

**COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS**

**Tuesday, February 9, 2016 – 10:00 a.m.**

**Arizona State Courts Building, 1501 W. Washington – Conference Room 119 A/B**

**Conference Call: 602-452-3288 Access Code: 8237#**

[WebEx Link](#)    [CIDVC Home Page](#)

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**AGENDA**

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- 10:00 a.m. Call to Order/ Welcome and Introductions *Judge Wendy Million  
Tucson City Court*
- Approval of Minutes – November 17, 2015  
 **Formal Action/Request**
- 10:10 a.m. Domestic Violence and the Federal System *Shelley Clemens, AUSA  
Sharon Sexton, AUSA  
Jovana Uzarraga-Figueroa, Victim Witness Specialist  
U.S. Attorney’s Office-District of Arizona*
- 11:10 a.m. Accounting for Domestic Violence in Custody Decisions *Judge Karen Adam (Ret.)*
- 11:25 a.m. Implementation of Amendment to ARS § 13-3967 *Judge Ron Reinstein (Ret.)  
COVIC Chair*  
Re: DV Risk and Lethality Assessments  
 **Formal Action/Request**
- 11:35 a.m. Workgroup Report: Judicial Education Workgroup *Judge Marianne Bayardi*
- 11:50 a.m. ARPOP Rule Petitions (R-15-0035, R-16-0026) *Kay Radwanski, AOC*  
 **Formal Action/Request**
- 12:00 p.m. Announcements/Call to the Public *Judge Million*
- Adjournment *Judge Million*
- Next Meeting:** May 10, 2016 - 10:00 a.m.  
Arizona State Courts Building, Conference Room 119 A/B
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**Other 2016 Meeting Dates**

September 13  
November 1

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*All times are approximate. The Chair reserves the right to set the order of the agenda. For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration § 1-202. Please contact Kay L. Radwanski, staff to the Committee on the Impact of Domestic Violence and the Courts, at (602) 452-3360, with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Julie Graber at (602) 452-3250. Requests should be made as early as possible to allow time to arrange for the accommodation.*



# COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

## Draft Minutes

Tuesday, November 17, 2015

10:00 a.m. to 2:00 p.m.

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

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**Present:** Judge Wendy Million (chair), Judge Keith D. Barth, Judge Carol Scott Berry, Ellen R. Brown, Diane L. Culin, Joi Davenport, Patricia George, Esq., Dorothy Hastings, Judge Statia D. Hendrix, Patricia Madsen, Dana Martinez, Shannon Rich, Amy Robinson (proxy for Amy St. Peter), Rebecca Strickland, Tracey J. Wilkinson

**Telephonic:** Deborah Fresquez, Anna Harper-Guerrero, Judge Wyatt J. Palmer, Judge Patricia A. Trebesch

**Absent/Excused:** Judge Marianne T. Bayardi, Carla F. Boatner, Lynn Fazz, Gloria E. Full, Captain Jeffrey Newnum, Deputy Chief Andrew R. Reinhardt, Assistant Chief Sandra Renteria

**Presenters/Guests:** Christine Groninger (Arizona Bar Foundation), Judge Kerry Passey (Ft. McDowell Yavapai Nation), and Merri Tiseth (Arizona Coalition to End Sexual & Domestic Violence)

**Administrative Office of the Courts (AOC):** Denise Lundin, David Withey

**AOC Staff:** Kay Radwanski, Julie Graber

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## I. REGULAR BUSINESS

### A. Welcome and Opening Remarks

The November 17, 2015, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:01 a.m. by Judge Wendy Million, Chair. Judge Million welcomed members and introduced new members, Deborah Fresquez from Coconino County Victim Witness Services, and Amy St. Peter from the Maricopa Association of Governments.

### B. Approval of Minutes

The draft minutes from the May 12, 2015, meeting of the CIDVC were presented for approval.

**Motion:** To approve the May 12, 2015, meeting minutes, as presented. **Action:** Approve, **Moved by** Judge Keith D. Barth, **Seconded by** Patricia George. Motion passed unanimously.

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. Expanding the Role of Lay Legal Advocates

Christine Groninger, Arizona Bar Foundation, and Merri Tiseth, Arizona Coalition to End Sexual & Domestic Violence (ACESDV) reviewed the role of lay legal advocates

(LLA) in areas of family law, housing and protective orders. They discussed the efforts to expand the current education and supportive role and its scope of assistance to improve access to justice for victims of domestic violence, provide more services for self-represented litigants, reduce document preparation in legal aid programs, and increase efficiency in the courtroom. Ms. Groninger described the proposed 24-month pilot project that would be low cost, work within the current system, have oversight and evaluation components, and allow an LLA to become a certified legal document preparer (CLDP). Participants would have to meet training requirements and agree to be supervised by legal aid attorneys. She discussed the project's impact and possible rule changes regarding the unauthorized practice of law and certification for legal document preparers. The greatest challenge for rural counties and non-profit organizations is the \$650 fee to become a certified legal document preparer.

Ms. Tiseth defined the LLA's training requirements and reviewed the basic, expanded and prohibited services. LLAs would be able to select, complete and review basic forms upon certification for CLDP; sit with the client at the litigant table; provide notes to litigants when and where necessary; and accompany a client in conferences in a supportive role only. However, LLAs would be prohibited from providing legal analysis or legal advice; representing the client in court, or disclosing information in violation of a court order or rule.

The presenters reviewed comments received from other stakeholders. The Arizona Commission on Access to Justice assigned a workgroup to look at all non-lawyer activity and how it could be implemented. The Commission on Victims in the Courts raised possible issues of liability and presumption of role if the LLA sits at the table with the client.

During discussion, a question was raised about whether there would be ongoing issues with conflicts. While the LLA is working under the supervision of a legal aid attorney, the conflict check system used by Legal Aid would be used. After the supervision period is over, the LLA would not be subject to Legal Aid's conflict check and would be able to help anybody. Members also inquired about the impact on the legal profession.

#### **B. Discussion: Domestic Violence Offender Treatment**

Judge Million updated the committee on the progress of the Domestic Violence Offender Treatment Workgroup, which was established to develop minimum standards for courts when approving domestic violence offender treatment programs not otherwise approved by the Department of Health Services (DHS), a probation department, or the Department of Veterans Affairs (VA) for persons convicted of a misdemeanor domestic violence offense. The law allows courts to approve these programs, subject to rules created by the Arizona Supreme Court, and takes effect on January 1, 2016. The workgroup drafted a proposed code section that was modeled after DHS rules but was less stringent for non-intimate partners and allowed for non-DHS certified treatment providers. Judge Million presented the workgroup's proposal to the Committee on Limited Jurisdiction Courts (LJC), which only supported the program in concept. The LJC felt that the standards did

not sufficiently address the logistical challenges in rural counties and suggested alternative delivery programs, such as distance learning and mail order programs.

CIDVC members raised a concern about the delivery of an offender treatment program without a monitoring component because it could lead to more risk.

### **C. Amended ARS § 13-3967 and Lethality Assessment**

Ellen Brown, Pima County Attorney's Office, provided background information regarding amendments to ARS § 13-3967, which requires judges to consider the results of a risk or lethality assessment when setting bonds and conditions of release for a person arrested on domestic violence charges to better determine the risk to the community and to domestic violence victims. Ms. Brown reported on revisions that Pima County made to Form 4(a) in the Rules of Criminal Procedure. Pima County's version of the form incorporates 12 lethality assessment questions based on the Maryland Model Lethality Assessment Protocol (LAP) that are asked of the victim. She explained when a lethality assessment is initiated, how the LAP works for law enforcement and victim advocates, and its goals to build rapport, increase awareness of danger, educate, and encourage victims to obtain services. Law enforcement in Pima County started using a release questionnaire based on the form for felony and misdemeanor domestic violence arrests after July 3, 2015; however, the results have been inconsistent, and additional training will be necessary to address the issues.

#### **Member comments:**

- The statute does not differentiate between risk and lethality assessments.
- A victim's responses to an assessment administered by law enforcement are not confidential and could pose a safety risk.
- Law enforcement has not been trained to use this protocol as a way to connect a victim to services. The training should be expanded to judges and others who administer LAPs.

### **D. Discussion: Protective Order and Law Enforcement**

Judge Million discussed establishing a new workgroup to address issues regarding protective orders and law enforcement. Ms. Radwanski reviewed several topics that have come up:

- "Domestication" and full faith and credit: There is no need for protective orders to be domesticated. Law enforcement is supposed to enforce out-of-state protective orders based on the person's word.
- Foot distance requirements: There is no foot distance requirement in the statute. The order indicates that the defendant is to have no contact with the plaintiff.
- Certified order: An order does not need to be certified to be served.
- Service of Orders of Protection not issued by the Phoenix City Court: The policy of the Phoenix Police Department is to have the plaintiff locate the defendant to have the order served in the City of Phoenix. This policy goes against the intent of protective orders to avoid contact situations.

- Tracey Wilkinson will chair the new Protective Orders and Law Enforcement Workgroup.

**E. Pro Bono Attorney List for Sexual and Domestic Violence Programs**

Shannon Rich, ACESDV, and Patricia Madsen, Community Legal Services, explained the need to create a list that connects advocates in shelters with pro bono attorneys who are willing to assist in emergent situations and address issues with confidentiality and privileged communication.

**F. Tribal Court Protective Order Repository** (*item out of order*)

David Withey, AOC Chief Legal Counsel, and Judge Kerry Passey, Acting Chief Judge, Ft. McDowell Yavapai Nation, provided background information regarding tribal court protective orders and the efforts by Judge Passey to make his Project Passport compliant orders available to law enforcement. Judge Passey noted that there are 560 tribes in country, 26 Native American shelters, and most tribal protective orders issued are not entered into the statewide and nationwide databases. Although it is unclear why the Department of Public Safety will not enter or accept tribal protective orders, the situation poses serious safety concerns for both law enforcement officers and the community because officers do not have access to the offender's complete history report, including the offender's current protective orders, prohibited firearms possessor status, and previous domestic violence assaults. He sought advice from CIDVC on how to address these challenges and get the data entered into the statewide and nationwide repositories.

The committee consensus was to refer the matter to Tony Coulson at the NICS Task Force. Mr. Coulson addresses issues with entry of protective orders into NCIC.

**G. Domestic Violence Training for Judicial Officers**

Judge Million discussed the concept of mandatory domestic violence training for judicial officers in light of the requirement in ACJA § 1-302(H)(5)(b) that judges, clerks and staff who process Orders of Protections and Injunctions Against Harassment attend training on these orders on a regular basis. She referred members to the mandatory domestic violence training requirements in California and nationwide.

**Member comments:**

- The committee consensus was that mandatory training, covering the processing of protective orders and domestic violence, should be every other year until the judicial official is no longer assigned in this area. Juvenile court judges should be covered by the rule but excluded if they do not process protective orders.
- Some members noted that the mandatory training could be difficult in some jurisdictions because every pro tem judge handles protective order hearings and domestic violence issues. In addition, there are not many types of domestic violence training available.

**H. Workgroup Reports:** (*item out of order*)

- **Orders, Enforcement and Access**
- **Training and Education**

Orders, Enforcement and Access Workgroup: Judge Carol Scott Berry reported that the workgroup is working on a reference card for agencies and law enforcement to set up remote video conferencing. There is a flowchart on one side and written information on the other to address different learning types. The workgroup needs to reconvene to discuss finalizing the reference card and distributing it.

Training and Education Workgroup: Judge Keith Barth reported on the progress of the bench cards regarding protective order procedures and the alternative methods of disseminating the bench cards to new and existing judges. The workgroup will need to meet to make final updates or clarifications. CIDVC was asked to provide two sessions at the Annual Judicial Conference. Suggestions should be forwarded to Judge Bayardi, chair of the Annual Judicial Conference Workgroup.

Judge Barth joined the Protective Orders and Law Enforcement Workgroup.

**I. Report: ARPOP Rule Petitions (R-15-0010, R-15-0016) (*item out of order*)**

Judge Million reported that CIDVC's rule petition restyling the ARPOP rules was adopted as submitted with two amendments from the Pima County Attorney that allow victims seeking an ex parte order of protection to be accompanied 1) by advocates, and 2) by their children if the petitioner would otherwise be denied access to the court. The new rules have also been incorporated into the Bench Briefings.

**J. Case Law Update: *Elonis v. United States***

Kay Radwanski updated members on a recent opinion, *Elonis v. United States*, issued by the U.S. Supreme Court. This case focused on lyrics that were posted on a social networking website and whether the comments constituted a threat under 18 U.S.C. § 875(c). The Supreme Court overturned the conviction and held that the defendant's crime required showing that the defendant intended to issue threats or knew that the communications would be viewed as threats, rather than that a reasonable person would regard the defendant's comments as threats.

**K. Update: Bench Briefings**

Bench Briefing No. 6 has been made available to judges and court staff. Bench briefings will be revised to incorporate the new ARPOP rules.

**III. OTHER BUSINESS**

**A. Good of the Order/Call to the Public**

None present.

**B. Next Committee Meeting Date**

Tuesday, February 9, 2016; 10:00 a.m.  
State Courts Building, Room 119  
1501 W. Washington Street, Phoenix, AZ 85007

The meeting adjourned at 1:53 p.m.



## COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

<b>Meeting Date:</b>  2/9/16	<b>Type of Action Requested:</b>  <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	<b>Subject:</b>  Domestic Violence and the Federal System
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**From:** The United States Attorney's Office-District of Arizona

**Presenter:** Shelley Clemens, Sharon Sexton, and Jovana Uzarraga-Figueroa

**Description of Presentation:** Shelley and Sharon, who are Assistant United States Attorneys, will be presenting on federal domestic violence laws and statutes. They will talk about the writ process from tribal to federal custody and challenges and issues of domestic violence cases such as Brady and Lautenberg. Jovana, who is a victim witness specialist, will talk about victim rights, how victims are helped through the federal justice system, resources available to victims, and the challenges of working with domestic violence victims.

**Recommended Motion:** n/a



## **Federal Firearm Offenses, Domestic Violence, and Victim Services in the Federal System**

### **FIREARMS STATUTES**

#### **Unlawful Possession of Firearm or Ammunition**

##### **18 U.S.C. § 922(g)**

- Convicted felon
- Fugitive from justice
- User or addict to any controlled substance
- Adjudicated as mental defective or committed to mental institution
- Illegal or non-immigrant alien
- Dishonorable discharge from armed forces
- Renounced US citizenship
- Subject to DV restraining order
- Convicted of DV misdemeanor crime of violence

### **Unlawful Possession of Firearm or Ammunition by Convicted Felon- 18 U.S.C. § 922(g) (1)**

- Convicted Felon
  - Convicted in any court of crime punishable by more than 1 year prison
  - Any federal felony offense
  - Any Arizona felony offense (including class 6 undesignated)
  - Most other state felony offenses

### **Unlawful Possession of Firearm or Ammunition by Convicted Felon- 18 U.S.C. § 922(g) (1)**

- Need official court documents of conviction
  - Offense, date of sentence, court, case number
- Suspect does not need to have served more than one year prison
  - i.e. sentenced to probation, but offense of conviction has sentencing range of 0-2 years

### **Unlawful Possession of Firearm or Ammunition by Drug User/Addict- 18 U.S.C. § 922(g) (3)**

- Not commonly charged because it's difficult to prove
  - need more than defendant's statements
  - some evidence of use (possession of drugs, paraphernalia)
- Addiction is difficult to establish
  - hospital or treatment records helpful, but confidential

### **Unlawful Possession of Firearm or Ammunition by Alien- 18 U.S.C. § 922(g) (5)**

- Alien
  - Unlawfully present in US
  - Admitted to US pursuant to non-immigrant visa
    - B1/B2 border crosser
    - Work or student visa

**Unlawful Possession of Firearm or Ammunition  
by Alien- 18 U.S.C. § 922(g) (5)**

- Confirm defendant's alien status through immigration records
- Defendant's statements
- Possession of non-immigrant visa
  - (g)(5)(B) – border crossing card

**Unlawful Possession of Firearm  
while under Restraining Order  
18 U.S.C. § 922(g) (8)**

- Specific requirements of court order, not always met with standard restraining orders
- Must be DV relationship
  - Requires a finding that defendant is a threat or a prohibition against violence

**Unlawful Possession of Firearm  
with prior Domestic Violence Conviction  
18 U.S.C. § 922(g) (9)**

- Doesn't apply to all domestic violence convictions
- Must have an element of force

**What qualifies as  
“interstate or foreign commerce”?**

Must have effect on interstate commerce (“nexus” element)  
for 18 U.S.C. § 922(g)

- Firearm/ammunition manufactured outside of Arizona  
(most common)
- Firearm/ammunition transported, shipped, sold, etc.,  
outside of Arizona
- Materials used in manufacturing firearm/ammunition  
originated outside of Arizona

## Establishing “nexus”

We cannot accept a 922(g) case without interstate/foreign commerce nexus

Most firearms and ammunition manufactured outside of AZ, but need confirmation

- ATF will provide preliminary nexus determination for complaint
- Prior to indictment, ATF will examine the firearms/ammo and provide nexus statement

## Issues in Unlawful Possession Cases

### Ammunition

- Common “defense”: defendant didn’t know unlawful to possess ammo
  - strict liability - don’t need to prove defendant knew it was unlawful
  - not an actual defense; usually a plea for sympathy
- Show defendant’s propensity for firearms (usually has ammo b/c owns a gun)
- Lack of other valid reason for possessing ammo
- Federal convictions: defendant advised of no ammo in conditions of supervised release
  - Standard AZ condition of probation also prohibits ammo

## Issues in Unlawful Possession Cases

- Possession
  - Physical control or intention and ability to control
    - If firearm/ammunition not on suspect's person, other evidence of control/intent
      - Vehicles, residences, etc.
- Knowledge
  - Knowledge of firearm/ammunition (not necessary that suspect knew prohibited from possessing)
    - If firearm/ammunition not on suspect's person, other evidence of control/intent
      - Firearm accessories, receipts, etc.

## Qualifying Prior Conviction

- Tribal Convictions – What if the defendant did not have counsel for the underlying misdemeanor conviction?
  - U.S. v. First, 731 F.3d 998 (9<sup>th</sup> 2013.) – Misdemeanor convictions in tribal court may qualify as predicate offenses for misdemeanor firearms possession so long as they received all rights available under the Indian Civil Rights Act, not the 6<sup>th</sup> Amendment.
  - BUT U.S. V. Bryant, 769 F.3d 671 (9<sup>th</sup> Cir. 2014). Prior misdemeanor convictions in tribal court cannot be used to support a charge of felony Domestic Assault by an Habitual Offender where the defendant was not provided a 6<sup>th</sup> Amendment Right to Counsel.

### **Prior Misdemeanor Crime of Violence Physical Force**

- Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon,
- Physical force requirement satisfied by degree of force that supports a common-law conviction – namely, offensive touching. *US v. Castleman*. 134 S.Ct. 1405, 1410 (2014).

### **Prior Misdemeanor Crime of Violence Physical Force**

- But must still be intentional vs. reckless conduct. *United States v. Nobriga*, 474 F.3d 561, 565 (9<sup>th</sup> Cir. 2006).

### **Prior Misdemeanor Crime of Violence**

- WAS THERE A DOMESTIC VIOLENCE RELATIONSHIP?
  - Statute – “committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.”

### **Protective Order**

- Must be a final protective order.
- No provision within statute for subject to relinquish firearms after protective order entered.

## **Adjudicated as a Mental Defective**

- Issues:
  - Proceedings are sealed.
  - States have different procedures/requirements for temporarily committing persons to an in-patient mental health facility.
  - Temporary commitment prior to a finding by the court may be insufficient.

## **Writ and Extradition**

**Crime Victims' Rights Act  
Title 18 United States Code section 3771**

- The right to be reasonably protected from the accused
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding

**Crime Victims' Rights Act  
Title 18 United States Code section 3771**

- The reasonable right to confer with the attorney for the Government in the case
- The right to full and timely restitution as provided in law
- The right to proceedings free from unreasonable delay
- The right to be treated with fairness and with respect for the victim's dignity and privacy

## **Crime Victims' Rights Act Title 18 United States Code section 3771**

- The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement
- The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice.

## **Victim Services**

- 21 Federally Recognized Tribes in the State of Arizona
- Criminal Justice Process
  - Charges filed all the way to Sentencing
- How to help
- Challenges
- Resources

## Questions?

**Sharon Sexton**

Assistant United States Attorney

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**Jovana Uzarraga-Figueroa**

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## COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

<b>Meeting Date:</b> February 9, 2016	<b>Type of Action Requested:</b> <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	<b>Subject:</b> ACCOUNTING FOR DV IN CUSTODY DECISIONS
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**From:** Battered Women Justice Project

**Presenter:** Karen Adam

**Description of Presentation:** The Battered Women's Justice Project (BWJP), National Council of juvenile and Family Court Judges (NCJFCJ) and the Association of Family and Conciliation Courts(AFCC) have been collaborating for several years to develop a set of guidelines for attorneys, evaluators, mediators and judges to use in family law cases with domestic violence. I will explain the guidelines and the curriculum. I continue to be engaged in the project as it is being adjusted for use in child welfare cases.

**Recommended Motion:** information only



# PRACTICE GUIDES FOR FAMILY COURT DECISION-MAKING IN DOMESTIC ABUSE- RELATED CHILD CUSTODY MATTERS

(Forms and Instructions)

By

Gabrielle Davis  
Loretta Frederick  
Nancy Ver Steegh

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This project is supported by Award 2009-TA-AX-K025 from the Office of Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed herein are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.

For questions or additional information, email us at [technicalassistance@bwjp.org](mailto:technicalassistance@bwjp.org)

5.8.15



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## A. INTRODUCTION

This compilation of research-based practice guides is designed to support and enhance substantive and procedural decision-making by family court professionals involved in domestic abuse-related child custody matters. It provides guidance on how to identify, understand and account for the nature, context and implications of abuse at every stage of the family court proceeding by any person who is involved in the case. It promotes informed decision-making that focuses upon the lived experiences of the parents and children whose lives are being adjusted by and within the family court system.

The practice guides contained in this compilation were developed by the Battered Women's Justice Project, in consultation with the National Council of Juvenile and Family Court Judges and representatives from the Association of Family and Conciliation Courts, with generous support from the U.S. Department of Justice Office of Violence Against Women. The practice guides were informed by researchers, scholars, and expert practitioners, as well as battered and battering parents across the country and around the world.

The materials presented here function as a package. They are color-coded to denote the relationships between and among the several guides. In other words, a blue section in one chart corresponds with the blue sections in every other chart. Likewise, an orange section in one chart corresponds with the orange sections in every other chart. The parenting charts have a separate color-coding system. In the parenting charts, green areas denote "safety" and red areas denote "danger."

No part of this compilation is meant to be used in isolation from any other. Nor is the whole or any part of this compilation meant to be used outside of the family court setting.

This compendium is a work-in-progress. Please contact the Battered Women's Justice Project at [technicalassistance@bwjp.org](mailto:technicalassistance@bwjp.org) for periodic updates.



## B. A FRAMEWORK FOR IDENTIFYING, UNDERSTANDING AND ACCOUNTING FOR ABUSE

This four-part framework is designed to help you gather, synthesize and analyze information about the context and implications of domestic abuse in order to improve informed decision-making. It can be used by anyone in any profession at any stage of the proceeding. The framework consists of the following four parts. Each part is described more fully below.



### 1. Identifying Domestic Abuse

The first step of the framework is to identify domestic abuse. At the outset, you must try to determine whether abuse is or may be an issue in the case. Several tools currently exist to help identify domestic abuse. A couple of them are included in this compilation, but many more are available elsewhere.

Most domestic abuse screening tools are designed for a specific purpose and a specific practice setting. Different tools look for different things for different reasons. Each has its own strengths and limitations. Consequently, it is important for you to know what you are looking for and why – and to use tools that are designed to get at what you need.

In order to promote safe and informed disclosures of domestic abuse, it is also important for you to explain to the people you screen why you are asking about abuse, how you will use the information they provide, who will have access to it, and where it might show up later in the family court process. For a more detailed discussion of how to promote safe and informed disclosures of domestic abuse, see the Initial Domestic Abuse Screening Guide and the Domestic Abuse Interview Guide in Sections IV and V below.



## 2. Defining the Nature and Context of Abuse

Identifying domestic abuse is an important first step, but just knowing that abuse has occurred or is still occurring does not tell you all you need to know in order to make informed decisions and take informed action. You need to know more specifically what is actually going on – what the nature and context of the abuse are. You need to know who is doing what to whom, why and to what effect. And, in the context of a family law case, you need to know what is going on with respect to parenting and the health, safety and wellbeing of the children, as well as the parent who is subjected to abuse.

## 3. Evaluating the Implications of Abuse

The third step of the framework is to evaluate the implications of the abuse. It says, “Now that you know what’s going on, what does it mean for the task or decision at hand?” For instance, if you are trying to come up with a parenting plan, you need to ask what the consequences of the abuse are for parenting. What risks and problems does the abuse create for the parents and for the children? What kinds of things are standing in the way of constructive parenting and healthy childhood development?

## 4. Taking Informed Action by Accounting for Abuse

By virtue of custom and practice, the family court system is often more focused on “divvying things up” (including the children) than it is on “making things work.” When institutional attention turns to “divvying things up” – to dividing and allocating aspects of the child’s life between the parents – it does not always tend to the very immediate things that get in the way of “making things work” for the child and the parents. For instance, it does not always account for post-separation abuse, or ongoing coercive control, or parenting practices that jeopardize the child’s safety and well-being, or the safety and well-being of the battered parent.

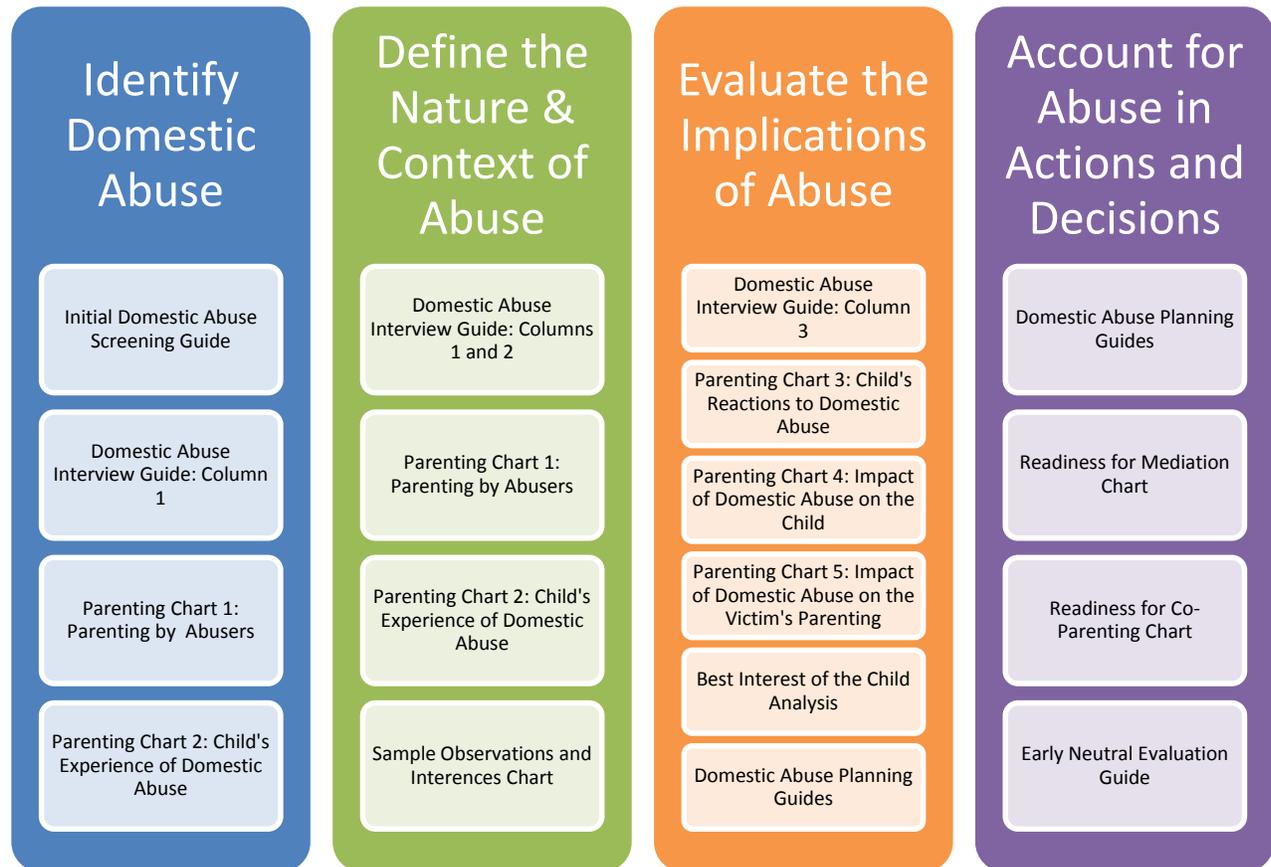
To address this problem, the last stage of the framework focuses on making informed decisions and taking informed actions that fully account for the nature, context and implications of abuse. In this way, the framework encourages you to directly address the underlying conditions that would otherwise allow the abuse – and its implications – to persist long after the family court case is officially closed.





