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Child Support Protocol

A Guide for Integrated Domestic Violence Courts

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A Guide for Integrated Domestic Violence Courts

Relationship Between Domestic Violence and Economic Abuse

With the advent of integrated domestic violence courts, and the emphasis on treating cases holistically, there is a growing understanding that domestic violence involves more than arrests and orders of protection. We know, for example, that the presence of violence and controlling behavior dramatically affects a child's well-being. It is for this reason that legislation requires courts to take domestic violence into account when making custody determinations. DRL § 240(1)(a).

It is important to recognize, as well, that domestic violence and control are strongly linked to family economic issues. If the couple lived together, the abuser may have exercised complete control over the money in the household. He may have insisted on doing all the shopping or accompanying the mother everywhere, including trips to the grocery store, the drug store, and the laundromat. The abuser may have held all the money, distributing it only on an "as needed" basis. He may have provided the mother with an allowance, from which she was expected to make all household expenditures. He may even have gone through bags of purchases and insisted on reviewing the receipts, even for groceries.

Once the parties have separated, an abuser who seemed generous while they were together may suddenly become stingy with money. He may be unwilling to provide any support for a child who no longer lives in his household. He may question the need for things that he had happily provided when the family lived together, thus requiring constant requests for money, with each request giving rise to further arguments and escalating violence.

Many of the same problems exist even if the couple never lived together. It is not uncommon, for example, for an abuser to feel that he can continue to spend all of his money on himself, except for certain expenses he may recognize, such as diapers, baby formula, and an occasional toy. Others simply want the problem to disappear and refuse to contribute in any way.

Likelihood That a Domestic Violence Case Will Have a Child Support Issue

Because control is at the heart of domestic violence, it is not surprising to see economic control issues continue long after the parties have separated. This dynamic makes it highly likely that a case with children in the IDV part will also have problems with child support.

If the court is to do what it can for the family, it must realize that domestic violence and child support are not separate issues. They should be treated in a coordinated fashion, and on the same day, if possible, so the parties are not required to take

more time from work. The victim should not have to face her abuser in yet another forum, one that may not be familiar with the domestic abuse in the family, which would increase the possibility that the abuser would use the judicial process for continued abuse.

Beginnings of federal involvement in child support

In 1975, part D was added to title IV of the federal social security act, establishing a federal role in creating a child support program. 42 USC 651 et seq. The agency, created under title IV-D for the social security act, became known as the “IV-D” agency.

The primary thrust of the new law was to address the alarming rise in welfare costs due to increasing illegitimacy rates and parental desertion of families by obtaining reimbursement for public assistance outlays given to single parents and their children under the AFDC (aid to families with dependent children) program, subsequently replaced by TANF (temporary assistance for needy families). When the AFDC program began in the 1930s, death or disability of a wage-earning parent was the major criteria for eligibility for welfare. By the late 1970s, however, families eligible due to the death of a parent accounted for only 2.2 percent of the total caseload, while over 90 percent of the children receiving AFDC benefits lived with their mothers (usually), with a living parent who was absent from the home and not providing sufficient support to keep the children off the welfare rolls.

The 1975 amendments sought to close this gap by requiring recipients of AFDC to assign their support rights to the welfare agency, so the agency could establish a support order (and paternity, if necessary) and collect support payments from non-custodial parents.

Child support amendments of 1984

Many amendments have been made to this law since it was enacted, but the most extensive amendments were made with the enactment of the child support enforcement amendments of 1984. The 1984 amendments required the states to enact a number of specific remedies and procedures to improve their child support enforcement programs as a condition of continued receipt of the full federal share of costs for their AFDC program. The amendments also sought to equalize the treatment of AFDC and non-AFDC families in the hopes of preventing the continued impoverishment of single parents and their children.

