



National Association for Court Management

2017 GUIDE

A Guide to Domestic Violence Cases

This guide is dedicated to helping courts
intervene effectively in domestic violence cases.



A Guide to DOMESTIC VIOLENCE CASES



National Association for **Court Management**

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What Is Domestic Violence?

“Domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Domestic violence can happen to anyone regardless of race, age, sexual orientation, religion, or gender. Domestic violence affects people of all socioeconomic backgrounds and education levels. Domestic violence occurs in both opposite-sex and same-sex relationships and can happen to intimate partners who are married, living together, or dating.” *U.S. Department of Justice, Office on Violence Against Women.*
<http://www.justice.gov/ovw/domestic-violence>

This definition of domestic violence is narrower in some ways and broader in other ways than the legal definition of domestic violence under most state statutes. This definition addresses the sociological behavior and definition of domestic violence. It more narrowly defines the relationships that fall under the definition of “domestic violence.” Yet it also includes behavior that would not be a crime under the law. Courts will encounter many cases labeled “domestic violence” under the criminal law that do not fit the above definition.

The domestic violence crimes that involve a power and control (or coercive control) relationship between intimate partners are the main focus of this guide.

In no other crime will a court system encounter victims and abusers who often still live together,

victims who attend court with the abuser, and cases that involve a level of continuing danger because of the ongoing relationship and the dynamics that exist.

Additionally, because of these relationships, victim behavior is often contradictory, counterintuitive, and perplexing to court staff, court administration, and judges, leading to inappropriate and dangerous justice system responses.

Other Types of “Domestic Violence”

Many situations labeled “domestic violence” do not fit under the above definition and do not pose the additional challenges presented by coercive-controlling intimate-partner crimes.

Family Violence Relationships—The type of coercive-controlling violence described above typically occurs between intimate partners—those who are now or at one time were married to each other, those who have a child in common, and those who have lived together as intimate partners now or in the past. Beyond intimate partners, though, are individuals in other relationships who, under many state statutes, qualify for protective orders and whose cases are categorized as “domestic violence.”

These broad classifications can include non-intimate housemates; non-intimate dating partners; family members related by blood, marriage, adoption, or legal custody; and other legal relationships, such as guardians, wards, custodians, or foster parents.

Differentiated Domestic Violence—When domestic violence became an openly discussed public health and safety issue in the 1970s, victims were seen as “battered women” and men as

their “batterers.”¹ These one-size-fits-all tags reinforced the idea that domestic violence is always defined by severe physical and emotional abuse. Over time, though, research has come to show that not all abusive behavior displays the characteristics of coercive controlling violence and that other patterns of intimate-partner violence exist.

Awareness of these additional patterns—and particularly the context in which the violence has occurred—is helpful in knowing what services to provide, shaping parenting plans, determining legal custody, protecting the victim, and holding the offender accountable.² Nevertheless, caution is advised. “While critics concur that not all violence is the same—rather it is important to assess the context of violent acts—they do not generally endorse differentiation of violence into various types, or they consider it premature to do so. They are wary of the unintended negative consequences of the deployment of typologies, especially the misuse of information from the assessment and dangers of incorrect categorization.”³

In “Differentiation Among Types of Intimate Partner Violence,” Kelly and Johnson (2008)⁴ describe these additional patterns as:

- **Situational Couple Violence**—a common type of aggression between married couples and cohabiting partners; perpetrated by both men and women; results from disputes that occasionally escalate into physical violence; one or both partners have a low ability to manage conflict or anger; more often involves minor forms of violence, such as pushing, shoving, or grabbing.

- **Separation-Instigated Violence**—an atypical and serious loss of psychological control; typically limited to one or two episodes at the beginning of or during separation; ranges from mild to severe violence; no prior history of violence in the relationship; seen symmetrically in both men and women; more likely to be perpetrated by the partner who is being left.
- **Violent Resistance**—occurs as an immediate reaction to an assault and is intended primarily to protect oneself or others from injury; often perpetrated by women; usually ineffective and often results in their own injury.

Mental Illness—Is an abuser’s behavior toward a victim attributable to mental illness? In her 2014 note, “Domestic Violence Homicide-Suicide: Expanding Intervention Through Mental Health Law,” Maryum Jordan acknowledges the debate about the relationship between domestic violence and psychiatric disorders. One side of the debate argues that the number of abusers with mental illness is lower than believed; the other side suggests that in cases with re-assault or severe abuse, mental health disorders may be present.⁵

Calling the link between mental illness and domestic violence inconclusive, the author notes that the connection is stronger in those who have expressed suicidal ideation.⁶ “Batterers who have expressed suicidal ideation are a significant focus for domestic violence intervention efforts. A batterer’s suicidal intention—along with indicating potential harm to him or herself—is recognized as a risk factor that may increase the chance of

¹ J. B. Kelly and M. P. Johnson, “Differentiation Among Types of Intimate Partner Violence,” *Family Court Review* 46 (2008): 476, 476-99; online at <http://ocadvs.org/wp-content/uploads/2014/04/Differentiation-Among-Types-of-Intimate-Partner-Violence.pdf>.

² L. Frederick, “Effective Interventions in Domestic Violence Cases: Context Is Everything,” Battered Women’s Justice Project, Minneapolis, May 2001.

³ J.R. Johnston and N. Ver Steegh, “Historical Trends in Family Court Response to Intimate Partner Violence: Perspectives of Critics and Proponents of Current Practices,” *Family Court Review* 51 (2013): 63-73.

⁴ Kelly and Johnson, *supra* n. 1.

⁵ M. Jordan, “Domestic Violence Homicide-Suicide: Expanding Intervention Through Mental Health Law,” *Harvard Journal of Law and Gender* 37 (2008): 553, 545-68.

⁶ *Id.* at 554.

intimate partner homicide.”⁷ In nearly one-third of the cases in which American women are murdered by their intimate partner, the intimate partner commits suicide.⁸

Mental illness is not an excuse for—and may be rarely a cause of—domestic violence, and abusers must be held accountable. But when an abuser threatens to kill not only the victim but him or herself, the risk is intensified, and mental health intervention may be indicated.

Coercive Controlling Domestic Violence

It is important for courts to recognize “coercive control” in domestic violence cases and to understand how this type of relationship might affect the cases in their courtrooms. By understanding how a power-and-control dynamic can impact the behaviors of both parties, the court staff will be able to focus on safety for the parties and court staff, procedural justice for both victims and abusers, and developing systems that respond to victims’ needs while holding offenders accountable.

This guide often refers to victims as female and abusers as male, not because there are no male

victims of domestic violence, but because research suggests that the majority of domestic violence victims in coercive controlling relationships are women.

As is evident from the definition above, domestic violence can occur in heterosexual and homosexual relationships, and abusers can be both male and female, but the majority of victims are female. From 1993 to 2005, the average annual domestic violence rate per 1,000 persons (age 12 or older) for intimate partners or relatives was 5.9 for females and 2.1 for males. (National Institute of Justice Special Report—Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges. <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>.)

Although “some sociological research based on self-reporting finds equal rates of male and female partner conflict (including minor physical assaults),” the behavior that is likely to violate most state and federal criminal and civil protective order statutes is typically perpetrated by males. (NIJ Report 2009.)

⁷ *Id.*

⁸ D. Adams, *Why Do They Kill?: Men Who Murder Their Intimate Partners* (Nashville, TN: Vanderbilt University Press, 2007), p. 4.

I. WHY ARE DOMESTIC VIOLENCE CASES DIFFERENT?

A. Introduction

Domestic violence cases are different because there are strong emotional ties between the victim and the abuser. They are in an intimate relationship, may share property together, be financially dependent on each other, and may have children in common. The victim may be seeking legal sanctions for reasons other than desiring punishment. Victims of domestic violence may only seek to stop the violence, not necessarily to punish the assailant or even to end the relationship.

Domestic violence cases, unlike crimes of violence involving strangers, tend to appear repeatedly on the court's docket in cases between the same parties. These cases present the court with unique concerns, including both the safety of litigants as well as the safety of court personnel. Heightened safety concerns arise from the intimate relationship between the abuser and the victim. This relationship increases the potential for danger in the following four ways:⁹ 1) the domestic violence abuser typically has unlimited access to the victim, he typically knows the victim's daily routine or has ready access to information about the victim's whereabouts; 2) the violence occurs in the privacy of the home, where its only witnesses are under the control of the abuser; 3) the abuser exercises a pattern of physical, social, psychological, or economic control over the intimate partner; and 4) separation does not always end the abuse. Because perpetrators of domestic abuse seek to control their intimate partners, they may resort to (or escalate)

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physical violence in order to regain control after a separation. Court intervention in abusive behavior may increase the abuser's sense of control and, thus, the risk of physical violence.¹⁰

According to intimate-partner-violence studies, from 1993 to 2010, the overall rate of intimate-partner violence in the United States per 1,000 persons (age 12 or older) was 3.6.¹¹ Familiarity with domestic violence issues means knowledge of state and federal laws on a variety of subjects, including criminal law, family law, immigration, and firearms regulation. Many states enacted their own legal definition of domestic violence, giving courts broad powers to hear matters and fashion restraining orders to help people and protect family members and intimate partners. The American Bar Association created a chart, "Domestic Violence Civil Protection Orders," containing answers and information about domestic violence orders and their variance from state to state.

