing to provide a more complete picture. The agency should not rely on one individual assessment, but instead should conduct a series of assessments.

Dangerousness varies widely and may increase or decrease over time. Lack of a criminal record or police involvement does not mean the perpetrator is not dangerous. Continued anger or externalizing of responsibility tends to point to a return to violence. Lack of compliance with the service and treatment plans is an indication of continued or heightened dangerousness. The level of dangerousness decreases only when the perpetrator is compliant and changes behavior.

If the agency or the court finds that a perpetrator is dangerous, all persons and networks in the system working with the family, including the victim parent and treatment providers, must be notified. Treatment

... is never appropriate to pressure or threaten children or victim parents to provide information about the perpetrator or his violence.

⁴ *Id.*

providers should be aware of the indicators of dangerousness.

- Did the agency screen the family for domestic violence when the case was first opened and at other appropriate intervals?
- Is the perpetrator dangerous?⁵
 - ✓ Does he blame someone other than himself for his violence?
 - ✓ Does he minimize his violence?
 - ✓ Does he use or threaten to use a weapon?
 - ✓ Does he own a firearm?
 - ✓ Does he use drugs or alcohol?
 - ✓ Does he ever threaten or try to commit suicide?
 - ✓ Does he threaten to harm the victim's children?
 - ✓ Does he engage in stalking behavior?
 - ✓ Has he ever strangled the victim?
 - ✓ Is he excessively jealous of his victims?
- Did the agency assess the perpetrator for strengths? This may include:
 - ✓ Identifying relatives or individuals in the perpetrator's life who can provide meaningful support and accountability to change the perpetrator's behaviors and attitudes.
 - ✓ Determining how to engage the perpetrator's family and community to support his use of non-violence.
 - ✓ Inquiring as to factors that may motivate the perpetrator to change.
 - ✓ Determining the ways the perpetrator cares for the children.
 - ✓ Consulting with the victim parent so the agency may determine what might motivate the perpetrator to change behaviors and what might hold him accountable.
- Has the agency assessed the perpetrator for fatherhood capacity?
 - ✓ What is his attachment to the children?
 - ✓ How does he believe the children are affected by his violence?
 - ✓ What fears does he have about the children's future?
 - ✓ How do the children figure into his decision-making?
 - ✓ Has the agency allocated resources to the perpetrator to help him become a better parent?

⁵ Jacquelyn C. Campbell, DANGER ASSESSMENT, Johns Hopkins University, School of Nursing, available at <http://www.dangerassessment.org>.

Research indicates that the most effective way to protect children is to keep their mothers safe. Ensuring the safety of the victim parent requires promoting change in and holding the perpetrator accountable. Change is not synonymous with attending or completing a batterer intervention program (BIP). The key to change is stopping old behaviors and replacing them with respectful new ways of interacting with victim parents and children. Child protection personnel should document and report the perpetrator's controlling and abusive behaviors toward victim parents and children as these behaviors are important indicators of whether change is occurring in the perpetrator.

Can the perpetrator change?

- ✓ Has he stopped the violence?
- ✓ What steps has he taken to establish and maintain a non-abusive pattern of behavior?
- ✓ What methods has he used to respond to conflict and disagreement in a reasonable way?
- ✓ What has he done to demonstrate that he can maintain appropriate and respectful parenting?
- ✓ In what way has he acknowledged the impact of his violence?
- ✓ If the parents are separated, how has the perpetrator demonstrated that he can co-parent without abuse and intimidation?

Has the perpetrator demonstrated that he is serious about changing? For example, did he:

- ✓ Fully comply with the court's orders?
- ✓ Demonstrate improvement in behavior with victim parents, children, and agency staff?
- ✓ Disclose the history of abuse against the victim parent?
- ✓ Recognize that his behavior is unacceptable and make unqualified statements that his behavior was wrong?
- ✓ Recognize the behavior as an intentional choice?
- ✓ Show empathy for the effects of the actions on the victim parent and children?
- ✓ Identify in detail the destructive impact the abuse has had without shifting back to his own emotional injuries, grievances, or excuses?
- ✓ Identify the pattern of controlling behavior and attitudes by naming specific forms of abuse and beliefs that drove his behavior?
- ✓ Replace abuse with respectful behaviors and attitudes?
- ✓ Show willingness to make amends in a meaningful way?
- ✓ Accept the consequences of his own actions?

Are there ongoing assessments regarding substance abuse or mental health issues?

If yes, see the Treatment section of this *Accountability Checklist*.

SERVICE PLANS

Are the service plans generally appropriate?

- ✓ Does each party, the perpetrator, the victim parent, and the children have their own service plan?
- ✓ Does each item in the plan have a positive effect on the safety of the victim parent and children?
- ✓ Does the service plan for the victim parent avoid provisions or directives that only the perpetrator can be responsible for or held accountable for ensuring?
- ✓ Are the requirements in the plan for the perpetrator available and accessible to the perpetrator?
 - Is the service offered locally?
 - Does the perpetrator have available transportation?
 - Is the service offered in the appropriate language?
 - Is the service culturally appropriate?
- ✓ Are the requirements based on and tied to specific needs?
- ✓ Are the services provided by those knowledgeable about domestic violence?
- ✓ Are the requirements in the plan based upon a careful and accurate assessment of the domestic violence in the home and the impact of the violence on the victim parent and children?