## C. IMPLEMENTING THE FRAMEWORK

Each step of the framework is supported by one or more practice guides. The practice guides applicable to each step of the framework are listed below. Each is discussed more fully in the pages that follow.



Additional practice guides are currently under development. They include guidance on early neutral evaluation, collaborative law, parent coordination, parent education, and interventions for parents who engage in domestic abuse, among others. Please contact the Battered Women's Justice Project at [technicalassistance@bwjp.org](mailto:technicalassistance@bwjp.org) for periodic updates.



## D. INITIAL DOMESTIC ABUSE SCREENING GUIDE

This initial screening guide is designed to help you identify domestic abuse and coercive controlling behaviors in family law cases. It is a simple screen that attempts to detect whether domestic abuse is or may be an issue in the case. It is not a comprehensive assessment guide like the Domestic Abuse Interview Guide that appears later in this compilation. You may use this guide to conduct an initial domestic abuse screen, or you may go directly to the Domestic Abuse Interview Guide for a more comprehensive screening and assessment protocol.

Whether you start with this screening guide or the more comprehensive Domestic Abuse Interview Guide, you should systematically screen every adult who plays a parenting role in the case, or who has a significant relationship with a parent in the case, regardless of gender, marital status, sexual orientation, or parenting status.

Before you begin, you should explain to the person you are working with:

- (1) That the professional standards that guide your work require you to look into certain issues in every case, including domestic abuse, and that knowing about any history of abuse will help you carry out your functions and fulfill your professional responsibilities;
- (2) What your specific role and function is in relation to the case, including:
  - What you were appointed, hired or referred to do;
  - What steps you plan to take to carry out your functions;
  - What you will and won't share with the court, the opposing party, and others; and
  - Whether the information will appear in the record and/or a pleading or report.
- (3) The scope and/or limits of confidentiality and your duty to report suspected child abuse and certain serious crimes.



If a person discloses domestic abuse, you should:

- (1) Obtain as much information as possible in order to fully understand the context and implications of the abuse;<sup>1</sup>
- (2) Conduct a thorough domestic abuse risk assessment<sup>2</sup> or refer the person to a qualified risk assessment specialist; and
- (3) Refer the person to a qualified domestic abuse advocate for safety planning assistance.

Remember that risk from domestic abuse is never static, that it is difficult to predict, that it can fluctuate over time, *and that it often escalates once it has been disclosed and/or the parties separate*. Consequently, screening for domestic abuse is not a one-time event, but should occur periodically over the course of your involvement in the case.

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<sup>1</sup> The accompanying Domestic Abuse Interview Guide may assist in this effort.

<sup>2</sup> You may wish to refer to the list of risk assessment factors that appears at the end of the accompanying Domestic Abuse Interview Guide, and in the accompanying Domestic Abuse Planning Guides, for further direction.



## INITIAL DOMESTIC ABUSE SCREENING GUIDE

### Basic Screening Questions:

### What to Listen For:

**How comfortable are you interacting with \_\_\_\_\_ now?**

- Do you have any concerns, fears or anxieties that I should be aware of?
- What worries you most?

#### Personal Interactions

Comfortable	↔	Uncomfortable
Safe/Secure	↔	Fearful/Anxious
Self-Ruled	↔	Controlled
Connected	↔	Isolated
Respected	↔	Disparaged
Self-Reliant	↔	Dependent
Supported	↔	Undermined

**When you look back over time, how were practical, everyday decisions made in your relationship?**

- How did you arrive at that arrangement?
- Are you comfortable with that?
- What happened when disagreements arose?

#### Everyday Decision-Making

(food, shelter, finances, children)

Equal	↔	Dominating
Cooperative	↔	Coercive
Responsible	↔	Irresponsible
Fair	↔	Manipulative

**Is there anything that gets in your way of doing the things you want or need to do in your daily life, like:**

- Managing your daily affairs
- Meeting your basic needs
- Meeting the basic needs of the children
- Fulfilling your everyday responsibilities
- Making your own decisions
- Interacting with other people

#### Control of Everyday Life

Self-Directed	↔	Controlled
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**Has there ever been any physical violence between you and \_\_\_\_\_? If so, can you tell me about that?**

#### Physical Violence

Very rare	↔	Every day
Very minor	↔	Very severe
No harm	↔	Severe injury

**Have you ever felt so ashamed, humiliated, embarrassed or fearful by something you or \_\_\_\_\_ said or did to the other that you didn't want anyone else to know about it? If so, can you tell me about what that was like for you (without revealing specifics)?**

#### Emotional Well-being

Safe/Secure	↔	Fearful/Anxious
Self-Respect	↔	Humiliation
Autonomous	↔	Controlled

**Have you or \_\_\_\_\_ ever forced the other to do sexual things the other didn't want to do or insisted on having sex when the other didn't want to? If so, can you tell me about that?**

#### Sexual Autonomy

Voluntary	↔	Forced
Respectful	↔	Degrading



Have you or \_\_\_\_\_ ever been concerned that the other was going to physically or psychologically harm the other, the children, or pets? If so, please explain.

**Fear of Physical or Psychological Harm**  
(self, children, pets, others)

Not fearful ←————→ Very fearful

How are parenting time arrangements currently being worked out?

- How did you arrive at that arrangement?
- Are you comfortable with that?
- Any concerns about children or fears for their safety?

**Parental Decision-Making**

Equal ←————→ Dominating  
 Cooperative ←————→ Coercive  
 Responsible ←————→ Irresponsible  
 Child-Focus ←————→ Self-Focus  
 Fair ←————→ Manipulative

Physical/Sexual Abuse	Emotional Abuse	Control of Daily Life	Economic Abuse
<input type="checkbox"/> Hold, pin, restrain <input type="checkbox"/> Kneel on or sit upon <input type="checkbox"/> Tie up, bind, gag <input type="checkbox"/> Push, shove, shake <input type="checkbox"/> Grab  <input type="checkbox"/> Scratch, pull hair, <input type="checkbox"/> Shave <input type="checkbox"/> Twist arm  <input type="checkbox"/> Bite <input type="checkbox"/> Spit on <input type="checkbox"/> Urinate upon  <input type="checkbox"/> Slap <input type="checkbox"/> Hit or punch <input type="checkbox"/> Kick or stomp <input type="checkbox"/> Strike or throw object  <input type="checkbox"/> Choke or strangle <input type="checkbox"/> Burn <input type="checkbox"/> Poke, stab, cut  <input type="checkbox"/> Withhold food <input type="checkbox"/> Withhold medicine <input type="checkbox"/> Disable medical equip.  <input type="checkbox"/> Forced sex	<input type="checkbox"/> Insult you/put you down <input type="checkbox"/> Ridicule you in public <input type="checkbox"/> Purposely humiliate you <input type="checkbox"/> Play mind games  <input type="checkbox"/> Intimidate you <input type="checkbox"/> Yell or scream at you <input type="checkbox"/> Act aggressively to you <input type="checkbox"/> Get jealous/possessive <input type="checkbox"/> Accuse you of infidelity  <input type="checkbox"/> Interfere with: <input type="checkbox"/> work/school life <input type="checkbox"/> social life <input type="checkbox"/> sleep <input type="checkbox"/> healthcare/medication  <input type="checkbox"/> Threaten to: <input type="checkbox"/> kill you or the children <input type="checkbox"/> kill him/herself <input type="checkbox"/> harm you or the children <input type="checkbox"/> harm person you care for <input type="checkbox"/> harm or kill pets  <input type="checkbox"/> Destroy things you care for <input type="checkbox"/> Threaten you w/ weapon <input type="checkbox"/> Put your life in danger <input type="checkbox"/> Disable your car <input type="checkbox"/> Drive recklessly to scare you	<input type="checkbox"/> Follow or stalk you <input type="checkbox"/> Often check up on <input type="checkbox"/> Examine mail/email <input type="checkbox"/> Check phone calls  <input type="checkbox"/> Hack into email <input type="checkbox"/> Grill you <input type="checkbox"/> Time activities <input type="checkbox"/> Use others as spies <input type="checkbox"/> Invade privacy <input type="checkbox"/> Misuse social media  <input type="checkbox"/> Physically restrain <input type="checkbox"/> Forbid you to leave <input type="checkbox"/> Punish you for disobeying  <input type="checkbox"/> Arrive unannounced <input type="checkbox"/> Make unwanted contact <input type="checkbox"/> Leave things to scare you  <input type="checkbox"/> Make you do things you don't want to do	<input type="checkbox"/> Deny money <input type="checkbox"/> Refuse to pay bills <input type="checkbox"/> Empty bank <input type="checkbox"/> Hide assets  <input type="checkbox"/> Destroy your credit <input type="checkbox"/> Deny credit access <input type="checkbox"/> Run up debt <input type="checkbox"/> Forge papers <input type="checkbox"/> Refuse to pass title  <input type="checkbox"/> Destroy property <input type="checkbox"/> Steal your property <input type="checkbox"/> Sell your property  <input type="checkbox"/> Shut off utilities <input type="checkbox"/> Fail to pay insurance <input type="checkbox"/> Cancel insurance <input type="checkbox"/> Cancel credit cards  <input type="checkbox"/> Refuse to work <input type="checkbox"/> Refuse to let you work <input type="checkbox"/> Try to get you fired  <input type="checkbox"/> Hide bills <input type="checkbox"/> Hide financial info.  <input type="checkbox"/> Constantly return to court



## E. DOMESTIC ABUSE INTERVIEW GUIDE

The Domestic Abuse Interview Guide is designed to help you identify domestic abuse and coercive controlling behaviors in family law cases. It should be used with all adults who are parties, or who play a parental role in a case, regardless of gender, marital status, sexual orientation, or parenting status. Screening for domestic abuse is often complicated by the fact that victims: (1) may not know why it might be in the interests of their children or themselves to disclose abuse; (2) may be unclear or concerned about the ramifications of disclosure; (3) may not trust you with information about domestic abuse, in spite your good intentions; and (4) may not perceive that their current level of risk warrants disclosure. For these and other reasons, victims are often reluctant to disclose abuse. Screening for domestic abuse, therefore, is not a one-time event, but should occur periodically over the course of your involvement in the case. Bear in mind that talking about abuse may be an emotionally difficult experience for the interviewee, as well as for you. It is important to plan accordingly.

### Introduction to the Interview Guide

The **first column** of this guide seeks general information across seven broad topic areas: (1) personal interactions; (2) access to resources; (3) children and parenting; (4) control of daily life; (5) emotional abuse; (6) physical abuse; and (7) sexual abuse. Below each broad topic area are examples of the kinds of things you might ask about in order to help you identify whether domestic abuse is, or may be, present. Research shows that asking behaviorally specific questions is the most effective method of screening for abuse and coercive control.

Learning about these seven broad topic areas can help you identify important issues in the case. It can help you assess the relative capacities of the parties to meaningfully participate in alternative dispute resolution processes. It can help you recognize the kinds of protections that ought to be put in place to ensure that court proceedings are safe and effective. And, it can help you and the parties with whom you are working to determine together what the most beneficial and realistic outcomes might be for themselves and their children.

The **second column** suggests follow-up areas to explore when any domestic abuse issues are identified or disclosed under column one. These discussion areas will help you gain a deeper understanding of the nature, context, severity and implications of domestic abuse and coercive controlling behaviors.

The **third column** contains a checklist of key concepts, behaviors, and dynamics to listen for in the narrative responses to the questions asked in columns one and two.



## Practical Considerations

For safety reasons, care must be taken in determining where, when and how to conduct this interview. *The interview should not be conducted in the presence or proximity of any other party or interested person unless s/he is an advocate or support person and it is determined that the presence of that person will not create any confidentiality problems or threaten any applicable professional privilege, such as the attorney-client privilege.*

**Before** conducting the interview, you should explain to the interviewee:

- (1) That the professional standards that guide your work require that you look into certain issues in every case, including domestic abuse, and that knowing about any history of domestic abuse will help you carry out your functions and fulfill your professional responsibilities.
- (2) What your specific role and function is in relation to the case, including:
  - What you were appointed, hired or referred to do;
  - How you intend to do it;
  - What you will and won't share with the court, the opposing party, and others;
  - Whether the information will appear in the record and/or a pleading or report.
- (3) The scope and/or limits of confidentiality and your duty to report suspected child abuse and certain serious crimes.

**If a person discloses domestic abuse**, you should:

- (1) Obtain as much information as possible in order to fully understand its implications, without confining yourself to the topics listed in this guide;
- (2) Assess with the person the risks s/he may be facing, including risks of injury, death or other dangers, especially those arising from disclosing abuse; and
- (3) Refer the person to a qualified domestic abuse advocate for safety planning assistance and a more in-depth risk assessment, as appropriate.

Remember that risk from domestic abuse is never static, that it is difficult to predict, that it can fluctuate over time, *and that it often escalates once it has been disclosed and/or the parties separate.*



## DOMESTIC ABUSE INTERVIEW GUIDE

Adapted from *Client Screening to Identify Domestic Abuse Victimization*, Domestic Abuse Committee of the Family Law Section of the Minnesota State Bar Association, 2010; Holtzworth-Munroe, Beck & Applegate (2010), *Mediator's Assessment of Safety Issues and Concerns*; and Janet Johnston, et al., *IN THE NAME OF THE CHILD* (2d ed.), Springer Publishing Co., 2009.

1. Personal Interactions	Discussion Areas:	What to Listen For:
<p><b>A. Let's start by talking about your current relationship with _____.</b></p> <p><b>B. How comfortable are you interacting with _____ now?</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Being alone together</li> <li><input type="checkbox"/> Meeting face-to-face</li> <li><input type="checkbox"/> Talking by phone</li> <li><input type="checkbox"/> Emailing or texting</li> <li><input type="checkbox"/> Public encounters</li> </ul> <p><b>C. Do you have any concerns, fears or anxieties that I should be aware of?</b></p> <p><b>D. What worries you most?</b></p>	<ol style="list-style-type: none"> <li>1. Quality of interactions               <ol style="list-style-type: none"> <li>a. Ability to express views</li> <li>b. Trust in other's judgment</li> <li>c. Reliance on other's word</li> <li>d. Cost of disagreement</li> <li>e. Post-separation changes</li> </ol> </li> <li>2. Prior separations</li> <li>3. Snapshots               <ol style="list-style-type: none"> <li>a. Happiest moments</li> <li>b. Most worrisome moment</li> <li>c. Scariest moments</li> </ol> </li> <li>4. Decision-making history</li> <li>5. Stressors               <ol style="list-style-type: none"> <li>a. Abuse</li> <li>b. Alcohol/drugs</li> <li>c. Physical/mental health</li> <li>d. Criminal activity</li> <li>e. Poverty</li> </ol> </li> </ol>	<p><b>Personal Interactions:</b></p> <p>Safe ↔ Dangerous</p> <p>Secure ↔ Fearful</p> <p>Autonomous ↔ Controlling</p> <p>Respectful ↔ Offensive</p> <p>Honest ↔ Deceptive</p> <p>Reliable ↔ Unreliable</p> <p>Consistent ↔ Volatile</p> <p>Supportive ↔ Damaging</p> <p>Cooperative ↔ Coercive</p> <p>Equal ↔ Dominant</p> <p>Trusting ↔ Suspicious</p> <p>Open ↔ Isolating</p>
2. Access to Resources	Discussion Areas:	What to Listen For:
<p><b>A. I'd like to get a sense of your economic wellbeing.</b></p> <p><b>B. Do you have access to your own resources, like money, bank accounts, food, housing, transportation and healthcare?</b></p> <p><b>C. Who decides how you spend money and manage your financial affairs?</b></p>	<ol style="list-style-type: none"> <li>1. History/detail</li> <li>2. Ability to meet basic needs</li> <li>3. Ability to meet obligations</li> <li>4. Recent changes</li> </ol>	<p><b>Economic Well-being:</b></p> <p>Resources      Not</p> <p>Accessible ↔ Accessible</p> <p>Decisions</p> <p>Cooperative ↔ Controlling</p> <p>Finances</p> <p>Secure ↔ Insecure</p> <p>Needs</p> <p>Always Met ↔ Never Met</p>



3. Children/Parenting	Discussion Areas:	What to Listen For:
<p><b>A. Let's talk about your children.</b></p> <p><b>B. Do you have any concerns about your children or fears for their safety?</b></p> <p><b>C. How are parenting time arrangements currently being worked out?</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Division of duties</li> <li><input type="checkbox"/> Parenting skills/capacities</li> <li><input type="checkbox"/> Parenting concerns/conflicts</li> <li><input type="checkbox"/> Children's adjustment</li> <li><input type="checkbox"/> Access/exchange issues</li> <li><input type="checkbox"/> Satisfaction with the plan</li> </ul> <p><b>D. Has _____ ever used or threatened to use the children to manipulate, control, or monitor you?</b></p> <p><b>E. How are your children doing now?</b></p>	<ol style="list-style-type: none"> <li>1. What worries you most?</li> <li>2. Capacity for joint decisions               <ol style="list-style-type: none"> <li>a. Common beliefs/values</li> <li>b. Parental involvement</li> <li>c. Trust in parental judgment</li> <li>d. Support of other parent</li> <li>e. Respect for other parent</li> <li>f. Nurture/support of kids</li> <li>g. Conflict resolution skills</li> <li>h. Developmental stage(s)</li> </ol> </li> <li>3. Interference with care</li> <li>4. Undermining authority</li> <li>5. Threats to:               <ol style="list-style-type: none"> <li>a. Take children away</li> <li>b. Harm children</li> <li>c. File CPS reports</li> <li>d. Deport</li> <li>e. Evict</li> </ol> </li> <li>6. Post-separation changes</li> </ol>	<p><b>Abuser's Parenting:</b></p> <p>Safe ↔ Dangerous</p> <p>Secure ↔ Erratic</p> <p>Supportive ↔ Neglectful</p> <p>Child focus ↔ Self-focus</p> <p>Skilled ↔ Not skilled</p> <p>Protective ↔ Destructive</p> <p><b>Children's Well-Being:</b></p> <p>Developmental</p> <p>+ ↔ -</p> <p>Behavioral</p> <p>+ ↔ -</p> <p>Emotional</p> <p>+ ↔ -</p> <p>Cognitive</p> <p>+ ↔ -</p> <p>Social</p> <p>+ ↔ -</p> <p>Physical</p> <p>+ ↔ -</p> <p>Economic</p> <p>+ ↔ -</p> <p><b>Co-parenting:</b></p> <p>Communication</p> <p>+ ↔ -</p> <p>Judgment</p> <p>+ ↔ -</p> <p>Boundaries</p> <p>+ ↔ -</p> <p>Support</p> <p>+ ↔ -</p>



4. Control of Daily Life	Discussion Areas:	What to Listen For:
<p><b>A. I'd like to get a sense of how much freedom you have in your everyday life.</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> To come/go as you please</li> <li><input type="checkbox"/> To manage your own time</li> <li><input type="checkbox"/> To make own decisions</li> <li><input type="checkbox"/> To set your own priorities</li> <li><input type="checkbox"/> To interact with others</li> </ul> <p><b>Can you talk a little about that?</b></p> <p><b>B. Is there anything that gets in your way of doing the things you want or need to do?</b></p> <p><b>C. Has _____ ever:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Followed you</li> <li><input type="checkbox"/> Often checked up on you</li> <li><input type="checkbox"/> Examined your mail/email</li> <li><input type="checkbox"/> Examined phone records</li> <li><input type="checkbox"/> Hacked into email/accounts</li> <li><input type="checkbox"/> Grilled you/timed activities</li> <li><input type="checkbox"/> Used others to spy on you</li> <li><input type="checkbox"/> Invaded your space/privacy</li> <li><input type="checkbox"/> Misused social network sites</li> </ul> <p><b>D. Has _____ ever physically restrained you, forbidden you from leaving, made you do things you didn't want to do, or punished you for defying his/her wishes?</b></p> <p><b>E. Has _____ ever shown up unannounced, contacted you against your will, or left something for you to find to scare or intimidate you?</b></p>	<ol style="list-style-type: none"> <li>1. Detail</li> <li>2. Frequency</li> <li>3. Severity</li> <li>4. Intent of other's behavior</li> <li>5. Meaning of behavior to you</li> <li>6. Effect on:               <ol style="list-style-type: none"> <li>a. Interactions</li> <li>b. Relationships</li> <li>c. Communications</li> <li>d. Self/children</li> <li>e. Parenting skills/capacities</li> </ol> </li> <li>7. Change:               <ol style="list-style-type: none"> <li>a. Over time</li> <li>b. Pre/post pregnancy</li> <li>c. Pre/post separation</li> </ol> </li> </ol>	<p style="text-align: center;"><b>Control of Daily Life:</b></p> <p>Autonomy ↔ Control</p> <p>Freedom ↔ Constraint</p> <p>Support ↔ Obstruction</p> <p>Trust ↔ Jealousy</p> <p>Cooperation ↔ Coercion</p> <p>Privacy ↔ Intrusion</p> <p>Predictability ↔ Instability</p> <p>Equality ↔ Dominance</p> <p>Safety ↔ Fear/Dread</p> <p>Open ↔ Isolating</p> <p>Letting Go ↔ Stalking</p> <p>Compromise ↔ Rulemaking</p> <p style="text-align: center;"><b>Risk Factors:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Access to firearms</li> <li><input type="checkbox"/> Use/threat of weapon</li> <li><input type="checkbox"/> Threat to kill</li> <li><input type="checkbox"/> Step children</li> <li><input type="checkbox"/> Control of daily activities</li> <li><input type="checkbox"/> Violent or constant jealousy</li> <li><input type="checkbox"/> Threatened/attempted suicide</li> <li><input type="checkbox"/> Threat to harm children</li> <li><input type="checkbox"/> Belief in capacity to kill</li> <li><input type="checkbox"/> Stalking</li> </ul>



5. Sexual Abuse	Discussion Questions:	What to Listen For:
<p><b>A. While it is uncomfortable to talk about these kinds of things, it's very important for me to know if ____ ever pressured or forced you to do sexual things that you did not want to do or that made you scared, uncomfortable, or ashamed. Has anything like that ever happened?</b></p> <p><b>B. Has ____ ever interfered with your decisions about birth control, pregnancy, and/or safe sex?</b></p> <p><b>C. Has ____ ever used your image, or forced or pressured you to use your own image, to engage in sexting or pornography?</b></p> <p><b>D. Is there anything else you think I should know about ____'s sexual behavior towards you?</b></p>	<ol style="list-style-type: none"> <li>1. Detail               <ul style="list-style-type: none"> <li><input type="checkbox"/> Children</li> <li><input type="checkbox"/> Family</li> <li><input type="checkbox"/> Friends</li> <li><input type="checkbox"/> Co-workers</li> <li><input type="checkbox"/> Public</li> <li><input type="checkbox"/> Nobody – just in private</li> </ul> </li> <li>3. Frequency</li> <li>4. Severity</li> <li>5. Intent of other's behavior</li> <li>6. Meaning of behavior to you</li> <li>7. Effect on:               <ol style="list-style-type: none"> <li>a. Interactions</li> <li>b. Relationships</li> <li>c. Communications</li> <li>d. Self/children</li> <li>e. Parenting skills/capacity</li> </ol> </li> <li>8. Change:               <ol style="list-style-type: none"> <li>a. Over time</li> <li>b. Pre/post pregnancy</li> <li>c. Pre/post separation</li> </ol> </li> <li>9. Injuries</li> <li>10. Medical attention</li> <li>11. Hospital visits</li> <li>12. Calls for help/to police</li> <li>13. Arrests</li> <li>14. Convictions/sanctions</li> <li>15. Orders for protection</li> <li>16. Protection order violations</li> </ol>	<p><b>Intimate Relationship:</b></p> <p>Safe ↔ Harmful</p> <p>Consensual ↔ Forced</p> <p>Mutual ↔ Dominating</p> <p>Respectful ↔ Degrading</p> <p>Trusting ↔ Jealous</p> <p>Voluntary ↔ Coercive</p> <p>Secure ↔ Anxious</p> <p><b>Risk Factors:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Use/threat of weapon</li> <li><input type="checkbox"/> Threat to kill</li> <li><input type="checkbox"/> Forced sex</li> <li><input type="checkbox"/> Attempted strangulation</li> <li><input type="checkbox"/> Violent jealousy</li> <li><input type="checkbox"/> Assault during pregnancy</li> <li><input type="checkbox"/> Threat/attempted suicide</li> <li><input type="checkbox"/> Threat to harm children</li> <li><input type="checkbox"/> Belief in capacity to kill</li> <li><input type="checkbox"/> Stalking</li> <li><input type="checkbox"/> Illegal drug use</li> <li><input type="checkbox"/> Alcohol dependency</li> </ul> <p><b>Response to Sexual Abuse:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Fight</li> <li><input type="checkbox"/> Flight</li> <li><input type="checkbox"/> Freeze</li> </ul>



6. Physical Abuse	Discussion Areas:	What to Listen For:
<p><b>A. Let's turn to your personal safety, both now and in the past. Has ____ ever used or threatened to use physical force or abuse against you or the children?</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Hold, pin down, restrain</li> <li><input type="checkbox"/> Kneel, stand or sit upon</li> <li><input type="checkbox"/> Tie up, bind, gag</li>   <li><input type="checkbox"/> Push, shove, shake, grab</li> <li><input type="checkbox"/> Scratch, pull hair, shave hair</li> <li><input type="checkbox"/> Twist arm</li>   <li><input type="checkbox"/> Bite</li> <li><input type="checkbox"/> Spit on</li> <li><input type="checkbox"/> Urinate upon</li>   <li><input type="checkbox"/> Slap</li> <li><input type="checkbox"/> Hit or punch</li> <li><input type="checkbox"/> Kick or stomp</li> <li><input type="checkbox"/> Strike w/ or throw object at</li>   <li><input type="checkbox"/> Choke, strangle</li> <li><input type="checkbox"/> Burn</li> <li><input type="checkbox"/> Poke, stab, cut</li>   <li><input type="checkbox"/> Withhold food/medication</li> <li><input type="checkbox"/> Disable medical equipment</li> </ul> <p><b>B. What's the worst thing ____ has ever done to you?</b></p> <p><b>C. What's the scariest thing ____ has ever done to you?</b></p>	<ol style="list-style-type: none"> <li>1. Detail</li> <li>2. In front of whom? <ul style="list-style-type: none"> <li><input type="checkbox"/> Children</li> <li><input type="checkbox"/> Family</li> <li><input type="checkbox"/> Friends</li> <li><input type="checkbox"/> Co-workers</li> <li><input type="checkbox"/> Public</li> <li><input type="checkbox"/> Nobody – just in private</li> </ul> </li> <li>3. Frequency</li> <li>4. Severity</li> <li>5. Intent of other's behavior</li> <li>6. Meaning of behavior to you</li> <li>7. Effect on: <ol style="list-style-type: none"> <li>a. Interactions</li> <li>b. Relationships</li> <li>c. Communications</li> <li>d. Self/children</li> <li>e. Parenting skills/capacity</li> </ol> </li> <li>8. Change: <ol style="list-style-type: none"> <li>a. Over time</li> <li>b. Pre/post pregnancy</li> <li>c. Pre/post separation</li> </ol> </li> <li>9. Injuries</li> <li>10. Medical attention</li> <li>11. Hospital visits</li> <li>12. Calls for help/to police</li> <li>13. Arrests</li> <li>14. Convictions/sanctions</li> <li>15. Protection orders</li> <li>16. Protection order violations</li> </ol>	<p><b>Physical Violence:</b></p> <p>Very rare ↔ Every day</p> <p>Very minor ↔ Very severe</p> <p>No harm ↔ Major injury</p> <p><b>Risk Factors:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Increase frequency/severity</li> <li><input type="checkbox"/> Access to firearms</li> <li><input type="checkbox"/> Use/threat of weapon</li> <li><input type="checkbox"/> Threat to kill</li> <li><input type="checkbox"/> Avoidance of arrest for DV</li> <li><input type="checkbox"/> Forced sex</li> <li><input type="checkbox"/> Attempted strangulation</li> <li><input type="checkbox"/> Violent jealousy</li> <li><input type="checkbox"/> Assault during pregnancy</li> <li><input type="checkbox"/> Threat/attempted suicide</li> <li><input type="checkbox"/> Threat to harm children</li> <li><input type="checkbox"/> Belief in capacity to kill</li> <li><input type="checkbox"/> Stalking</li> <li><input type="checkbox"/> Illegal drug use</li> <li><input type="checkbox"/> Alcohol dependency</li> </ul> <p><b>Response to Physical Abuse:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Fight</li> <li><input type="checkbox"/> Flight</li> <li><input type="checkbox"/> Freeze</li> </ul>