1. Power and Control

The word "domestic" should be construed as suggesting the close relationship between the abuser and the victim. It is the intimate relationship that exists between the victim and the abuser that makes domestic violence cases unique. Violence in a relationship occurs when one person feels entitled to exercise power and control over a partner and chooses to use abusive conduct in order to gain and maintain that control. Abuse should not be defined in

⁹ Adapted from the *New Mexico Domestic Violence Benchbook: Criminal and Civil Proceedings Involving Domestic Violence* (Albuquerque: New Mexico Judicial Education Center, Institute of Public Law, University of New Mexico School of Law, 2005), p. 1-1.

¹⁰ *Domestic Violence Guide to Civil Proceedings—Third Edition* (Lansing: Michigan Judicial Institute, 2012), p. 1-1.

¹¹ S. Catalano, "Intimate Partner Violence, 1993-2010," *Special Report*, U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Washington, D.C., November 2012; online at <https://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.

a manner requiring actual physical injury or traditionally assaultive behavior. Likewise, abuse should not be defined in a manner requiring actual criminal conduct. What is required is more than one isolated incident or instance of abuse. A pattern of such coercive behavior, having an effect of exercising power and control over another, is how we understand domestic violence today. We have become aware that such behavior often tends to escalate over time without intervention.

Below is a non-exhaustive list of abusive conduct often used to exert control and power over another.

- **Intimidation and Acts of Intimidation**—behavior employed by the abuser that makes the victim feel intimidated and apprehensive, such as making threatening gestures, casting menacing looks, destroying property, or exhibiting weapons.
- **Emotional Abuse**—conduct that verbally degrades another, name-calling, questioning one’s sanity, employing mind games, and making one feel either humiliated or guilty.
- **Isolating Another**—exerting physical control over another’s activities, limiting contact with the outside world, and exhibiting jealous behavior.
- **Denials and Minimization of Past Abuse and Blaming Others for Such Abuse**—behaviors that do not take seriously the victim’s fears and apprehension, shifting blame for one’s own behavior, and making light of abusive conduct.
- **Employing Children**—tactics that use children as messengers (causing children to create feelings of guilt) and even making threats against children.
- **Male Entitlement**—reinforcing traditional domestic stereotypes, defining and limiting another’s roles, and insisting on controlling decision-making.

- **Economic Abuse**—limiting another’s efforts or desire to work at an outside job, establishing a prescribed allowance, making one ask or plead for money, and controlling account access.
- **Coercive and Threatening Behavior**—threatening to harm someone or something in the present or future, shouting, yelling, instilling fear, and attacking someone’s self-esteem.

This list of conduct and behaviors illustrates the pattern, intent, and effect of coercion and violence that should be recognized and considered in addition to any immediate allegations before the court.

The original Duluth Power and Control Wheel was developed in 1984 by the Domestic Abuse Intervention Programs in efforts to advocate on behalf of battered women and help explain the tactics used by men in those relationships. The wheel is used in educational and clinical settings and has been adapted for a variety of settings including gender neutral contexts.

2. Intimate Partner Different than Family

Traditional legal definitions relevant to domestic violence often assumed a familial relationship and therefore worked to preclude or limit both recourse and resources for individuals existing outside a traditional familial context. Simply put, some victims may not qualify as victims. The nomenclature also limited and precluded a full understanding and consideration of the dynamics involved in addition to remedies. Both statutes and legal interpretation nationwide continue to struggle to treat intimate partners the same as family members under applicable law. Many jurisdictions today may still differ in their legal treatment of family members as juxtaposed with intimate partners, often affording varying levels of treatment for the latter. As it stands today, statutes will often necessarily narrow our statutory



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definitions of “victims” as those classifications pertain to domestic violence.

3. Who Are the Abusers and the Victims?

The short answer is that anyone may be either an abuser or a victim. Men and women of varying age, economic status, sexual orientation,

gender, race, religion, or nationality can be victims of violence. Domestic violence victims must navigate many systems in their search for safety. Their unfortunate experiences in abusive households may lead them to seek remedies in family law, juvenile dependency, emergency protective order, and criminal courts. Thus, understanding domestic violence is a formidable task.

Our understanding of the causes of domestic violence has transitioned and evolved since the last century. Contemporary studies and research also suggest the males-as-aggressors stereotype may be less true and that the sexes may be closer to symmetrical in terms of domestic violence than we previously realized.¹²

Domestic violence can happen to intimate and formerly intimate partners who are married, living together, dating, divorced, formerly dating, those who formerly lived together, and two persons who have produced a child together. To improve access for the public and promote effective judicial governance, it is important to be cognizant of both opposite-sex and same-sex relationships. Legislation and legal interpretation of legislation relative to domestic violence often assumed a heterosexual relationship. Even classifications between heterosexual and same-sex relationships lack a full treatment and contemplation of the relationships impacted by domestic violence. If our goal has been to protect all of humanity, our legal remedies for domestic violence have frequently fallen short.

Our court system must also be prepared to address the LGBTQ (Lesbian, Gay, Bisexual, Trans, and Questioning) community and members of the community whose gender identities and sociology are less shared and understood by majority groups. An understanding of intersex and asexual individuals should also be included. Relatedly, a court's use of terminology and classification relative to such can both instill trust and confidence when used correctly and create skepticism and mistrust when used incorrectly. Some terms are considered inclusive and legitimate, albeit evolving. Other labels may be interpreted as outdated and stigmatizing. As a general issue, there is no reason to believe this segment of the community is not

just as affected by domestic violence as other segments of the population.¹³

For further information on this section:

What Is Domestic Violence? The National Domestic Violence Hotline
<http://www.thehotline.org/is-this-abuse/abuse-defined/>
<https://www.theduluthmodel.org/>

B. Behaviors of Abusers

1. Out of Court – What Do They Do to Maintain Control?

Chosen and learned behaviors are thoroughly illustrated in the Duluth Model's Power and Control Wheel discussed earlier. The following list details some of the behaviors demonstrated by abusers in their everyday lives.

- charming in public but abusive at home, i.e., “Jekyll-Hyde” personality
- intimidating
- consistent, persistent attempts to control the victim
- self-centered and narcissistic
- claims to be the “real” victim
- minimizes and denies own behavior and instead blames the victim, circumstances, or others
- dependent on the victim
- exhibits jealousy and possessiveness under the guise of love
- low self-esteem, inadequate or desperate feelings once caught
- promises to change
- authoritarian and controlling of all household members
- uses children to “spy” on the other parent or threatens to harm them
- substance abuse

¹² M. A. Straus, “Gender Symmetry and Mutuality in Perpetration of Clinical-Level Partner Violence: Empirical Evidence and Implications for Prevention and Treatment,” *Aggression and Violent Behavior* 16 (2011): 279-88; online at <https://pubpages.unh.edu/~mas2/V78%20Clinical%20level%20symmetry-Published-11.pdf>.

¹³ M. J. Potocniak, J. E. Mourrot, M. Crosbie-Burnett, and D. J. Potocniak, “Legal and Psychological Perspectives on Same-Sex Domestic Violence: A Multi-Systemic Approach,” *Journal of Family Psychology* 17 (2003): 252-59.

Another tactic—“gaslighting”—can make a victim question his or her own feelings and judgment to the point where he or she begins to rely on the abuser as a primary source of information. This serves to increase an abuser’s power over the victim. The following is an excerpt from a blog article titled “What Is Gaslighting?,”¹⁴ published by the National Domestic Violence Hotline.

There are a variety of gaslighting techniques that an abusive partner might use:

Withholding: the abusive partner pretends not to understand or refuses to listen. Ex. “I don’t want to hear this again,” or “You’re trying to confuse me.”

Countering: the abusive partner questions the victim’s memory of events, even when the victim remembers them accurately. Ex. “You’re wrong, you never remember things correctly.”

Blocking/Diverting: the abusive partner changes the subject and/or questions the victim’s thoughts. Ex. “Is that another crazy idea you got from [friend/family member]?” or “You’re imagining things.”

Trivializing: the abusive partner makes the victim’s needs or feelings seem unimportant. Ex. “You’re going to get angry over a little thing like that?” or “You’re too sensitive.”

Forgetting/Denial: the abusive partner pretends to have forgotten what actually occurred or denies things like promises made to the victim. Ex. “I don’t know what you’re talking about,” or “You’re just making stuff up.”

2. In Court

Because of the need to feel in control, the abuser may attempt to intimidate the victim in an effort to stall or defeat legal proceedings.

Abusers may engage in one or more of the following behaviors:

- Prior to coming to court, the abuser may make harassing or intimidating phone calls or visits to the victim. These threats may involve violence to the victim, the children, or damage to property.
- During proceedings, the abuser may send notes to the victim or glance in such a way as to communicate authority over the victim.
- Some abusers testify about how the behavior “caused” him or her act abusively.
- Abusers may request repeated continuances to prolong the legal proceedings.
- An abuser may follow the victim into the hallway or within the courtroom.
- An abuser may make statements of profound devotion or remorse to the victim and the court. Abusers are practiced at maintaining an image of life that differs from reality. The court and attorneys may find this portrayal convincing.
- In extreme cases, victims have been assaulted as they go to and from the courthouse.