Does the perpetrator's plan consider:

- ✓ The meaning and impact of his exposing the children to the abuse of the victim parent?
- ✓ The degree to which the perpetrator has used the children as instruments of abuse?
- ✓ The extent to which court proceedings are being used by the perpetrator to extend his power and control?
- ✓ The safety risk he poses to the victim parent and children?
- ✓ The willingness and ability of the perpetrator to change?
- ✓ Overlapping forms of maltreatment (domestic violence and child physical and sexual abuse)?
- ✓ The ability of the agency and the court to monitor safety and compliance?
- ✓ How visitation can be done safely?

Does the perpetrator's plan include:

- ✓ Attendance in a BIP?
- ✓ Supervised visitation center services or supervised visitation?
- ✓ Substance abuse or mental health services?
- ✓ Random drug/alcohol testing?

SERVICE PLANS (cont.)

- ✓ Fatherhood classes that include information on the impact of the perpetrator's actions on the children?
 - ✓ Probation/parole contacts and compliance?
 - ✓ Housing services? Transportation?
 - ✓ Employment and training services?
 - ✓ Compliance with court orders, including those in other proceedings?
 - ✓ Restraint on all physical, psychological, and emotional abuse and intimidation of the victim parent, children, and caseworkers?
 - ✓ Requirements that the perpetrator support and facilitate the victim parent's and children's access to treatment and compliance with their plans?
 - ✓ Removal of all weapons from his possession and control?
 - ✓ Confidential waivers and permission to obtain available information?
 - ✓ Educational classes on how violence affects children, and steps to remedy the effects and heal the relationships with the children?
 - ✓ Child support, if the children are not living with him?
- Work to stop violent and abusive behaviors?
 - Teach positive alternative skills for non-abusive and responsible relationships?
 - ✓ Hold the perpetrator accountable for changing behavior?
 - ✓ Assess the need for concurrent substance abuse or mental health treatment?
 - ✓ Terminate services for failure to comply or continued use of violence?
 - ✓ Have confidential and safety-oriented contacts with victims?
 - ✓ Address the impact of the perpetrator's violence on the children and victim parent?

TREATMENT

Psychotherapy, anger management, and mental health or substance abuse treatments are not acceptable substitutes for a BIP. Family or couples therapy are demonstrated to be ineffective and may jeopardize the safety of the victim parent. The goal of anger management is to reduce emotional feelings and the physiological arousal that anger causes; it does not address the underlying pattern of coercive control present in domestic violence. In some cases, substance abuse or mental health treatment may be appropriate if completed concurrently with a BIP.⁶

Communication between service providers is essential to keep the victim parent and children safe and to hold the perpetrator accountable. The domestic violence, substance abuse, and mental health treatment providers need to provide information to the court on the severity of the problems and whether they preclude treatment.

BIPs should focus on interrupting, avoiding, and ending violence and abuse and on the batterer's capacity to change. In jurisdictions where BIPs are not available, caution should be taken to ensure alternative treatments, such as individual counseling, account for and are provided by professionals trained in domestic violence.

Does the BIP (or alternative treatment if unavailable):

- ✓ Concentrate on behavior changes?

⁶ For a sample batterer intervention program model protocol please refer to Georgia's Model Protocol for Batterer's Classes available at http://www.biscmi.org/other_resources/docs/georgia.html.

If assessments found either substance abuse or mental health issues:

- ✓ Does the treatment program for substance abuse or mental health issues take into account the perpetrator's use of violence?
- ✓ Is the perpetrator excused from the BIP only when the substance abuse is severe and current? For example, if the perpetrator must be taken to a detoxification program and then to substance abuse treatment, is he being required to start a BIP within one to two months after he has established sobriety?
- ✓ Is the perpetrator being assigned to the BIP to assess whether he can successfully participate in the BIP treatment when there are indications of his ability to function despite his mental health issues?

PLACEMENT AND VISITATION

If the court finds that a parent is a perpetrator of domestic violence, ordering supervised visitation or no contact with the perpetrator should be considered. Visitation should not be allowed if the perpetrator has not acknowledged responsibility for his past harm to the children and for the children's future safety or if the violence continues. There must be some certainty that the children and victim parent will be safe from further exposure to violence. Restrictions on visits, including making them supervised or stopping them altogether, should be considered if the perpetrator fails to comply with his requirements. These may be eased if the interventions are proving successful, the perpetrator's behaviors are changing, and safety permits. If the perpetrator is habitually non-compliant, the court should consider terminating the perpetrator's parental rights if allowed under local law.

If unsupervised visits are deemed safe, relatively short visits (generally not overnight) should be used until observable change has occurred. This reduces the perpetrator's ability to damage the relationship between the children and victim parent; limits the perpetrator's negative influence on the children's behavior and value system; and enhances the

PLACEMENT AND VISITATION (cont.)

children's feelings of safety and security while still allowing the children to feel connected to the perpetrator.

☐ Will the children be safe if placed with or allowed unsupervised visits with the perpetrator or his family?

- ✓ What was the level of the perpetrator's violence in the home?
- ✓ To what degree did the perpetrator expose the children to his violence? Were they involved, either directly or indirectly?
- ✓ What is the capacity of the perpetrator to care for the children appropriately?
- ✓ How does the perpetrator understand parenting?
- ✓ Were the children physically or sexually abused by the perpetrator?
- ✓ Are the children still at high risk of harm by having contact with the perpetrator?
- ✓ Does the perpetrator use the children as weapons against the victim parent?
- ✓ Does the perpetrator neglect the children?
- ✓ Does the perpetrator undermine the victim parent's parenting?
- ✓ Has the perpetrator's family been assessed for domestic violence?