Federal research showed that judges were miserably failing at establishing and enforcing adequate child support awards and that, as a result, thousands of women and children were unnecessarily living in poverty. In an attempt to correct this failing, the federal amendments required each state to take child support out of the hands of the judges and establish an expedited process for cases to be heard and decided by administrative or quasi-judicial personnel. These amendments also required the state child support agencies (SCU) to provide the same services to parents not receiving public assistance as it employs on behalf of welfare recipients.

Failure to comply with these amendments could have cost New York over \$100 million in federal reimbursement for welfare costs. In addition, New York would have lost the 70 percent federal reimbursement it received for the administrative

costs of operating its child support program, much of which is passed on to the counties.

Research by the New York State Commission on Child Support confirmed the federal conclusions and recommended a procedure that would continue to be based in the court, but with decisions made by hearing examiners, rather than judges, in the family court. *Report of New York State Commission on Child Support (1985)*. The possibility of an administrative procedure was rejected in order to preserve the legal nature and precedential value of child support decisions. To cut down on the expense to litigants, however, appeals are brought to the family court judge (by filing objections), rather directly to the appellate division. This procedure was approved by the federal Office of Child Support Enforcement and is codified in Family Court Act §§ 439 and 439-a (L.1985, ch.809).

Federal reimbursement for state child support programs

Title IV-D of the Social Security Act establishes procedures and requirements for payments to each state for reimbursement of costs associated with operation of its child support program. Reimbursable expenses include not only those directly attributed to the IV-D agency itself, but also certain costs of court operations. For example, expenditures related to the services of support magistrates are eligible for federal reimbursement, as are child support training and publicity expenses.

Currently, each state that operates under an approved plan is eligible to receive federal reimbursement of 66 percent of the expenditures for its child support program, one-half of which is passed on to the counties. In order to qualify for approval by the secretary of health and human services, each state must meet a list of requirements, among which is the requirement for expedited procedures for establishing paternity and for establishing, modifying, and enforcing support obligations, unless a special waiver is obtained. 41 USC §655.

New York's plan was approved by the federal Office of Child Support Enforcement and is codified in Family Court Act §§ 439 and 439-a (L.1985, ch.809). The plan requires the use of hearing examiners (now support magistrates) to expedite child support and paternity determinations, unless a federal waiver is obtained (only for counties that are not wholly within a city and that have a population of under 400,000). See Memorandum of State Executive Department, L. 1985, ch. 809.

There would be significant fiscal consequences to the state if it were to proceed in a manner that is inconsistent with its own plan and applicable federal law. Should the state undertake to have child support matters heard by jurists, or by hearing officers other than support magistrates, it would violate the state statute that was enacted to comply with Title IV-D, thus putting the state out of compliance with the federally approved plan for child and spousal support. This violation would subject the plan to federal disapproval and disqualify it for the 66 percent federal reimbursement program, resulting in a significant lost of revenue.

Unless equity would dictate otherwise, child and spousal support must be determined by a support magistrate. In addition to the federal requirements for reimbursement, there are many other reasons why it may be preferable to have support

determined by support magistrates. The case will be heard in the most efficient manner, as support magistrates have specialized training and experience with the law on support, which has grown increasingly complicated and specialized. In IDV cases, referral to a support magistrate also frees up the IDV judge to hear other aspects of the case.

The support magistrates are familiar with IV-D system for enforcement of support orders by the support collection (SCU). They also have had ample experience with hidden income and other specific problems related to income. They have also experienced, first hand, the manipulation that can go on, such as attempts to parlay additional visitation time (or bids for custody) into reduced child support.

Best Practices for Integrating Child Support into the Integrated Domestic Violence Court

The special procedural requirements that must be followed in determining support matters need not stand in the way of providing complete service to litigants in the IDV parts. Child support can be integrated into the IDV court, as long as the federal requirements are kept in mind.