For further information on this section:

“What Is Gaslighting?” The National Domestic Violence Hotline, <http://www.thehotline.org/2014/05/what-is-gaslighting/>.

C. Behaviors of Victims

1. Out of Court – Why Do They Stay?

In 1999, Sarah M. Buel, then a clinical professor at the University of Texas School of Law, identified the “Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay.” Today, all fifty obstacles still exist. However, some have become more pronounced as our demographics change and more research is available on

¹⁴ “What Is Gaslighting?,” National Domestic Violence Hotline, May 29, 2013; online at <http://www.thehotline.org/2014/05/what-is-gaslighting/>.

the topic of domestic violence. The list below concentrates on ten reasons victims stay in today's culture and societal environments.

1. Fear of violence. Victim believes threats and fears retaliation.

The primary reason for staying is fear of violence by the abuser. "The fear of the violence is realistic. Abusers will use violence and all other tactics of control to maintain the relationship. Staying or returning to the relationship may simply be safer than leaving."

Leaving an abuser is the most dangerous time for a victim. Men who have killed their wives state that threats of separation by their partner or actual separations were most often the precipitating events that led to the murder.

2. Children's best interest. Fear of losing child custody. Keeping the family together.

A batterer knows that a victim will succumb to anything when their child is threatened. Custody battles then become another tool for the abuser. Because the victim is often not familiar with the legal system and unaware of the resources available, staying and remaining with the batterer becomes the best option.

Victims should know that legal ramifications exist in some state statutes, such as enhanced penalties and fines for those persons who commit domestic violence in which children "witnessed" acts of domestic violence in their homes.

3. Denial and guilt

Victims desperately want to believe batterers' promises to do better, promises that the abuse will never happen again. This belief is what keeps the victim from leaving.

Minimizing the abuse or denying that it even exists is what supports the belief.

When the abuse continues, the abuser often convinces the victim that but for the victim's incompetent and faulty behavior, the violence would not occur. After all, promises were made. Since victims rarely encounter anyone who has held an abuser accountable for his or her actions, victims mistakenly assume that the "something" needed to stop the abuse lies in their hands. Afterward, in court they minimize the seriousness of the incident, or they take blame for starting the violence.

4. Love

While victims want the violence to end, they do not always want the relationship to end. It is important to remember that violence in the relationship usually emerges after strong feelings for the abusive partner have developed. By then, the victim has built connections with the abuser, such as having children together, sharing a home, and planning a future. An abuser will often present a charming, loving persona especially at the beginning of the relationship. Victims often hope that the abusive behavior is just temporary and that their partner will return to being the person he or she was at the beginning of the relationship.¹⁵

5. Low self-esteem

Victims with low self-esteem often believe they cannot do better than the situation they are in, which makes them far less likely to leave than victims who have high self-esteem and can stand up for themselves. Often these victims experienced domestic violence in their childhood.

Abusers tend to prey on victims who have low self-esteem, realizing that the victim will want and need them no matter what they do. The victim stays, suffering from low self-esteem that is compounded by fear that he or she cannot make it alone without the abuser.

¹⁵ "Why Do People Stay in Abusive Relationships?," National Domestic Violence Hotline; online at <http://www.thehotline.org/is-this-abuse/why-do-people-stay-in-abusive-relationships/>.

6. Lack of education and lower-paying jobs

Education is a valuable tool in contemporary society. The less formal education a person has, the less likely he or she is able to earn a competitive wage. Victims with less formal education become dependent on their abusers as they are not able to support themselves or their children. The lack of education and strained income provides the abuser with an upper hand in feeding upon the victim's vulnerability. The victim, unable to secure employment that makes leaving possible, will stay out of necessity.

7. Victims with disabilities

A victim with a disability is defined as a person who has a physical, mental, or health impairment that substantially limits one or more major life activities. Women with disabilities tend to suffer from additional types of abuse not seen with other domestic violence victims. The domicile of a victim with a disability may be an extended care facility.

Within this category, we also address the elder victim. A vast majority of elder maltreatment is committed by someone familiar to the victim. Emotional and sexual maltreatment are most frequently committed by either a partner or a spouse.

Unlike other domestic violence victims, the victim with a disability is not debating staying or leaving but rather is attempting to regain control while fighting for the most basic needs. Similar to other domestic violence victims, victims with disabilities grapple with:

- a) Fear of losing housing, services, caretakers withholding hygiene care and products;
- b) Fear of being deprived of food, medicine, and health care;
- c) Fear of retaliation from the abuser or repercussions directed at their family—for example, thinking that others might blame

the family for not protecting them; and, d) There is often a lack of a support system for disabled victims within agencies they receive services from. Disabled victims may also fear reporting abuse if the abuser is a staff member within the agency from which they are receiving services.

8. Substance abuse and alcohol

While abuse of drugs or alcohol often accompanies domestic violence, such behaviors do not cause it. Domestic violence is rooted in power and control. Oftentimes, abusers use substance abuse as an excuse for their behavior and to deny responsibility for their actions. For a survivor, the trauma of being a victim of abuse might lead to self-medication in order to cope with the situation.¹⁶

9. Undocumented victims

Undocumented victims face a myriad of obstacles in their quest for safety. A batterer often controls the victim's immigration status and becomes the source for information and protection. Lack of financial resources exacerbates this problem. While many undocumented victims have protections under the Violence Against Women Act, lack of awareness further entraps victims in a very dangerous situation.

In addition, many abusers use victims' undocumented status against them by withholding or destroying pertinent legal documents. A victim may also be prevented from learning English or having contact with friends or family in their country of origin.

For more information on the nuances of power and control impacting immigrant victims, see the Immigrant Power and Control Wheel at <http://endingviolence.org/wp-content/uploads/2014/02/ImmigrantWomenPCwheel.pdf>.

¹⁶ "Drugs, Alcohol and Abuse," National Domestic Violence Hotline, March 11, 2015; online at <http://www.thehotline.org/2015/03/drugs-alcohol-and-abuse/>.

10. LGBTQ victims

The same fears experienced by other victims of domestic violence exist for the LGBTQ victim and prevent them from leaving the relationship. Additionally, the LGBTQ domestic violence victim has the following with which to contend:

- a) For the victim who has still not come out, the fear of being “outed” to colleagues, family and friends;
- b) For the gay victim with HIV, the fear of disclosure;
- c) Call centers with personnel not trained in LGBTQ issues;
- d) Lack of support from friends or family. The LGBTQ community is a closed community in which a victim may perceive a conspiracy of silence when an outcry is made. Additionally, because both the abuser and the victim share the same circle of close friends, abusive behavior is not socially exhibited and therefore often not believed; and
- e) When law enforcement is called, police may appear unsympathetic and trivialize the incident. In the situation of the gay victim, the abuser often tells the police that the incident was simply “horsing around.”

2. In Court

To keep themselves or their children safe, victims may display some or many of the following behaviors during court proceedings:

- Victims may refuse to testify, fail to appear for trial, plead with prosecutors to drop the charges because they fear they will be in further danger, or believe that everything is going to be alright. Additionally, they are often unfamiliar with the court process and feel intimidated when going to court.
- A victim’s judgment may be skewed and out of touch with reality, often because of misinformation provided by the abuser. Distorted judgment causes some victims to excuse, minimize, or even deny the abusive acts of their partners.

- Victims of trauma often repress memories of traumatic events. Repression is a defense mechanism that helps the human psyche protect itself from pain. In such cases, it may be necessary to question the victim directly about the abuse.
- Battered victims desperately want to believe their batterers’ promises to change and improve. This belief is part of what keeps them from leaving the abusive relationship. To outsiders, this belief may seem irrational, yet victims often cannot perceive the irrationality.
- Sometimes victims assume responsibility for what happened to them. Victims often perceive being battered as a personal or moral failure, which is a deep source of shame. A courtroom setting can exacerbate the shame and embarrassment. Not surprisingly, this shame leads victims to avoid eye contact while testifying. Avoidance of eye contact should not be interpreted as a sign that a victim lacks credibility.
- A victim’s sense of shame and humiliation may be overwhelming. Assumptions about victims based upon their manner of dress, grooming, or other aspects of outward appearance do a disservice to victims and their families.
- Many victims are reluctant to offer information related to alcohol or substance abuse unless specifically directed by the court to do so.
- Victims may be hiding injuries wearing sunglasses, make-up, sleeves, or other means to hide bruises.
- Victims often fail to provide essential details unless asked specific, pointed questions.
- Victims often deny the truth, even to themselves.

An abuse victim may also:

- Abandon proceedings
- Agree to unfair property settlements or support provisions

- Agree to what outsiders see as unsafe provisions for child custody or parenting time
- Avow love for the abuser
- Display agitation or a raised voice with others in the courtroom, including the judge
- Display anxiety about rulings by questioning decisions made by the judge
- Display combative intensity during proceedings
- Flee the jurisdiction, along with the children
- Insist on specific provisions that may not be available in the proceeding
- Make statements supporting the abuser
- Publicly agree with the abuser's denial or minimization of a violent incident

Additional sources:

Teen Victims. Love is Respect.Org.