☐ Can the perpetrator provide:

- ✓ A sense of physical and emotional safety in the children's current surroundings?
- ✓ Structure, limits, and predictability for the children?
- ✓ An environment that allows for and promotes a strong bond between the children and victim parent and between siblings?
- ✓ A sense that the children are not responsible for the violence?
- ✓ Developmentally appropriate care-taking that meets the children's physiological needs, social needs, esteem, and well-being?

☐ If the children were removed from the home:

- ✓ Must the children remain out of the victim parent's care to remain safe?
- ✓ Is the perpetrator still in the family home?
- ✓ Does the perpetrator's current abuse preclude the victim parent from protecting the children from further harm, either alone or with the help of services?
- ✓ Are the perpetrator's actions coloring the agency's assessment of the victim parent's ability to care for the children?
- ✓ Has a restraining order been considered to remove the perpetrator so the children may stay in the family home?
- ✓ Has the agency checked the foster care or relative care placement for the presence of domestic violence?

- ✓ Can the children safely return home if financial help, housing assistance, food assistance, transportation, child care, counseling, and access to legal services are immediately provided to the victim parent?
- ✓ What clear guidelines, controls, and appropriate interventions have been established for the perpetrator in cases where supervised visitation is granted?
- ✓ Will the victim parent and children be safe if visits occur in a supervised visitation center?
- ✓ Will the victim parent and children be safe if the supervision is done by a third party rather than a supervised visitation center?
- ✓ How will the court determine if current visitation arrangements are causing harm to the children or victim parent?
- ✓ How will the court determine if current visitation arrangements are causing harm to the relationship between the victim parent and children or between siblings?
- ✓ How will the court determine if current visitation arrangements are causing setbacks in the emotional healing of the children?
- ✓ How will the court monitor the visitation?

JUDICIAL PROCESS

Judges play a leadership role in ensuring that the court sends a consistent message that domestic violence will not be tolerated. This can be accomplished by implementing processes and practices that are culturally appropriate, account for perpetrator manipulation, and monitor compliance. Judges should not allow proceedings to become a manipulative tool for the perpetrator.

Courts should share information with other courts and utilize review hearings to promote accountability. If there are concurrent court proceedings, the court must ensure that the orders do not conflict. If the perpetrator is non-compliant, he should be confronted since non-compliance lowers the likelihood of his achieving non-violence. The non-compliance must also be taken into account in safety planning for the victim parent and children.

☐ Is the court sending a consistent message that there is zero tolerance for domestic violence?

- ✓ Is the focus on the safety of the victim parent and children?
- ✓ Is there a focus on the perpetrator's behavior?
- ✓ Is the court sending the message that the abusive behavior is that of the perpetrator, not the victim?
- ✓ Is there recognition that safety planning for the victim parent and children is an integral part of perpetrator accountability?
- ✓ Has the agency attempted to find and work with the perpetrator?

JUDICIAL PROCESS (cont.)

- ✓ Has the perpetrator been brought before the court?
 - ✓ Is the agency working directly with the perpetrator and not through the victim parent or children?
 - ✓ Are the lawyers appearing in court aware of and giving consideration to the growing body of knowledge on domestic violence?
 - ✓ Is the responsibility for changing the abusive and violent behaviors being placed on the perpetrator and not on the victim parent and children?
 - ✓ Does the judicial process enhance the safety of the victim parent, the children, the agency workers, and all service providers?
- Does the process allow the perpetrator to receive the services and opportunities needed to move from perpetrator to safe and stable parent and partner in culturally appropriate ways?
- ✓ Does the perpetrator experience respectful treatment in court?
 - ✓ Does the perpetrator understand the process?
 - Have the orders, including restraining and no-contact orders, been explained in detail?
 - ✓ Does the perpetrator have the capacity to follow court orders and the ability to pay for services when so ordered?
 - ✓ Were court sessions and agency services offered in the perpetrator's primary language?
 - ✓ Is the focus on the behaviors, attitudes, and responsibilities of the perpetrator rather than on shaming or blaming?
 - ✓ Is the perpetrator given an opportunity to demonstrate a capacity to change and rebuild his relationship with the children?
 - ✓ Is the perpetrator prevented from trying to use culture as an excuse for the abusive behaviors?
 - ✓ Is there an understanding of both the positive and negative aspects of the culture, including the perpetrator's positive traditions and positive role models of fatherhood?
- If the victim parent is not in compliance:
- ✓ Was the violation in response to the perpetrator implicitly or explicitly threatening the victim parent or children?
 - ✓ Has there been an incident that made the victim parent or children feel unsafe?
 - ✓ Was the violation an attempt to protect the victim parent, the children, or a third party?
 - ✓ Was the violation an inappropriate response to the perpetrator's non-compliance?
 - ✓ Is it necessary to revise the order to protect the victim parent or children?
 - ✓ Has the court considered the violent context in which the victim parent must make decisions?
- Are review hearings being held often and regularly?
- ✓ Is the order still adequate?
 - ✓ If the victim parent and children are not safe, was the order modified?
 - ✓ Have there been changes in the family structure? Has the perpetrator moved out?
 - ✓ Are there newly discovered needs that must be addressed?
 - ✓ Is there monitoring and consequences for non-compliance?
 - ✓ Are there consequences for each act of violence, each incident of non-cooperation with treatment providers, and each violation of the order?
 - ✓ Are community service obligations imposed for non-compliance?
 - ✓ Is the perpetrator being held in contempt, including incarceration if appropriate?