7. Emotional Abuse	Discussion Areas:	What to Listen For:
<p><b>A. Let's talk more about how you and _____ relate to one another. Can you describe how _____ treats you as a person?</b></p> <p><b>B. Does _____ ever:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Insult you or put you down</li> <li><input type="checkbox"/> Ridicule you in public</li> <li><input type="checkbox"/> Purposely humiliate you</li> <li><input type="checkbox"/> Play mind games</li> </ul> <p><b>C. Does _____ ever:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Intimidate you</li> <li><input type="checkbox"/> Yell or scream at you</li> <li><input type="checkbox"/> Act aggressively toward you</li> </ul> <p><b>D. Does _____ ever:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Get jealous or possessive</li> <li><input type="checkbox"/> Accuse you of infidelity</li> </ul> <p><b>E. Does _____ ever interfere with:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Your work/school life</li> <li><input type="checkbox"/> Your social life</li> <li><input type="checkbox"/> Your sleep</li> <li><input type="checkbox"/> Your healthcare/medications</li> </ul> <p><b>F. Has _____ ever threatened to:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Kill you or the children</li> <li><input type="checkbox"/> Kill him/herself</li> <li><input type="checkbox"/> Harm you or the children</li> <li><input type="checkbox"/> Harm someone you care for</li> <li><input type="checkbox"/> Harm or kill pets</li> </ul> <p><b>G. Has _____ ever:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Destroyed your property</li> <li><input type="checkbox"/> Threatened w/ weapon</li> <li><input type="checkbox"/> Put your life in danger               <ul style="list-style-type: none"> <li><input type="checkbox"/> Disabled car/equipment</li> <li><input type="checkbox"/> Driven recklessly to scare</li> </ul> </li> </ul>	<ol style="list-style-type: none"> <li>1. Detail</li> <li>2. In front of whom?           <ul style="list-style-type: none"> <li><input type="checkbox"/> Children</li> <li><input type="checkbox"/> Family</li> <li><input type="checkbox"/> Friends</li> <li><input type="checkbox"/> Co-workers</li> <li><input type="checkbox"/> Public</li> <li><input type="checkbox"/> Nobody – just in private</li> </ul> </li> <li>3. Frequency</li> <li>4. Severity</li> <li>5. Intent of other's behavior</li> <li>6. Meaning of behavior to you</li> <li>7. Effect on:           <ol style="list-style-type: none"> <li>a. Interactions</li> <li>b. Relationships</li> <li>c. Communications</li> <li>d. Self/children</li> <li>e. Parenting skills/capacities</li> </ol> </li> <li>8. Change:           <ol style="list-style-type: none"> <li>a. Over time</li> <li>b. Pre/post pregnancy</li> <li>c. Pre/post separation</li> </ol> </li> </ol>	<p><b>Emotional Relationship:</b></p> <p>Safe ↔ Fearful</p> <p>Respectful ↔ Degrading</p> <p>Hopeful ↔ Hopeless</p> <p>Supportive ↔ Undermining</p> <p>Honest ↔ Manipulative</p> <p>Caring ↔ Cruel</p> <p>Secure ↔ Traumatic</p> <p>Protective ↔ Exploitive</p> <p><b>Risk Factors:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Access to firearms</li> <li><input type="checkbox"/> Use/threat of weapon</li> <li><input type="checkbox"/> Threat to kill</li> <li><input type="checkbox"/> Step children</li> <li><input type="checkbox"/> Forced sex</li> <li><input type="checkbox"/> Attempted strangulation</li> <li><input type="checkbox"/> Control of daily activities</li> <li><input type="checkbox"/> Violent jealousy</li> <li><input type="checkbox"/> Assault during pregnancy</li> <li><input type="checkbox"/> Threat/attempted suicide</li> <li><input type="checkbox"/> Threat to harm children</li> <li><input type="checkbox"/> Belief in capacity to kill</li> <li><input type="checkbox"/> Stalking</li> <li><input type="checkbox"/> Illegal drug use</li> <li><input type="checkbox"/> Alcohol dependency</li> </ul> <p><b>Response to Emotional Abuse:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Fight</li> <li><input type="checkbox"/> Flight</li> <li><input type="checkbox"/> Freeze</li> </ul>



<b>Implications of Domestic Abuse for Safety and Parenting:</b>		
<b>Immediate Safety Concerns:</b>  <i>See Risk Assessment Factors and Questions 1(A)-(D), 3(B), 4(E), 5(F)-(G), 6(A)-(C), 7(A)-(D)</i>	<b>Risk Assessment Factors:</b> <ul style="list-style-type: none"><li><input type="checkbox"/> Increase in frequency/severity</li><li><input type="checkbox"/> Access to firearms</li><li><input type="checkbox"/> Recent separation</li><li><input type="checkbox"/> Unemployment</li><li><input type="checkbox"/> Use/threat to use lethal weapon</li><li><input type="checkbox"/> Threat to kill</li><li><input type="checkbox"/> Avoidance of arrest for DV</li><li><input type="checkbox"/> Step-children</li><li><input type="checkbox"/> Forced sex</li><li><input type="checkbox"/> Attempted strangulation</li><li><input type="checkbox"/> Illegal drug use</li><li><input type="checkbox"/> Alcohol dependency</li><li><input type="checkbox"/> Control of daily activities</li><li><input type="checkbox"/> Violent or constant jealousy</li><li><input type="checkbox"/> Assault during pregnancy</li><li><input type="checkbox"/> Threatened/attempted suicide</li><li><input type="checkbox"/> Threat to harm children</li><li><input type="checkbox"/> Belief in capacity to kill</li><li><input type="checkbox"/> Stalking</li><li><input type="checkbox"/> Major mental illness</li></ul>	
<b>Immediate Economic Concerns:</b>  <i>See Questions 2(A)-(C), 4(C), 5(E)</i>		
<b>Immediate Parenting Concerns:</b>  <i>See Questions 1(A)-(C), 2(A)-(C), 3(A)-(E), 4(A)-(E), 5(E)-(G), 6(A)-(C), 7(A)-(D)</i>		
<b>Long-Term Concerns:</b>		



## F. SAMPLE OBSERVATIONS AND INFERENCES

The following chart identifies several observations that are commonly seen in domestic abuse-related custody cases, together with examples of corresponding inferences that might follow from those observations. The list of sample inferences is not exhaustive. It is merely meant to help you consider alternative explanations that might prompt further investigation before you arrive at any conclusions.

### OBSERVATIONS AND INFERENCES

OBSERVATION:	INFERENCE A	INFERENCE B	INFERENCE C
There is no documentation of abuse.	The abuse never happened.	The abuse happened, but it was never reported.	The abuse happened and it was reported, but it was never documented.
There is no substantiation of abuse.	The abuse never happened.	The abuse happened, but there is not enough evidence to prove it happened.	Something happened, but it doesn't rise to the level of abuse.
Both parties have been violent.	The abuse is mutual. Both parties are responsible for the abuse.	The abuse is not mutual. One party is responsible for the abuse.	The abuse is not mutual. One party is the responsible for the abuse and the other party acted in self-defense or tried to pre-empt the abuse.
The victim's account of abuse keeps changing.	The victim is lying. The abuse never happened.	The abuse happened, but the victim is afraid or uncertain what to disclose.	The victim's account is a typical traumatic response to abuse.
The victim is hostile or uncooperative.	The abuse never happened.	The abuse happened and the victim has a negative disposition.	The abuse happened and the victim is frustrated, scared, or feeling manipulated in regard to matters beyond their control.



<b>Allegations of abuse were not raised until the custody case was filed.</b>	The abuse never happened. The victim is trying to “get a leg up.”	The abuse happened and the victim is trying to “get a leg up.”	The victim did not disclose abuse until it was necessary.
<b>The physical abuse is relatively minor.</b>	The abuse is nominal and not relevant to the custody case.	A low level of physical abuse is all that is required for the abuser to maintain power and control over the victim.	The physical abuse is nominal, but other risk markers could be present that indicate heightened danger.
<b>The abuse happened a long time ago.</b>	The abuser poses no present danger.	The abuser might pose a danger, but lacks the means to carry out further abuse.	The abuser still poses a danger by virtue of the nature of the past abuse.
<b>The abuse happened a long time ago.</b>	The victim seems focused on the past.	The victim is focused on the past abuse because it raises present safety concerns.	The victim is focused on the past, but the abuse is ongoing and raises present safety concerns.
<b>The victim-parent has gone back to the alleged abuser.</b>	The abuse never happened or, if it did, it wasn't that bad.	The victim-parent isn't really afraid of the alleged abuser.	The victim-parent is managing multiple risks from abuse and going back is the safest option.
<b>The alleged abuser seems nice enough.</b>	The abuse never happened.	The abuse happened, and the abuser has a pleasant disposition.	The abuse happened and the abuser is a good manipulator.
<b>There has been no direct abuse of the child.</b>	The child is entirely unaware of and not affected by abuse.	The child has witnessed or is exposed to abuse.	The child is experiencing the aftermath of abuse.
<b>The child seems to have a close bond with the alleged abuser.</b>	The child wouldn't be aligned with the abuser unless the allegations of abuse are false.	The child's alignment with the abuser is a safety or risk management strategy.	The child's alignment with the abuser is a result of traumatic bonding.



<p>The child does not want to have anything to do with the alleged abuser.</p>	<p>The victim-parent is turning the child against the other parent.</p>	<p>The child has a good reason for not wanting to have anything to do with the alleged abuser.</p>	<p>The child is going through a normal developmental stage, trying to establish his/her own identity.</p>
<p>The victim-parent does not want the alleged abuser to have contact with the child.</p>	<p>The victim-parent is turning the child against the other parent.</p>	<p>The abuser does not pose a risk to the child, but the child and/or the victim-parent thinks the abuser does.</p>	<p>The abuser poses a risk to the child.</p>
<p>The victim-parent wants the alleged abuser to have contact with the child.</p>	<p>The alleged abuser poses no risk to the child.</p>	<p>The alleged abuser poses a risk to the child, but the victim-parent is afraid to say so.</p>	<p>The alleged abuser poses a risk to the child, but the victim-parent thinks contact is safer than no contact.</p>
<p>The child is angry with the victim-parent.</p>	<p>The alleged victim-parent is responsible for the abuse and/or its aftermath.</p>	<p>The alleged victim-parent is not responsible for the abuse or its aftermath, but the child thinks so.</p>	<p>The alleged abuser is undermining the victim-parent's authority or relationship with the child.</p>
<p>The victim-parent has discussed the abuse with the child.</p>	<p>The victim-parent is drawing the child into "adult matters."</p>	<p>The victim-parent is trying to help the child manage his/her own reactions to the abuse.</p>	<p>The victim-parent is trying to protect the child from further abuse.</p>
<p>The child seems to be doing well, in spite of the abuse.</p>	<p>The child is unaffected by the abuse.</p>	<p>The child is skillful at hiding from or denying abuse.</p>	<p>The child is managing the abuse through academic, athletic or outside achievement.</p>
<p>Child protective services has determined that child sexual abuse allegations are "unsubstantiated."</p>	<p>Child sexual abuse never happened.</p>	<p>Child sexual abuse happened, but there is insufficient evidence to prove that it happened.</p>	<p>Something happened, but it doesn't rise to the level of child sexual abuse.</p>



## G. PARENTING IN THE CONTEXT OF DOMESTIC ABUSE

The next six charts are designed to help you analyze the nature, dynamics and implications of parenting *in the context of domestic abuse*. Each chart has a specific purpose and is intended to facilitate a specific analysis.

The first chart, which is captioned *Parenting by Abusers* (Chart 1 of 6), is meant to assess the parenting capacities of abusers. It is only to be used after you have determined that one of the parties has engaged in domestic abuse – and it is only to be used to consider the parenting behaviors and decisions *of the abusive parent*. It is not meant to assess the victim parent.

The next three charts, which are captioned *Child's Experience of Domestic Abuse* (Chart 2 of 6), *Child's Reactions to the Experience of Domestic Abuse* (Chart 3 of 6), and *Impact of Domestic Abuse on Child* (Chart 4 of 6) are meant to assess the experiences and effects of the parenting behaviors and decisions of the abusive parent *on the child*.

The last two charts, which are captioned *Impact of Domestic Abuse on Victim's Parenting* (Chart 5 of 6) and *Impact of Domestic Abuse on Co-Parenting* (Chart 6 of 6), are meant to assess the effects of the parenting behaviors and decisions of the abusive parent *on the victim's parenting* and the *co-parenting relationship*. They are not intended to be used to analyze the abuser's parenting – nor are they intended to assess the impact of domestic abuse on *other aspects of the victim's life* beyond parenting and co-parenting.

**Be sure to select and apply the appropriate chart for the specific analysis you are undertaking. Misapplication of these charts can distort your analysis and lead to harmful outcomes for battered parents and their children.**

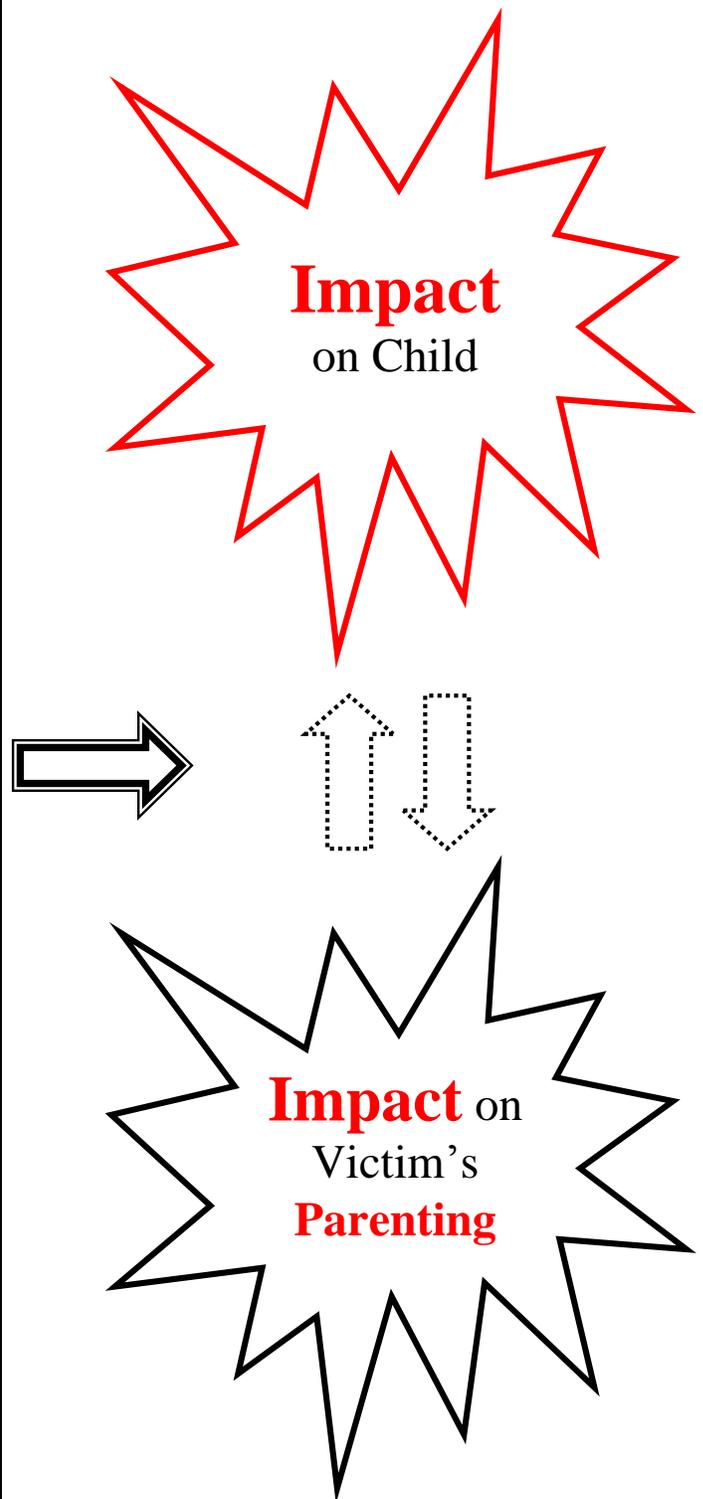
### **Family Court-Specific Design**

These charts were designed specifically for family court practitioners (lawyers, judges, custody evaluators, guardians ad litem, CASAs, mediators, parenting coordinators, parent educators, etc.) *for use in family court settings*. They were not developed for use in other settings, such as child protection or criminal justice proceedings.

**Be sure to exercise discretion and caution in applying these charts to non-family court settings.**



PARENTING BY ABUSERS (Chart 1 of 6)





**Physical or Sexual Abuse or Neglect of Child:** Decisions and behaviors that directly harm the child's physical safety, security and well-being, including but not limited to:

- Hitting, punching, slapping, pushing child
- Using excessive/coercive discipline
- Refusing to tolerate age-appropriate behavior
- Violating child labor laws (forced labor)
- Denying food, clothing, necessary medical care
- Forcing other parent to participate in child abuse
- Abducting or threatening to abduct child
- Forcing child into criminal activity
- Promoting truancy
- Having inappropriate sexual contact
- Sexually exploiting/grooming child
- Exposing child to pornography
- Using child in pornography
- Forcing child to have sex with others
- Violating child's physical privacy
- Abandoning child
- Exposing child to drugs
- Willfully violating health or housing codes

**Emotional Abuse of Child:** Wide-ranging decisions or behaviors that directly or indirectly harm the child's emotional safety, security, development, and/or well-being, including but not limited to:

- Rejecting child
- Denigrating child's feelings
- Calling child names
- Making child feel stupid or inadequate
- Demanding demonstrations of affection/loyalty
- Isolating child from friends or family
- Embarrassing, humiliating or shaming child
- Promoting gender bias or disrespect of women
- Refusing to meet child's basic emotional needs
- Creating a chaotic or unpredictable home life
- Missing visits or appointments
- Exposing child to abuse
- Modeling bad behavior
- Harming or threatening to harm animals or pets
- Breaking promises
- Vacillating between parenting styles
- Violating child's boundaries
- Denying support or affection to child
- Interfering with school or homework
- Micro-managing or monitoring child
- Disrupting child's structure or routines
- Destroying child's toys or personal items
- Mocking child's interests or ambitions
- Fluctuating involvement with child
- Threatening to harm or kill parent or child
- Saying one thing and doing another
- Exposing child to aftermath of abuse
- Morally corrupting child
- Inducing fear or terror
- Threatening suicide

**Economic Abuse:** Decisions to or behaviors that unnecessarily harm the child's economic stability or security, including but not limited to:

- Refusing to provide available financial support
- Interfering with other parent's work
- Withholding important financial information
- Trading money or support for time with child
- Shutting off utilities
- Disabling vehicles
- Stealing property from child or other parent
- Denying other parent access to resources
- Depleting bank accounts
- Destroying other parent's credit
- Preventing other parent's access to credit
- Refusing to pay insurance premiums
- Cancelling insurance
- Selling other parent's or child's property



**Using Child as a Tool of Abuse:** Decisions to or behaviors that employ the child to manipulate, control, threaten or harm the other parent, including but not limited to:

- Drawing child into abuse
- Using child to monitor other parent
- Pitting child against other parent
- Separating children from their siblings
- Encouraging child to disrespect other parent
- Rewarding child for rejecting other parent
- Threatening to harm child
- Threatening to take child from other parent
- Using child to bargain with other parent
- Dividing child's loyalties
- Using child to coerce other parent
- Hurting child in order to hurt other parent
- Using custody to harass other parent
- Disrupting established visitation schedule
- Using visitation to access other parent
- Threatening to seek custody to hurt parent
- Degrading other parent to child
- Neglecting child on visits

**Denying Impact of Abuse on Child:** Decisions or behaviors that fail to acknowledge and repair the damage resulting from one's own abuse, including but not limited to:

- Failing to acknowledge damage from abuse
- Interfering with other parent's treatment efforts
- Refusing to seek counseling for abuse
- Interfering with other parent's care of child
- Interfering with child's counseling/healthcare
- Justifying abuse
- Being intolerant of criticism for abuse
- Demanding respect in the face of abuse
- Failing to acknowledge child's needs
- Failing to respond to child's needs
- Disregarding child's needs
- Refusing to apologize for abuse
- Forcing unwanted engagement with child
- Blaming others for abuse

**Ignoring Child's Separate Needs:** Beliefs that the child's interests, needs and perceptions are either: (1) indistinguishable from the other parent's interests, needs and perceptions; or (2) attributable to the other parent, including but not limited to:

- Elevating one's own needs above the child's needs
- Believing one's own needs and child's need are identical
- Believing that oneself and one's child think and feel the same way
- Believing that one knows exclusively what is best for the child
- Believing that one's own pain is mirrored in the child
- Obsessive attachment to the child
- Seeing no value in the child's contact with the other parent, absent sufficient cause
- Believing that child's mind is being poisoned by the other parent
- Believing that the child is mirroring the other parent
- Believing that the other parent and the child are conspiring



**Undermining the Other's Parenting or Relationship with Child:** Decisions to or behaviors that either: (1) interfere with the other parent's ability to parent or exercise parental authority; or (2) disrupt or harm the child's relationship with the other parent, including but not limited to:

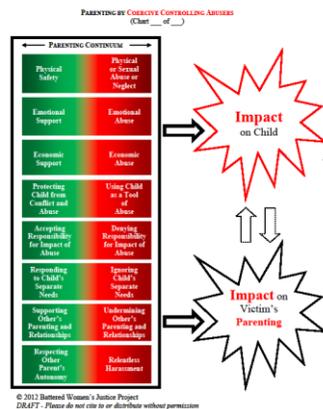
- Refusing to enforce established rules
- Violating established parenting agreements
- Withholding information concerning the child
- Disrupting child's schedule or routine
- Sharing too much information with child
- Disrespecting other parent's new partner
- Ignoring child's allergies or illnesses
- Refusing to agree to rules or structure
- Making false allegations to authorities
- Under- or over-medicating child
- Using new partner to replace other parent
- Disparaging other parent in front of child
- Criticizing other parent
- Manufacturing tensions

**Relentless Harassment:** Decisions to or behaviors that disrupt the everyday life of, and create persistent instability, insecurity or unpredictability for the child and/or the other parent, *usually under the guise of some seemingly legitimate principle (like safety, equality, fairness, duty, or parental concern)*, including but not limited to:

- Constantly disrupting the child's schedule
- Constantly disrupting the child's routines
- Engaging in harassing litigation
- Making false reports to authorities
- Fluctuating parental involvement
- Monitoring other parent's whereabouts
- Making unreasonable demands on time
- Making oneself look good in harmful ways
- Hacking into other parent's computer
- Cutting off phone service
- Constantly raising "technical arguments"
- Missing visits and appointments
- Interfering with the other parent's work
- Interfering with school, sleep or social life
- Interfering with health care
- Disparaging other parent to family/friends
- Constantly changing rules or expectations
- Stalking other parent or child
- Cancelling or rescheduling appointments
- Disrupting utilities
- Disrupting other parent's transportation
- Setting off home alarm system
- Showing up unannounced
- Sabotaging other parent at every turn



## CHILD'S EXPERIENCE OF DOMESTIC ABUSE (Chart 2 of 6)



- Exposure during pregnancy
- Direct intervention in abuse
- Direct harm during abuse
- Participation in abuse
- Direct observation of abuse
- Indirect observation of abuse
- Retreat from abuse
- Witness to initial effects
- Experience of aftermath
- Knowledge of abuse
- Seemingly unaware of abuse

Adapted from George W. Holden, *Children Exposed to Domestic Violence and Child Abuse: Terminology and Taxonomy*, 6 CLINICAL CHILD & FAM. PSYCH. REV. 151 (2003).



**Exposure to abuse during pregnancy:** The developing fetus experiences abuse *in utero*, where, for instance, an abuser:

- Kicks or punches a pregnant partner
- Terrorizes a pregnant partner
- Sexually assaults a pregnant partner
- Deprives a pregnant partner of sleep
- Pushes or shoves a pregnant partner
- Attempts to induce miscarriage
- Coerces a pregnant partner to use drugs
- Denies or interferes with prenatal care

**Direct intervention to stop abuse:** The child takes affirmative steps to make the abuse end, such as:

- Pleading with the abuser to stop
- Calling for help
- Locking the windows and doors
- Attempting to distract the abuser
- Blocking abuser's access to victim
- Pulling the abuser off the victim
- Physically assaulting the abuser
- Shooting or stabbing the abuser

**Direct harm from abuse:** The child suffers verbal, physical or emotional harm during the course of abuse, where, for instance:

- The abuser intentionally injures the child
- The abuser accidentally injures the child
- The victim accidentally injures the child
- The abuser punishes the child for intervening
- The abuser shames the child for being weak
- The abuser uses the child's toys as weapons
- The child gets caught in the crossfire
- The victim harms child to pre-empt injury
- The child injures self attempting to escape
- The abuser blames the child for the abuse
- The abuser tells the child he or she is next
- The abuser ridicules the child for crying

**Direct participation in abuse:** The child joins in the abuse of the victim parent, by way of force, coercion, identification with the abuser, or self-preservation:

- The abuser uses the child to spy on the victim
- The abuser orders the child to abuse the victim
- The abuser rewards the child for participating
- Child joins abuser in taunting the victim
- The abuser draws the child into abuse
- Child mimics the abuser's role modeling

**Direct observation of abuse:** The child is an eyewitness to the abuse, where, for instance, the child:

- Watches an assault of one parent by the other
- Observes coercive power
- Is present to hear pleas for help or screams
- Is present during a verbal assault
- Sees the abuser intimidate the other parent
- Witnesses the victim's degradation



**Indirect observation of abuse:** The child hears but does not see the abuse, where, for instance, the child hears:

- Threats or screams
- Pleas for help or mercy
- Gunfire
- Breaking objects, furniture or windows
- Verbal abuse or degradation
- Blows to the victim's head or body

**Retreat from abuse:** The child takes cover from abuse by:

- Running away from home
- Locking him/herself in the closet
- Pretending like nothing is wrong
- Tuning out the world
- Hiding under the bed
- Using alcohol and/or drugs

**Witnesses initial effects of abuse:** The child observes the immediate effects of abuse, including, but not limited to:

- Blood, bruises, and other injuries
- Ambulances and emergency vehicles
- Damaged property
- Police officers and first responders
- A parent being arrested or restrained
- Intense emotions or traumatic responses

**Experiences the aftermath of abuse:** The child faces life altering change as a result of the abuse, including, but not limited to:

- Parental anxiety and/or depression
- Shelter or relocation
- New school and/or faith community
- Chaos, uncertainty and unpredictability
- Disrupted visits and exchanges
- Separation from the abuser
- Reorganization of family structures
- Broken social ties and support systems
- Breakdown in trust and/or confidence
- Economic instability

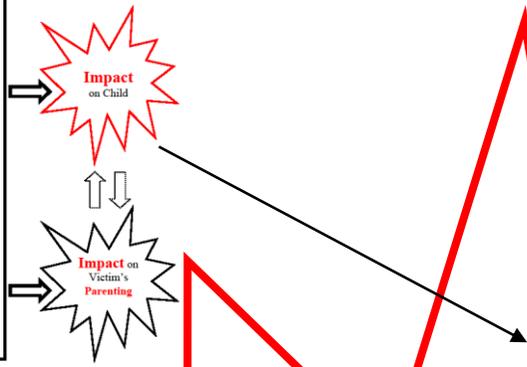
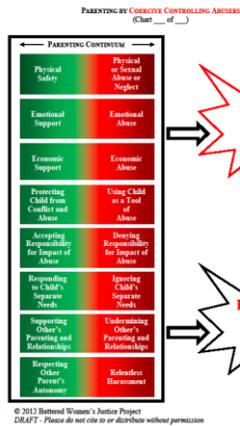
**Hears about abuse from others:** The child is told about (or overhears) conversations regarding the abuse.

**Seemingly unaware of abuse:** According to sources, the child lacks knowledge of the abuse because:

- The abuse occurred away from home or while the child was away; or
- The abuse occurred when caregivers believed the child was asleep.