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National Council of Juvenile and Family Court Judges. Guides for Self-Represented Victims. <http://www.ncjfcj.org/10-Steps-Presenting-Evidence>
<http://www.ncjfcj.org/10-Ways-Find-Case-Help>

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P. Tjaden and N. Thoennes. *Extent, Nature, and Consequences of Intimate Partner Violence, Findings from the National Violence Against Women Survey*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, 2000. <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>

Child Welfare Information Gateway. *Child Witnesses to Domestic Violence*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, 2016. <https://www.childwelfare.gov/pubPDFs/witnessdv.pdf>

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"Crime and Victimization in the United States." Fact Sheet. Office of Justice Programs, National Center for Victims of Crime. Washington, D.C. https://ovc.ncjrs.gov/ncvrw2017/fact_sheet.html

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M. A. Curry and F. Navarro. "Responding to Abuse Against Women with Disabilities: Broadening the Definition of Domestic Violence." *Health Alert*. Winter 2002. http://www.futureswithoutviolence.org/userfiles/file/HealthCare/responding_to_abuse.pdf

"Immigrants in the U.S. Have the Right to Live Life Free of Abuse." National Domestic Violence Hotline. <http://www.thehotline.org/is-this-abuse/abuse-and-immigrants/>

“Immigration Options for Victims of Crimes.” U.S. Department of Homeland Security. <https://www.dhs.gov/immigration-options-victims-crimes>

“LGBTQ Relationship Violence.” National Domestic Violence Hotline. <http://www.thehotline.org/is-this-abuse/lgbt-abuse/>

T.K. Logan et al. “The Kentucky Civil Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, and Costs.” Institute for Social Research, University of Michigan. 2009.

D. Lethality Issues

1. Lethality Factors

National research supports that certain behaviors of the domestic violence abuser can be considered “lethality factors”; that is, the presence of these factors in a relationship increases the likelihood that the victim and others (the children, the batterer, and often bystanders) will end up dead. Lethality factors that multiply the odds of homicide five times or more over nonfatal abuse have been found to include:

- a) threats to kill (14.9 times more likely)
- b) prior attempts to strangle (9.9 times more likely)
- c) forced sex (7.6 times more likely)
- d) escalating physical violence, severity over time (5.2 times more likely)
- e) partner control over the victim’s daily activities (5.1 times more likely)

Research has also found that male abusers are more likely to kill if they are not the fathers of the children in the household.¹⁷ In addition, “more female intimate partners are killed by firearms than by all other means combined. Firearms in the household increase the odds

of lethal versus nonlethal violence by a factor of 6.1 to 1. Women who were previously threatened or assaulted with a firearm or other weapon are 20 times more likely to be murdered by their abuser than are other women. Prior firearm use includes threats to shoot the victim; cleaning, holding or loading a gun during an argument; threatening to shoot a pet or a person the victim cares about; and firing a gun during an argument.” (NIJ Report 2009, page 26.)

Strangulation is a significant predictor of future lethal violence. A common form of intimate partner violence, strangulation has often been minimized or overlooked by victims, abusers, and professionals. Strangulation is a tremendously effective power and control tactic used by abusers, as it reinforces to the victim that the abuser has the ability to kill her.¹⁸ Female victims of attempted or completed homicide by an intimate partner are far more likely to have had a history of strangulation than other abused women with no history of strangulation. According to Dr. Jacquelyn Campbell, a professor in the Johns Hopkins University School of Nursing, the odds of becoming an attempted homicide increased by about sevenfold for women who had been strangled by their partner.

For further information on this section:

Training Institute on Strangulation Prevention. <https://www.strangulationtraininginstitute.com/>

Because of these very real risks, many jurisdictions around the country are using LAPs—Lethality Assessment Protocols—to determine whether the victim is at high risk. These assessments are often performed by an officer who responds to the scene of a domestic violence call. When this occurs, the best practice is for

¹⁷ National Institute of Justice, “Practical Implications of Domestic Violence Research for Law Enforcement, Prosecutors and Judges,” June 2009, p. 27.

¹⁸ A. Schwartz, “Strangulation and Domestic Violence,” Empire Justice Center website (2010); online at <http://www.empirejustice.org/issue-areas/domestic-violence/case-laws-statutes/criminal/strangulation-and-domestic.html>.

the officer to arrange for the victim to be connected immediately to services through a domestic violence services agency or a victim witness program. Other times, advocates who work in a courthouse can administer these LAPs to victims who appear for protective orders or with the offenders for criminal cases. Sometimes the results of these assessments can be made available to prosecutors and judges so that they have additional information to make decisions on prosecution, conditions of release, and sentencing. However, the issues of confidentiality and victim safety are of paramount importance, and courts should always remember that it may be more detrimental to a victim to have an abuser know the victim was speaking about their relationship to outsiders.

The questions in the Maryland Danger Assessment were designed by Dr. Campbell, who has become known as one of the foremost researchers in the area of domestic violence and lethality. These questions focus on guns, threats to kill, and stalking and controlling behaviors. Not all of the questions carry the same weight, but they all assess behavior that should be taken seriously by court professionals.

1. Has the physical violence increased in severity or frequency over the past year?
2. Does he own a gun?
3. Have you left him after living together during the past year?
4. Is he unemployed?
5. Has he ever used a weapon against you or threatened you with a lethal weapon?
6. Does he threaten to kill you?
7. Has he avoided being arrested for domestic violence?
8. Do you have a child that is not his?
9. Has he ever forced you to have sex when you did not wish to do so?
10. Does he ever try to choke you?
11. Does he use illegal drugs?
12. Is he an alcoholic or problem drinker?
13. Does he control most or all of your daily activities? For instance, does he tell you

who you can be friends with, when you can see your family, how much money you can use, or when you can take the car?

14. Is he violently and constantly jealous of you? (For instance, does he say, "If I can't have you, no one can"?)
15. Have you ever been beaten by him while you were pregnant?
16. Has he ever threatened or tried to commit suicide?
17. Does he threaten to harm your children?
18. Do you believe he is capable of killing you?
19. Does he follow or spy on you, leave threatening notes or messages, destroy your property, or call you when you don't want him to?
20. Have you ever threatened or tried to commit suicide?

These questions should not be asked by an untrained person and should not be asked unless there is an advocate available to provide direct and quick services. If a judge or court staff hear evidence from a victim about this type of behavior by the abuser, all attempts should be made to provide the victim with advocate services.

For further information on this section:

Maryland Danger Assessment,
<https://www.dangerassessment.org>

Battered Women's Justice Project
Firearms, <http://www.bwjp.org/our-work/topics/firearms-topic.html>

Risk Assessment, <http://www.bwjp.org/our-work/topics/risk-assessment.html>

Preventing Abusers' Access to Firearms,
<http://www.preventdvgunviolence.org/resources/preventing-access.html>

Lethality Assessment Program, Maryland
Network Against Domestic Violence
http://mnadv.org/_mnadvWeb/wp-content/uploads/2011/10/LAP_Info_Packet--as_of_12-8-10.pdf

2. Stalking and Electronic Harrassment Information

Stalking is often assumed to be the behavior of some creepy made-for-TV movie stranger who fixates on a pretty girl he dated once. But in real life, many DV abusers stalk their intimate partners, both during the relationship and after the victim has left the relationship. With the advent of so much readily accessible technology, stalking someone electronically is easier than ever before. The National Stalking Resource Center provides these statistics:

- 7.5 million people are stalked in one year in the United States.
- More than 85% of stalking victims are stalked by someone they know.
- 61% of female victims and 44% of male victims of stalking are stalked by a current or former intimate partner.
- 25% of female victims and 32% of male victims of stalking are stalked by an acquaintance.
- About 1 in 5 of stalking victims are stalked by a stranger.
- Persons aged 18-24 years old experience the highest rate of stalking.
- 11% of stalking victims have been stalked for 5 years or more.
- 46% of stalking victims experience at least one unwanted contact per week.

The Center lists behaviors that constitute stalking:

- Following the victim and appearing wherever the victim is.
- Sending unwanted gifts, letters, cards, or e-mails.
- Damaging the victim's home, car, or other property.
- Monitoring the victim's phone calls or computer use.

- Using technology, like hidden cameras or global positioning systems (GPS), to track where the victim goes.
- Driving by or hanging out near the victim's home, school, or work.
- Researching the victim by using public records or online search services, hiring investigators, going through the victim's garbage, or contacting friends, family, neighbors, or co-workers.

There is a strong connection between stalking and intimate-partner violence. Stalking behavior typically starts after the relationship has ended. The most dangerous time for a victim of stalking is 1) at the time of separation, when a victim leaves the relationship; 2) when a protective order is served or there has been a criminal arrest; 3) when there have been multiple incidents within a short period of time with an escalation in behaviors.