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What Makes a Domestic Violence Court Work?

Lessons from New York

By Robyn Mazur and Liberty Aldrich

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The 1990s witnessed a sea change in the criminal justice response to domestic violence. For centuries, domestic violence had been perceived as a private affair—a personal matter between disputants. Courts did not handle domestic violence cases in large part because domestic or family violence often was not illegal. It took years of hard work from advocates to change this situation.

Even after statutes and case law had made it clear that domestic vio-

lence was against the law, many judges, police officers, and other criminal justice professionals believed that legal intervention was a waste of resources. Many simply didn't take domestic violence seriously—an attitude that was reinforced when many victims dropped charges and returned, seemingly voluntarily, to the arms of the accused batterer.

What was missing from the system was an understanding of the complexities of domestic violence, especially the powerful social and economic ties that bind victims to their abusers. And, to be fair, there was not a large body of knowledge to build on in the field—no one knew what worked with these difficult cases. While the reasons for the criminal justice system's failures could be subtle, the consequences were plain as day: in all too many instances, either perpetrators were never brought to court or their cases were quickly dismissed. And domestic violence continued unabated. The FBI estimates that a domestic violence crime is committed at a rate of once every fifteen seconds.¹ According to conservative estimates, one million women are battered by an intimate partner annually.² Other sur-

veys say the number assaulted each year is as high as four million.³

These staggering numbers and the consciousness-raising efforts of domestic violence advocates have led, during the last twenty years, to significant changes in the criminal justice response to such offenses. Perhaps the greatest changes occurred in the 1990s, with the passage of the federal Violence Against Women Act and the infamous O.J. Simpson trial, which focused national attention on domestic violence. This increased attention on domestic violence resulted in, among other things, the passage of mandatory arrest laws, an increase in funding for services for victims, and the creation of special domestic violence prosecution and police units. At the same time, there was a parallel movement taking place within state court systems. More and more judges and attorneys became frustrated with seeing the same litigants before them time and time again. These system insiders began to search for new tools, strategies, and new technologies that could help them address difficult cases where social, human, and legal problems collide. The result was the creation of "problem-solving courts," a

reform effort designed to improve case outcomes for those involved with the justice system and their communities. It should come as little surprise that domestic violence advocates and problem-solving court innovators were both attracted to the idea of creating a specialized court to address domestic violence. Today, there are more than 300 courts nationwide that have special processing mechanisms for domestic violence cases.⁴

As domestic violence courts spread across the country, many jurisdictions are beginning to wrestle with questions about how to administer these courts effectively. In New York, under the leadership of Chief Judge Judith S. Kaye, the state court system has developed or is planning sixteen domestic violence courts, including six recently-launched “integrated domestic violence courts,” in which the presiding judges handle all issues—both criminal and civil—affecting a single family.

This document is designed to communicate the basic lessons of domestic violence courts in New York. The goal is to provide judges, attorneys, court administrators, and others with the benefit of New York’s experience—experience that has run the gamut from densely populated urban communities to suburban and even rural settings and from courts dedicated exclusively to handling felonies to high-volume courts that handle up to 3,000 misdemeanors a year. Each of New York’s courts has also experimented with different ways of monitoring defendants and providing services to victims. Through consultation with partner agencies and experts in the field, as well as through trial and error, New York’s domestic violence courts have developed and field-tested techniques that have helped improve victim safety and enhance defendant accountability.

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Confronting the Challenge of Domestic Violence

The number of domestic violence crimes in New York is overwhelming. It is estimated that approximately 200,000 New Yorkers are victimized by physical violence each year.⁵ And, in New York City alone, Safe Horizon, a victim-assistance agency, helps more than 900 people per month obtain orders of protection.⁶

The resulting domestic violence cases constitute about 20 percent of all cases that enter the criminal court system.⁷ This load of cases has led the state’s judicial leadership to search for new responses. As the state’s chief judge, Judith S. Kaye, has written:

One possible judicial response to the current situation is to continue to process domestic violence cases as any other kind of case, and to continue to observe systemic failures. Another response, however—the problem-solving response—is to try to design court programs that explicitly take into account the special characteristics that domestic violence cases present. If domestic violence defendants present a particular risk of future violence, then why not enhance monitoring efforts to deter such actions? If victims remain in abusive situations due to fear for their own and their children’s well being, then why not provide links to services and safety planning that may expand the choices available to them? If cases are slipping between the cracks of a fragmented criminal justice system, then why not work together to improve coordination and consistency?⁸

As Kaye makes clear, domestic violence is not like other crimes: it does not involve violence between strangers, like a barroom brawl, but violence between intimates. Victims, under the influence of their abuser even after an arrest, are often isolated and reluctant to prosecute. The abuser may reinforce these feelings through additional threats and abuse, which may make the victim reluctant to take steps to protect herself. These simple facts make it more difficult to prevent and prosecute crimes of domestic violence. Any effort to break

this dangerous cycle must stress both intensive victim service provision and defendant accountability.