1. The IDV judge should not ignore child support issues.

Even though child support has not been on the docket of family court judges for some time, it should not be ignored by the IDV judge. Without adequate child support, the mother may not be able to make the separation that is so essential for survival. It may also be critical that the victim and/or the children be covered by medical insurance, if it is available. Because of fear, however, or the requirements of a job, she may not have the ability to seek support in a separate proceeding. She may only have the courage to pursue it if the parties are already in court on the serious matter concerning physical violence.

2. The IDV judge should inquire into the need for child support, and not wait for it to be raised.

Because of fear, the issue of child support may not be raised by the victim. In her need for immediate assistance from the court, she may not, yet, have focused on how she will manage with the abuser out of the household and not providing support for the children. She may not realize that the abuser's withholding and control of money is part of his pattern of abuse.

3. The IDV judge should make an order for temporary support.

Section 828(4) of the Family Court Act provides that the court may, together with a temporary order of protection, issue an order for temporary child support, in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. This is part of New York's plan and is in compliance with federal requirements.

4. The IDV judge should immediately order medical insurance coverage, if it is available.

Section 828(4) of the Family Court Act authorizes the court, as part of an order of temporary support, to determine if the respondent/defendant has employer-provided medical insurance and, if so, to direct that a medical support execution (pursuant to CPLR 5241) be issued and served upon the employer. This must be done in every case, to assure that the children (and spouse, if applicable) can continue to obtain needed medical care and treatment.

5. For the safety of the victim, the IDV judge should make the support order payable through the support collection unit (SCU).

Since safety of the victim is always a concern, and the exchange of money frequently presents an opportunity for further abuse, the IDV judge should avoid direct payments of child support. Any support order should be made payable through the support collection unit (SCU). Through this mechanism, all payments are made to a central place and go into a central account, from which a separate check is drawn and mailed to the intended recipient. This has the effect of distancing the payor from the receiver, as payments are made to a neutral party, and no address information is exchanged. An additional protection is that the SCU may deduct the money from the payor's income so that he doesn't have any active part in the payment. It also eliminates any excuse he might make for coming to her house. SCU also possesses many other avenues for enforcement of the order, including the attachment of income tax refunds, bank accounts, and lottery winnings.

Unless the custodial parent is receiving public assistance, Social Services Law § 111-g requires a person who wishes SCU services to apply by signing a form supplied by the agency or signing a statement clearly indicating a request for child support enforcement services. This statement should be included in any request for assistance from the court, or otherwise made available to the victim, without the need to go to the SCU office.

6. The IDV judge should refer the support issues to a support magistrate for hearing and a final decision.

After making a temporary order of support, the IDV judge should immediately refer the case to a support magistrate for a hearing and final determination. This would ensure compliance with federal requirements and maximize federal reimbursement to the state. A final determination by the judge does not qualify for federal reimbursement and may jeopardize the entire reimbursement scheme.

If there is paperwork required for this referral (such as the filing of a petition on the "F" docket), this should be handled by IDV clerical staff, for a smooth transition.

7. Where there is a matrimonial matter pending, the judge may refer the support issues to a support magistrate for hearing and a final decision, or retain the matter for resolution along with other economic issues.

Supreme court judges often make ultimate child support decisions in the context of matrimonial cases, although family court judges are not permitted to do so. Unfortunately, however, the state does not get federal reimbursement for those cases. Having the case in the IDV part presents an opportunity to improve on current practice and achieve federal reimbursement, as well, for the support aspect of a case.

Best practice for the IDV judge, therefore, would be to refer the child support to a support magistrate for final decision. Where a particular matrimonial matter has interwoven financial issues, however, the judge may find it best to keep the entire matter together, bypassing the support magistrate for that case.

8. The parties should not be required to go to another court to file a petition or to make further service.

One of the reasons victims of domestic violence don't pursue support is that they cannot take any more time to pursue separate actions and are unable to effect service on the respondent without putting themselves, or their children, in danger. When there is a support issue in the IDV part, the parties should receive clerical assistance in filling out any necessary paperwork, and every effort should be made to minimize the number of court dates and places to go. With this method, custodial parents will not be discouraged from seeking economic support from their violent partners, and the parties, and their attorneys, won't have to appear in several courts for matters that are actually related.