Abusers often exploit technology to create an advantage for themselves. Most of the technologies used by stalkers have legitimate legal functions. Stalking behaviors used may include: sending the victim unwanted emails, instant messages, or messages through social media websites; making unwanted telephone calls to the victim, including hang-ups; leaving the victim unwanted messages, including text or voice messages; and watching or following a victim from a distance, or spying on a victim with a listening device, camera, or global positioning system.

Court staff and judicial officers should be especially cognizant of these real behaviors when dealing with petitioners for protective orders or with ongoing domestic violence cases. When a victim testifies or even mentions that the abuser just seems to be showing up everywhere, or knows exactly what she is doing, it is entirely possible with today's technology, that the abuser is aware of her every movement.

For further information on this section:

Stalking Resource Center; See specifically, “Stalking Response Tips for Judges” and “The Use of Technology to Stalk”
<http://victimsofcrime.org/our-programs/stalking-resource-center>.

National Institute of Justice, Intimate Partner Stalking; <https://www.nij.gov/topics/crime/intimate-partner-violence/stalking/Pages/welcome.aspx>.

3. Firearms

The presence of guns in a household is one of the strongest risk factors for lethality in a domestic violence relationship.

Domestic assaults involving a firearm are twelve times more likely to result in death than those involving other weapons or bodily force,¹⁹ and a woman is five times more likely to be killed by her abuser if the abuser owns a firearm.²⁰

However, keeping firearms out of the hands of domestic abusers is not an easy task in many states. Some states allow guns to be prohibited when ex parte protective orders are issued, but some do not. Many states do not have processes or procedures to ensure that court orders regarding firearms possession are enforced. Even prosecutions of federal firearms prohibitions on certain protective order cases and

criminal domestic violence offenses are handled unevenly.

The Battered Women’s Justice Project’s website, Safer Families, Safer Communities, <http://www.preventdvgunviolence.org/index.html>, has multiple resources and listings of every state’s laws and procedures. It also includes firearms forms used by courts around the country to help ensure that offenders have turned in their weapons.

For further information on this section:

Preventing Abusers’ Access to Firearms, Battered Women’s Justice Project.

<http://www.preventdvgunviolence.org/resources/preventing-access.html>

Stalking Resource Center, The National Center for Victims of Crime.

<http://www.victimsofcrime.org/our-programs/stalking-resource-center/stalking-information>

A Passport to Safety: A Judge’s Bench Card for Full Faith and Credit. National Council of Juvenile and Family Court Judges

http://www.bwjp.org/assets/documents/pdfs/a_passport_to_safety.pdf

Firearm Checklist for Judges. National Center on Protection Orders and Full Faith and Credit.

<http://www.bwjp.org/assets/documents/pdfs/ncpoffc-firearm-checklist-judges.pdf>

¹⁹ L. E. Saltzman et al., “Weapon Involvement and Injury Outcomes in Family and Intimate Assaults,” *JAMA* 267 (1992): 3043-47.

²⁰ J. C. Campbell et al., “Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study,” *American Journal of Public Health* 93 (2003): 1089, 1092.

II. WHAT CAN COURTS DO?

A. Ten Essential Elements for Effective Intervention in Domestic Violence

1. Leadership

Effective domestic violence initiatives require leadership from within the court system. An effective leadership model is a domestic violence coordinating council that includes all major players. Councils may establish policies and procedures, coordinate efforts, and work through problems. Such councils can function at local, regional and statewide levels.

Key council members to consider include:

- Chief judge
- Chief prosecutor
- Court administrator
- Public defender
- Law enforcement representative
- Chief probation officer
- Domestic violence statewide committee representative
- Child protective services representative
- Health care professional
- Domestic violence coalition representative
- Domestic violence shelter representative
- Regional behavioral health representative
- Domestic violence treatment services representative
- Local or state funding representatives
- Clergy

2. Differentiated Domestic Violence

The victim advocate community has come to accept the notion of “differentiated domestic violence.” There is a realization that not all abusers are “batterers” and that domestic violence can display itself in different ways, as detailed below.

Situational couple violence: Couples whose relationships are defined by frequent but not typically violent arguments.

Separation-instigated violence: Stress built up during separation or divorce that typically ends when the divorce is finalized. Violence is not typical of either party and is often a one-time event. Protective orders are usually effective in deterring this conduct.

Violent resistance: Self-defense usually committed by women against men and often ending in serious injury to the woman.

Coercive control: The most insidious form that is more likely to end in the victim’s death. It is defined by controlling behavior that is often non-violent—separating the victim from friends and family, controlling the family’s money, and monitoring the victim’s whereabouts. A protective order can incite the abuser to extreme violence.

3. Coordinated Community Response (CCR)

Using a Coordinated Community Response (CCR) model, practitioners are encouraged to identify and use effective means to work within and across agencies to protect victims and to help abusers change their behaviors. According to the Battered Woman’s Justice Project (BWJP), an effective criminal justice response to cases of intimate-partner violence, sexual assault, and stalking requires a partnership among system and community practitioners to identify and implement innovative solutions that further the shared goals of victim safety and offender accountability.

A CCR model creates and sustains solid collaboration across and among practitioners involved in the criminal justice system to maximize the ability to gain control over offenders, to intervene quickly to new acts of violence or intimidation, and to increase the overall capacity to better protect victims. An effective and

just intervention to these crimes cannot be achieved with a one-dimensional, “one-size-fits-all” response.

An effective interagency response (CCR model) often includes the following practitioners:

- Chief judge
- Community advocates
- 911/dispatch
- Law enforcement
- Prosecution
- Victim/witness staff
- Judges and court staff
- Probation/parole officers
- Batterer intervention programs
- Medical staff

The CCR model places a primary focus on the safety and autonomy of victims, while holding offenders accountable, and creating a climate of deterrence for further violence.

For further information on this section:

Coordinated Community Response, The Advocates for Human Rights, Stop Violence Against Women.
http://www.stopvaw.org/Coordinated_Community_Response

Coordination Models, Battered Women’s Justice Project.

<http://www.bwjp.org/our-work/topics/ccr-models.html>

4. Designated Personnel

Each law enforcement agency, social service agency, court and prosecutor’s office should have specifically designated personnel to handle domestic violence cases.

5. Coordination

The most effective interventions coordinate the actions of the system to work together on behalf of victim safety and offender accountability. The acts of those who intervene in domestic violence cases impact not only abusers, but also victims and their families. Holding offenders

accountable includes seeking solutions that involve partnerships between agencies.

Effective coordination and partnerships among agencies allow a flow of information between appropriate parties. One example includes ensuring court orders do not fall through the cracks. For example, coordination between the police and courts may be needed when the judge requires the offender to turn in firearms to the police department.

Another example of effective coordination is a partnership between victim advocacy and batterer intervention programs (BIP). Even when there is networking, victim advocates may not be familiar with BIPs, their strengths and limitations, how they work, and how knowledge about them can assist their day-to-day work with survivors. Information-sharing can save lives when monitoring high-risk offenders, and the BIP’s ability to monitor offender risk effectively over time is an important role, especially when they work closely with their partner agencies.

Finally, the successful implementation of a specialized DV court requires coordination among the court, prosecutor’s office, and treatment services.

6. Prosecution Efforts

Prosecution efforts should include a prosecutor who is trained in the dynamics of and specialized evidentiary issues often seen in domestic violence cases. Prosecution practices should include providing timely notice to victims of all court hearings and ensuring that the victim is aware of and has the opportunity to provide input on all plea agreements. The use of victim advocates aids victims in understanding and participating in the court system. Prosecutors should consider taking cases forward, when appropriate, without victim testimony. Prosecutors may offer diversion programs for minor or first-time domestic violence offenses. These

diversion programs require the completion of an intervention program. A specialized domestic violence court may allow for more consistent treatment of offenders and victims, as well as, shorter timelines in handling domestic violence cases.

7. Court Orders

Court orders containing the conditions of release and probation should be clearly stated so the defendant can remain in compliance with court orders. Clearly written court orders also allow for the prompt enforceability of the orders.

8. Formal Monitoring and Enforcement

Effective domestic violence programs must have adequate resources and controls to monitor compliance to court orders. Many offenders are placed on probation; however, monitoring efforts may be limited because of large caseloads or the offender is placed on unsupervised probation. Specialized probation caseloads and intensive probation can be used to effectively monitor domestic violence offenders and ensure compliance with court orders, including treatment.

Domestic violence problem-solving courts can be an effective court strategy to manage DV cases. Typically, the DV court is focused on monitoring compliance with court orders and holding the defendant accountable. Monitoring compliance includes regularly scheduled status hearings that the defendant must attend to demonstrate compliance with court orders.

Implementing effective offender accountability policies and practices within each part the criminal justice response is a strategy to increase victim safety. Criminal justice institutions have been tasked with implementing policies and practices that enhance their ability to hold offenders accountable while accounting for risk and danger.

9. Domestic Violence (Batterers) Intervention Programs

Most offenders who are convicted of domestic violence charges are ordered to attend a domestic violence treatment program. Intervention programs may cover topics such as power and control, the difference between anger and violence, how men learn to be violent, how to take a “time out,” and some “communication skills.” Some programs also teach mental health concepts; others examine issues of entitlement and learning to value equality and non-violence.