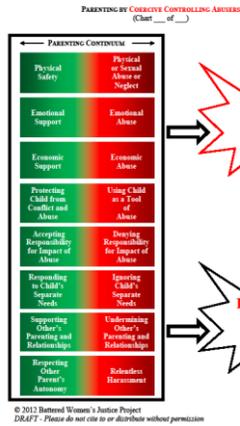
## CHILD'S REACTIONS TO THE EXPERIENCE OF DOMESTIC ABUSE (Chart 3 of 6)



- Fear ● Anxiety ● Trauma ● Confusion ● Doom
- Distrust ● Insecurity ● Anger ● Guilt ● Shame
- Responsibility ● Complicity ● Vengeance ●
- Moodiness ● Abandonment ● Isolation ● Rage
- Betrayal ● Helplessness ● Fatigue ● Apathy
- Worthlessness ● Indignance ● Uncertainty ●
- Protectiveness ● Defensiveness ● Restlessness
- Hypervigilance ● Distractedness ● Headaches ●
- Disappointment ● Hopelessness ● Sleeplessness



## IMPACT OF DOMESTIC ABUSE ON THE CHILD (Chart 4 of 6)



Impact on Child

Impact on Victim's Parenting

- Developmental Problems
- Behavior Problems
- Emotional Problems
- Cognitive Problems
- Relationship Problems
- Health Problems
- Economic Problems
- No Obvious Problems



**Developmental Problems:** Over- or under- stimulation of neural connections and pathways during infancy that can lead to lifelong challenges, such as:

- Failure to meet physical/emotional milestones
- Maladaptive stress responses
- Negative expectations about being:
  - Loved
  - Confident
  - Safe to explore the world
  - Neglected
  - Treated with hostility
- Poor sleep and awake functioning
- Emotional detachment/poor engagement
- Increased risk of:
  - Heart attack and stroke
  - Hypertension and depression
  - Alcoholism and diabetes
  - Hyperthyroidism
  - Malnutrition and gastrointestinal disease

**Behavioral Problems:** Outward conduct or actions that create difficulties for the child, including but not limited to:

- Self-harm (cutting, attempted suicide, drug use)
- Delinquency or criminal behavior
- Running away
- Physical aggression and/or bullying
- Hyperactivity
- Regressive behaviors, such as:
  - Baby talk, thumb sucking, nail biting
  - Crying spells, fear of the dark, clinginess
- Truancy
- Unregulated temper
- Verbal abuse
- Sexual promiscuity
- Defiance of authority
- Parentified behaviors, such as:
  - Caretaking of parents and siblings
  - Excessive enmeshment with parent(s)

**Emotional Problems:** Internal, often unconscious behaviors that cause a child to have difficulty coping, including but not limited to:

- Nightmares or sleep disruptions
- Distraction or inability to focus
- Anxiety or restlessness
- Fear of being alone
- Difficulty separating from parents
- Lack of interest in school, friends, activities
- Exaggerated startle response
- Re-living abuse through play
- Withdrawal
- Hypervigilance
- Insecurity
- Low self regard

**Cognitive Problems:** Difficulties with thinking, learning, concentrating, or processing information, including but not limited to:

- Poor skill development
- Underachievement at school
- Poor or distorted memory
- Poor verbal abilities
- Distraction or inability to focus
- Poor analytical skills



**Relationship Problems:** Interpersonal interactions that create difficulties for the child, including but not limited to:

- Inappropriate social responses to others
- Ambivalent attachment with caregivers
- Bullying or peer victimization
- Abusive dating relationships
- Diminished ability to trust others
- Lack of empathy
- Manipulation or coercion to get needs met
- Aggression toward siblings/parents/peers
- Difficulty making or keeping friends
- Diminished self-confidence

**Health Problems:** Physical manifestations that include, but are not limited to:

- Headaches
- Asthma
- Bed-wetting
- Rashes
- Autoimmune deficiencies
- Stomach aches
- Intestinal problems
- Eating disorders
- Allergies
- Chronic fatigue

**Economic Problems:** Damage or harm to the child's economic stability or security, including but not limited to:

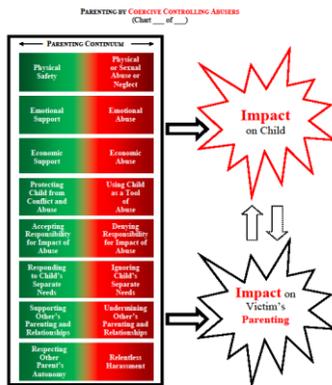
- Poverty
- Exclusion from extracurricular activities
- Exclusion from higher education
- Increased responsibilities at home
- Homelessness
- Social isolation
- Increased responsibility to work
- Care for younger children

**No Obvious Problems:** Some children, particularly adolescents and older children, may cope with abuse in the home by re-directing their energies towards outside or adult activities and interests, including but not limited to:

- Academic achievement
- Engagement in extracurricular activities
- Artistic or creative endeavors
- Assumption of parental responsibilities, like:
  - Providing care for younger siblings
  - Preparing meals and/or keeping house
  - Making appointments
  - Supervising or monitoring parents' activities
- Involvement in sports
- Participation in social activities
- Volunteer work



## IMPACT OF DOMESTIC ABUSE ON VICTIM'S PARENTING (Chart 5 of 6)



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### HEIGHTENED RESPONSIBILITY FOR PROTECTION OF CHILD

- Monitoring abuser's moods/behaviors
- Appeasing abuser
- Regulating child's actions to avoid abuse
- Shielding child from abuse
- Intervening when child is being abused
- Directly challenging/confronting abuser
- Leaving with the child

### HEIGHTENED RESPONSIBILITY FOR CARE OF CHILD

- Inability to trust or rely on abuser to provide care
- Decoding signals from child about child's needs
- Hiding attempts to meet child's needs in face of harm
- Teaching child that abuse is unacceptable
- Supporting the everyday needs of child

### LOSS OF CONTROL OVER OWN PARENTING

- Navigating around abuser's control
- Being subject to scrutiny by courts/services
- Securing access to resources or support
- Managing safety in the midst of chaos

Adapted from Simon Lapierre, *Striving to be "Good" Mothers: Abused Women's Experiences of Mothering*, 19 CHILD ABUSE REV. 342 (2010); Simon Lapierre, *More Responsibilities, Less Control: Understanding the Challenges and Difficulties Involved in Mothering in the Context of Domestic Violence*, 40 BRITISH J. SOC. WORK 1434 (2010).

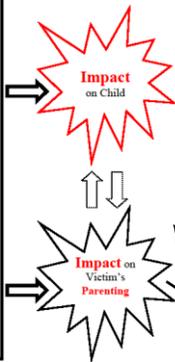


## IMPACT OF ABUSE ON THE CO-PARENTING RELATIONSHIP (Chart 6 of 6)

PARENTING BY COERCIVE CONTROLLING ABUSERS  
(Chart \_\_\_ of \_\_\_)

PARENTING CONTINUUM	
Physical Safety	Physical or Sexual Abuse or Neglect
Emotional Support	Emotional Abuse
Economic Support	Economic Abuse
Protecting Child from Conflict and Abuse	Using Child as a Tool of Abuse
Accepting Responsibility for Impact of Abuse	Denying Responsibility for Impact of Abuse
Responding to Child's Separate Needs	Ignoring Child's Separate Needs
Supporting Other's Parenting and Relationships	Undermining Other's Parenting and Relationships
Respecting Other Parent's Autonomy	Retaliation/ Harassment

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### Parental Communication & Interaction

Measured	↔	Volatile
Constructive	↔	Unproductive
Child-focused	↔	Parent-focused
Concrete	↔	Indefinite
Trustworthy	↔	Unreliable
Safe	↔	Dangerous

### Parental Decision-Making

Practical	↔	Impractical
Child-centered	↔	Parent-centered
Responsible	↔	Irresponsible

### Parental Roles and Boundaries

Well-defined	↔	Unclear
Child-centered	↔	Partner-centered



H. BEST INTERESTS OF THE CHILD DOMESTIC ABUSE ANALYSIS

The Best Interests of the Child Domestic Abuse Analysis is designed to help you think about the ways in which domestic abuse shapes each of the statutory best interest factors enumerated under state law. The sample here addresses the Ohio best interest factors. You can adapt this chart to your state law – or contact the Battered Women’s Justice Project at [technicalassistance@bwjp.org](mailto:technicalassistance@bwjp.org) to request state-specific resources.

**BEST INTERESTS OF THE CHILD DOMESTIC ABUSE ANALYSIS**

BEST INTEREST FACTORS OH. REV.CODE §3109.04(F)(1):	WHAT DO WE KNOW?	HOW DOES DOMESTIC ABUSE SHAPE WHAT WE KNOW?
The <b>wishes of the child’s parents</b> regarding the child’s care	What are the parents’ wishes?	<b>How does domestic abuse impact parents’ wishes?</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Do parents have any fears or worries?</li> <li><input type="checkbox"/> What are the past/current arrangements?</li> <li><input type="checkbox"/> How do wishes account for child’s safety?</li> <li><input type="checkbox"/> Are wishes realistic given context of abuse?</li> </ul>
The <b>wishes and concerns of the child</b> , as expressed to the court	What are the wishes and concerns of the child?	<b>How does domestic abuse impact child’s wishes?</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> What is the impact of abuse on the child?</li> <li><input type="checkbox"/> What is the impact of trauma on the child?</li> <li><input type="checkbox"/> Does child have any fears or worries?</li> <li><input type="checkbox"/> Has abuse interfered with child’s daily life?</li> </ul>
The <b>child’s interaction and interrelationship</b> with the child’s parents, siblings, and any other person who may significantly affect the child’s best interest	What do the child’s interactions and interrelationships look like?	<b>How does abuse impact child’s relationships?</b> Look for indications of: <ul style="list-style-type: none"> <li><input type="checkbox"/> Physical/sexual abuse of parent or child</li> <li><input type="checkbox"/> Emotional abuse of parent or child</li> <li><input type="checkbox"/> Interference with parental authority</li> <li><input type="checkbox"/> Interference with child’s privacy</li> <li><input type="checkbox"/> Interference with other parent’s privacy</li> <li><input type="checkbox"/> Use of child to spy on other parent</li> <li><input type="checkbox"/> Use of child to manipulate other parent</li> <li><input type="checkbox"/> Isolation of child from friends or family</li> <li><input type="checkbox"/> Isolation of child from social activities</li> <li><input type="checkbox"/> Age inappropriate actions/behaviors</li> </ul>



BEST INTEREST FACTORS	WHAT DO WE KNOW?	HOW DOES ABUSE SHAPE WHAT WE KNOW?
The <b>child's adjustment to home, school, and community</b>	How is the child functioning in relation to home, school and community?	<b>How does abuse impact child's adjustment?</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Any effect on home, school, social life?</li> <li><input type="checkbox"/> Isolation/interference with daily activities?</li> <li><input type="checkbox"/> Threat to child's basic needs?</li> <li><input type="checkbox"/> Does child have fears, concerns, anxieties?</li> </ul>
The <b>mental and physical health</b> of all persons involved in the situation	What, if any, mental and/or physical health concerns exist?	<b>How does abuse impact the health of parents/child?</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Impact on the safety of parents/child?</li> <li><input type="checkbox"/> Emotional impact on parents/child?</li> <li><input type="checkbox"/> How do parents and children cope?</li> <li><input type="checkbox"/> Affect on healthcare decision making?</li> <li><input type="checkbox"/> What supports have been sought?</li> <li><input type="checkbox"/> What other supports are available?</li> </ul>
The <b>parent most likely to honor and facilitate court-approved parenting time</b> rights or visitation and companionship rights	Are the parents honoring and facilitating court-approved parenting time and, if not, what is getting in the way?	<b>How does abuse impact parenting time?</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Is access plan safe for parents and child?</li> <li><input type="checkbox"/> Are there any concerns, fears, anxieties?</li> <li><input type="checkbox"/> What is the level of parental involvement?</li> <li><input type="checkbox"/> Any threats to harm or take child away?</li> <li><input type="checkbox"/> Any recent/post-separation changes?</li> </ul>
Whether either parent has failed to make all <b>child support</b> payments	Has either parent failed to make all child support payments and, if not, what is getting in the way?	<b>How does abuse impact child support payments?</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Indications of economic abuse?</li> <li><input type="checkbox"/> Indications of economic exploitation?</li> <li><input type="checkbox"/> Have economic arrangements changed?</li> </ul>
Whether either parent or household member has been <b>convicted of or pleaded guilty</b> to child abuse or neglect, domestic abuse, a sexually oriented offense, or any crime resulting in physical harm to a family or household member	Has either parent or a household member of either parent been convicted of or pleaded guilty to one of the enumerated offenses – and, if so, what is the nature and context of that conduct?	<b>How does abuse impact the other parent or child?</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Implications of abuse for parenting?</li> <li><input type="checkbox"/> Impact of abuse on the child?</li> </ul>



**BEST INTEREST FACTORS**

**WHAT DO WE KNOW?**

**HOW DOES ABUSE SHAPE WHAT WE KNOW?**

Whether the residential parent or one of the parents subject to a shared parenting decree has **continuously and willfully denied the other parent's right to parenting time** in accordance with a court order

Has either parent continuously and willfully denied the other parent's right to parenting time and, if so, what are the circumstances surrounding that denial?

**How does abuse affect parenting time decision-making?**

- Is the access arrangement safe for child?
- Is the access arrangement safe for parents?
- Any concern, fears, anxieties about access?
- History of parental involvement?
- Any threats to harm or take child away?
- Any post-separation changes?

Whether either parent has **established a residence, or is planning to establish a residence, outside this state**

Has either parent established a residence, or is either parent planning to establish a residence, outside this state and, if so, what are the circumstances surrounding that decision?

**How does abuse impact relocation decision-making?**

- How does relocation account for child safety?
- How does it account for child wellbeing?
- Will relocation meet child's basic needs?
- Will relocation meet parents' basic needs?
- Any threats to harm or take child away?

**Other Considerations**

**Does abuse raise other considerations?**

- Personal interactions
- Access to resources
- Children and parenting
- Control of daily life
- Emotional abuse
- Physical abuse
- Sexual abuse
- Other



## I. CASE PLANNING GUIDES

The following Case Planning Guides, one specifically designed for evaluators and guardians, and the other created especially for legal professionals and advocates, help account for the nature, context and implications of abuse in family court decision-making, depending upon your role and function in the case.

The guides synthesize the information you’ve collected from the Initial Domestic Abuse Screening Guide, the Domestic Abuse Interview Guide and the Domestic Abuse Parenting Charts. Each guide is divided into sections concerning the parties’: (1) everyday interactions; (2) economic well-being; (3) children and parenting; (4) emotional well-being; (5) physical well-being; and (6) other considerations. It asks you consider the implications of abuse for purposes of assessing dispute resolution alternatives and for evaluating potential parenting and co-parenting arrangements.

### DOMESTIC ABUSE PLANNING GUIDE FOR EVALUATORS & GALs

#### Everyday Interactions:

This section relates to the parties’ everyday interactions with their separating partner. Knowing how the parties relate to one another will help evaluators and GALs develop recommendations about how best to manage and ultimately resolve the case. The family court system generally prefers – and often expects – parents to resolve parenting arrangements in a cooperative, non-adversarial way. This assumes that parents can engage with one another in an honest, fair, respectful, and trusting manner. It also assumes that parents can put the interests of their children ahead of their own and support the other partner’s efforts to effectively supervise, nurture and care for their children. Domestic abuse often conflicts with these basic assumptions.

Quality of Interactions:		Implications:	Options:
Autonomous	↔	Controlling	What does this mean for:  <input type="checkbox"/> Dispute resolution?  <input type="checkbox"/> Parenting?  <input type="checkbox"/> Co-parenting?
Equal	↔	Unequal	
Safe	↔	Dangerous	
Secure	↔	Vulnerable	
Predictable	↔	Volatile	
Honest	↔	Deceptive	
Respectful	↔	Degrading	
Voluntary	↔	Coercive	
Trusting	↔	Jealous	
Supportive	↔	Undermining	
Responsible	↔	Irresponsible	
Liberating	↔	Isolating	



### Economic Well-being:

This section relates to the parties' personal and economic independence. Knowing about access to resources and support systems, and the extent to which the parties are able to organize, arrange and manage their daily lives without undue interference from the other, helps evaluators and GALs recommend dispute resolution mechanisms and parenting arrangements that would be most appropriate and feasible under the circumstances.

Access to Resources:		Implications:	Options:
Self-sufficient	←————→ Income Food Housing Transportation Bank Accounts Credit Insurance	Dependent  What does this mean for:  <input type="checkbox"/> Dispute resolution?  <input type="checkbox"/> Parenting?  <input type="checkbox"/> Co-parenting?	
<b>Management of Affairs:</b> Autonomous ←————→ Controlling			

### Children and Parenting:

This section relates to the needs of the children and the ability of the parents to meet those needs. Knowing about children and parenting issues will help evaluators and GALs identify parenting arrangements that meet the specific developmental, emotional, material, and practical needs of the children to the greatest extent possible.

As a rule, courts prefer parenting arrangements that provide parents with equal decision-making authority and unrestricted access to the children. This assumes that parents and children have the right “equipment” to make that work, including sufficient trust, maturity, resources, flexibility, and capacity to share responsibilities. Domestic abuse, and especially emotional abuse, often conflicts with these basic assumptions.

Parenting Decisions by the <b>Abusive</b> Parent:		Implications:	Options:
Physical safety	←————→	Phys/sex abuse	What does this mean for:  <input type="checkbox"/> Dispute resolution?  <input type="checkbox"/> Parenting?  <input type="checkbox"/> Co-parenting?
Emotional support	←————→	Emotional abuse	
Economic support	←————→	Non-support	
Shelter from abuse	←————→	Tool of abuse	
Repair of harm	←————→	Denial of harm	
Attuned to needs	←————→	Unaware of needs	
Consistent	←————→	Inconsistent	
Responsible	←————→	Irresponsible	
Involved	←————→	Under-involved	
Supportive	←————→	Disruptive	
Positive model	←————→	Negative model	



Co-Parenting Decisions by the <b>Abusive</b> Parent:		Implications:	Options:
Physical safety	↔	Phys/sex abuse	What does this mean for: <input type="checkbox"/> Dispute resolution?  <input type="checkbox"/> Parenting?  <input type="checkbox"/> Co-parenting?
Emotional support	↔	Emotional abuse	
Repair of harm	↔	Denial of harm	
Parental support	↔	Upheaval	
Parental respect	↔	Denigration	
Honest dealings	↔	Manipulative	
Dependable	↔	Unreliable	
Autonomous	↔	Controlling	
Respects privacy	↔	Violates privacy	
Flexible	↔	Overly rigid	
Reasonable	↔	Irrational	

Co-Parenting Decisions by the <b>Abused</b> Parent:		Implications:	Options:
Protective	↔	Abusive	What does this mean for dispute resolution, parenting and co-parenting?
Reactive	↔	Aggressive	

### Emotional Well-being:

This section relates to the parties' experience of psychological and emotional abuse in the relationship, if any. Knowing about potential emotional abuse can help evaluators and GALs plan an approach to the case and evaluate parenting options that will account for these kinds of behaviors.

<b>Abused</b> Parent's Sense of Self:		Implications:	Options:
Self-confidence	↔	Insecurity	What does this mean for: <input type="checkbox"/> Dispute resolution?  <input type="checkbox"/> Parenting?  <input type="checkbox"/> Co-parenting?
Dignity/honor	↔	Embarrassment	
Stability	↔	Chaos	
Certainty	↔	Self-doubt	
Trust	↔	Jealousy	
Autonomy	↔	Interference	
Social support	↔	Isolation	
Peace of mind	↔	Trauma/anxiety	
Good health	↔	Health problems	
Safety	↔	Risk of harm	
Security	↔	Threats of harm	
Free agency	↔	Entrapment	



<b>Abusive Parent's Influence:</b>		<b>Implications:</b>	<b>Options:</b>
Equitable	↔	Entitled	What does this mean for: <input type="checkbox"/> Dispute resolution? <input type="checkbox"/> Parenting? <input type="checkbox"/> Co-parenting?
Supportive	↔	Controlling	
Trusting	↔	Possessive	
Respectful	↔	Intrusive	
Fair handed	↔	Manipulative	
Responsible	↔	Demanding	
Protective	↔	Intimidating	
Non-violent	↔	Violent	
Secure	↔	Disruptive	
Accountable	↔	Unaccountable	
Honest	↔	Deceitful	
Stable	↔	Unpredictable	

### Physical Well-being:

This section relates to the parties' experience of physical and/or sexual abuse in the relationship, if any. Knowing about a history of physical abuse and/or sexual impropriety will help evaluators and GALs assess whether either party or the children are at risk of danger or harm. If so, the evaluator or GAL can make appropriate referrals for safety planning and advocacy and integrate safety planning into all dispute resolution processes and proposed parenting arrangements, including restrictions on access and/or supervised exchange where appropriate.

<b>Risk Assessment Factors:</b>	<b>Implications:</b>	<b>Options:</b>
<input type="checkbox"/> Increase in frequency/severity of abuse <input type="checkbox"/> Access to firearms <input type="checkbox"/> Recent separation <input type="checkbox"/> Unemployment <input type="checkbox"/> Use or threatened use of lethal weapon <input type="checkbox"/> Threat to kill <input type="checkbox"/> Avoidance of arrest for domestic abuse <input type="checkbox"/> Step-children <input type="checkbox"/> Forced sex <input type="checkbox"/> Attempted strangulation <input type="checkbox"/> Illegal drug use <input type="checkbox"/> Alcohol dependency <input type="checkbox"/> Control of daily activities <input type="checkbox"/> Violent or constant jealousy <input type="checkbox"/> Assault during pregnancy <input type="checkbox"/> Threatened or attempted suicide <input type="checkbox"/> Threat to harm children <input type="checkbox"/> Victim's belief in abuser's capacity to kill <input type="checkbox"/> Stalking <input type="checkbox"/> Major mental illness	What does this mean for: <input type="checkbox"/> Dispute resolution? <input type="checkbox"/> Parenting? <input type="checkbox"/> Co-parenting?	



## DOMESTIC ABUSE PLANNING GUIDE FOR LEGAL PROFESSIONALS

### Everyday Interactions:

This section relates to the client’s everyday interactions with his/her separating partner. Knowing how the parties relate to one another will help the lawyer and client decide how best to manage and ultimately resolve the case. The family court system generally prefers – and often expects – parents to resolve parenting arrangements in a cooperative, non-adversarial way. This assumes that parents can engage with one another in an honest, fair, respectful, and trusting manner. It also assumes that parents can put the interests of their children ahead of their own and support the other partner’s efforts to effectively supervise, nurture and care for their children. Domestic abuse often conflicts with these basic assumptions.

Quality of Interactions:		Implications:	Options:
Autonomous	↔	Controlling	What does this mean for: <input type="checkbox"/> Dispute resolution? <input type="checkbox"/> Parenting? <input type="checkbox"/> Co-parenting?
Equal	↔	Unequal	
Safe	↔	Dangerous	
Secure	↔	Vulnerable	
Predictable	↔	Volatile	
Honest	↔	Deceptive	
Respectful	↔	Degrading	
Voluntary	↔	Coercive	
Trusting	↔	Jealous	
Supportive	↔	Undermining	
Responsible	↔	Irresponsible	
Liberating	↔	Isolating	

### Economic Well-being:

This section relates to the client’s personal and economic independence. Knowing about access to resources and support systems, and the extent to which the client is able to organize, arrange and manage his/her daily life without undue interference from the other, helps the lawyer and client decide what sorts of dispute resolution mechanisms and parenting arrangements would be most appropriate and feasible under the circumstances.

Access to Resources:		Implications:	Options:
Self-sufficient	↔	Dependent	What does this mean for: <input type="checkbox"/> Dispute resolution? <input type="checkbox"/> Parenting? <input type="checkbox"/> Co-parenting?
	Income Food Housing Transportation Bank Accounts Credit/Insurance		
<b>Management of Affairs:</b>			
Autonomous	↔	Controlling	



### Children and Parenting:

This section relates to the needs of the children and the ability of the parents to meet those needs. Knowing about children and parenting issues will help the lawyer and client identify parenting arrangements that meet the specific developmental, emotional, material, and practical needs of the children to the greatest extent possible.

As a rule, courts prefer parenting arrangements that provide parents with equal decision-making authority and unrestricted access to the children. This assumes that parents and children have the right “equipment” to make that work, including sufficient trust, maturity, resources, flexibility, and capacity to share responsibilities. Domestic abuse, and especially emotional abuse, often conflicts with these basic assumptions.

Parenting Decisions by the <b>Abusive</b> Parent:		Implications:	Options:
Physical safety	↔	Phys/sex abuse	What does this mean for:  <input type="checkbox"/> Dispute resolution?  <input type="checkbox"/> Parenting?  <input type="checkbox"/> Co-parenting?
Emotional support	↔	Emotional abuse	
Economic support	↔	Non-support	
Shelter from abuse	↔	Tool of abuse	
Repair of harm	↔	Denial of harm	
Attuned to needs	↔	Unaware of needs	
Consistent	↔	Inconsistent	
Responsible	↔	Irresponsible	
Involved	↔	Under-involved	
Supportive	↔	Disruptive	
Positive model	↔	Negative model	

Co-Parenting Decisions by <b>Abusive</b> Parent:		Implications:	Options:
Physical safety	↔	Phys/sex abuse	What does this mean for:  <input type="checkbox"/> Dispute resolution?  <input type="checkbox"/> Parenting?  <input type="checkbox"/> Co-parenting?
Emotional support	↔	Emotional abuse	
Repair of harm	↔	Denial of harm	
Parental support	↔	Upheaval	
Parental respect	↔	Denigration	
Honest dealings	↔	Manipulative	
Dependable	↔	Unreliable	
Autonomous	↔	Controlling	
Respects privacy	↔	Violates privacy	
Flexible	↔	Overly rigid	
Reasonable	↔	Irrational	

Co-Parenting Decisions by <b>Abused</b> Parent:		Implications:	Options:
Protective	↔	Abusive	What does this mean for dispute resolution, parenting and co-parenting?
Reactive	↔	Aggressive	



### Emotional Well-being:

This section relates to the client’s experience of psychological and emotional abuse in the relationship, if any. Knowing about potential emotional abuse can help the lawyer and client plan an approach to the case and evaluate parenting options that will account for these kinds of behaviors.

Client’s Sense of Self:			Implications:	Options:
Self-confidence	↔	Insecurity	What does this mean for:  <input type="checkbox"/> Dispute resolution?  <input type="checkbox"/> Parenting?  <input type="checkbox"/> Co-parenting?	
Dignity/honor	↔	Embarrassment		
Stability	↔	Chaos		
Certainty	↔	Self-doubt		
Trust	↔	Jealousy		
Autonomy	↔	Interference		
Social support	↔	Isolation		
Peace of mind	↔	Trauma/anxiety		
Good health	↔	Health problems		
Safety	↔	Risk of harm		
Security	↔	Threats of harm		
Free agency	↔	Entrapment		

Opposing Party’s Influence:			Implications:	Options:
Equitable	↔	Entitled	What does this mean for:  <input type="checkbox"/> Dispute resolution?  <input type="checkbox"/> Parenting?  <input type="checkbox"/> Co-parenting?	
Supportive	↔	Controlling		
Trusting	↔	Possessive		
Respectful	↔	Intrusive		
Fair handed	↔	Manipulative		
Responsible	↔	Demanding		
Protective	↔	Intimidating		
Non-violent	↔	Violent		
Secure	↔	Disruptive		
Accountable	↔	Unaccountable		
Honest	↔	Deceitful		
Stable	↔	Unpredictable		



### Physical Well-being:

This section relates to the client's experience of physical and/or sexual abuse in the relationship, if any. Knowing about a history of physical abuse and/or sexual impropriety will help the lawyer and client assess whether either party or the children are at risk of danger or harm. If so, the lawyer can make appropriate referrals for safety planning and advocacy and integrate safety planning into all dispute resolution processes and proposed parenting arrangements, including restrictions on access and/or supervised exchange where appropriate.