The New York State Model

New York’s domestic violence courts were designed from the beginning to take this challenge head-on. The first domestic violence court in the state opened in Brooklyn in 1996, handling felony-level domestic violence cases. The model was designed to overturn the “business as usual” approach to domestic violence. The court featured a single presiding judge, a fixed prosecutorial team, and enhanced staffing to monitor defendant compliance and provide assistance to victims.

The court also sought to change the way the criminal justice community viewed domestic violence. Through education and partnerships, the court sought to stimulate a more coordinated response to domestic violence. For example, the court established a “court partners” meeting, which includes judges, court personnel, victim advocates, prosecutors, defense attorneys, probation and parole officers, representatives from batterers programs, and a variety of social service agencies. Convened every six weeks, the partners meeting allows the various agencies to exchange information and ideas on the most effective way to respond to domestic violence. New ideas have led to new action. Discussions at partners meetings revealed that many offenders were leaving prison and did not know that the terms of their original order of protection were still in effect. In order to ensure that the offenders could no longer plead ignorance, the domestic violence court instituted a procedure that required parolees to come back to the court for a formal review of the terms of their order of protection.

There are encouraging signs that the Brooklyn court model is making a difference. Dismissals have been cut in half since the court’s opening—from 8 percent to 4 percent.⁹ The court has offered intensive services, such as housing, job training, and safety-plan-

ning, to virtually every victim with a case pending. Independent researchers from the Urban Institute concluded that “victim services are clearly expanded under the specialized court, in that all victims are assigned an advocate and receive a protection order.” It also found that “the District Attorney’s Office [is] more likely to indict cases with less severe police charges in order to bring the enhanced defendant monitoring and victim services resources to these cases.” And while conviction rates didn’t change under the domestic violence court, the method of reaching disposition did: “Convictions by guilty pleas were more common and trials were less common . . . Even when accounting for other relevant factors (such as factors relating to evidence), plea bargaining is more likely to result from use of the court model itself. This represents a cost-savings to the court system.”¹⁰

Guided by the success of the Brooklyn model, the New York State Unified Court System subsequently developed domestic violence courts in several other counties. To date, there are domestic violence courts in operation or in the planning stages in ten jurisdictions in both felony and misdemeanor courts, and both urban and suburban jurisdictions. The inclusion of misdemeanors has added an important dimension to the model, testing the efficiency of a high-volume court where judges cannot leverage substantial jail time to enforce compliance.

In addition to the domestic violence felony and misdemeanor court models, the state court system is also piloting “integrated” domestic violence courts. These multijurisdictional courts are dedicated to the idea of “one family—one judge.” They allow a single judge to oversee criminal cases, orders of protection, custody, visitation, and divorce matters for one family. From a practical perspective, these courts simplify the court process for families in distress, creating an environment where litigants no longer have to navigate multiple court systems simultaneously

Multijurisdictional courts allow a single judge to oversee criminal cases, orders of protection, custody, visitation, and divorce matters for one family.

and reducing the risk that they will receive conflicting orders.

Principles

Based on the collective experience of the New York State domestic violence courts—misdemeanor, felony, and integrated—several core principles have emerged. While each domestic violence court must address the needs of its own community, this list highlights the building blocks of a successful domestic violence court: victim services, judicial monitoring, accountability, and coordinated community response.

Victim Services

Complainants in domestic violence cases have unique needs and concerns. Unlike typical assault victims, they are often dependent on their assailant for economic assistance, have children together with him, or are even living with his family.¹¹ They may also be threatened by the defendant or his family during the course of a case. These factors and others greatly complicate domestic violence cases and make the prompt and effective provision of social services to victims of paramount importance.

• **Provide victims with immediate access to advocates.** Victim safety is the true cornerstone of domestic vio-

lence courts. Every victim should be given immediate access to an advocate who can provide safety planning and explain court procedures. Comprehensive victim advocacy should include long-term services as well as access to counseling, job training, immigration services, child services, and other programs aimed at improving self-sufficiency. A victim should remain paired with her advocate throughout the pendency of the case (i.e., from police response through post-disposition).

At the Brooklyn Felony Domestic Violence Court, advocates are drawn from two sources: the district attorney’s office and Safe Horizon, an independent victim advocacy organization. Both have offices in the courthouse, giving them easy access to victims and court staff. Their services are not exactly the same, however: advocates from a district attorney’s office may be compelled to give victim information to the prosecutor—even if the victim does not want the information to be shared. Independent victim advocates, on the other hand, have greater flexibility to keep information confidential. In Brooklyn, complaining witnesses may choose to see an independent advocate if they are uncomfortable with the district attorney’s advocate. This arrange-

ment takes advantage of the strengths of both systems without sacrificing victim confidentiality.

- **“Frontload” social services.**

Advocates should make linkages with social service agencies, emergency shelter, food, and civil legal services. This makes sense in human terms (providing people in crisis with help as soon as possible) and in terms of improving court outcomes. Studies have shown that when victims receive assistance early in the court process, they are much more likely to remain engaged in their cases. Victims are more likely to follow through with a case when they clearly understand the legal process.

- **Keep victims informed.** In addition to providing general information and referrals, advocates should provide victims with up-to-date information on their cases. This reduces the burden on the victim to constantly reappear in court to find out the status of her case, and ultimately reduces her chances of being placed in further danger. It also gives the victim the feeling that the system cares about her welfare; this may, in turn, persuade the victim to do all she can to participate in the prosecution.