Many treatment programs now employ a differentiated treatment model for domestic violence offenders. This model is based on the Risk, Needs and Responsivity principles (RNR), which research has demonstrated is effective in reducing general offender recidivism.

The RNR principles emphasize matching offender level of risk to level of service, assessing dynamic risk factors associated with criminal behavior, and targeting those needs in treatment. The principles address the offender’s learning by tailoring the intervention to the learning style, motivation, abilities, and strengths of the offender.

The cognitive-behavioral approach also appears to be used, including swift and certain court response for violations, intensive programming for high-risk men, and ongoing monitoring of risk. Program effectiveness depends substantially on the intervention system of which the program is a part.

There are major differences across jurisdictions in the consistency of the institutional response to sanction participants who fail to attend or who reoffend while attending the program. Failing to impose consequences for criminal behavior, including violation of court and probation conditions, reinforces batterers’ belief that they can use violence with impunity.

Most intervention programs use models based on research on heterosexual intimate partner violence. There are a significant number of LGBTQ men, women, and gender-nonconforming people ill-served by these programs. Mainstream programs may have little consideration for the different experience of this community.

Anger management programs are considered inappropriate for batterers because they are ineffective in stopping domestic violence or holding offenders accountable. In these programs, anger is viewed as the primary problem, with the focus on managing anger and emotions. Anger management intervention is short term, usually 2-4 weeks. Little attention is given to the consequences of the abuser's actions or on accountability. Anger management programs are generally non-confrontational, and denial is not addressed. Anger management programs often have the effect of teaching the abuser to be more controlling because of the focus on the batterer's control of emotions.

Domestic violence, though, is about power and control in a relationship and requires more extensive treatment. Batterer intervention programs are focused on domestic violence offenders, changing their behavior, and holding them accountable for their actions. Abuse and control are viewed as the primary problem. Offenders are reminded of the damage that they have caused. The long-term intervention treatment is confrontational with denial targeted. Accountability for actions is paramount in batterer intervention programs.

For further information on this section:

Batterer Intervention. Futures Without Violence.
<https://www.futureswithoutviolence.org/batterer-intervention/>

Men Stopping Violence.
<http://menstoppingviolence.org/programs/mens-education/>

Emerge—Counseling and Education to Stop Domestic Violence.
<http://www.emergedv.com/>

10. Training

All individuals working with domestic violence cases must receive comprehensive training on the nature of domestic violence. This includes court staff, judges, prosecutors, police, probation, public defenders, and treatment providers. Responding effectively to stop domestic violence requires obtaining enough information to understand the context of the violence, the intent of the violence, and the impact and meaning of the violence to the victim.

B. Court Security Measures

1. Overview

Recognizing that, by their nature, court operations are vulnerable to potentially volatile situations, the successful deterrence, prevention, and management of any security incident requires the establishment of a sound court security program. Security planning efforts should reasonably facilitate the public's access to resolve disputes and will support the objectives of the judicial process. Security planning is a collaborative effort with other governing bodies and will help in the creation of security policies and procedures. Reasonable security measures are developed from information found in facility surveys and risk assessments focusing on the needs of each court. Planning should emphasize a strong security posture for perimeter screening, use of current technology, staff training, and an effective design of court buildings.

2. Goal

Court security programs are intended to reduce the opportunity for people to commit crimes, disrupt court operations, and intimidate visitors or court employees.

3. Strategy

To make the courthouse a safe place for all participants, courts should:

1. Ensure that physical security surveys are conducted annually. These surveys should include recognized vulnerabilities for infrastructure and operations with recommendations for any mitigation listed.
2. Establish security policies and procedures in a court security manual. These procedures provide court security officers with both general and specific instructions applicable to their duties and will provide methodologies for tracking security intelligence, threats, and incidences. Furthermore, procedures will establish mandatory performance guidelines for all tasks expected of a security team.

To ensure courtroom operations support a safe environment, courts should always be aware of safety for both the victim and court staff, especially in cases involving domestic violence. This includes providing a safe way to obtain protective orders and making a courtroom a safe place for all the participants.

1. Make courts safe and accessible to victims by providing protective orders by telephone, video, and electronic filing, and by providing safe-waiting areas. Assist victims in obtaining and enforcing protection orders by designating specially trained personnel for the task.
2. Ensure that victim contact information is kept confidential if court rules or laws protect this information.
3. In the courtroom, one of the most important things a judge can do is set the proper tone for all proceedings. A judge should communicate to all the parties and court staff that the judge takes domestic violence cases seriously and will treat all parties with respect and dignity. A judge also has a key role in ensuring that the courtroom and the courthouse are physically safe for the victim.
4. The atmosphere in the courtroom must be free of intimidation. It is easy to forget that the victim may have been exposed to years

of intimidation. A judge should use his or her authority to create a courtroom ambiance that mitigates further risks. This may include using court security officers to ensure that victims and defendants are appropriately separated throughout the entire proceeding.

For further information on this section:

Safety Net Project, National Network to End Domestic Violence.
<http://nnedv.org/projects/safetynet.html>

4. Key Tasks

- Establish a court security committee with the cooperation of law enforcement. Committee members should include court administration, facilities management, emergency responders, and any other designated court security stakeholders.
- Establish policies and procedures in a court security manual that commits to the implementation of effective, comprehensive security based on best practice models.
- Ensure court security procedures are in alignment with judicial objectives for hearings, with an emphasis on domestic violence cases.
- Conduct annual recurring training for court security and court staff.
- Critical Infrastructure – Provide insight and guidance related to physical security.
- Emergency Operations Plan (EOP) – Update emergency response plans.

The risks involved in court operations are great and varied and generally can never be eliminated. However, by exercising due diligence and devoting the appropriate attention, incidents can be both minimized and mitigated.

C. Ethical Issues

What can a judge ethically do about domestic violence? Can a judge be educated and learn about the dynamics of these cases? Can a judge establish a special court to deal with

domestic violence cases? Can a judge participate in commissions or sit on boards that deal with domestic violence issues? Should a judge have special procedures in the courtroom for domestic violence cases and victims?

As in all cases dealing with judicial ethics, the specific facts in each instance will dictate the answer. A judge should always consult with the local ethics advisor if there is any doubt.

All judges should become educated on the subject of domestic violence. There is no ethical barrier to receiving training in a specific area of the law, and, in fact, several jurisdictions require that judges attend training on domestic violence issues on a regular basis.

As leaders in the court system, judges play a key role in ensuring that all other court personnel and independent contractors working for the court receive domestic violence training. Clerks, bailiffs, mediators, evaluators, probation officers, and other court staff who come into contact with abusers and victims need training on the dynamics of domestic violence.

What can a judicial employee do about domestic violence?

Consistent with all cases, judicial employees should provide courteous customer service and accurate information and at the same time remain neutral. Judicial employees provide information about court procedures and forms and case information, and they answer procedural questions. Judicial employees must ensure that confidential information is not disclosed. All staff should become educated on the subject of protective orders and specific court procedures related to domestic violence cases.

D. Procedural Justice Issues

1. What?

Procedural justice focuses on the way courts and other legal authorities interact with the public and how the characteristics of those interactions shape the public's view of the court.²¹ People feel affirmed if the procedures that are adopted treat them with fairness, respect, and dignity, making it easier to accept even outcomes they do not like.²²

2. Why?

Procedural justice can increase compliance with court orders, improve public trust, and reduce recidivism. Litigants who believe that they have been treated fairly are more likely to follow the court's treatment orders and remain law abiding.²³

3. How?

Examples of practices that increase the perception of fairness throughout the courthouse include:

- Train all court staff on procedural justice and domestic violence.
- Increase access to victims with outreach about court resources and court procedures.
- Improve personal interactions with litigants – i.e., effective communication, make eye contact, avoid multitasking, etc.
- Ensure understanding by taking the time to explain the process to self-represented litigants, minimize use of legal jargon, and provide interpretation services. Also, judges should explain in plain language how decisions were made and what is expected going forward.

²¹ National Initiative for Building Community Trust and Justice.

²² M. Deutsch, "Justice and Conflict," in *The Handbook of Conflict Resolution: Theory and Practice*, ed. M. Deutsch and P.T. Coleman (San Francisco: Jossey-Bass Inc. Publishers, 2011).

²³ D. Malangone, "Integrating Procedural Justice in Domestic Violence Cases," Center for Court Innovation, New York.

- Give litigants a voice by asking open-ended questions that give them an opportunity to tell their side of the story. Also, provide a forum so litigants can give the court feedback about their experiences.
- Demonstrate neutrality at all times. Avoid showing a preference to certain parties (prosecutors versus defense attorneys), and do not make jokes or comments that could be misinterpreted by the litigants.
- Promote helpfulness by partnering with local victim advocates or social service providers. Ensure that court staff are

knowledgeable about available resources and are able to make referrals.²⁴

For further information on this section:

Domestic Violence Courts, Center for Court Innovation.

<http://www.courtinnovation.org/project/domestic-violence-courts>

Community Supervision of Domestic Violence Offenders, American Probation and Parole Association.