Risk Assessment Factors:	Implications:	Options:
<ul style="list-style-type: none"><li><input type="checkbox"/> Increase in frequency or severity of abuse</li><li><input type="checkbox"/> Access to firearms</li><li><input type="checkbox"/> Recent separation</li><li><input type="checkbox"/> Unemployment</li><li><input type="checkbox"/> Use or threatened use of lethal weapon</li><li><input type="checkbox"/> Threat to kill</li><li><input type="checkbox"/> Avoidance of arrest for domestic abuse</li><li><input type="checkbox"/> Step-children</li><li><input type="checkbox"/> Forced sex</li><li><input type="checkbox"/> Attempted strangulation</li><li><input type="checkbox"/> Illegal drug use</li><li><input type="checkbox"/> Alcohol dependency</li><li><input type="checkbox"/> Control of daily activities</li><li><input type="checkbox"/> Violent or constant jealousy</li><li><input type="checkbox"/> Assault during pregnancy</li><li><input type="checkbox"/> Threatened or attempted suicide</li><li><input type="checkbox"/> Threat to harm children</li><li><input type="checkbox"/> Victim's believe in abuser's capacity to kill</li><li><input type="checkbox"/> Stalking</li><li><input type="checkbox"/> Major mental illness</li></ul>	<p>What does this mean for:</p> <ul style="list-style-type: none"><li><input type="checkbox"/> Dispute resolution?</li><li><input type="checkbox"/> Parenting?</li><li><input type="checkbox"/> Co-parenting?</li></ul>	

### Other Considerations:



## J. READINESS FOR MEDIATION ASSESSMENT GUIDE

This guide is designed to help you assess whether parents possess sufficient capacity to successfully mediate child custody disputes. It walks you through a structured analysis that corresponds to the four-part framework discussed earlier in this compilation. It establishes a number of mediation benchmarks and then provides a list of considerations to help you determine whether mediation can safely proceed, with or without accommodation, whether mediation should be delayed until the mediation benchmarks can be met, or whether another form of dispute resolution should be considered.

### READINESS FOR MEDIATION ASSESSMENT GUIDE

Successful mediation requires safe involvement; knowing and voluntary participation; good faith and fair dealing; and autonomous decision-making by all parties.

Identify Domestic Abuse	Understand the Nature & Context of Abuse (for purposes of mediation)	Determine the Implications of Abuse (benchmarks for mediation)	Account for Abuse in Actions and Decisions (for any unmet benchmark)
<ul style="list-style-type: none"><li>Does universal, comprehensive and systematic screening reveal any signs or indications of physical, sexual, emotional, economic, or coercive controlling abuse?</li></ul>	<ul style="list-style-type: none"><li>What is the quality of the parents' interactions with each other?</li><li>What risk, if any, does either parent pose (or ever posed) to any other family member's physical, sexual, or emotional safety, security or well-being?</li><li>In what ways, if any, does either parent exercise (or ever exercised) disproportionate authority or control over the other or otherwise threaten the other's capacity for self-determination?</li><li>In what ways, if any, does either parent believe that their rights or needs are more important than the rights and needs of other family members?</li><li>In what ways, if at all, does either parent interfere (or ever interfered) with the other's access to necessary and/or available information or resources?</li></ul>	<ul style="list-style-type: none"><li>Are relationships free from violence, threats of violence, and coercive control? <input type="checkbox"/>Y <input type="checkbox"/>N</li><li>Are both parents free from traumatic effects of abuse, like PTSD, major depression, fear or forboding, memory loss, or processing difficulties? <input type="checkbox"/>Y <input type="checkbox"/>N</li><li>Are there comparable interests at stake for both parents? <input type="checkbox"/>Y <input type="checkbox"/>N</li><li>Do both parents feel free to participate, not participate, or withdraw from participation without fear or threat of reprisal? <input type="checkbox"/>Y <input type="checkbox"/>N</li><li>Are both parents willing and able to participate in good faith, deal fairly and comply with the ground rules and agreements? <input type="checkbox"/>Y <input type="checkbox"/>N</li><li>Do both parents feel they can negotiate freely and make autonomous decisions without fear or threat of reprisal? <input type="checkbox"/>Y <input type="checkbox"/>N</li></ul>	<ul style="list-style-type: none"><li>Modify the mediation process?</li><li>Delay mediation?</li><li>Utilize a different dispute resolution process?</li></ul>



## GUIDING PRINCIPLES FOR MEDIATION

### **Safe Involvement** is....

- Free from actual or perceived violence, threats of violence, and/or coercive control
- Restricted to clearly defined issues and/or disputes
- Consistent with pre-established, enforceable rules and expectations
- Subject to immediate recess, adjournment or termination by any party for any reason

### **Knowing and Voluntary Participation** requires *informed consent*, which includes....

- Understanding the mediation process
- Understanding the mediator's style and approach to mediation, and limits of authority
- Awareness and appreciation of the nature and consequences of the issues to be decided
- Relinquishment of right to offer evidence, examine witnesses, and make a record
- Relinquishment of right to obtain a decision on the merits or file an appeal
- Freedom to participate, not participate, or withdraw from participation without pressure, fear, or threat of repercussion from the other party, the mediator or the court system

### **Good Faith and Fair Dealing** require....

- Acceptance of and adherence to pre-established ground rules for mediation
- Respect for the legitimate needs and interests of the other parent and children
- Complete, accurate and timely disclosure of relevant information
- Willingness and ability to explore options and proposals
- Willingness and ability to share decision-making authority
- Intention and commitment to honor promises and agreements

### **Autonomous Decision Making** is, from the perspective of each party....

- Voluntary (free from undue pressure, duress, coercion, threats, manipulation or intimidation)
- Sufficiently informed
- The product of one's own deliberation and judgment



## BENCHMARKS FOR MEDIATION

Use the following benchmarks to gauge the parties' readiness to mediate. If all of the benchmarks are met, then mediation can proceed without accommodation at the election of the parties. If, on the other hand, any benchmark is not met, then the parties may not be ready for mediation. You should proceed with mediation only if the specific concerns you've identified can be ameliorated to the satisfaction of the parties. (See next section for prospective safeguards).

### **Relationships are free from violence, threats of violence, and coercive control:**

Notes:

### **Parents are free from the traumatic effects of abuse:**

Notes:

### **Interests at stake for both parents are relatively comparable:**

Notes:

### **Both parents feel free to participate, not participate, or withdraw from participation without fear of harm or threat of reprisal:**

Notes:

### **Both parents are ready, willing and able to participate in good faith, deal fairly with one another, and comply with rules:**

Notes:

### **Both parents can and will negotiate freely and make autonomous decisions without fear of harm or threat of reprisal:**

Notes:

## SAFEGUARDS FOR MEDIATION

**Modify the mediation process:** If any of the mediation benchmarks are not met, the mediator must determine whether it is possible to modify the mediation process to effectively ensure safe involvement, knowing and voluntary participation, good faith and fair dealing, and autonomous decision-making by all parties. In making this determination, mediators should consider:



### **Safe involvement:**

Whether it is possible to design and implement a safety protocol to keep parties safe both in and outside of mediation sessions; and, if so, what the terms of that safety protocol should be.

### **Knowing and voluntary participation:**

Whether anything further can be done to assure that the parties understand the mediation process and the consequences of the issues to be decided; and, if so, what those steps should be.

Whether more clearly defining, limiting, or narrowing the issues to be decided can address and overcome a party's reluctance or inability to participate in mediation; and, if so, what refinements would be necessary, fair and sufficient.

Whether it is possible to design and implement a mediation termination protocol to ensure that parties can safely end or suspend mediation without fear of harm, threat of reprisal or other negative consequence and, if so, what the terms of that termination protocol should be.

### **Good faith and fair dealing:**

Whether it is possible to prevent the parties from manipulating the process or coercing the other party during or between mediation sessions; and, if so, what safeguards would be necessary, fair and sufficient.

Whether it is possible to ensure compliance with and enforcement of agreements governing the mediation process and behavior between mediation sessions; and, if so, how compliance will be monitored and enforced.

Whether it is possible to repair whatever harm is caused by non-compliance with agreements; and, if so, what reparations would be necessary, fair and sufficient.

### **Autonomous decision making:**

Whether it is possible, with proper support, to assure that both parties can and will make free and informed decisions; and, if so, what supports would be necessary, fair and sufficient.

**Delay mediation:** If any of the mediation benchmarks are not met – and it is not possible to modify the mediation process to effectively ensure safe involvement, knowing and voluntary participation, good faith and fair dealing, and autonomous decision-making by all parties – the mediator must determine whether delaying mediation would give the parties sufficient time and opportunity to meet the required benchmarks. In making this determination, mediators should consider:

What issues would have to be addressed before participation in mediation would be reconsidered?



- What interventions would potentially ameliorate identified concerns?
- How will it be determined whether the intervention(s) have been effective?
- Whether a postponement would exacerbate the problem(s), unnecessarily delay a resolution, create further uncertainty or instability for the children, or result in undue hardship for one or more parties or the children.

**Utilize a different dispute resolution process:** If any of the mediation benchmarks are not met – and it is not possible to effectively modify the mediation process or delay mediation – the mediator should consider utilizing a different dispute resolution process.



## K. READINESS FOR CO-PARENTING ASSESSMENT GUIDE

This guide is designed to help you assess whether parents possess sufficient capacity to make co-parenting work. It walks you through a structured analysis that corresponds to the four-part framework discussed earlier in this compilation. Then, it provides a list of potential safeguards that could be incorporated into a parenting plan to properly account for the nature, context and implications of abuse, if any.

At the outset, it is important to identify who the *functional* co-parents are going to be; that is, who is going to be co-parenting with whom? While we often assume that co-parenting arrangements are between the two legal parents or guardians of the child, in reality, parenting authority and parental responsibilities are sometimes delegated or relegated to someone else, like extended family members, new partners, professional caretakers, or others. This guide is intended to assess the *functional* parents' readiness for co-parenting. The functional parents may or may not be the two legal parents or guardians of the child – and they may or may not be the actual parties to the legal proceeding in which the parenting arrangement is being decided.

### READINESS FOR CO-PARENTING ASSESSMENT GUIDE

Successful co-parenting requires safe parental involvement, secure parent-child relationships, low parental conflict, effective parental communication, and clear boundaries between partner and parental roles.

Identify Domestic Abuse	Understand the Nature & Context of Abuse (for purposes of co-parenting)	Determine the Implications of Abuse (co-parenting benchmarks)	Account for Abuse in Actions and Decisions (for any unmet benchmark)
<ul style="list-style-type: none"> <li>Does a structured interview reveal any signs or indications of physical, sexual, emotional, economic, or coercive controlling abuse?</li> </ul>	<ul style="list-style-type: none"> <li>What is the quality of the parents' interactions with each other?</li> <li>What is the quality of the parents' interactions with each child?</li> <li>Does either parent interfere with the other's access to necessary and/or available resources?</li> <li>Does either parent threaten the other's capacity for self-determination?</li> <li>Does either parent pose a risk to any other family member's physical, sexual, or emotional safety, security or well-being?</li> </ul>	<ul style="list-style-type: none"> <li>Are relationships free from violence, threats of violence, and coercive control? <input type="checkbox"/>Y <input type="checkbox"/>N</li> <li>Do parents recognize and support children's needs? <input type="checkbox"/>Y <input type="checkbox"/>N</li> <li>Do children feel safe, secure and supported by parents? <input type="checkbox"/>Y <input type="checkbox"/>N</li> <li>Is communication between parents direct, civil, constructive, and focused on the children? <input type="checkbox"/>Y <input type="checkbox"/>N</li> <li>Do parents separate their role as parent from their role as partner? <input type="checkbox"/>Y <input type="checkbox"/>N</li> </ul>	<ul style="list-style-type: none"> <li>Is there cause to:               <ul style="list-style-type: none"> <li>Limit or monitor the abusive parent's access to a child or victim-parent?</li> <li>Limit or monitor the abusive parent's decision-making authority?</li> <li>Monitor the abusive parent's compliance with the parenting plan?</li> <li>Require the abusive parent to participate in remedial interventions and/or other services?</li> <li>Support the victim-parent's efforts to protect a child?</li> <li>Strengthen a child's support system?</li> </ul> </li> </ul>



## GUIDING PRINCIPLES FOR CO-PARENTING

### **Safe Parental Involvement** is....

- Free from violence, threats of violence, and/or coercive control
- Age and developmentally appropriate
- Focused on and supportive of the child
- Based on mastery of basic parenting skills and parental decision-making
- Consistent with established rules and expectations

### **Secure Parental Relationships** are....

- Free from violence, threats of violence, and/or coercive control
- Stable and predictable
- Focused on and responsive to the needs of the child

### **Cooperation Between Parents** requires....

- Mutual responsibility and shared authority
- Absence of violence, threats of violence, exploitation and/or coercion
- Willingness to consider alternate viewpoints
- Capacity to recognize and respond to others' needs (emotional maturity)
- Ability to compromise and reach agreement on important issues

### **Effective Parental Communication** is....

- Open and direct
- Civil and bi-directional
- Constructive (not harmful or damaging and more than the mere sharing of information)
- Focused on the children

### **Clear Boundaries Between Partner and Parental Roles** mean....

- Parents are able to separate their role as parents from their role as partners
- Limits between partner and parental roles are clear and unambiguous



## BENCHMARKS FOR CO-PARENTING

Use the following benchmarks to gauge the parties' readiness to co-parent. If all of the benchmarks are met, then co-parenting can proceed without accommodation at the election of the parties. If, on the other hand, any benchmark is not met, then the parties may not be ready for co-parenting. You should proceed with co-parenting only if the specific concerns you've identified can be ameliorated to the satisfaction of the parties. (See following sections for specific co-parenting challenges and prospective safeguards).

### **Relationships are free from violence, threats of violence, and coercive control:**

Notes:

### **Parents recognize and support child's needs:**

Notes:

### **Children feel safe, secure and supported by parents:**

Notes:

### **Communication between parents is direct, civil, constructive, and focused on the child:**

Notes:

### **Parents separate their role as parent from their role as partner:**

Notes:

## SAFEGUARDS FOR CO-PARENTING

If any of the co-parenting benchmarks are not met, the practitioner must determine whether it is possible to employ safeguards to effectively ensure safe parental involvement, secure parent-child relationships, cooperation between parents, effective parental communication, and clear boundaries between partner and parental roles. In making this determination, practitioners should consider the following co-parenting safeguards, among others:

### **Limit or monitor abusive parent's access to child or victim parent:**

- Limit methods of communication with child (no in-person, telephonic or social media contact)
- Prescribe methods of communication (email only, text only, My Family Wizard, etc.)
- Restrict frequency of inter-parental communication or communication with child
- Restrict content of communication (define scope and boundaries, etc.)



- Restrict length of communication (1 page, 10-minutes, etc.)
- Limit access to sensitive information (account numbers, SSNs, medical & school records, etc.)
- Issue and/or enforce no contact orders and orders for protection
- Require neutral exchange locations (school, place of business, etc.)
- Require third party exchanges (friend, family member, professional, etc.)
- Restrict visitation to a place (grandparent's home, public park, church, counseling center, etc.)
- Restrict visitation to a geographic area (25-mile radius, in town, in state, in country, etc.)
- Prohibit visitation outside a geographic area (not out-of-town, out-of-state, or out-of-country)
- Condition visitation on having a third party present (friend, family member, professional)
- Limit who can be present during visitation (no new partners, no known criminals, etc.)
- Restrict what can happen during visitation (no alcohol, drugs, weapons, dangerous activities)
- Require professionally supervised or monitored visitation
- Set benchmarks for unsupervised access (no abuse, threats of abuse, inappropriate contact)
- Condition visits on compliance with terms (sobriety, BIP, car seat, valid drivers' license)
- Appoint a post-visitation monitor to make sure visits are safe and go as planned
- Periodically monitor and conduct risk and danger assessments
- Define consequences for non-compliance with access restrictions

#### **Limit abusive parent's rulemaking or decision-making authority:**

- Grant sole legal custody to non-abusive parent
- Grant sole legal custody to non-abusive parent with deviations under defined circumstances
- Grant parallel legal custody
- Grant parallel legal custody with deviations under prescribed circumstances
- Appoint a parenting consultant to confer with the abusive parent on all major decisions
- Appoint a parenting monitor to oversee and assess parenting decisions by the abusive parent
- Restrict abusive parent's access to information that is susceptible to misuse
- Limit abusive parent's ability to dispose of real or personal property or to dissipate assets
- Appoint a special master to monitor and effectuate property distributions and settlements

#### **Monitor abusive parent's compliance with parenting plan:**

- Conduct review hearings
- Establish schedule for abusive parent to show compliance with parenting plan
- Establish automatic consequences for non-compliance with parenting plan
- Appoint a compliance monitor paid for by the abusive parent

#### **Enforce terms of parenting plan:**

- Hold abusive parent accountable for unjustified and/or intentional parenting plan violations
- Establish self-executing terms to effectuate pre-defined consequences for non-compliance

#### **Require abusive parent to participate in remedial interventions and/or other services:**

- Refer abusive parent to a batterer intervention program for assessment and services
- Refer abusive parent to a parenting after violence program for assessment and services

**Support victim parent's efforts to protect child:**

- Link parental decision-making authority to parental responsibility for child's care
- Designate victim parent as the custodian of records
- Provide victim parent with information about/access to available community-based services
- Establish self-executing parenting plan enforcement mechanisms
- Allow direct and expedited access to parenting plan enforcement mechanisms
- Establish automatic bill-paying processes for abusive parent's financial obligations
- Require abusive parent to submit periodic parenting plan compliance reports
- Limit the grounds upon which abusive parent may object to victim parent's decision-making
- Delineate reasonable house rules in the parenting plan or order
- Allow the victim parent to relocate with the child in accordance with the law

**Strengthen child's systems of support:**

- Ensure that the parenting plan accommodates child's interests, activities, and supports
- Provide sufficient parenting time flexibility to adapt to child's developmental and social needs
- Structure parenting time to maintain access to child's support system
- Connect child and victim parent to available community-based resources



## L. GUIDE TO APPROPRIATENESS OF EARLY NEUTRAL EVALUATION

This guide is designed to help you assess whether parents possess sufficient capacity to successfully engage in early neutral evaluation. It walks you through a structured analysis that corresponds to the four-part framework discussed earlier in this compilation. Then, it provides a list of potential safeguards that could be incorporated into an early neutral evaluation process to properly account for the nature, context and implications of abuse, if any.

### Guide to Appropriateness of Early Neutral Evaluation

During early neutral evaluation (ENE), experts hear the factual and legal assertions of each party and render a nonbinding opinion predicting a judicial decision on the merits. Successful early neutral evaluation requires safe involvement, knowing and voluntary participation, knowledge of relevant facts and applicable law, ability to persuasively articulate facts and legal arguments, and autonomous decision-making by each party.

Identify Domestic Abuse	Understand the Nature & Context of Abuse <i>(for purposes of ENE)</i>	Determine the Implications of Abuse <i>(benchmarks for ENE)</i>	Account for Abuse in Actions and Decisions <i>(for any unmet benchmark)</i>
<ul style="list-style-type: none"> <li>Does universal, comprehensive and systematic screening reveal any signs or indications of physical, sexual, emotional, economic, or coercive controlling abuse?</li> </ul>	<ul style="list-style-type: none"> <li>What risk, if any, does either party pose to any other family member's physical, sexual, or emotional safety, security or well-being?</li> <li>In what ways, if at all, does either parent interfere with the other's access to necessary and/or available information or resources?</li> <li>In what ways, if any, does either parent interfere with the other's ability to assert a contrary viewpoint or challenge something with which he or she does not agree?</li> <li>In what ways, if any, does either party exercise disproportionate authority or control over the other or otherwise threaten the other's capacity for self-determination?</li> </ul>	<ul style="list-style-type: none"> <li>Are relationships free from violence, threats of violence, and coercive control? <input type="checkbox"/>Y <input type="checkbox"/>N</li> <li>Are both parents free from traumatic effects of abuse, like PTSD, major depression, fear or forboding, memory loss, or processing difficulties? <input type="checkbox"/>Y <input type="checkbox"/>N</li> <li>Do both parents feel free to fully participate, not participate, or withdraw from participation without fear or threat of reprisal? <input type="checkbox"/>Y <input type="checkbox"/>N</li> <li>Are both parents knowledgeable about relevant facts and applicable law? <input type="checkbox"/>Y <input type="checkbox"/>N</li> <li>Are both parents able to make persuasive factual and legal arguments and do so without fear or threat of reprisal? <input type="checkbox"/>Y <input type="checkbox"/>N</li> <li>Are both parents willing and able to negotiate freely and make autonomous decisions (that may be contrary to evaluators' recommendations) without intimidation or threat of reprisal? <input type="checkbox"/>Y <input type="checkbox"/>N</li> </ul>	<ul style="list-style-type: none"> <li>Modify the early neutral evaluation process?</li> <li>Utilize a different dispute resolution process?</li> </ul>



## Guiding Principles for Successful Early Neutral Evaluation

### **Safe Involvement** is . . .

- Free from actual or perceived violence, threats of violence, and/or coercive control
- Consistent with pre-established, enforceable rules and expectations
- Subject to immediate recess or termination by any party for any reason or for no reason at all

### **Knowing and voluntary participation** requires informed consent, the elements of which include:

- Understanding the early neutral evaluation process
- Understanding the role played by evaluators
- Understanding the limits on the evaluators' authority
- Awareness and appreciation of the nature and consequences of the issues to be decided
- Understanding that the early neutral evaluation process will not include verification of assertions or the right to offer evidence, examine witnesses, make a record, obtain a decision on the merits, or file an appeal
- Freedom to participate, not participate, or withdraw from participation without pressure, fear, or threat of repercussion from the other party, the evaluators or the court system

### **Knowledge of relevant facts and law** involves . . .

- Awareness of and access to relevant information
- Ability to verify facts asserted
- Understanding of the substantive and procedural law on which the evaluators' opinion will be based

### **Ability to make persuasive factual and legal arguments** involves . . .

- Willingness and ability to formulate a compelling factual narrative based on the law governing the case
- Willingness and ability to clearly and cogently speak on one's behalf
- Willingness and ability to promptly respond to questions and correct misinformation

### **Autonomous decision making** is, from the perspective of each party . . .

- Voluntary (free from undue pressure, duress, coercion, threats, manipulation and/or intimidation)
- Sufficiently informed
- The product of one's own deliberation and judgment
- Potentially contrary to the recommendations of the evaluators
- Potentially contrary to the assertions and arguments of the other party



## Benchmarks for Successful Early Neutral Evaluation

Use the following benchmarks to gauge the appropriateness of early neutral evaluation. If all of the benchmarks are met, then early neutral evaluation can proceed without accommodation at the election of the parties. If, on the other hand, any benchmark is not met, then the early neutral evaluation may not be appropriate. You should proceed with early neutral evaluation only if the specific concerns you've identified can be ameliorated to the satisfaction of the parties. (See next section for prospective safeguards).

### **Relationships are free from violence, threats of violence, and coercive control:**

Notes:

### **Parents are free from the traumatic effects of abuse:**

Notes:

### **Both parents feel free to participate, not participate, or withdraw from participation without fear of harm or threat of reprisal:**

Notes:

### **Both parents have knowledge of relevant facts and law:**

Notes:

### **Both parents are capable of persuasively articulating facts and legal arguments.**

Notes:

### **Both parents can and will negotiate freely and make autonomous decisions without intimidation or threat of reprisal:**

Notes:



## Safeguards for Successful Early Neutral Evaluation

**Modify the early neutral evaluation process:** If any of the early neutral evaluation benchmarks are not met, the evaluators must determine whether it is possible to modify the early neutral evaluation process to effectively ensure safe involvement, knowing and voluntary participation, knowledge of relevant facts and applicable law, ability to persuasively articulate facts and legal arguments, and autonomous decision-making by each party. In making this determination, evaluators should consider:

**Safe involvement:**

Whether it is possible to design and implement a safety protocol to keep parties safe both in and outside of the early neutral evaluation session; and, if so, what the terms of that safety protocol should be.

Ideas:

**Knowing and voluntary participation:**

Whether anything can be done to assure that the parties understand the early neutral evaluation process and the consequences of the issues to be decided; and, if so, what those steps should be.

Ideas:

Whether more clearly defining, limiting, or narrowing the issues to be discussed can address and overcome a party's reluctance or inability to participate in early neutral evaluation; and, if so, what refinements would be necessary, fair and sufficient.

Ideas:

Whether it is possible to design and implement an early neutral evaluation termination protocol to ensure that parties can safely end or suspend early neutral evaluation without fear of harm, threat of reprisal or other negative consequence and, if so, what the terms of that termination protocol should be.

Ideas:



**Knowledge of relevant facts and law:**

Whether the parties' knowledge of and access to relevant information and applicable law can be sufficiently improved so that the parties can provide an adequate basis for the evaluators' opinion, and if so, what steps should be taken.

Ideas:

**Ability to make persuasive factual and legal arguments:**

Whether steps can be taken to enable the parties to make factual and legal arguments, and if so, what steps should be taken.

**Autonomous decision making:**

Whether it is possible, with proper support, to assure that both parties can and will make free and informed decisions; and, if so, what supports would be necessary, fair and sufficient.

Ideas:

Whether it is possible to provide sufficient support to assure that parties are able to freely oppose the recommendations of the evaluators.

Ideas:

Whether it is possible to provide sufficient support to assure that each party is able to freely oppose the assertions and arguments of the other party.

Ideas:

**Utilize a different dispute resolution process:** If any of the early neutral evaluation benchmarks are not met – and it is not possible to effectively modify the process or delay early neutral evaluation – the parties should consider utilizing a different dispute resolution process.

# A SYSTEMATIC APPROACH TO DOMESTIC ABUSE-INFORMED CHILD CUSTODY DECISION MAKING IN FAMILY LAW CASES<sup>1</sup>

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This article introduces an approach to domestic violence-informed decision making developed under the auspices of the National Child Custody Differentiation Project, a cooperative undertaking among the Battered Women's Justice Project, the Association of Family & Conciliation Courts, the National Council of Juvenile & Family Court Judges, Praxis International, and the U.S. Department of Justice Office on Violence Against Women. This approach has four essential elements: (1) identifying domestic abuse; (2) understanding the nature and context of domestic abuse; (3) determining the implications of abuse; and (4) accounting for the nature, context, and implications of abuse in all custody-related recommendations and decisions.

Key Points for the Family Court Community:

- Applying a systematic approach to domestic violence can help practitioners identify, understand, and account for abuse in family law cases.
- The approach recommended here is suitable for use by anyone who is involved in a contested child custody case at any stage of the proceeding.
- The specific application of the recommended approach will vary depending upon the practitioner's role and function in the case, relationship to the parties, and access to information, as well as the nature of the proceeding and the issues to be decided.

**Keywords:** *Battered Women's Justice Project; Best Interests of the Child; Domestic Abuse; Domestic Violence; Family Court; Informed Decision Making; Intimate Partner Abuse; and Parenting.*

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## I. INTRODUCTION

Child custody decision making in the context of domestic abuse allegations is controversial, unpredictable, and challenging for practitioners and families. For years, survivors and advocates have observed that the family court system fails to adequately protect the safety and well-being of children and their battered parents in domestic violence-related child custody cases.<sup>2</sup> Others have raised concern that the family court system does not adequately protect the rights and interests of parents who are wrongfully accused of domestic violence and/or unjustifiably estranged from their children.<sup>3</sup> In order to address these and other institutionally entrenched issues, the U.S. Department of Justice Office on Violence Against Women (OVW) enlisted the services of the Battered Women's Justice Project (BWJP) to lead the National Child Custody Differentiation Project (the Project). The goal of the Project was to develop a mechanism by which family court practitioners could better identify, understand, and account for the context and implications of domestic violence at all decision-making stages and settings within contested child custody proceedings.

This article provides a brief overview of the Project, discusses the key findings and themes that emerged from the Project, and introduces an approach to domestic violence-informed decision making that grew out of the Project. That approach has four essential elements: (1) identifying domestic abuse (determining whether domestic abuse is or may be an issue in the case); (2) understanding the nature and context of domestic abuse (ascertaining who is doing what to whom, why, and to what

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effect); (3) determining the implications of abuse (establishing the consequences and realities of living with abuse); and (4) accounting for the nature, context and implications of abuse in all custody-related recommendations and decisions.

## II. THE NATIONAL CHILD CUSTODY DIFFERENTIATION PROJECT

In 2009, OVW and BWJP launched the National Child Custody Differentiation Project. The goal of the Project was to enhance safety for battered parents and their children by ensuring that family court decision making properly accounts for the nature and effects of domestic violence. BWJP and its project partner Praxis International—in close consultation with the National Council of Juvenile & Family Court Judges (NCJFCJ) and the Association of Family & Conciliation Courts (AFCC)—designed, coordinated, and completed a number of major activities in the first two years of the Project, including: (1) a comprehensive literature review, (2) an in-depth assessment of a family court system in rural Northwest Ohio, (3) a text analysis of child custody evaluation reports, (4) dozens of stakeholder interviews and focus groups, and (5) hundreds of consultations with nationally and internationally recognized researchers and expert practitioners. Those activities produced a number of key findings and recommendations for improving the way family courts approach, address, and respond to domestic violence. Those findings and recommendations are summarized in two reports<sup>4</sup> and provide the basis for the approach to domestic violence–informed decision making outlined below.