- **Schedule cases promptly.**

Another way to enhance victim safety is to schedule domestic violence cases promptly so that victims can get an order of protection quickly. The longer the victim must wait for legal action, the longer she is at risk. The sooner a case can be heard, the sooner assistance can be provided. In Westchester County, for instance, felonies are transferred immediately to the domestic violence court after the initial filing of an indictment. This allows for the rapid issuance of orders of protection, and sends the message to defendants that the case is being taken seriously. It also allows the court to link victims to services as early in the process as possible. Experience indicates that delays give the batterer more time to convince the victim to become uncooperative.

- **Create “safe places” within the courthouse.** Court planners should recognize

the need for victim safety and provide security and comfort for victims accordingly. Design elements can include providing private space to speak with advocates and separate waiting areas near the victim services office. The Bronx Misdemeanor Domestic Violence Court, in fact, has a separate safe waiting area in the victim services office. The waiting area is staffed by victim advocates; victims are escorted to and from the courtrooms when they need to testify.

Judicial Monitoring

Domestic violence courts seek to take advantage of the coercive and symbolic authority of judges. There is good reason for this: research indicates that ongoing judicial monitoring may be the most effective technique to reduce domestic violence recidivism.¹² Monitoring ensures that repeat offenses will not be tolerated and ensures that the full weight of the judge’s authority is directed at stopping the violence.

- **Assign a permanent judge.**

Assigning a single judge to handle criminal domestic violence cases from arraignment through sentence and compliance helps ensure consistency. It also helps the judge become well-versed in responding to the special issues presented by domestic violence. Having a single judge preside from the beginning to the end of a case also helps the judge make more informed decisions. The judge’s ability to hold a defendant accountable is compromised when the defendant has more information than the court and can “play” the system.

- **Supervise defendants continuously.** Domestic violence courts should use intensive judicial supervision from arraignment through disposition. For defendants whose sentences include probation, judicial monitoring should continue post-disposition as well. Intensive monitoring can come in many forms. In felony-level cases, a judge can require defendants to appear in court every two weeks while a case is pending to ensure that they have enrolled in a batterers treatment program (often a

condition of bail) and to ensure that they are refraining from contact with the victim. Later, judges can use similar techniques to ensure compliance with the sentence. Frequent reporting means that if a violation of a sentence does occur, the court is in a position to respond immediately.

- **Explore new methods of judicial monitoring.** Courts should always look for ways to enhance judicial monitoring. Curfews, phone check-ins, and ankle monitors are all techniques that courts have explored. For example, the Brooklyn Domestic Violence Court established a partnership with the New York State Department of Parole that requires new parolees to appear before the judge upon their release from prison. During their appearance, the judge carefully goes over the conditions of their release, with particular attention focused on the stipulations contained in the order of protection. Thus, the court found a new way to expand the role of the judge in monitoring offenders.

- **Dedicate additional staff and resources for monitoring.** Judges can’t do it alone. In New York’s domestic violence courts, judges rely on case managers to keep track of victim needs and violations by defendants. Case managers can assist the judge by staying in constant contact with off-site partners and tracking defendant compliance with court orders.

- **Create a separate compliance docket if there is high volume.**

Particularly in busy courthouses, it may make sense to create a separate “compliance courtroom” in which a judge is assigned to monitor offenders’ compliance after imposition of the sentence. The compliance judge can quickly identify violations and refer the case back to the sentencing judge as necessary. In the Queens Misdemeanor Domestic Violence Court, for example, the volume is so high that a separate compliance courtroom was established in order to adequately address each case and get reports on each defendant in a timely manner.

Accountability

It is common for both the complaining witness and the defendant in a domestic violence case to believe that the victim brought the violence on herself. The court can respond to this by making sure that defendants understand that they are directly accountable to the judge for their behavior towards the complainant and their compliance with court orders. Domestic violence courts can encourage another kind of accountability as well, holding government and nonprofit partners accountable for serving victims and monitoring defendants in the most effective manner possible.

- **Build strong relationships with service providers.** Information is crucial to any effort to promote accountability. Strong relationships with service providers, such as batterers intervention programs and substance abuse treatment providers, ensure that when a defendant is noncompliant, the court is notified right away and can act accordingly. In Buffalo, service referrals are made through a clinical center located right in the courthouse, ensuring that information flows smoothly both from and to the court.

- **Hold batterers programs accountable.** Judges and case managers should research local batterers programs to determine which ones will reinforce the court's message to defendants. Additionally, the court needs to work together with batterers programs so that they know what they have to tell the court and why. One batterers intervention program in Brooklyn, not accustomed to being accountable to the court, reported as a matter of course that all offenders sentenced to the program were in compliance even if they were not. When the court realized this, it stopped referring defendants to that program. This example highlights the need for constant communication with off-site programs.

- **Think creatively.** In many jurisdictions the local probation department can provide the court with specialized domestic violence officers to help

supervise offenders. Probation and parole departments can monitor offenders even when they are no longer being monitored directly by the court. And local nonprofits can pitch in as well. In Queens, the domestic violence court has a representative from a local batterers intervention program sitting in the courtroom in order to conduct an immediate intake for each sentenced offender. This process eliminates a step from the process—sending the offender off-site to participate in an assessment interview—and thus improves efficiency and accountability.