<http://www.appa-net.org/dv/index.htm>

²⁴ *Id.*

III. PROTECTIVE ORDER ISSUES

Domestic violence is a very real societal ill and public safety issue, with significant costs not only to the victim but also to the broader community. Much attention and resources have been devoted to domestic violence issues in the past 25 years. Many interventions and agencies exist to aid domestic violence victims, but one of the most prevalent mechanisms in place to assist victims is the civil protection order. Judges and court staff play a major role in the lives of victims who come to the courts, seeking those orders.

Across the United States, protective orders have different names—orders of protection, protection-from-abuse orders, or restraining orders, for example—but they generally fall into two broad categories: short-term emergency or temporary orders and long-term or final orders. Although each type contains some similar elements, fundamental differences exist regarding the scope, applicability, and duration of these orders. For example, a final order can last for as little as 90 days or be permanent, with no end date, depending on each state’s laws. In some states, a protective order can include family law provisions such as custody, parenting time, and child support; in other states, laws prohibit inclusion of family law provisions. Of course, as the laws in each state vary, so do the elements and procedures. Court staff should refer to applicable state statutes and rules for more specific information.

Some of the information in this section pertains to judicial officers handling protective orders. But it also is imperative for court staff to become educated and well trained in this area so they can work more effectively with domestic violence victims as they assist them. The process for issuing protective orders is of paramount importance. Judges and court staff should strive to make courts accessible to victims and to provide a forum for individuals to resolve disputes without injury to anyone. A victim’s path to safety is filled

with obstacles, and the judicial system should avoid being perceived as yet another barrier.

General Guidelines

A. Access to the Courts

Victims need easy access to the courts. Many victims, most of whom will be self-represented, may never have had any prior experience with a court. They are likely to find the legal terminology and procedures for applying for protective orders bewildering. Courts can alleviate some of that frustration and confusion by providing public access to web-based forms, e-filing, and information that simply and clearly describes legal terms and protective orders procedures. The court forms, whether electronic or paper, should be easy for the petitioner to understand and fill out. Forms should also be provided at no cost. Where possible, translated forms should be developed for reference, and language assistance for ex parte and contested hearings should be provided. Courts can also establish relationships with organizations that provide victim advocates to assist self-represented victims through the process. The court-advocate relationship can also include procedures for remote electronic ex parte hearings.

Every court having jurisdiction to issue a protective order should accept petitions for protective orders. If a court must refer an applicant to another court, the referring court should contact the court to which the applicant is being sent to make sure a judge is available to hear the applicant’s petition. The applicant should be given clear directions to the other court. Without adequate information, the applicant may feel further overwhelmed and simply give up on obtaining a protective order.²⁵

²⁵ American Bar Association, “Domestic Violence Civil Protection Orders (CPOs)”; online at https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Resources/statutorysummarycharts/2014%20CPO%20Availability%20Chart.authcheckdam.pdf.

B. Priority

Courts should hear protective order petitions as quickly as possible, even if other scheduled matters must be interrupted. Requests for protective orders can be interspersed with short proceedings. Ideally, courts should set aside one courtroom or division to hear protective order petitions.

C. Security

At all stages of protective order proceedings, judicial officers and court personnel should maintain appropriate security for the parties and themselves. If the safety of the parties or any witnesses is a concern, a judicial officer may request a law enforcement officer's presence in the courtroom during a contested hearing or for escorting a party from the courthouse. The court may find it prudent to direct the defendant to remain in the courtroom for a short time after the plaintiff is excused so the plaintiff can safely exit the building. Additionally, wherever possible, courts should allocate space to provide separate waiting areas for the parties.

D. Mediation²⁶

Mediation is a process by which parties in equivalent bargaining positions voluntarily reach consensual agreement about the issues at hand. Violence, however, is not a subject for compromise. A process that involves both parties mediating the issue of violence implies that the victim is somehow at fault. Mediation of issues in proceedings for protective orders, custody or legal decision-making, parenting time, and child support are problematic because the victim is frequently unable to participate on equal terms with the person against whom protection has been sought.

In some states, mediation of any family court matter cannot take place if the parties have a

protective order between them. In other states, alternative dispute resolution (ADR) may be permissible for child custody or parenting time issues but not for terms in the protective order.

Before beginning the ADR process, ensure that court-appointed mediators screen each party for domestic violence and inform them of the right to opt out of the process. If mediation does go forward, the mediator can employ various techniques—such as shuttling between the parties in separate rooms or scheduling them at different days or times—to ensure safety and meaningful participation by each party. If the mediator becomes aware that a party cannot participate in a meaningful way because of domestic violence, the mediation must end.

D. Fees and Costs

States that accept federal funds through the Violence Against Women Act (VAWA) cannot charge any fees for the filing, issuance, registration, or service of protection orders for victims of domestic violence, stalking, or sexual assault.

E. Limit on Number of Protective Orders

A court should not deny issuance of a protective order simply because previous orders were issued, dismissed, or both. The number of times a protective order has been requested or dismissed in the past does not alone provide a basis for denying a request for protective relief. Judicial officers should issue protective orders if they find specified statutory grounds to do so.

F. Protected Addresses

Plaintiffs should be advised that address information may be omitted from the petition and the order and may be protected from

²⁶ American Bar Association, "Mediation in Family Law Matters Where DV Is Present"; online at https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Charts/2014%20Mediation%20Statutory%20Chart.authcheckdam.pdf.

disclosure. A plaintiff should never be asked to disclose the location of a domestic violence shelter in which the person is staying. Shelter locations are kept confidential to protect all of the residents staying in them. However, the plaintiff should be asked to provide the court with an alternate address and telephone numbers so the plaintiff can receive court notices.

One way to obtain an alternate address is through an Address Confidentiality Program (ACP). An ACP program provides an eligible applicant with a substitute address. The applicant's first-class mail is delivered to the substitute address and then forwarded by the Secretary of State to the applicant's actual address. ACPs are available in most states and are typically administered by each state's Secretary of State. Applicants must comply with the ACP requirements in their state.

G. Service of the Order

If the plaintiff is responsible for having the order served on the defendant, ensure that the plaintiff is given specific instructions on how to have service performed. The instructions should include information on the timeframes within which the order must be served (for example, within one year from the date of issuance).

H. Protective Order Relief

Depending on state laws, various types of relief can be granted for the protection of the plaintiff and other persons named on the order. Orders should be specific and clear. Otherwise, law enforcement officers will not know what to enforce or how to enforce an order, and a prosecutor may decline to pursue contempt charges against a noncompliant defendant if the order is unreasonably vague.

Among the more common types of relief available are:

- No-contact provisions that protect the plaintiff and other persons at home, school, work, and other locations
- Protection for third parties, such as relatives
- Protection of animals that are possessed by the plaintiff, the defendant, or children living in the residence
- Exclusion of the defendant from a shared residence
- Prohibitions on other types of communication, such as telephone, email, text messages, or through social media
- A prohibition on possession of a weapon by the defendant and provisions for surrender of firearms
- Child custody and parenting time provisions
- Financial support, such as payment of child support, spousal support, rent or mortgage, or utilities
- Prohibitions against following, stalking, threatening, or harassing the plaintiff and other protected persons

For further information on this section:

Passport to Safety, National Council of Juvenile and Family Court Judges.

<http://www.ncjfcj.org/resource-library/publications/passport-safety>

Protection Orders, Battered Women's Justice Project.

<http://www.bwjp.org/our-work/projects/protection-orders.html>

IV. FAMILY LAW ISSUES

Recent trends have highlighted the need for courts to screen carefully for domestic violence in most family law cases. Research indicates that at least 50 percent of divorces include allegations of domestic violence.²⁷ The percentage may be significantly higher where there is a dispute over child custody.²⁸ Many states have statutes directing courts to consider domestic violence as a factor in custody determinations.²⁹ A number have adopted a rebuttable presumption that sole or joint legal or physical custody may not be awarded to a perpetrator of domestic violence.³⁰ A few have expanded the presumption to limit a perpetrator to supervised visitation if the court finds it has attached.³¹

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Adding to the challenge is the rapid growth in self-representation in family cases. In recent years, the number of family law cases involving at least one self-represented litigant has grown to about 60 to 90 percent.³² Self-represented parties are now a majority of family court litigants in many jurisdictions. Courts must be especially diligent in assessing for domestic violence when parties are trying to navigate the system without legal assistance. Domestic violence differs in context, severity and impact. It can be severe, ongoing and clearly committed by one party, classic coercive control, or battering behavior.³³ However, abuse also can

appear to be jointly inflicted, less serious, or a relatively isolated event instigated by separation or the parties' situation or relationship.³⁴ In assessing domestic violence claims, court personnel and judicial officers need to consider the severity of prior abuse and the potential for serious injury and lethality and whether there is a pattern of coercive control, which does not always include overt acts of violence.³⁵ Victims may minimize or hesitate to report violence in an

attempt to reduce conflict. Some may not even recognize that they have been the victim of abuse.