### A. KEY FINDINGS AND EMERGING THEMES

Several themes emerged from the Project. These themes are consistent with and supported by research in the field, as well as reports from family court practitioners and litigants across the country consulted in connection with the Project.

#### 1. Ill-Defined Terminology

Very little agreement exists among practitioners about the meaning of commonly used terminology like *domestic violence*, *high conflict*, *parental alienation*, and *best interests*.<sup>5</sup> As one team of commentators put it:

...family court judges have traditionally been hindered in their response to abuse by the guiding literature's conflation of "conflict" and "abuse," and by the failure to distinguish between violence associated with conflict and violence associated with abuse.<sup>6</sup>

Moreover, terms like *high conflict* often mean different things to different people. Mediators, for instance, often view *high conflict* as poor, or even damaging, interparental communication; courts, on the other hand, often view *high conflict* as cases that just will not settle; whereas custody evaluators frequently refer to *high conflict* as anything from general marital acrimony to severe physical violence.<sup>7</sup> Other examples abound. This lack of conceptual clarity leads to a lot of confusion and misunderstanding.

#### 2. Lack of Clarity Regarding Professional Roles and Functions

In addition to ill-defined terminology, practitioners often lack clarity about their own roles and functions within the family court system. For example, some evaluators perceive their function to be strictly about determining what parenting arrangement would be in the best interests of the child, while other evaluators see their role as facilitating a settlement between the parents.<sup>8</sup> Similarly, some mediators understand their function as facilitating a settlement between the parents, while other

mediators see their role as evaluating the merits of the case.<sup>9</sup> Many examples of this sort of confusion about who is responsible for what exist within the family court system.

### **3. Inconsistent Screening, Assessment and Assumptions about Domestic Abuse**

While most family court practitioners engage in some sort of screening for domestic violence, very little evidence exists that practitioners routinely use standardized protocols or tools to determine the nature, extent, and context of domestic violence. Instead, many practitioners simply rely on their own gut feelings or instincts to determine whether domestic violence has occurred and impose their own personal assumptions about domestic violence. A large body of research supports this observation.<sup>10,11</sup>

### **4. Poorly Informed Decision Making**

Big decisions are often made by practitioners in all court settings in the face of tremendous factual uncertainty about domestic violence—and in some cases, on the basis of wildly inaccurate information—with very few opportunities for the parties to challenge the facts or correct the record. This paucity of reliable information and inconsistent assessments leads to poorly informed decision making. Again, these observations appear to be borne out in a large body of research.<sup>12</sup>

### **5. Disconnected Interventions and Services**

In what Jill Davies refers to as “service-defined” as opposed to “survivor-defined” interventions,<sup>13</sup> available interventions and services are often disconnected from what people actually need. This observation is also supported by a considerable amount of research.<sup>14</sup>

While each of the foregoing themes emerged as discrete problems, they are clearly interconnected. The momentum of these problems—and the way in which they compound one on top of the other—propel many family court cases off track. A major challenge for the Project was to conceptualize an approach to these cases that more closely aligns institutional practices with the realities of people’s lives—to close the gaps between what the people who are drawn into the family court system need and what the system is set up to provide. That approach would envision a system where professionals at all levels speak the same language; perform clearly defined functions; engage in universal, systematic screening and assessment; make informed decisions; and link interventions to the particular needs of families.

## **III. AN APPROACH TO DOMESTIC VIOLENCE–INFORMED DECISION MAKING**

Despite its prevalence and its threat to the safety and well-being of children and battered parents, domestic abuse often remains undetected in child custody proceedings.<sup>15</sup> Commentators have identified several practices that contribute to this problem, including lack of systematic screening for domestic abuse in family law proceedings;<sup>16</sup> the use of inadequate or unreliable screening protocols and instruments;<sup>17</sup> and the application of inaccurate assumptions, biases, and beliefs about domestic abuse,<sup>18</sup> among other things.

To address these institutional pitfalls, BWJP developed a four-part approach to domestic violence–informed decision making designed to help practitioners gather, synthesize, and analyze information about the context and implications of domestic abuse in contested child custody cases. The framework consists of the four parts described below.

One of the key features of this framework is that it makes no assumptions about domestic abuse. While it recognizes that domestic abuse is fairly prevalent in contested child custody matters,<sup>19</sup> it does not assume that domestic abuse is an issue in every case. Instead, it directs practitioners to find

out whether domestic abuse is or may be present. Similarly, while the framework recognizes that coercive controlling abuse is not uncommon in contested child custody matters,<sup>20</sup> it does not assume that coercive control is present in every case. Instead, it directs practitioners to find out what the specific nature and context of abuse is in each individual case. And, while the framework recognizes that domestic abuse can have important implications for parenting,<sup>21</sup> co-parenting,<sup>22</sup> and the safety and well-being of the child and victim-parent,<sup>23</sup> the framework does not assume that such implications are present in every case. Rather, it directs practitioners to find out whether domestic violence has repercussions for parenting, co-parenting, and the best interests of the child and, if so, what those repercussions are in each individual case. Finally, the framework does not assume that a particular intervention or parenting plan is necessarily appropriate in every case in which domestic violence is present. Instead, it directs practitioners to link proposed interventions to the specific nature, context, and implications of abuse in each individual case. In this way, the framework calls upon practitioners to put aside their own personal assumptions, biases, and beliefs in favor of information about what is actually going on in the real lives of the people whose legal relationships are being adjusted through the family court system. With that in mind, each part of the framework is discussed more fully below.

### **A. IDENTIFYING DOMESTIC ABUSE**

The first step of the framework is to identify domestic abuse. At the outset, it is important to determine whether abuse is or may be an issue in every case. Here, the practitioner is asked to conduct an initial screen to determine whether there is any reason to believe that the case might involve domestic abuse.<sup>24</sup>

This step is somewhat analogous to an airport security checkpoint, where the security agent is asked to screen all passengers to determine whether they might pose a risk to the safety of an aircraft. Those who pass through the screening device without setting off any alarms are free to proceed through the terminal without further delay. Those who trip an alarm are pulled aside for a closer look. If the closer look does not reveal an actual risk (because the passenger forgot to remove loose change from his pocket, for instance), the passenger is excused and can go about his business. If, on the other hand, a closer inspection detects a real risk (the presence of an explosive, for instance), then the passenger is likely to be detained for further questioning and/or investigation.

In order to increase the likelihood that domestic violence cases are detected early, it is necessary to ensure that potentially serious cases do not slip through the cracks. Therefore, BWJP recommends that—at this early stage—practitioners employ a screening device that is sensitive to a broad range of characteristics, including physical, sexual, emotional, economic, and coercive controlling abuse. This approach is consistent with the research that suggests that screening for multiple forms of abuse, including coercive control, is more likely to detect physical and sexual abuse, threats to life, and the kind of relational distress that makes co-parenting with an abuser especially difficult, dangerous, or even impossible than screening for physical violence alone.<sup>25</sup>

This broad-based approach to screening is justified because, just as the airport security agent does not want a potential terrorist to slip past the checkpoint, family court practitioners do not want potentially dangerous cases to defy detection. At this stage, the practitioner's goal is simply to determine whether domestic violence is or may be an issue that warrants further assessment. The practitioner's task at this juncture is not to make any judgments about a party's guilt or innocence. It is not to punish anyone or to give anyone a tactical advantage in the case. Rather, the goal is to determine whether it is necessary to take a closer look.<sup>26</sup>

### **B. UNDERSTANDING THE NATURE AND CONTEXT OF ABUSE**

A large body of research confirms that domestic abuse is neither a uniform phenomenon nor a static condition, but varies in form, frequency and severity.<sup>27</sup> There is growing awareness that domestic abuse does not look the same in all families and does not operate the same way under all

circumstances or at all points in time. For instance, not every case of domestic abuse involves serious physical violence, but some cases involve severe, even lethal, violence. Similarly, not every case is characterized by a pattern of coercive control, but some cases are marked by extreme isolation, degradation, and domination. While some acts of violence are clearly abusive, others can be protective, as in the case of self-defense or the defense of one's children. Family court practitioners must have a mechanism to tell these cases apart. Otherwise, they might easily mistake the nature, intent, and significance of abuse, as well as its relationship to the best interests of the child.

Moreover, the dynamics of domestic abuse are often expressed differently at different points in time. For instance, the strategies that abusers employ during a relationship might not be practical or effective after separation, so they may devise new ways to perpetuate abuse once the relationship ends.<sup>28</sup> Again, practitioners must be alert to the nature and context of abuse both during the relationship and after separation.

Standing alone, the mere presence of domestic abuse in an individual case signifies very little because it does not describe the variations in the ways in which domestic abuse is enacted and experienced at multiple points in time within individual families and by the children whose interests the court is charged to protect.<sup>29</sup> Consequently, it is not enough for practitioners to simply identify domestic abuse. They must delve deeper to understand the specific nature and context of domestic abuse that is occurring in each individual case. In short, they must determine who is doing what to whom and to what effect.<sup>30</sup>

Scholars and practitioners generally recognize three distinct types of domestic abuse: coercive controlling violence, violent resistance, and situational couple violence,<sup>31</sup> though other characterizations have been articulated.<sup>32</sup> According to Michael Johnson, “the differences among the types are defined not by the nature of the violence itself, but by the interpersonal dynamics that produce the violence.”<sup>33</sup> Coercive controlling violence and violent resistance, for instance, are produced and shaped by the dynamics of power and control, whereas situational couple violence is rooted in “the dynamics of conflict management.”<sup>34</sup> Because the defining features of each type of domestic abuse are the interpersonal dynamics that produce the violence rather than the nature of the violence itself, the context of abuse cannot be determined by “looking at violent incidents in isolation.”<sup>35</sup> Rather, the context of abuse can only be determined by a careful analysis of the nature of the relationship in which the violence is enacted and/or embedded.<sup>36</sup>

A thorough explication of the discrete characteristics of abuse is beyond the scope of this article. Nevertheless, in order for family court professionals to fulfill their respective functions in child custody disputes, they must understand the nature and context of the abuse that is occurring in the family. Otherwise, they run the risk of mistaking or misinterpreting what is actually going on—and that can mean the difference between protecting the best interests of the child and inadvertently advancing the very *worst* interests of the child.

### C. DETERMINING THE IMPLICATIONS OF ABUSE

Once the practitioner identifies that domestic abuse may be an issue in the case and then comes to an understanding of the nature and context of the domestic abuse that is operating within the family, the next task is to determine the implications of the abuse. For purposes of developing a parenting plan recommendation, that means asking and attempting to clarify the following key questions:

- What is it like to parent in this particular environment of abuse?
- What is it like to co-parent in this particular environment of abuse?
- What is it like to be parented in this particular environment of abuse?

Determining the implications of abuse is, perhaps, the practitioner's most difficult and vexing task. Additionally, there is very little research to guide the practitioner in this undertaking. What little research exists, however, is instructive.

## 1. Parenting in the Context of Domestic Abuse

Few studies have explored the experience of parenting by people who are violent toward their partners, or whose partners are violent toward them.<sup>37</sup> The rare studies that do exist focus primarily on the experiences of violent fathers and abused mothers.<sup>38</sup> One of the few large-scale surveys to examine the perspectives of both mothers and fathers who reported victimization by an ex-partner was conducted on behalf of the Australian government.<sup>39</sup> This qualitative study, which followed a major overhaul of the Family Law Act and the enactment of the Shared Parental Responsibility Act, identified significant gender-based differences in the experience of parenting in the face of postseparation family violence.

For instance, female victims reported a range of physical, sexual, emotional, psychological, verbal, social, financial, and oppressively controlling abuse both during their relationships and after separation.<sup>40</sup> Women's accounts included frequent references to "beatings, stabbings, strangling, rapes, pet torture, use of weapons and other high-level forms of violence," which they attributed to their ex-partners' limited ability to control them following separation.<sup>41</sup>

Male victims, on the other hand, reported more emotional, psychological, and verbal abuse, often interpreting their "partner's failure to function in a stereotypical family role as being abusive to them in a way that women did not."<sup>42</sup> Men's accounts included frequent references to women's parenting, child support, and false allegations of abuse levied against them, which they attributed to their ex-wives' drug and alcohol use, mental illness, and financial problems following separation.<sup>43</sup>

As a result, women's experience of parenting in the context of postseparation abuse was quite different than men's experience of postseparation parenting. Women reported parenting marked by fear, powerlessness, constant intrusion, harassment, and ongoing threats to both themselves and their children.<sup>44</sup> Men's reports were different. According to the study:

Men did not report continuing violence after separation to the same extent, nor did they report fear of their ex-partner or fears for their children's safety or feelings of powerlessness in the same way as women. Rather, after separation men were more concerned about obstructions to access to their children and false allegations of family violence and saw these as expressions of violence. They expressed frustration and sometimes hopelessness rather than fear.<sup>45</sup>

For most respondents (68.7% of women and 52.2% of men), "the consequence of family violence was that suitable and safe arrangements for themselves and their children were not achieved after separation," due in large part to the perception that "'service providers' disbelief and ignorance of family violence" left many of their problems unresolved.<sup>46</sup>

This study and the handful of others that examine postseparation parenting in the context of domestic abuse reveal that family court practitioners must attempt to determine the implications of domestic abuse for parenting. While the impact of domestic abuse on parenting varies from case to case, the experience of postseparation parenting is directly linked to the statutory best interest factors that most practitioners are bound to consider under applicable state law, including:

- the wishes of the parents regarding the child's care
- the wishes and concerns of the child
- the child's interactions and interrelationships with his or her parents
- the child's adjustment to home, school, and community
- the mental and physical health of the child and the parents
- the likelihood that a parent will honor and facilitate parenting time
- the likelihood that a parent has or will make court-ordered child support payments
- a parent's desire or intention to relocate
- the parents' ability to communicate and make joint parenting decisions
- the likelihood that the parents will encourage the child to have a close and continuing relationship with the other parent<sup>47</sup>

## 2. Co-Parenting in the Context of Domestic Abuse

A relatively small body of research has explored co-parenting relationships with abusive ex-partners. What little research exists suggests that the quality of co-parenting depends to some extent upon how well abusive ex-partners are able to separate their roles as parents from their roles as spouses.<sup>48</sup> In their small qualitative study, Jennifer Hardesty and her colleagues found that co-parenting with abusive former spouses who could not separate their parental and spousal roles following divorce (i.e., those who saw their children as mere extensions of their former partners) was much more dangerous and difficult to manage than co-parenting with abusive former spouses who were able to separate their roles as parents and partners.<sup>49</sup> Abused parents whose ex-spouses could not differentiate reported controlling intrusions into their daily lives, an atmosphere of fear, ongoing litigation, and disruptions in child support, among other things, making effective co-parenting challenging, if not impossible.<sup>50</sup> Abused parents whose ex-spouses were well differentiated, on the other hand, had fewer difficulties co-parenting because both parents could respect each others' boundaries, share decision-making authority, and prioritize the needs of their children.<sup>51</sup>

This study is instructive because it underscores that it is not the *mere fact of violence* that drives the dynamics of co-parenting after divorce, but *the abuser's motive to control the victim*, which, for the coercive controlling abuser, can be indistinguishable from his role as a parent.<sup>52</sup> That is to say that it is *context* that matters most in determining the implications of abuse for co-parenting.<sup>53</sup>

## 3. Being Parented in the Context of Domestic Abuse

Children experience family violence in many different ways. In his influential article on children exposed to family violence,<sup>54</sup> George Holden catalogued the myriad ways in which children experience domestic abuse. Sometimes they are exposed to domestic abuse in utero, where, for instance, an abuser kicks or punches a pregnant partner, terrorizes or sexually assaults a pregnant partner, or attempts to induce miscarriage, coerces a pregnant partner to use drugs, or interferes with prenatal care.<sup>55</sup>

Sometimes children directly intervene to try to end the abuse, where, for instance they plead with the abuser to stop, call for help, or physically assault the abuser themselves.<sup>56</sup> Sometimes, children suffer direct harm from abuse, where, for instance, they get caught in the crossfire, injure themselves trying to escape, or get blamed for the abuse.<sup>57</sup>

Sometimes children join in the abuse of a parent, often by means of threats, force, coercion, identification with the abuser, or self-preservation.<sup>58</sup> Other times, children directly observe abuse by watching an assault of one parent by the other or seeing one parent plead for help or mercy.<sup>59</sup> Still other times, children indirectly observe abuse by hearing threats, screams, gunfire, breaking furniture, or blows to the victim's head or body.<sup>60</sup>

Sometimes children hide from abuse by running away from home, locking themselves in their closet, or turning to alcohol or drugs. Children can be left to deal with the immediate effects of abuse by seeing blood, bruises, or other injuries or watching a parent being arrested, restrained, or taken away in an ambulance.<sup>61</sup> In many cases, children face life-altering changes as a result of the abuse, like separation from a parent, broken social ties, loss of trust and/or confidence in their parents, or economic instability.<sup>62</sup>

Children are rarely unaware of abuse. Research shows that eighty to ninety percent of children living in homes where domestic violence occurs are aware of the violence.<sup>63</sup>

Children often have very complex feelings about their parents in relation to domestic abuse. In a recent article, Betsy McAlister Groves, Patricia Van Horn, and Alicia Lieberman—all experienced clinical practitioners who work with children exposed to domestic violence—offer three case examples to illustrate this complexity:

Benjamin, a nine-year-old boy, was referred for treatment after he witnessed his father attempt to stab his mother. This event had happened about four months prior to the referral, and he had not had contact with his father since the incident. Benjamin was quite willing to talk with the therapist about what had happened.

He told the story in some detail, elaborating on how he had felt so terrified that he could not do anything to help his mother. He commented that he had heard his parents argue “every night” and that he was always scared that something would happen to one of them. He expressed great relief to have his father out of the house but then stated that he would miss him at the annual school breakfast for fathers. The therapist wondered if Benjamin might want to see his father at some point. Benjamin thought for a long time and replied, “Yes, if I could be sure that I was big and strong enough to be able to get away from him if I had to.”

Elena, age eight, witnessed the arrest of her father after an assault in which he attempted to strangle her mother. As he resisted the arrest, he picked up a kitchen knife and brandished it toward the officers who responded. They called for backup help, and eventually, there were six officers at the scene to effect the arrest. Elena was the terrified bystander to this mayhem. When asked by her therapist if she wanted to talk about what had happened, she decided to draw a picture. She drew a picture of four police officers with their guns drawn, pointing toward her father. He was seated in a chair, a small figure with tears coming down his cheeks. She told her therapist that she was scared the policemen would kill her father.

Betina, age four, had twice witnessed her father choking her mother. After the last incident, Betina’s mother called the police and obtained a restraining order. Betina had not seen her father for three months. In one session with her therapist, she sat rocking a baby doll. She said, “Baby, you miss your daddy.” Betina looked off into space and said, “Daddy, you called me your princess. Why did you leave and go to the moon?” Later in the same session, Betina drew a picture of a figure behind bars. She said that her daddy was in jail. She told the therapist to put a big lock on the door so that her daddy couldn’t get out and hurt her mommy.<sup>64</sup>

Although every case is unique, these examples provide a glimpse into what it can be like for a child to be parented in the context of domestic abuse. These summaries reveal just a few of the many conflicting feelings that can arise when a child witnesses a violent assault by one parent against the other, such as simultaneous fear of, yearning for, and worry about the abusive parent, coupled with a desire to protect not only themselves from danger, but their abused parent and siblings, as well. Knowing that, as a consequence of domestic abuse, a child is scared of a parent, worried about a parent, distanced from a parent, feeling protective of a parent, angry at a parent, or unable to trust a parent is essential to a family court practitioner’s consideration of the best interests of the child. These implications have a direct bearing on almost every statutory best interest factor in every state.<sup>65</sup>

Determining the implications of domestic abuse for parenting, co-parenting, and children is one of the family court practitioner’s most difficult, but important, tasks. It takes time, knowledge, and skill. It involves a complex process of analyzing the effects of domestic abuse on the quality of the parents’ interactions; the nature of their parenting and co-parenting decisions and priorities; and the physical, emotional, and economic well-being of the parents and each of their children.

#### **D. ACCOUNTING FOR DOMESTIC ABUSE IN ALL DECISIONS AND RECOMMENDATIONS**

There is growing awareness that one-size-fits-all parenting plans and interventions fail to adequately account for the variations in the way domestic violence is enacted and experienced by individual people, including the children who are often the subject of custody disputes in family court.<sup>66</sup> In fact, there is concern in some quarters that disconnected interventions are not only ineffective, in that they fail to address the specific dynamics at work in individual cases, but they can actually amplify rather than ameliorate the harmful and potentially lethal consequences of domestic violence for battered parents and their children.<sup>67</sup>

In 2012, the U.S. Attorney General’s National Task Force on Children Exposed to Violence issued a report and recommendations on trauma-informed practices, services, and interventions for children and survivors of domestic abuse. The task force noted that:

The majority of children in our country who are identified as having been exposed to violence never receive services or treatment that effectively help them to stabilize themselves, regain their normal developmental trajectory, restore their safety, and heal their social and emotional wounds. But help isn’t

optional or a luxury when a child's life is at stake; it's a necessity. Even after the violence has ended, these child survivors suffer from severe problems with anxiety, depression, anger, grief, and posttraumatic stress that can mar their relationships and family life and limit their success in school or work, not only in childhood but throughout their adult lives. Without services or treatment, even children who appear resilient and seem to recover from exposure to violence still bear emotional scars that may lead them to experience these same health and psychological problems years or decades later.<sup>68</sup>

According to Michael Johnson, "evidence is building that current intervention strategies are differentially effective."<sup>69</sup> Practitioners, therefore, must take care to ensure that their case strategies; recommendations; and proposed parenting plans adequately account for the nature, context, and implications of domestic abuse in order to promote and protect the best interests of the child, as well as the safety and well-being of their abused and abusive parents.

## V. CONCLUSION

The four-part framework described above, which calls on practitioners to identify, understand, and account for the nature, context, and implications of abuse, is suitable for use by anyone who is involved in a contested child custody case at any stage of the proceeding. The precise application of the framework, however, may vary substantially depending upon the circumstances, including the practitioners' role and function in the case, the practitioners' relationship to the parties and access to information, the nature of the family court proceeding, and the nature of the decision or action at issue at the moment.<sup>70</sup>

The framework is versatile in that it can be used in any number of ways. For instance, it can be employed to directly analyze the nature, context and implications of abuse in any given case, as outlined above. It can also be used as a measure against which other practitioners' analyses of abuse may be reviewed or assessed. Judges can use the framework as a vehicle to communicate their expectations about what they want to know about domestic abuse from lawyers, evaluators, guardians ad litem, and other appointees in child custody cases. Attorneys and self-represented parties can use the framework to develop legal theory and organize legal strategy. Judges, mediators, early neutral evaluators, and other dispute resolution professionals can use the framework to structure court proceedings and/or processes to enhance safety in domestic violence-related custody disputes. Attorneys and parties can use the framework to evaluate alternative dispute resolution options, interventions, and services. Family court practitioners and parties can use the framework to define the contours of appropriate parenting arrangements. Court administrators and case managers can use the framework to develop institutional policies, procedures, and practices and to design forms, checklists, practice guides, and manuals. And professional trainers can use the framework to develop workshop curricula to train family court practitioners.

The strength of the framework lies in the fact that it does not assume anything about abuse, but requires practitioners to delve into the specifics of abuse. It is gender neutral on its face, but invites rigorous gender analyses. It discourages workers from imposing their own beliefs, assumptions, and biases and applies across cultures and circumstances. It is also relatively straightforward. On the other hand, the framework presents some challenges. It is deceptively simple and takes time, thought, and careful attention to apply well. Nevertheless, it provides family court practitioners with a structured approach to complex cases where the stakes are high and the margins for error are slim.

## NOTES

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2. See Mallika Kaur et al., *Family Law Remedies for Domestic Violence Across California: A Survey*. California Partnership to End Domestic Violence (2013); Molly Dragiewicz, *Gender Bias in Courts: Implications for Battered Mothers and their Children*, 5(1) FAM. & INTIMATE PARTNER VIOLENCE Q. 13 (2012).

3. See Jocelyn Elsie Crowley, *Adopting "Equality Tools" from the Toolboxes of their Predecessors: The Fathers Right Movement in the United States*, in FATHERS' RIGHTS ACTIVISM AND LAW REFORM IN COMPARATIVE PERSPECTIVE 81 (Richard Collier & Sally Sheldon eds., 2006).

4. The two reports are entitled *Report of the Henry County, Ohio Child Custody and Domestic Violence Safety and Accountability Audit* and *Mind the Gap: Accounting for Domestic Abuse in Child Custody Evaluations* and are available for review at [www.bwjp.org](http://www.bwjp.org).

5. This lack of conceptual clarity is well established in the field: BARBARA J. FIDLER ET AL., CHILDREN WHO RESIST POSTSEPARATION PARENTAL CONTACT 50 (2013) ("There is not presently a clear consensus about how best to define alienation, which creates difficulties when attempting to assess its occurrence, related factors, and consequences."); Zeev Winstok, *From a Static to a Dynamic Approach to the Study of Partner Violence*. 69 SEX ROLES 193 (2013) (different ideological groups "use the same terminology, but ascribe it different meanings and concepts. . ."); Erica M. Woodin et al., *Intimate Partner Violence Assessment in an Historical Context: Divergent Approaches and Opportunities for Progress*, 69 SEX ROLES 120 (2013)) ("... although the researchers who study IPV in different fields are moving towards consensus, there are still differences in how physical IPV (as well as other aspects of IPV) are defined."); R. Rachel Bimbaum & Nicholas Bala, *Toward the Differentiation of High-Conflict Families: An Analysis of Social Science Research and Canadian Case Law*, 48 FAM. CT. REV. 403 (2010) ("The use of 'high conflict' terminology by social science researchers and the courts has increased dramatically over the past decade . . . but the term is often used vaguely and to characterize very different types of cases . . . There is a need for the development of more refined, explicit analytical concepts for the identification and differentiation of various types of high conflict cases.").

6. Clare Dalton et al., *High Conflict Divorce, Violence, and Abuse: Implications for Custody and Visitation Decisions*, 54(4) JUV. & FAM. CT. J. 11, 12 (2003).

7. Ellen Pence et al., *Mind the Gap: Accounting for Abuse in Child Custody Evaluations*, Battered Women's Justice Project 11–12 (2012).

8. See generally AFCC, MODEL STANDARDS OF PRACTICE FOR CUSTODY EVALUATION (2006).

9. See generally Michael T. Colatella, Jr., *Informed Consent in Mediation: Promoting Pro Se Parties' Informed Settlement Choice While Honoring the Mediator's Ethical Duties*, 15 CARDOZO J. CONFLICT RESOL. 705 (2014).

10. Commentators regularly lament the paucity of reliable and valid screening and assessment tools, as well as the variations in screening and assessment protocols. BARBARA J. FIDLER ET AL., CHILDREN WHO RESIST POSTSEPARATION PARENTAL CONTACT 77 (2013) ("Currently, there is a lack of reliable or valid assessment protocols and measures for alienation . . . there are some measures of alienation in current use that have some utility, but none have been demonstrated in research studies to have reliability or validity."); James Bow, *Review of Empirical Research on Child Custody Practice*, 3(1) J. CHILD CUSTODY 23 (2006) ("Child custody evaluations involving DV and/or sexual abuse allegations generally require increased interview time, testing time, record review, and report length. Of major concern was the lack of use of specialized assessment instruments or protocols in these evaluations."); Andrea Flynn & Kathryn Graham, *Why Did It Happen? A Review and Conceptual Framework for Research on Perpetrators' and Victims' Explanations for Intimate Partner Violence*, 15 AGGRESSION & VIOLENT BEHAV. 239 (2010) ("lack of a comprehensive and psychometrically-sound instrument for measuring motivations of partner violence has resulted in a body of literature characterized by inconsistencies and wide gaps in knowledge."); Peter G. Jaffe et al., *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 FAM. CT. REV. 500 (2008) ("other than clinical descriptive criteria, instruments to reliably differentiate between types of violence and how they might relate to parenting have yet to be developed."); Daniel G. Saunders et al., *Custody Evaluators' Beliefs About Domestic Abuse Allegations: Final Technical Report*, NAT'L INST. JUST. REP. (2010) (while "94% of the evaluators reported that they always or almost always directly inquire about domestic violence, . . . 38% never used instruments or standard protocols to screen for DV, and another 24% used them only some of the time [and] some evaluators used only a mental health measure to assess" domestic violence); Woodin et al., *supra* note 5 ("No scale is sufficient for evaluating all aspects of IPV.").