- **Use technology to enhance access to information.** Computer technology can streamline the information process and ensure that relevant information flows continuously, quickly, and reliably to all dedicated personnel. Dedicated domestic violence courts use technology to help avoid contradictory rulings and to make more informed decisions about sentencing. New York has developed a specialized domestic violence technology application to allow judges, case managers, district attorneys, defense attorneys, probation officers, and community partners to have immediate access to important information regarding each domestic violence case.¹³

Coordinated Community Response

To combat domestic violence, all segments of a community have to work together to send a consistent message that violence is not acceptable. Domestic violence courts can play a critical role in raising public consciousness and convening disparate partners to improve interagency communication.

- **Create strong linkages with a wide range of partners.** Because of its complexity, domestic violence inevitably involves a variety of local systems, agencies, and individuals. Recognizing this, domestic violence courts should aspire to expand the range of organizations that are involved in the court's efforts. Partnerships between the domestic

violence court and the many agencies that provide victim assistance/advocacy and defendant monitoring help to strengthen the message to the defendant—and to the community—that domestic violence is not tolerated.

- **Convene regular meetings with criminal justice and social service partners.** Interagency collaboration is crucial to ensuring communication, consistency, and continuing education about the court and domestic violence. The domestic violence judge can be a catalyst, providing leadership to the collaboration. Judges should invite all of the court's partners—representatives from the prosecutor's office, the defense bar, court officers, victim advocates, resource coordinators, batterers intervention programs, and probation—to participate in regular meetings. The meetings create an opportunity to clarify and understand the court's expectation of everyone's roles. Partner meetings can also focus on strengthening outreach to underserved communities and devising preventive education models. Partners, meetings in Westchester County, for example, frequently draw representatives from as many as fifty agencies to share new strategies and form new linkages.

- **Provide court personnel and partners with domestic violence education and training.** Domestic violence courts can continually educate and update staff and partners by scheduling regular court-sponsored trainings. In New York's domestic violence courts, trainings have been held on a variety of topics featuring a wide range of both local and national experts. Trainings have ranged from "Domestic Violence 101" presentations held during Domestic Violence Awareness month to more in-depth day-long presentations focused on specific issues such as the overlap of child maltreatment and domestic violence. The goals of these trainings are really twofold—to provide ongoing support and reinforcement on domestic violence issues to court personnel and partners as well and to highlight the court's commitment to

handling domestic violence cases in an educated and serious manner.

Obstacles

Creating a domestic violence court is not without its challenges, of course. A domestic violence court is, by its nature, a collaborative enterprise requiring the buy-in of numerous agencies including court administrators, judges, prosecutors, victim advocates, and, where possible, the defense bar. Each of these stakeholders will have their own concerns. Addressing as many of these issues up front will help prevent problems down the road.

• **Defense objections.** Defense counsel opposition often focuses on the court's use of intensive judicial monitoring and predisposition conditions of release. Planners can help address this issue by including defense counsel in all aspects of court development and implementation. New York domestic violence courts have discovered that there are in fact issues related to domestic violence that engage the defense bar (i.e., battered women defendants, defendants with mental illness) and have used these topics as a catalyst to encourage their participation. These issues are worthy of special attention because both defense counsel and victim advocates agree that these cases present unique difficulties (e.g., battered women defendants are themselves victims of domestic violence and defendants with mental illness are hard to place within current criminal justice sanctioning schemes) and might be better solved through a domestic violence court. Defense counsel have also objected that referring to a court as a "domestic violence court" is inherently prejudicial. They felt that the label "domestic violence" presupposes the guilt of all court participants. In response to these concerns, the Brooklyn court removed all signage from the courtroom, although the court part is still officially known as the Brooklyn Felony Domestic Violence Court, and remains dedicated to responding to the issues of domestic violence. Through inclusion of defense

counsel in meetings as well as by taking pains to preserve due process protections, domestic violence courts can work to mollify the defense bar's concerns.

• **Judicial objections.** Judges may feel that their involvement in a specialized court will compromise their objectivity. Some judges have expressed the opinion that domestic violence trainings force them to be too closely aligned with the victim's perspective and that additional information from case managers could be considered *ex parte* communication. New York Chief Judge Judith S. Kaye has mandated that all judges that hear family-related cases participate in domestic violence training. Understanding the dynamics of domestic violence does not mandate any particular finding in any individual case. And judges who have presided over domestic violence courts have not found their objectivity impaired. After spending three years in the Bronx misdemeanor domestic violence court, Judge Ethan Greenberg has seen firsthand the benefits of domestic violence courts. "I am able to make better decisions with the enhanced training and information that I am given," he said.

• **Partner objections.** Criminal justice professionals (i.e., attorneys, police, probation officers) may claim with good reason that they are too short-staffed to provide additional scrutiny to domestic violence cases. Arranging for a site visit to an operational court can help mollify these concerns. Agencies with experience working with domestic violence courts in New York have often found that their additional efforts pay off in savings down the road. For example, prosecutors may have to redeploy personnel in order to provide a dedicated team to the part. Although difficult at first, this arrangement may save staff time in the long run by minimizing adjournments. Additionally, partner agencies should be encouraged to work together to look for additional funding opportunities that will help fill gaps in staffing.

• **"Burnout."** After months of planning and implementation, the realities

of handling a caseload consisting solely of domestic violence can take its toll on the front-line judges and attorneys in a domestic violence court. Burnout is a widespread problem for professionals who work with domestic violence victims and perpetrators. The cases are highly emotional and, in many situations, the parties return to court repeatedly. Burnout can affect everyone from the judge to the victim advocate to the case manager. Domestic violence courts should not be shy about seeking out professional assistance, providing staff with the tools they need to prevent "secondary trauma."