9. Where possible, a support magistrate should be present in the court, so the support case can proceed smoothly to the next stage.

Once in court, every effort should be made to minimize the number of times they are required to return to court in order to obtain complete relief. Having a support magistrate assigned to the IDV (even if only one day a week) would further this goal.

Even if there is no support magistrate dedicated to the IDV part, a particular support magistrate should be assigned to hear the IDV support cases so they can receive proper training and have access to files and information from the matter before the IDV judge.

10. All support magistrates – especially those who decide cases referred from the IDV part -- should receive comprehensive training on domestic violence and its relationship to economic abuse.

The support magistrate should have a thorough understanding of the way in which an abuser may respond to a request for child support. He could even get violent in court, or outside the court, during the proceedings. He may refuse to comply with an order so that the mother will remain entangled with him while she seeks compliance. Even if he pays, he may insist on handing over the support money personally, and

use the occasion for continued abuse. Comprehensive training in this area may prevent the abuser from using judicial proceedings, or the exchange of child support, as a further opportunity for contact and abuse.

11. The IDV judge should monitor cases for compliance with support orders.

This monitoring can be accomplished, on either the criminal or family court docket, by making support payments a condition of any order of protection. Additional information sharing between the judge and support magistrate may be necessary and should be discussed/coordinated.

12. Files should be shared between the IDV judge and the support magistrate.

It is important for the support magistrate to know the extent of the domestic violence claimed, whether or not there is an order of protection. The IDV judge needs to know what is transpiring on child support: what assertions are being made, compliance problems, etc., because they may be relevant to custody and visitation decisions, and to the facts surrounding the complaint of domestic violence. Just as a judge gets access to all information in a divorce action, so should the judge receive information on support cases.

13. All decisions should be made with the victim's safety in mind.

The IDV judge should take special care to see that an order for support does not place the victim or children in additional danger. This may be accomplished in most cases by making the order payable through SCU. Sometimes, however, even payment through the SCU will not be sufficient. Even where child support may be of immense assistance, it will sometimes be better to forego it -- at least until a time when the possibility of danger has been reduced. This decision will have a profound effect on the life of the child and should not be made lightly.

If the victim is receiving public assistance, she must cooperate in seeking a child support order at some point, unless she receives a waiver from this requirement as a domestic violence victim, pursuant to SSL § 349-a. If this is the case, the IDV judge can refer the victim to the domestic violence liaison at the local public assistance provider for assessment.

Since one of the advantages of having an order payable through the SCU is that the victim does not have to reveal her address in order to receive support, the IDV judge must take care not to inadvertently reveal the victim's address.

Every effort must be taken not to place the victim in danger by requiring her to go with her abuser to file additional petitions or complete additional paperwork. To the extent additional paperwork is necessary, it should be completed by clerical staff, with the parties kept separate from each other.

Notes

Center for Court Innovation

The winner of an Innovations in American Government Award from the Ford Foundation and Harvard's John F. Kennedy School of Government, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how courts and criminal justice agencies can aid victims, change the behavior of offenders and strengthen communities.

In New York, the Center functions as the state court system's independent research and development arm, creating demonstration projects that test new approaches to problems that have resisted conventional solutions. The Center's problem-solving courts include the nation's first community court (Midtown Community Court), as well as drug courts, domestic violence courts, youth courts, mental health courts and others.

Beyond New York, the Center disseminates the lessons learned from its experiments, helping courts across the country and the world launch their own problem-solving innovations. The Center contributes to the international conversation about justice through a variety of written products, including books, journal articles and white papers like this one. The Center also provides hands-on technical assistance, advising court and criminal justice planners across the globe. Current areas of interest include problem-solving justice, community prosecution, court technology, drug treatment courts, domestic violence courts, mental health courts and research/evaluation.

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