11. Extensive evidence exists that untested parenting assumptions are often applied in contested custody disputes. C. V. Claire Crooks et al., *Factoring in the Effects of Children's Exposure to Domestic Violence in Determining Appropriate Postseparation Parenting Plans*, in DOMESTIC VIOLENCE, ABUSE, AND CHILD CUSTODY (Mo Therese Hannah & Barry Goldstein eds., 2010). ("It is critical that decision makers not rely on their own 'gut feeling' or character assessment in determining whether or not a batterer has reformed his behavior, as these impressionistic assessments are highly unreliable."); Jennifer L. Hardesty et al., *An Integrative Theoretical Model of Intimate Partner Violence, Coparenting After Separation, and Maternal and Child Well-Being*, 4 J. FAM. THEORY & REV. 318 (2012) ("These interventions typically assume that both parents are capable of coparenting; however, it is largely unknown whether some parents are able to develop safe and effective coparenting relationships despite a history of IPV"); D. J. Donna Hitchens & Patricia Van Horn, *The Court's Role in Supporting and Protecting Children Exposed to Domestic Violence*, J. CENTER FOR FAM. CHILD. & CTS. 31 (2005) (courts tend to operate under the assumption that parents will always act in their children's best interest); Nico Trocme & Nicholas Bala, *False Allegations of Abuse and Neglect When Parents Separate*, 29 CHILD ABUSE & NEGLECT 1333 (2005) ("There is a widespread misperception that there is a high incidence of intentionally false allegations of child abuse made by mothers in the context of parental separation and divorce in order to gain a tactical advantage or seek revenge from their estranged partners.").

12. Courts frequently fail to gather or consider documentation of domestic violence and/or child abuse in child custody determinations. Jonathan W. Gould & David A. Martindale, *Child Custody Evaluations: Current Literature and Practical Applications*, in THE HANDBOOK OF PSYCHOLOGY: VOLUME 11: THE HANDBOOK OF FORENSIC PSYCHOLOGY (Randy Otto ed., 2012) (“Too many child custody evaluators focus the attention of their parent interviews on historical information about relationships and marital behaviors. Often, there is little information gathering about areas relevant to parenting, the parent–child relationship, parent-to-parent communication history, parent-to-parent cooperation, parent–child attachment, sibling relationships, and other child- and parenting-related issues”); Connie Beck et al., *Analysis of Mediation Agreements of Families Reporting Specific Types of Intimate Partner Violence*, 47 FAM. CT. REV. 401 (2009); James Bow, *Review of Empirical Research on Child Custody Practice*, 3(1) J. CHILD CUSTODY 23 (2006) (“Child abuse and DV were often documented in the court record but not addressed in the evaluation report.”); Mary A. Kernic et al., *Children in the Crossfire: Child Custody Determinations Among Couples With a History of Intimate Partner Violence*, 11(8) VIOLENCE AGAINST WOMEN 991 (2005); Lawrie Moloney et al., Australian Inst. Fam. Stud., *Allegations of Family Violence and Child Abuse in Family Law Children’s Proceedings: A Pre-Reform Exploratory Study* (2007) (“A scarcity of supporting evidentiary material suggests that legal advice and legal decision-making may often be taking place in the context of widespread factual uncertainty.”); Jay G. Silverman et al., *Child Custody Determinations in Cases Involving Intimate Partner Violence: A Human Rights Analysis*, 94 AM. J. PUBLIC HEALTH 951 (2004); Colleen Varcoe & Lori G. Irwin, “If I Killed You, I’d Get the Kids”: *Women’s Survival and Protection Work with Child Custody and Access in the Context of Woman Abuse*, 27(1) QUALITATIVE SOCIOLOGY 77 (2004) (“the dynamics of violence and the relationship and safety needs of women and children were not taken into account in the provision of services and judgments of parenting.”).

13. JILL DAVIES, ADVOCACY BEYOND LEAVING. FAMILY VIOLENCE PREVENTION FUND 5 (2006).

14. Beck et al., *supra* note 12 (“overall level of [intimate partner violence] was unrelated to the specific terms of mediated agreements.”); Hardesty et al., *supra* note 11 (“...current interventions do not adequately address the unique risks and stressors experienced by women who separate from violent partners,” citing Jill Bowers et al., *A Review of Online Divorce Education Programs*, 49 FAM. CT. REV. 776 (2011)); Katreena L. Scott & Claire V. Crooks, *Intervention for Abusive Fathers: Promising Practices in Court and Community Responses*, 57(2) JUV. & FAM. CT. J. 29 (2006) (“Most communities have few (if any) well-conceptualized services to intervene responsibly with men who have been abusive in their role as fathers.”).

15. Mary A. Kernic et al., *Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Violence*, 11 VIOLENCE AGAINST WOMEN 991 (2005).

16. Peter G. Jaffe & Richard Geffner, *Child Custody Disputes and Domestic Violence: Critical Issues for Mental Health, Social Service, and Legal Professionals*, in CHILDREN EXPOSED TO MARITAL VIOLENCE: THEORY, RESEARCH, AND APPLIED ISSUES 371 (George Holden et al. eds., 1998); Saunders et al., *supra* note 10.

17. Robin H. Ballard et al., *Detecting Intimate Partner Violence in Family and Divorce Mediation: A Randomized Trial of Intimate Partner Violence Screening*, 17 PSYCHOL. PUB. POL’Y & L. 241 (2011); Connie J. A. Beck & Chitra Raghavan, *Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control*, 48 FAM. CT. REV. 555 (2010); James N. Bow & Paul Boxer, *Assessing Allegations of Domestic Violence in Child Custody Evaluations*, 18 J. INTERPERSONAL VIOLENCE 1349 (2003); Joan Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 FAM. CT. REV. 476 (2008); Nancy Ver Steegh & Clare Dalton, *Report from the Wingspread Conference on Domestic Violence and Family Courts*, 46 FAM. CT. REV. 454 (2008).

18. Michael S. Davis et al., Nat’l Inst. Just., *Custody Evaluations When There Are Allegations of Domestic Violence: Practices, Beliefs and Recommendations of Professional Evaluators* (2010); Megan L. Haselschwert et al., *Custody Evaluators’ Beliefs About Domestic Violence Allegations During Divorce: Feminist and Family Violence Perspectives*, J. INTERPERSONAL VIOLENCE, doi:10.1177/0886260510370599 (2000); Saunders et al., *supra* note 10.

19. JANET R. JOHNSTON ET AL., IN THE NAME OF THE CHILD: A DEVELOPMENTAL APPROACH TO UNDERSTANDING AND HELPING CHILDREN OF CONFLICTED AND VIOLENCE DIVORCE (2009); Janet R. Johnston et al., *Allegations and Substantiations of Abuse in Custody-Disputing Families*, 42 FAM. CT. REV. 283 (2005) (estimating that between two-thirds and three-quarters of all contested child custody cases involve allegations of domestic abuse). One large-scale study of custody-mediating couples documented that it was rare to find a case that did not involve allegations of domestic abuse, where reports of physical violence (58% of women and 54% of men); psychological abuse (98% of women and 97% of men); and sexual intimidation, coercion, and rape (56% of women and 29% of men) were more the rule than the exception. Beck et al., *supra* note 12.

20. JENNIFER L. HARDESTY ET AL., DOMESTIC VIOLENCE AND CHILD CUSTODY, IN PARENTING PLAN EVALUATIONS: APPLIED RESEARCH FOR FAMILY COURT ((2012) (citing Janet R. Johnston & L. E. Campbell, *Parent-Child Relationships in Domestic Violence Families Disputing Custody*, 31 FAM. & CONCILIATION CT. REV. 282 (1993)); Kimberly Crossman et al., *Coparenting Quality After Separation: the Role of Intimate Terrorism and Boundary Ambiguity* (Paper presented at the annual conference of the National Council on Family Relations, Minneapolis, MN, November 2010).

21. Jeffrey L. Edelson & Oliver J. Williams, PARENTING BY MEN WHO BATTER: NEW DIRECTIONS FOR ASSESSMENT AND INTERVENTION 12 (2007); George W. Holden et al., *Parenting Behaviors and Beliefs of Battered Women*, in CHILDREN EXPOSED TO MARITAL VIOLENCE: THEORY, RESEARCH AND APPLIED ISSUES 185 (George Holden et al. eds., 1998).

22. Jennifer L. Hardesty et al., *Coparenting Relationships After Divorce: Variations by Type of Marital Violence and Fathers’ Role Differentiation*, 57 FAM. REL. 479 (2008).

23. PETER G. JAFFE ET AL., CHILDREN OF BATTERED WOMEN (1990); UNITED NATIONS CHILDREN’S FUND, BEHIND CLOSED DOORS: THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN (2006); Anne E. Appel & George W. Holden, *The Co-Occurrence of Spouse and Physical Abuse: A Review and Appraisal*, 12 J. FAM. PSYCHOL. 578 (1998); Jeffrey L. Edleson, *The Overlap Between Child*

*Maltreatment and Woman Battering*, 5 VIOLENCE AGAINST WOMEN 134 (1999); David A. Wolfe et al., *The Effects of Exposure to Domestic Violence in Children: A Meta-Analysis and Critique*, 6 CLINICAL CHILD & FAM. PSYCHOL. REV. 171 (2013).

24. While just about everybody who works in the family court system needs to know about domestic violence, not everybody needs to know the same thing—and not everybody needs to find out about it in the same way. What any individual practitioner needs to know—and why he or she needs to know it—depends upon his or her role and function in the case and the nature of the proceeding before him or her.

25. Connie J. A. Beck & Chitra Raghavan, *Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control*, 48 FAM. CT. REV. 555 (2010).

26. It is beyond the scope of this article to discuss the elements of an effective domestic violence screening protocol. However, research suggests any such protocol should be: (1) systematically and universally applied in all child custody disputes; (2) behaviorally specific; (3) focused on multiple forms of abuse, including coercive control; (4) attuned to both past abuse and more recent abuse; (5) alert to established indicators of risk, danger, and potential lethality; and (6) structured in a way that promotes safe and informed disclosures. Amy Holtzworth-Munroe et al., *The Mediators' Assessment of Safety Issues and Concerns (MASIC): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain*, 48 FAM. CT. REV. 646 (2010); Anne Menard, Nat'l Healthy Marriage Resource Center, *Screening and Assessment for Domestic Violence: Attending to Safety and Culture* (2010).

27. Loretta Frederick, *Questions About Family Court Domestic Violence Screening and Assessment*, 46 FAM. CT. REV. 523 (2008); Kelly & Johnson, *supra* note 17; Ver Steegh & Dalton, *supra* note 17.

28. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65 (1991).

29. Nancy Ver Steegh et al., *Look Before You Leap: Court System Triage of Family Law Cases Involving Intimate Partner Violence*, 95 MARQ. L. REV. 955, 969 (2012).

30. Frederick, *supra* note 28, at 524–25.

31. ELLEN PENCE & MICHAEL PAYMAR, EDUCATION GROUPS FOR MEN WHO BATTER (1993).

32. Kelly & Johnson, *supra* note 17.

33. *Id.*; Maryse Rinfret-Raynor et al., *Violences Envers les Femmes: Réalités Complexes et Nouveaux Enjeux dans un Monde en Transformation* (Presses Universitaires de l'Université du Québec 2014).

34. Rinfret-Raynor et al., *supra* note 33.

35. *Id.*

36. *Id.*

37. See Charlene K. Baker et al., *Parenting Stress and Parenting Competence Among Latino Men Who Batter*, 16 J. INTERPERSONAL VIOLENCE 1139 (2001); Jennifer L. Hardesty & Lawrence H. Ganong, *How Women Make Custody Decisions and Manage Co-Parenting With Abusive Former Husbands*, 23 J. SOC. & PERS. RELATIONSHIPS 543 (2006); Simon Lapierre, *Mothering in the Context of Domestic Violence: The Pervasiveness of a Deficit Model of Mothering*, 13 CHILD & FAM. SOC. WORK 454 (2008); Guy Perel & Einat Peled, *The Fathering of Violent Men: Constriction and Yearning*, 14 VIOLENCE AGAINST WOMEN 457 (2008); Emily F. Rothman et al., *Abusers' Perceptions of the Effect of Their Intimate Partner Violence on Children*, 13 VIOLENCE AGAINST WOMEN 1179 (2007); Carolyn Y. Tubbs, *African American Women's Perspectives of Shared Parenting After Dissolution of a Violent Relationship*, 22 J. FEMINIST FAM. THERAPY 130 (2010).

38. See Hardesty & Ganong, *supra* note 37; Lapierre, *supra* note 7; Perel & Peled, *supra* note 37; Rothman et al., *supra* note 37.

39. DALE BAGSHAW ET AL., FAMILY VIOLENCE AND FAMILY LAW IN AUSTRALIA: THE EXPERIENCES AND VIEWS OF CHILDREN AND ADULTS FROM FAMILIES WHO SEPARATED POST-1995 AND POST-1996 (Commonwealth of Australia, April 2010).

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. See OHIO REV. CODE ANN. § 3109.04(F) (2011).

48. Hardesty, *supra* note 22.

49. *Id.* at 483.

50. *Id.* at 483, 490.

51. *Id.* at 486.

52. *Id.* at 491.

53. See Hardesty et al., *supra* note 11.

54. George W. Holden, *Children Exposed to Domestic Violence and Child Abuse: Terminology and Taxonomy*, 6 CLINICAL CHILD & FAM. PSYCHOL. REV. 151 (2003).

55. *Id.* at 153.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. Mildred Daley Pagelow, *Effects of Domestic Violence on Children and their Consequences for Custody and Visitation Agreements*, 7 *MEDIATION Q.*, 347 (1990).

64. Betsy McAlister Groves et al., *Deciding on Fathers' Involvement in Their Children's Treatment After Domestic Violence*, in *PARENTING BY MEN WHO BATTER* 69 (Jeffrey L. Edleson & Oliver J. Williams eds., 2007).

65. *See, e.g.*, OHIO REV. CODE ANN. § 3109.04(F) (2011).

66. Ver Steegh & Cla Dalton, *supra* note 17.

67. Jaffe et al., *supra* note 10.

68. Robert L. Listenbee et al., *Report of the Attorney General's Task Force on Children Exposed to Violence*; U.S. DEP'T OF JUSTICE, Dec 2012, at 9.

69. Michael P. Johnson, *Distinguishing Among Types of Domestic Violence*, in *VIOLENCES ENVERS LES FEMMES: RÉALITÉS COMPLEXES ET NOUVEAUX ENJEUX DANS UN MONDE EN TRANSFORMATION* 15 (Maryse Rinfret-Raynor et al. eds., 2014).

70. BWJP has developed a compendium of practice guides with detailed instructions to help practitioners carry out each of these functions. They include screening protocols; interview guides; and various charts and worksheets related to parenting, co-parenting, and the best interests of the child, among other things.

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## **A FRAMEWORK FOR DECISION-MAKING IN DOMESTIC VIOLENCE-RELATED CHILD CUSTODY**

### **DISPUTES**

Gabrielle Davis

### **INTRODUCTION**

Child custody decision-making in the context of domestic abuse allegations can be controversial, unpredictable, and challenging. The family court system struggles to protect the safety and wellbeing of children and their battered parents in domestic violence-related child custody cases.<sup>1</sup> It is also concerned about protecting the rights and interests of parents who are accused of domestic violence and/or unjustifiably estranged from their children.<sup>2</sup> This article describes a decision-making framework for addressing domestic violence in child custody cases.<sup>3</sup> The goal of the framework is to produce safer, more workable outcomes for battered parents and their children.

### **A NEW METHODOLOGY**

The decision-making framework consists of four parts: (1) identifying abuse; (2) understanding the full nature and context of abuse; (3) determining the implications of abuse for parenting, co-parenting and the best interests of the child; and (4) accounting for abuse in all family court actions, recommendations, and decisions.

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<sup>1</sup> See Kaur, M., Melara, S., Scott, E. & Vasan, A. (2013). *Family Law Remedies for Domestic Violence Across California: A Survey*. California Partnership to End Domestic Violence; Dragiewicz, M. (2012). *Gender Bias in Courts: Implications for Battered Mothers and their Children*. *Family and Intimate Partner Violence Quarterly*, 5(1):13-35.

<sup>2</sup> See Jocelyn Elsie Crowley, *Adopting 'Equality Tools' from the Toolboxes of their Predecessors: The Fathers Right Movement in the United States*, in *FATHERS' RIGHTS ACTIVISM AND LAW REFORM IN COMPARATIVE PERSPECTIVE* 81 (Richard Collier & Sally Sheldon eds., 2006).

<sup>3</sup> Many of the ideas expressed herein were developed under Award 2009-TA-AX-K025 from the Office on Violence Against Women, U.S. Department of Justice and are more fully explored in Gabrielle Davis, (2015). *A Systematic Approach to Domestic Violence-Informed Decision Making in Family Law Cases*, *Family Court Review*, 53(4):565-577. The opinions, findings, conclusions and recommendations expressed herein are those of the author and do not necessarily reflect the views of the U.S. Department of Justice.



This framework seems intuitive, but the implementation of it requires attention to information that is too often ignored. In many instances, family court professionals take shortcuts. They often skip over the intermediate steps of the framework (understanding the nature, context and implications of abuse) and come to quick and seemingly simple conclusions. In reality, the intermediate steps are the most crucial, yet frequently overlooked, elements of the analysis.

The strength of this framework is that it steers practitioners away from making unfounded assumptions about domestic violence and people's experience of it. Practitioners must not assume that domestic violence is an issue in every custody dispute. Instead, they need to find out if that is the case. Practitioners mustn't assume that every domestic violence case involves serious physical harm or a long history of coercive controlling abuse. Rather, they need to explore what is actually going on. Practitioners mustn't assume that the presence of domestic violence always has a negative effect on children or parenting. Instead, they need to determine whether that is so. And, practitioners mustn't assume that every domestic violence case ought to result in some predetermined outcome. Rather, they must craft outcomes that address the full nature, context and implications of abuse, whatever they may be. The framework guides this work.

### **Identifying Domestic Abuse.**

The first element of the framework is a basic screening function. It calls on family court professionals to identify whether domestic abuse is or may be an issue in the case. Like other screening functions in non-court settings, the goal of this first step is simply to explore whether there is reason to take a closer look at domestic violence. This first element is somewhat akin to airport security. Before entering the gate area, all passengers must pass through a metal detector or body scanner to uncover whether they might pose a threat to airline safety. Most people pass through security without incident. Sometimes, a passenger trips an alarm. The alarm might go off because that passenger left keys in his pocket, or has a metal pin in his knee – or, much less frequently, because he has a bomb stuffed down his pants. The screening device can't tell the difference. Rather, it signals to the security agent that she needs to take a closer look. It's not the screening device, but this closer look, that tells the security agent what she really needs to know. It's the same with domestic violence. The screening protocol (which is represented by the first element of the framework) merely tells the family court professional that he has to do a more thorough domestic violence assessment.

### **Understanding the Nature and Context of Abuse.**

The second element of the framework represents this more thorough domestic violence assessment. It calls on family court professionals to explore the full nature and context of any potential abuse that is detected during the screening process. The assessment is important because domestic violence is not a fixed or uniform condition. It is carried out and experienced differently by different people in different relationships and even at different times within the same relationship. Consequently, it's not enough to know that domestic violence has occurred

or has been alleged. Family court practitioners need to know what is actually going on in people's real lives. They have to know, for instance, whether the abuse they have detected is an isolated incident or part of a larger pattern or history of abuse. They need to know whether the violence is designed to instill fear or compliance with unilateral and self-proclaimed rulemaking authority – or whether it represents resistance to violence that has been perpetrated against that partner. Family court practitioners need to know whether the abuse they have detected includes markers of lethal danger – and/or whether it is associated with other life stressors, such as major mental health problems or substance abuse. In short, family court professionals must attempt to gain a full and complete understanding of the abuse in context – to discern who is doing what to whom and why. Otherwise, they'll end up treating everything and everybody the same, and that can endanger children and battered parents, embolden abusers, and undermine effective interventions.

### **Determining the Implications of Abuse.**

The third element of the framework is determining the implications of abuse. Here, practitioners are directed to explore what the experience of abuse means for the parties and the children – both in the broadest and most narrow sense. In the broadest sense, this means discovering what it is like to live in an environment of abuse, to parent and to be parented in an atmosphere of abuse. The framework directs family court professionals to consider how abuse shapes everyday life and communication, daily responsibilities and authority in the home, and general parenting beliefs, attitudes and practices. It guides family court professionals to discern the relative needs and interests of the children and parents, to determine whose needs are satisfied and whose interests are protected. In the more narrow sense, the third element of

the framework asks family court professionals to determine why domestic violence matters – how it is relevant to the decision or action at hand and how it is connected to the standards by which the decision or action that must be taken is to be made.

In this way, the third element of the framework dictates a differential analysis that seeks to assess the impact of abuse in different ways depending upon what the practitioner is trying to do. If, for instance, the practitioner is trying to decide what sort of access arrangement is appropriate, the pertinent implications of abuse revolve around such things as the physical and emotional safety of the child, the capacity of the abuser-parent to recognize and respond to the child's individual needs, the degree to which the abuser-parent takes responsibility for past abuse or continues to use the child as an instrument of abuse, the extent to which the child and the victim-parent trust the abuser-parent's parenting, and so forth. If, on the other hand, the practitioner is trying to decide the parents' competence to make joint parenting decisions, the relevant implications of abuse include slightly different considerations, such as the ability of the parents to communicate in a direct, civil, constructive and child-focused manner, the willingness of the abuser-parent to support the parental authority of the victim-parent, and the abuser-parent's ability to separate his role as parent from his role as partner, among other things. Just as the standards for decision-making differ depending upon the issues to be decided, so too does the task of determining the implications of abuse.

#### **Accounting for Abuse in Actions and Decisions.**

The fourth element of the framework is accounting for the implications of abuse. This is especially important because research indicates that even when domestic violence is detected, cases often proceed to resolution without regard to safety, power differentials, and other

implications of abuse.<sup>4</sup> The goal of this last element is to respond directly to – and to correct, if possible – the harm resulting from abuse, whatever it is, and to minimize the opportunity for ongoing abuse and future unwelcomed intrusion into the lives of battered parents and children.

By way of illustration, suppose a custody evaluator performs an initial domestic violence screen pursuant to the first element of the framework and learns that one of the parents has been emotionally abused by the other parent. This signals to the evaluator that she should take a closer look, pursuant to the second element of the framework, to figure out what is actually going on. The evaluator investigates further and discovers that the emotionally-abusive parent is intentionally withholding necessary and available financial support in order to punish the victim-parent for leaving the relationship. The evaluator also learns that the child does not want to spend time with the emotionally-abusive parent. The evaluator proceeds to the third element of the framework to determine why and how that matters. Upon inquiry, the evaluator learns that the child's basic needs are not being met, the victim-parent is anxious and depressed about finances, the child feels resentful of the abuser-parent for not supporting him, and the child feels betrayed by the victim-parent for breaking up the family. Equipped with this knowledge, the evaluator must figure out how to craft a parenting recommendation that accounts for the nature, context and implications of the abuse pursuant to the fourth element of the framework. The evaluator might consider incorporating terms into the parenting recommendation that set clear and enforceable financial obligations for the abuser-parent, impose some form of financial oversight to ensure those obligations are being satisfied on a

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<sup>4</sup> Mary Kernic, Daphne Monary-Ernsdorff, Jennifer Koepsell & Victoria Holt (2005). *Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Abuse*, *Violence Against Women*, 11(8):991-1021; James Bow (2006), *Review of Empirical Research on Child Custody Practice*, *Journal of Child Custody*, 3(1):23-50.

consistent basis, support the victim-parent's health and economic self-sufficiency, and restore the child's trust in both of his parents.

When put this way, the methodology outlined above makes perfect sense. Yet, it is neither widely practiced nor self-executing. Although the framework is intuitive and easy to understand, it can be very challenging to implement. Consequently, BWJP has developed a compendium of practice guides to operationalize the framework. The compendium includes an initial domestic violence screening guide, a domestic violence interview protocol, a tool for assessing parenting in the context of domestic violence, a best interest analysis, case planning guides, domestic violence assessment guides for mediation and early neutral evaluation, and a co-parenting assessment guide. The practice guides are available online at <http://www.bwjp.org/resource-center/resource-results/practice-guides-for-family-court-decision-making-in-domestic-abuse-related-child-custody-matters.html>.

## **CONCLUSION**

The framework described above is designed to transform a family court system that is poorly organized to respond to domestic violence into one that produces safer, more workable outcomes for battered parents and their children. The key to that effort is to follow an approach that effectively identifies if and when domestic violence is an issue in the case; explores the full nature and context of any abuse that is detected; examines the real life implications of the abuse that is or has been occurring; and accounts for the abuse in all parenting recommendations, decisions and related activities – all in a way that facilitates the family court practitioner's ability to act in the best interests of the child living with domestic violence.



## COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

<b>Meeting Date:</b> February 9, 2016	<b>Type of Action Requested:</b> <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	<b>Subject:</b> Implementation of Amendment to ARS Sec. 13-3967 Re: DV Risk and Lethality Assessments
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**From:** Commission on Victims in the Courts (COVIC)

**Presenter:** Hon. Ron Reinstein (ret.), Chair of COVIC

**Description of Presentation:** Law Enforcement and Judicial Officers throughout the state have not been provided uniform notice, or training, on this new mandate, which went into effect July 3, 2015. Should Criminal Rule 41, Form 4(a) - Release Questionnaire/Law Enforcement - be amended to include a DV Lethality section? Should a joint workgroup consisting of COVIC and CIDVC members, and others, be formed to consider this, make any recommendations, and address other issues relating to the implementation of this amendment?

**Recommended Motion:** To be determined post-discussion.



BACK TO SEARCH RESULTS

# Police Departments' Use of the Lethality Assessment Program

### Resource Tags

#### Type

Webinar Recording

#### Category

Criminal Justice System and Interagency Coordination (CCR)

#### Related Work

##### Topic

Risk Assessment

##### Project

Improving Criminal Justice Responses OVV Grant

Published: January, 2016 | Jacqueline Campbell, Jill Messing, Beverly Patchell

Calling the police is one of the most commonly employed help seeking strategies by women in abusive relationships, though domestic violence services, safety planning and shelter are more often rated as helpful by survivors of intimate partner violence (IPV) and have been shown to be more effective at reducing subsequent violence. Here the presenters discuss their research examining the effectiveness of the Lethality Assessment Program (LAP).

The LAP is a collaboration between police and social service providers consisting of 2 steps. First, a police officer responding to the scene of a domestic violence incident uses a brief 11-item risk assessment (the Lethality Screen) to identify victims at high risk of homicide. Second, women that screen in as high risk based on the Lethality Screen are put in immediate telephone contact with a collaborating social service provider who provides them with advocacy, safety planning and referral for services.

Download the audio recording of this webinar (28.9 MB)  
Right click and save to download.

### Police Departments' Use of the Lethality Assessment Program (Part 1)

VIEW RESOURCE

#### SIMILAR RESOURCES (3)

#### OTHER RESOURCES (3)

**A Roadmap to Risk Assessment: ODARA and Maine's CCR**  
Webinar Recording

**Interagency Planning: Engage your Partners in Goal-Setting to Address Dangerousness and Gaps in Case Processing**  
Webinar Recording

**Maryland's Lethality Assessment Program**  
Webinar Recording

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<http://www.bwjp.org/resource-center/resource-results/police-use-lap.html>

## COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

<b>Meeting Date:</b> February 9, 2016	<b>Type of Action Requested:</b> <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	<b>Subject:</b> Rule 28 Petitions--2016 Rules Cycle
--	--	--

**From:** Kay Radwanski

**Presenter:** Kay Radwanski

**Description of Presentation:** Two petitions to amend the Arizona Rules of Protective Order Procedure--R-15-0035 and R-16-0026--have been filed in the 2016 rules cycle. R-15-0035 seeks to amend the rules affecting petitions for Injunctions Against Harassment and Injunctions Against Workplace Harassment. If CIDVC wishes the comment on this petition, the deadline to do so is May 20, 2016. R-16-0026 proposes an amendment to Rule 31, ARPOP, regarding service of petitions. If CIDVC wishes to comment on this petition, the first deadline to do so is April 1, 2016. A second comment period for R-16-0026 will end on June 20, 2016.