Defining Success

Many domestic violence advocates are hesitant to embrace the idea that domestic violence courts are "problem-solving courts." There are substantial differences between domestic violence courts and other problem-solving courts. Many of these differences stem from how success is measured and to whom services are offered. Drug courts can easily look to see whether defendants are successfully completing their court-mandated drug-treatment programs. But domestic violence courts are not targeted at "rehabilitating" defendants. Indeed, services are offered primarily to help victims achieve independence. The primary "service" offered to defendants is batterers programs. But in New York domestic violence courts, batterers programs are used by domestic violence courts primarily as a monitoring tool rather than as a therapeutic device. This approach is based on the research about batterers programs, which is extremely mixed. It is unclear whether these programs have any impact at all in deterring further violence.

Other methods of measuring recidivism present substantial challenges. First, one might turn to the victims to track re-offending. After all, they are not defendants—they aren't fingerprinted and the court has no legal hold on them. Moreover, many victims are loath to "re-live" their victimization by

participating in follow-up studies. As a result, it is often difficult to track victims over the long haul. For the same reasons, it can also be difficult to find out whether domestic violence courts are meeting victims' service needs.

Without victim information, researchers may be forced to use official records, which track only arrests and not unreported offenses, to try to understand the courts' impact on recidivism. Additionally, court records have other problems. Official records rarely record whether an offense is committed against the same victim, and sometimes not even whether a rearrest is a domestic assault or "regular" assault.

Domestic violence courts in New York keep track of case numbers, dispositions, and the number of victims linked to services in order to assess their progress. This information is collected quarterly and distributed to the judges, court administrators, and clerks. But more is needed. Because it is difficult to identify a single standard for defining success, it has been difficult to show whether or not these specialized courts are making a difference. This debate echoes the debate over whether or not batterers programs have an impact on either recidivism or safety. As more research is being done in this area, domestic violence courts will have to modify their procedures to ensure that they are consistent with the best practices in the field.

Funding

Finding funding, both initially and for ongoing support, has proven to be an obstacle to wider implementation of domestic violence courts. Although the federal government provided a tremendous incentive to launch these specialized courts, they cannot be expected to provide funding over the long term.

As with all courts, resource allocation is always a challenge. Dollars for the extra resources necessary for a domestic violence court are often hard to come by. However, domestic violence courts do have the potential to attract funding from an array of

sources—they do not have to rely exclusively on state judicial budgets. Fundraising efforts should capitalize on the courts' ability to increase victim safety and improve community well-being. Planners should seek out partnerships with community-based organizations in order to strengthen applications both to government and private funders who may be interested in issues like women's health, families, and other topics related to domestic violence.

Conclusion

While these obstacles should not be minimized, domestic violence courts have been able to change the way that the criminal justice system approaches domestic violence cases. Domestic violence is a unique crime that demands innovation from the entire criminal justice system. The progressive nature of domestic violence crime—which tends to become more and more violent—underscores that courts cannot look only at individual cases. They must look for broader system outcomes, seeking to reduce recidivism, increase safety for victims, and improve inter-agency collaboration.

Domestic violence courts alone cannot eliminate family violence, but they can play an important role, increasing accountability for defendants and safety for victims. This is the lesson of New York's experience with domestic violence courts.

Notes

1. N.Y. STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, DOMESTIC VIOLENCE DATA SHEET (2001).

2. Judith S. Kaye and Susan K. Knipps, *Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach* [herein after *Judicial Responses*], 27 W. ST. U.L. REV. 3 (1999-2000).

3. *Id.*

4. SUSAN KEILITZ, NATIONAL CENTER FOR STATE COURTS, SPECIALIZATION OF DOMESTIC VIOLENCE CASE MANAGEMENT IN THE COURTS: A NATIONAL SURVEY (2000).

5. N.Y. STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, *supra* note 1.

6. SAFE HORIZON, HELP IN THE COURTS FACT SHEET (2000).

7. Amy Waldman, *Striking Back*, N.Y. TIMES, June 28, 1998.

8. Judith S. Kaye and Susan K. Knipps, *Judicial Responses* 5, 6.

9. LISA NEWMARK ET AL., URBAN INSTITUTE JUSTICE POLICY CENTER, SPECIALIZED FELONY DOMESTIC VIOLENCE COURTS: LESSONS ON IMPLEMENTATION AND IMPACTS FROM THE KINGS COUNTY EXPERIENCE (Oct. 2001).

10. *Id.*

11. It is worth noting that domestic violence is not limited to male-female relationships and is not always perpetrated by men. This document uses "she" in order to refer to the complainant/victim and "he" to refer to the defendant for simplicity and in order to reflect the results of studies that show approximately 95 percent of domestic violence victims are female.

12. EDWARD GONDOLF, PENN. COMM. ON CRIME AND DELINQUENCY, THE IMPACT OF MANDATORY COURT REVIEW ON BATTERER COMPLIANCE: AN EVALUATION OF THE PITTSBURGH MUNICIPAL COURTS AND DOMESTIC ABUSE COUNSELING CENTER (1998).

13. See PAMELA YOUNG, CENTER FOR COURT INNOVATION, AN INFORMED RESPONSE: AN OVERVIEW OF THE DOMESTIC VIOLENCE COURT TECHNOLOGY APPLICATION AND RESOURCE LINK (2001).