Research shows that children are negatively impacted by being in the presence of conflict or abuse, even if they are

not direct victims. Protecting children and parent victims must be a priority, while allowing for the least restrictive plan for parent-child contact that benefits the child.³⁶

While it is common for abusers to use children as a means to control their partner, children can also be exposed to intimate partner violence and other types of family violence in many ways. The most commonly identified types of exposure include seeing and hearing violent acts, seeing injuries resulting from violence, and being told about the violence after it has occurred. A child's

²⁷ N. VerSteegh, G. Davis, and L. Frederick, "Look Before You Leap: Court System Triage of Family Law Cases Involving Intimate Partner Violence," *Marquette Law Review* 95 (2012): 955, 966.

²⁸ *Id.*

²⁹ Resource Center on Domestic Violence, Child Protection and Custody, a project of the Family Violence and Domestic Relations Program, 2013.

³⁰ *Id.*

³¹ *Id.*

³² *Creating a User-Friendly Court Structure and Environment* (Williamsburg, VA: National Association for Court Management, 2016), p. 12.

³³ P. G. Jaffe et al., "Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans," *Family Court Review* 46 (2008).

³⁴ *Id.*

³⁵ *Id.*, p. 504.

³⁶ *Id.*

exposure to domestic violence can result in short-term or long-term consequences or consequences across a life span; for some resilient children, it may have no impact at all.

Types of risks to children include emotional harm or traumatization, unintentional injury, child physical abuse, child sexual abuse, abduction, or homicide. Bystander injury can also occur if the child is held in a victim's arms during an assault, tries to intervene in an incident, is hit by thrown objects, or gets pulled between parents during an incident. A child can be injured if the mother is assaulted during pregnancy.

Along with the increase in rates of self-representation, the use of alternative dispute resolution processes has seen substantial growth in family law. Because many litigants present agreements reached through ADR, it is important to ensure that mediators and other court professionals are as well trained as judicial officers in screening for domestic violence to ensure that agreements are voluntary and not coerced.

³⁶ *Id.*

V. SPECIALIZED DV COURTS

A good domestic violence court provides comprehensive judicial monitoring of offenders and offers access to services for victims. Domestic violence courts may address civil protective order cases, criminal cases, or a combination of both.

Specialized domestic violence courts come in many different models. This allows jurisdictions to address the issue within the confines of their resources and caseloads.

Various models include:

Dedicated Civil Protection Order Courts—have a docket dedicated to the issuance and enforcement of domestic violence civil protective orders. While the judge may hear other types of cases, the protection order caseload is maintained separately.

Criminal Domestic Violence Courts—devote a dedicated docket and one or more specially trained judges to hearing domestic violence cases. Some courts hear only misdemeanor cases, some only felony cases, while some hear all domestic violence cases.

Additionally, some domestic violence courts also carry related caseloads. For example:

Unified Family Court Dockets—handle any civil cases involving the same family, where there are domestic violence issues.

Coordinated Courts—handle both the criminal domestic violence cases and any related civil matters within the same court division but with different judges.

Integrated Domestic Violence Courts—are based on the one-family, one-judge concept, and they handle both criminal domestic violence cases and related civil matters, such as

family law or juvenile law cases.

The keys to a successful domestic violence court, whatever the model, lie in the following elements:

Dedicated Judge: *A single judge presides over cases from post-arraignment through sentencing and compliance. This practice improves decision-making and ensures consistent and efficient case handling.*

Ongoing Monitoring: *Intensive judicial supervision of these cases enables the court to hold offenders accountable by promoting compliance with orders of protection and other court mandates, such as program attendance, and to respond swiftly to violations.*

Resource Coordinator: *A resource coordinator collects and prepares offender and victim information for the judge, holds agencies accountable for accurate*

and prompt reporting, and is the court's primary liaison with the community.

On-Site Victim Advocate: *The on-site victim advocate serves as primary linkage to services; creates safety plans, and coordinates housing, counseling, as well as other social services; and provides victims with information about criminal proceedings and special conditions contained within their orders of protection.*

Coordinated Community Response: *A coordinated community response involves increased information sharing, communication and coordination among criminal justice agencies and community-based social services; a consistent and collaborative response to domestic violence; and more opportunities for continued education and training on domestic violence and the courts.*

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The coordinated community response is crucial to ensure that the judge has the information necessary to make safe release and sentencing conditions in criminal cases and write enforceable orders in protective order and family law cases. Participation by victim services, the police, the prosecution, the defense bar, and the offender treatment providers strengthens the goals of holding offenders accountable and providing services to victims. Emphasis on training for all partners ensures that the entire domestic violence court team understands the dynamics of domestic violence and increases safety for victims. Additionally, having a dedicated team in court led by a judge who is focused on procedural justice for all the participants assures a better outcome for both the offenders and the victims in these cases.

For further information on this section:

Domestic Violence Court, Center for Court Innovation.

<http://www.courtinnovation.org/project/domestic-violence-courts>

Georgia Domestic Violence Courts Best Practices. Georgia Commission on Family Violence, March 2017.

https://gcfv.georgia.gov/sites/gcfv.georgia.gov/files/related_files/site_page/GCFV%20DV%20Courts%20Best%20Practices.pdf

M. Mazur and L. Aldrich, "What Makes a Domestic Violence Court Work? Lessons from New York," *Judges' Journal* 42, no. 2 (2003).

<http://www.courtinnovation.org/sites/default/files/whatmakesdvcourtwork.pdf>

VI. DOMESTIC VIOLENCE OFFENDER TREATMENT

In the United States, the tools for stopping domestic violence include not only protective orders and criminal prosecution but also sentencing or referrals to domestic violence offender treatment programs. Many of these programs also are called Batterer Intervention Programs (BIPs). Offenders are directed into these programs as part of criminal sentences or through civil protective orders. The goals of domestic violence offender treatment include holding the offender accountable, reducing recidivism, rehabilitating the offender, and keeping the victim safe.

More than 40 states have developed standards for domestic violence offender treatment programs. In some states, providers must adhere to the standards; in others, adherence to the standards is voluntary. The standards may be developed by state attorneys general or state public health, corrections, probation, or human services departments. In others, domestic violence coalitions have developed the standards. In states with mandatory standards, there may be statutorily created counsels or boards to oversee or certify providers.

The majority of programs are based on the Duluth Model, a 26-week program that focuses on power and control and the behaviors identified in the Power and Control Wheel. These types of programs, designed primarily for men, use a psycho-educational curriculum or a cognitive behavioral model that teach skills and personal coping strategies.

Colorado has adopted risk-based standards, with the program provider determining the length of time an offender must participate, based on a risk assessment. Part of Colorado's standards require periodic assessment of the standards and programming to determine their effectiveness. Iowa

has adopted an intervention program based on acceptance and commitment theory. The Iowa Domestic Abuse Program (IDAP) is "a group educational program that offers the opportunity for change with 24 classes required to be completed in 28 weeks. Facilitators use lectures, videos, discussion, and assignments to teach participants how to identify abusive behaviors they have used in their relationships. Curriculum incorporates the many contributors to why a person behaves aggressively or in a controlling manner as well as the contributors and triggers that make it likely that the pattern will continue."

For the Duluth-styled programs, there are some unique approaches, but there are common threads that connect them. These programs recognize the serious nature of an offender's violent behavior. There is a universal attempt to reduce the offender's ability to blame the violence on the victim, to hold the offender accountable for the abusive

behavior, and to replace unacceptable abusive behaviors with mutual trust, respect, and support. The programs use a group dynamic setting. Among them, there is general agreement that couples' counseling, anger management, and family therapy are not substitutes for domestic violence offender treatment. There is agreement that these treatments or therapies may be used in aftercare setting. Many state standards for offender treatment program prohibit couples, marriage, or family counseling until after the offender has completed the intervention program.

Most of these programs strive to change abusive behaviors by teaching offenders to:

- Take full responsibility for their behavior.
- Understand that abuse is a choice and that they can choose not to be abusive, no matter how they are feeling.

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- Adopt new ways of communicating with their partner and their children.
- Learn to respect the opinions and wishes of all family members.
- Understand the effects of their abuse on their partner and their children.
- Identify and change attitudes and beliefs that lead to abusive behavior.

Offender compliance is a challenge. Depending on resources within a state, an offender may have to travel a significant distance to get to an approved program. Where a minimum number of sessions are required—typically spread over 26 weeks or more—the logistics of travel and the time commitment impact compliance. The cost of participation is usually borne by the offender. Where program costs are unregulated or sliding-scale options not offered, the offender takes on a financial cost that may be unmanageable.

And, finally, does offender treatment work? Even many years after implementation, the effectiveness

of any kind of domestic violence offender treatment is a subject of debate. Research has been published that supports the effectiveness of programs; other research exists that indicates the success of the offender treatment programs is difficult to measure. Debates exist over which type of model is most effective in changing an offender's behavior. That the debate goes on provides fertile ground for the development of other types of intervention programs as well as the refinement of existing programs.

For further information on this section:

Batterer's Intervention.

<https://www.biscmi.org/aquila/>

L. Frederick, "Effective Interventions in Domestic Violence Cases: Context Is Everything," Battered Women's Justice Project, 2001.

http://www.bwjp.org/assets/documents/pdfs/effective_interventions_context_is_everything.pdf