**Recommended Motion:** Decide whether CIDVC should file comments on either of these rule petitions.

Mike Palmer  
18402 N. 19<sup>th</sup> Ave., #109  
Phoenix, AZ 85023  
mikepalmer\_az@yahoo.com

**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND  
RULES 25(b) and 26(b) OF THE  
PROPOSED ARIZONA RULES OF  
PROTECTIVE ORDER PROCEDURE

Supreme Court No. R-15-\_\_\_\_\_

**Petition to Amend Rules 25(b)  
and 26(c) of the Proposed  
Arizona Rules of Protective  
Order Procedure**

**Request for Expedited decision  
before January 1, 2016**

Pursuant to Rule 28, Rules of the Supreme Court, Mike Palmer petitions the Court to amend Rules 25(b) and 26(b) before January 1, 2016 to comport with the 14<sup>th</sup> Amendment due process guarantee recently clarified by this Court in Rule 23(b).

**I. Background and Purpose for amending the Rules**

In January of this year, the CIDVC proposed a massive revision (amendment) to the Arizona Rules of Protective Order Procedure. In late August, this Court approved the amendment. (I apologize to the Court for being late to the party.)

Among the substantive changes, the CIDVC amended proposed Rule 23, which governs petitions for (criminal) Domestic Violence Orders Of Protection. The CIDVC asked for this to "clarify[ ] language regarding the scope of the petition . . . as a result of *Savord v. Morton*, 235 Ariz. 256, 330 P.3d 1013 (Ariz. Ct. App. 1 2014). In *Savord*, the Court of Appeals directs courts to either limit the scope of the hearing to the allegations of the petition or allow the plaintiff to amend the petition and reschedule the hearing to give the defendant the opportunity to prepare a defense against new allegations."

Consequently, new Rule 23(b), subtitled *Contents of Petition* says "In the petition, the plaintiff must: (1) allege each specific act of domestic violence **that will be relied on at hearing.**" (Emphasis mine.)

That's fine as far as it goes. But the CIDVC did not go far enough.

The CIDVC should have similarly amended the Rules governing petitions for (civil) Injunctions Against Harassment and Injunctions Against Workplace Harassment to similarly limit the scope of these hearings to the allegations in their respective petitions. The 14<sup>th</sup> Amendment right to due process (per *Savord*) and a fair hearing (per me) is no less a right in these matters. And the "collateral legal and reputational consequences that last beyond an order's expiration" (quoting *Savord* at ¶11) are just as great in civil injunctions as they are with DV protective orders. (Especially as practiced under the Court's Rules of Procedure.)

Since plaintiffs often sneak in new allegations at hearings for civil protective orders just as they do in criminal DV hearings, and since defendants have the same

due process right not to be blindsided (to prepare a defense for these new allegations), the same clarification should be codified in the Rules to protect defendants in civil injunctions.

## **II. Proposed Text**

Therefore, I propose that Rule 25(b) be amended to insert a sentence immediately after the bold text **Contents of Petition** saying "In the petition, the plaintiff must allege each specific act harassment that will be relied on at hearing."

Similarly, I propose that Rule 26(b) be amended to insert a sentence immediately after the bold text **Contents of Petition** saying "In the petition, the plaintiff must allege specific acts harassment that will be relied on at hearing."

DATED this 28<sup>th</sup> day of September, 2015

By /s/ Mike Palmer

David K. Byers  
Administrative Director  
Administrative Office of the Courts  
1501 W. Washington, Suite 411  
Phoenix, AZ 85007  
(602) 452-3301  
Email: [kradwanski@courts.az.gov](mailto:kradwanski@courts.az.gov)

**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:	)	
	)	
PETITION TO AMEND RULE 31,	)	Supreme Court
ARIZONA RULES OF PROTECTIVE	)	No. R-16-00____
ORDER PROCEDURE	)	
_____	)	

**PETITION TO AMEND RULE 31,**

**ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE**

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend Rule 31, Arizona Rules of Protective Order Procedure (ARPOP), as reflected in the accompanying Appendix A.

**Purpose.** The purpose of the proposed amendment is to expedite service of Orders of Protection by clarifying that courts are permitted to transmit orders to law enforcement agencies electronically, while simultaneously providing safety to a domestic violence victim.

The Order of Protection statute, A.R.S. § 13-3602(D), requires a plaintiff, upon issuance of an Order of Protection, to request service of the order by city police, the county sheriff, or a constable, depending on the type of court that issued the order. City police are to serve orders issued by city courts; constables are to serve orders issued by justice of the peace courts; and county sheriffs are to serve orders issued by superior courts. The Injunction Against Harassment statute, A.R.S. § 12-1809(D), contains similar language.

A protective order becomes effective when it is served on the defendant. Under Arizona statute, law enforcement or a process server has seven business days to return proof of service to the court. After the court receives the proof of service, the court has 24 hours to record service and forward the protective order and proof of service to the county sheriff, who is the holder of record. An officer who wishes to confirm validity of the order for enforcement purposes must contact the holder of record for that confirmation.

For many plaintiffs, delivering the order to the correct law enforcement agency can be challenging. The plaintiff must first locate the correct agency and then deliver the paperwork to it. Determining the correct agency can be confusing, and transportation can be difficult. Some Arizona courts have attempted to assist plaintiffs in this endeavor by transmitting orders—by fax, email, or simply by having a designated location where law enforcement routinely picks up orders—to

a cooperating law enforcement agency where the defendant resides, is employed, or can be located. Other courts have participated in the Glendale Police Department's protective order coordinator project in which eleven partner cities in Maricopa County work with one coordinator to effect cross-jurisdictional service across the valley.

Through these projects, orders are timely served, courts receive proof of service expeditiously, and plaintiffs can find out more quickly when their orders have been served.

The purpose of an Order of Protection is to provide safety to the plaintiff. Advocates report that violence can escalate when a domestic violence victim attempts to leave the relationship, increasing the risk of harm, including serious and life-threatening injuries. The seven-business day time period given to law enforcement for providing proof of service to the court can be problematic. As a practical matter, seven consecutive business days is actually nine calendar days as this time must include two weekend days. The court then has 24 hours to transmit the order to the sheriff, who then can confirm validity of the order upon request by a law enforcement officer. These can be ten days of increased risk to a victim who does not know if or when the protective order has been served.

This time lag also presents enforcement problems. A plaintiff who claims that the defendant has violated the order between the time it was served and the

time the sheriff can confirm its validity will have challenges with enforcement. An officer responding to a call that the order has been violated will not be certain that a valid order is in effect until the sheriff can confirm it.

While some courts have developed processes for electronic transmission of orders to law enforcement, others may be reluctant to do so without appropriate authority through court rule. This proposed rule change would provide that authority. Not only will this rule change expedite service of orders and optimize communication between courts and law enforcement, it will improve customer service and provide options for plaintiffs.

**Substantive Changes.** The proposed amendment to Rule 31, ARPOP, will allow a court to transmit documents for service of an Order of Protection or an Injunction Against Harassment based on a dating relationship to a cooperating law enforcement agency or a private process server under contract with a court. There are no fees for service of Orders of Protection or Injunctions Against Harassment based on dating relationships, so this modification would have no impact on fees.

**Pre-Petition Comments.** This petition has not been circulated for pre-petition comments.

**Request for a Modified Comment Period.** As this petition has not been circulated for pre-petition comments and the public and various stakeholders have

not had an opportunity to comment, a modified comment period is requested as follows:

April 20, 2016: First round of comments due

May 20, 2016: Amended petition due

June 15, 2016: Second round of comments due

July 13, 2016: Reply due

**Conclusion.** Petitioner requests that the Court open this petition for comments during the modified periods described above. Petitioner additionally requests that the Court adopt the proposed rule, either as filed or as modified after comments, with an effective date of January 1, 2017.

DATED this 11<sup>th</sup> day of January, 2016.

---

David K. Byers

## APPENDIX A

### Arizona Rules of Protective Order Procedure

#### 31. Service of protective orders

**(a) Who Can Effect Service.** A protective order can be served only by a person authorized by Rule 4(d), *Arizona Rules of Civil Procedure*, A.R.S. §§ 13-3602(R), 12-1809(R), or 12-1810(R) or as otherwise provided in this rule.

**(b) Expiration of an Unserved Order.** A protective order expires if it is not served on the defendant, together with a copy of the petition, within one year from the date the judicial officer signs the protective order. *See* A.R.S. §§ 13-3602(K), 12-1809(J) and 12-1810(I).

**(c) Transmission of an Order of Protection or an Injunction Against Harassment.** Upon issuance of an Order of Protection or an Injunction Against Harassment based on a dating relationship, and at the plaintiff's request, a court may transmit the documents for service to a cooperating law enforcement agency or a private process server under contract with the court.

~~(e)~~ **(d) Certification Not Required.** There is no requirement that the copy of the order served on the defendant be certified.

~~(d)~~ **(e) Service of a Modified Order.** The service and registration requirements applicable to the original protective order also apply to a modified protective order.

~~(e)~~ **(f) Acceptance of Service.** A defendant may sign an acceptance of service form, which has the same effect as service. If the defendant refuses to sign an acceptance of service form, the judicial officer may have the defendant served in open court. In superior court, the minute entry must reflect the method of service that was used.

~~(f)~~ **(g) Service in Court.** If the defendant is present in court and refuses to sign an acceptance of service form, the judicial officer must have the defendant served in open court by a person specially appointed by the court. A judicial appointment to effectuate service may be granted freely, is valid only for the service of the protective order or modification entered in the cause, and does not constitute an appointment as a registered private process server. A specially appointed person directed to serve such process must be a court employee who is at least 21 years old and cannot be a party, an attorney, or the employee of an attorney in the action whose process is being served. If such an appointment is entered on the record, a signed order is not required provided a minute entry reflects the special appointment and the nature of service.

~~(g)~~ **(h) Service at the Scene.** If a defendant is physically present with the plaintiff and has not yet been served, a peace officer may be summoned to the scene and may use the plaintiff's copy of the protective order to effect service on the defendant.

~~(h)~~ **(i) Filing the Proof of Service.** The original proof of service must be promptly filed with the clerk of the issuing court. If mailed, proof of service must be postmarked no later than the end of the seventh court business day after the date of service. Proof of service may be submitted by facsimile, provided the original proof of service is promptly filed with the court. *See* A.R.S. §§ 13-3602(M), 12-1809(L) and 12-1810(K).

~~(i)~~ **(j) Effective Date.** An initial protective order takes effect when the defendant is served with a copy of the order and the petition, and it expires one year from the date it is served. A modified order takes effect upon service but expires one year after service of the initial order.

#### **COMMENT**

The defendant must be personally served because 1) personal service on the defendant satisfies the criminal notice requirement if a violation of the protective order is prosecuted under criminal statutes, and 2) unless the affidavit of service, acceptance of service, or return of service shows personal service on the defendant, many sheriffs' offices, which are the holders of record, will not accept a protective order for entry into protective order databases.

SUPREME COURT OF ARIZONA

In the Matter of ) Arizona Supreme Court  
)  
) Nos. R-16-0008  
OPENING NEW RULE PETITIONS ) R-16-0010  
FOR COMMENT ) R-16-0026  
)  
)  
)  
)  
)  
)  
\_\_\_\_\_ ) **FILED 01/13/2016**

**O R D E R**

Petitions having been filed in the above captioned cases pursuant to Rule 28(A), Rules of the Arizona Supreme Court, and upon consideration,

**IT IS ORDERED** that the petitions shall be opened for public comment pursuant to Rule 28(C), Rules of the Supreme Court. **Comments shall be due according to the following schedule:**

<b>April 1, 2016</b>	Initial Comments due
<b>May 13, 2016</b>	Amended petition, if any due
<b>June 20, 2016</b>	Second round of comments due
<b>July 8, 2016</b>	Petitioner's reply due

The petitions may be viewed by going to:  
<http://www.azcourts.gov/> and hovering on "Rules" in the drop down menu under "AZ Supreme Court." Click on "Rules Forum" in the drop down menu next to "Rules." This will take you to the "Welcome" page. Petitions are posted under the appropriate body of rules, which you can find by scrolling down the page.

For instructions on how to post comments electronically,

follow the steps listed above but click on "FAQ" at the top of the "Welcome" page and then "How do I file a comment on a Rule 28 petition."

Alternatively, comments may be submitted by filing an original and one (1) paper copy and one copy of the written comments and supporting documents in Microsoft Word format on a CD, disk or other compatible electronic medium with the Clerk of the Supreme Court, 1501 West Washington St., Room 402, Phoenix, AZ 85007 in an envelope marked "Rule Comment".

Any person filing a comment shall send a copy thereof to Petitioner.

DATED this 13th day of January, 2016.

\_\_\_\_\_  
/s/  
ROBERT M. BRUTINEL  
Duty Justice

TO:

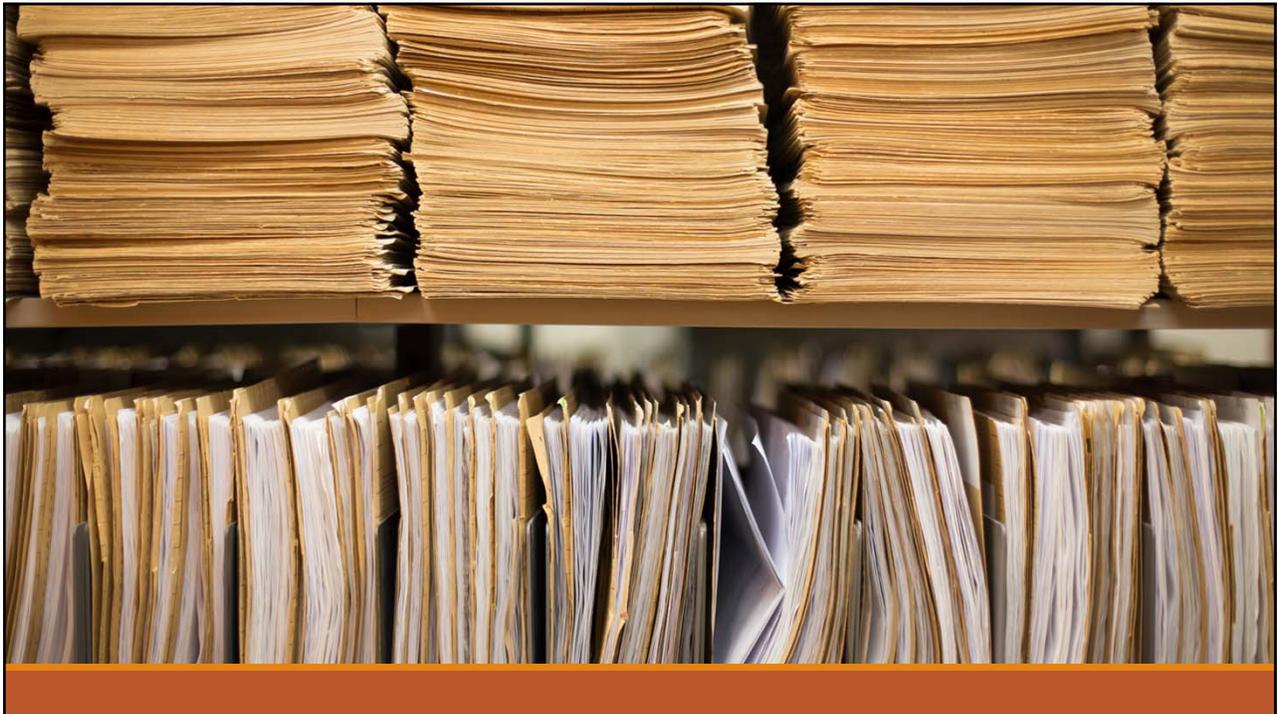
Kay Radwanski  
Marcus Reinkensmeyer  
Mark E Meltzer  
William G Klain  
David B Rosenbaum  
David K Byers

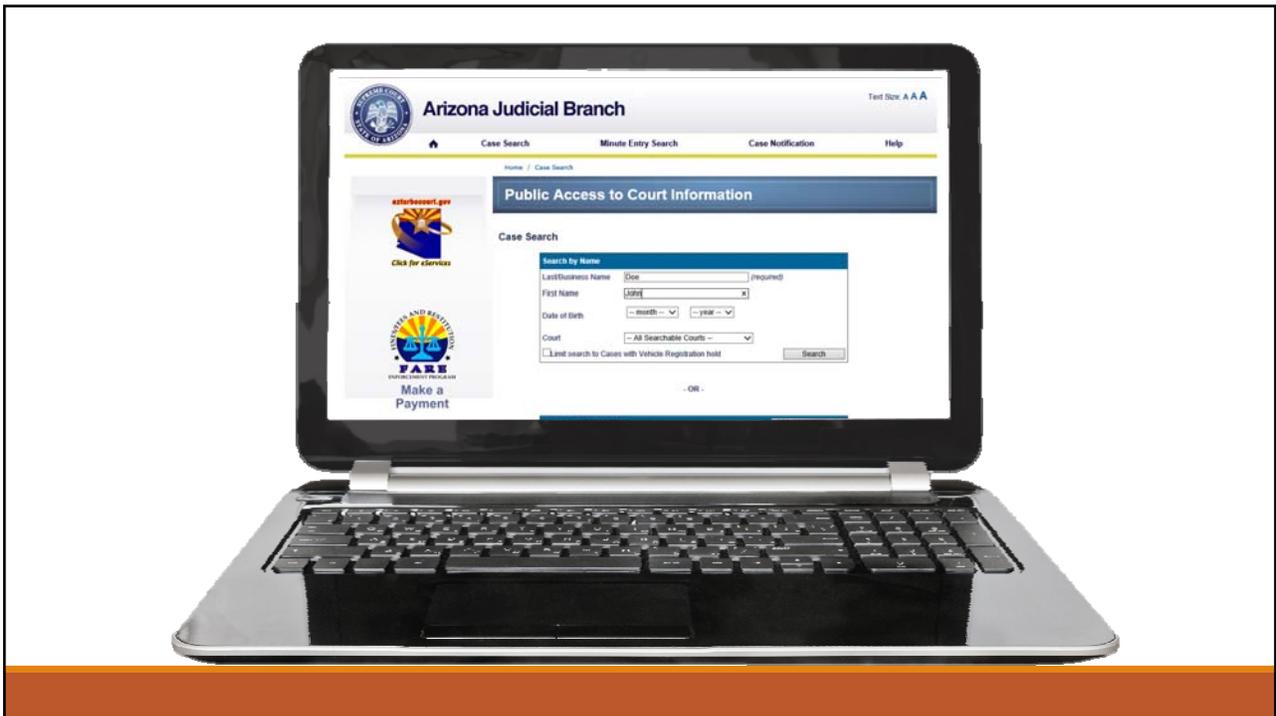
# Committee on Time Periods for Electronic Display of Superior Court Case Records

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REPORT TO THE COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE  
AND THE COURTS

FEBRUARY 9, 2016





- 2002 – Ad Hoc Committee to Study Public Access to Electronic Court Records (Hon. Sheldon Weisberg, chair)**

  - Studied restrictions on Internet access to protective orders, criminal case records, and individual case information (data elements).
- 2007 – Rule 123 Data and Dissemination Committee (Michael Jeanes, chair; Dave Byers, vice chair)**

  - Examined the issues surrounding bulk data requests, the expanding role of case management databases in data sharing, and public access to court records.
- 2012 – Advisory Committee on Rule 123 and Rule 125 (Mike Baumstark, chair)**

  - Examined and made recommendations on issues surrounding online access to documents and minutes entries in family law and probate cases.
- 2013 – Electronic Records Retention and Destruction Advisory Committee (Marcus Reinkensmeyer, chair)**

  - Examined and made recommendations on the issues surrounding records retention and destruction schedules and access to electronic court records.
- 2014 – Superior Court Records Retention Schedule Revision Committee (Judge Pamela Gates, chair)**

  - Reviewed and updated the superior court records retention schedule (ACJA § 3-402).

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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<p>In the Matter of: )</p> <p>ESTABLISHING THE COMMITTEE ON )</p> <p>TIME PERIODS FOR ELECTRONIC )</p> <p>DISPLAY OF SUPERIOR COURT )</p> <p>CASE RECORDS )</p>	<p>Administrative Order )</p> <p>No. 2015 - 28 )</p>
---	--

As part of the Arizona Supreme Court's strategic agenda, the Arizona Judicial Branch is digitizing court records to enhance public access to court services and improve the efficiency of court operations. Rule 123, Rules of the Supreme Court, as well as the records retention and destruction schedules in the Arizona Code of Judicial Administration (ACJA), related administrative orders, and various statutes govern the retention and management of case records throughout the Arizona Judicial Branch.

While a number of electronic records policies are in place, additional direction and clarification is needed to manage remote electronic access to superior court case records.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

**IT IS ORDERED** as follows:

1. The Committee on Time Periods for Electronic Display of Superior Court Case Records is established.
2. **PURPOSE:** The Committee shall examine and make recommendations on the following questions regarding superior court case records designated as Records Series #: -13 on the Superior Court Records Retention and Disposition Schedules as ACJA § 3-402:
  - a. Should superior court case records for which there is a permanent retention

# *How long should courts publish case information online via the Internet?*



- Until the end of retention?
- Before the end of retention?

Public's right to know



Right to be forgotten



Intentional inconvenience,  
practical obscurity

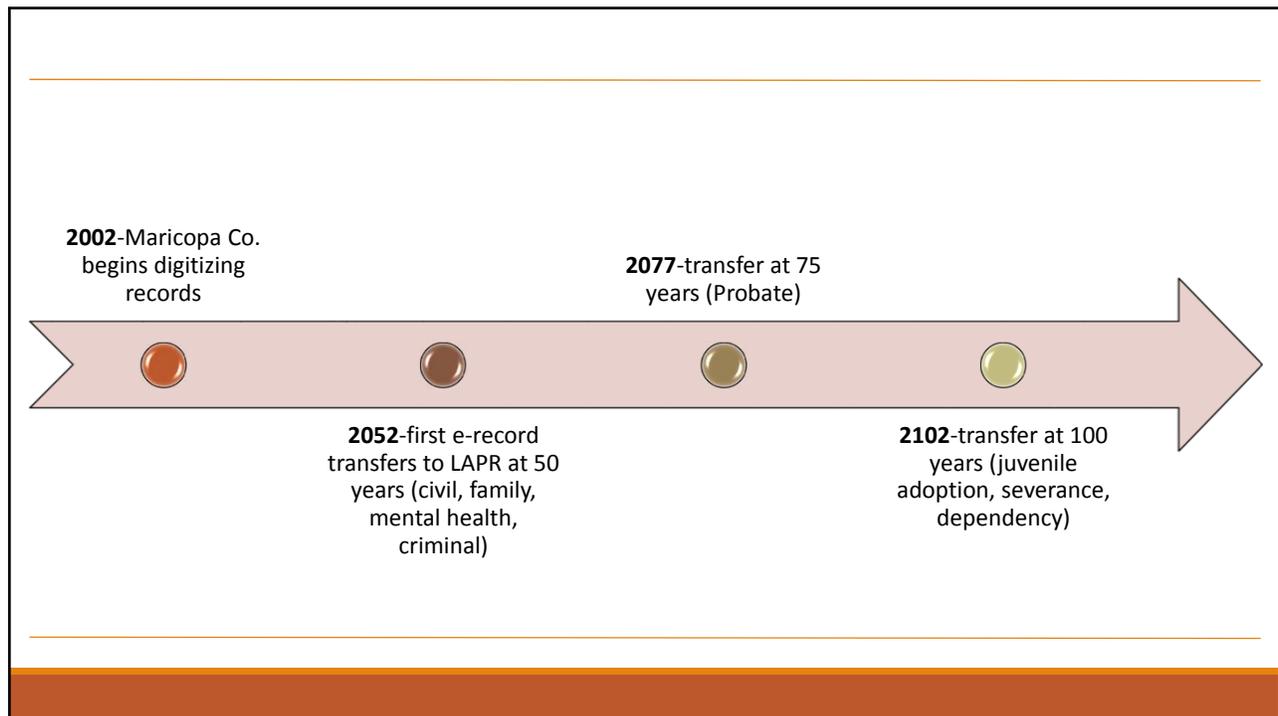


## Public Access Savings Question

- Q: How much savings will result when electronic records are removed from public access display sooner rather than later?
- A: None.

## No Added Cost For a Long While

Courts only incur additional costs for holding electronic records beyond the end of retention.



Committee Policy Recommendation

**time period for display = retention period with court**

- ✓ Accomplishes goal of statewide continuity and consistency.
- ✓ Makes court information accessible to the public in accord with the Judiciary’s open records policy.
- ✓ Honors past policy decisions on public access to court records.

Group 1 (50+ years with court; permanent retention at LAPR)							
	1-2. Civil	3-4. Family	6-7. Mental Health	8-9. Probate	11-12. Criminal	13. Criminal capital	14. Juvenile adoption, severance, dependency
Retention with court	50 years	50 years	50 years	75 years	50 years	At D's death	100 years from final disposition
Available on court public access websites	50 years	50 years	50 years	75 years	50 years	At D's death	n/a

Group 2 (Variable retention with court; no transfer to LAPR)				
	5. Orders of Protection	15. Juvenile Delinquency	16. Juvenile abortion	17. Juvenile traffic (superior court)
Retention with court	50 years	After ARS § 8-349 satisfied or 25 years following year case filed	7 years after final disposition or 5 years from minor's 18 <sup>th</sup> birthday	Until minor reaches age 19
Available on court public access websites	50 years	After ARS § 8-349 satisfied or 25 years following year case filed	n/a	Until minor reaches age 19

Group 3 (Shorter retention with court, special case type)		
	10. General stream adjudication	18. Lower court appeals
Retention with court	Latter of 25 years from year filed or 5 years from date of final non-appealable order	5 years after superior court disposes of case
Available on court public access websites	Latter of 25 years from year filed or 5 years from date of final non-appealable order	5 years after superior court disposes of case

■ Permanent, available to public in whole or part  
 ■ Not permanent, available to public in whole or part  
 ■ Confidential by rule or statute

## Dissenting view on one case type: Criminal felonies ...

- Discrimination in employment or housing
- 50 years is most of an adult's lifetime.
- Should a criminal case go offline if a set-aside is granted?
- Appeal that overturns conviction is not linked to underlying criminal case.
- Co-defendant can be dismissed from case but still be named in the initial filing.
- Unintended harm can follow a person who has been found not guilty.
- Concern about victims' names included in case information
- Remove a case from public access at 25 years or until the sentence has been served, whichever is longer.

### Rule 123, Rules of the Supreme Court

#### (g) Remote Electronic Access to Case Records

(5) [The public access website through which a court publishes case management system data and case records must include a prominent disclaimer on the limitations of the case information displayed.](#)

(6) ~~Removing case records from online access.~~

Courts or clerks of court ~~may~~ [must](#) remove case management system data and case records from online display [as provided in](#) ~~once the applicable records retention schedule period is met.~~

~~For cases scheduled to be retained more than 25 years, courts or clerks of court may remove case management system data and case records from online display after 25 years, provided the data and records are then retained through an electronically preserved method. In place of the records, the court or clerk of court shall display a notice online which directs the viewer to contact the court or clerk for access to the case record.~~

Records Series #	Records Series Title	Retention Period with Court	LAPR Retention	<u>Retention Period on Arizona Supreme Court and Local Court Public Websites</u>	Remarks
<b>CASE FILES HELD BY THE CLERK OF COURT</b>					
1.	CIVIL CASE FILES, FILED ON OR BEFORE DECEMBER 31, 1959	50 years from the year the case was filed. However, clerks who wish to retain these files in their local office permanently and make them available to the public may retain these files.	Permanent	<u>50 years from the year the case was filed.</u>	Clerks may transfer these case files to LAPR at any time.
2.	CIVIL CASE FILES, FILED ON OR AFTER JANUARY 1, 1960	50 years from the year the case was	Permanent	<u>50 years from the</u>	Clerks must transfer the

## Next steps

- January 2016—Filed Petition R-16-0008 to amend Rule 123; filing of petition to amend ACJA § 3-402 is pending
  - Share with standing committees, stakeholders
  - Review and respond to comments
- July 30, 2016—Committee's term ends
- August 2016—Supreme Court's Rules Agenda meeting
- October 2016—PJ and AJC meetings
- January 1, 2017—effective date for changes

### Committee on Time Periods for the Electronic Display of Superior Court Case Records

*Marcus Reinkensmeyer, Chair*  
Director, AOC Court Services Division

*Honorable Lee Jantzen*  
Superior Court in Mohave County

*Jon Smith, Esq.*  
Yuma County Attorney

*David Bodney, Esq.*  
Ballard Spahr LLC

*Janet Sell, Esq.*  
Office of the Attorney General

*Honorable Amanda Stanford*  
Clerk of the Court, Pinal County

*Honorable Pamela Gates*  
Superior Court in Maricopa County

*Eric Silverberg*  
Court Administrator  
Superior Court in Cochise County

*Mikel Steinfeld, Esq.*  
Maricopa Co. Public Defender's Office

*Honorable Toni Hellon*  
Clerk of the Court, Pima County

*Andrew Silverman, Esq.*  
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