

# Domestic Violence Benchbooks

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A Guide to Court Intervention

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# INTRODUCTION

Judges and justice system staff are uniquely positioned to address the problem of domestic violence. Court intervention can significantly impact victims and families, but in order to effectively intervene, domestic violence-specific education for judges is critical.

As a comprehensive technical assistance provider for the Office on Violence Against Women, the Center for Court Innovation often receives inquiries from courts nationwide on benchbooks and other judicial resources regarding domestic violence and sexual assault. This guide and recommended set of practices was created in response to these requests. Understanding that domestic violence laws differ from state to state, this project focuses on the dynamics of domestic violence rather than state statutes.

## Domestic Violence Benchbooks in the United States

Domestic violence benchbooks and resources fall into three general categories: dynamics-focused, practice-focused, or statute-focused. *Dynamics-focused resources* often contextualize and supplement state statutes and case law (describing the “who,” “what,” “why,” “when” and “how” of domestic violence), while also informing judicial interventions. *Practice-focused resources* provide “best practices” or “practice tips” based on an understanding of domestic violence dynamics. Unlike the first two types of resources, *statute-focused resources* identify all of the relevant statutes and case law with commentary and do not generally discuss dynamics.

Appendix A (Common Themes in Domestic Violence Dynamics and Practice-Focused Resources) of this document describes many of the currently available domestic violence-specific benchbooks, bench cards, and other resources available for judges and/or court staff. This appendix is a summary of common themes found only in dynamics- and practice-focused resources; the themes are not drawn from statute-focused or national resources.

### ***Purpose of Benchbooks***

Domestic violence benchbooks are generally written and distributed to provide judges with an overview of domestic violence law to promote consistency and informed decision making. They can also provide judges with an important discussion of context surrounding domestic violence, as can other resources such as bench cards, practice manuals, or web courses. Common goals of the reviewed resources<sup>1</sup> are to:

- Provide judges with information to ensure competent judicial decisions
- Increase consistency in judicial and/or coordinated community responses to domestic violence
- Promote victim safety and offender accountability
- Provide judges with a comprehensive resource on domestic violence that includes information about local community resources

**Intended Audience**

Although many of the resources reviewed were created primarily to educate and train judges in handling domestic violence cases, much of the material can also benefit other professionals. Many resources specifically encourage law enforcement officials, attorneys, prosecutors, and other court personnel to use the resource and become familiar with the material.

**Authors**

The majority of the resources reviewed were written and compiled by the state’s Administrative Offices of the Court or equivalent body. Some resources were written by a multidisciplinary team consisting of several judges or court administration staff with a domestic violence background, along with representatives from domestic violence advocacy organizations. In three states, the domestic violence benchbook was primarily authored by the state’s domestic violence coalition. Four states relied on local law schools or law professors to author their domestic violence resources. Table 2 summarizes the authors of judicial domestic violence resources.

Table 2 Summary of Judicial Domestic Violence Resource Authors

Author	Number of Identified Jurisdictions
Court Administration	13
Coalition	3
Multi-disciplinary	12
University	4
Other (Family Violence, Prevention Center, Attorney General's Office)	2

## THE WHAT

### Defining Domestic Violence

Several resources specifically indicate the differences between the behavioral and legal definitions of domestic violence. The behavioral definition usually refers to a pattern of coercive behaviors used to gain power and control over an intimate partner. On the other hand, in most states the legal definition is broader and can extend to violence between household members.

There are also differences in the types of behavior included in each definition. The legal definition of domestic violence in many states is based on a specific set of criminal acts such as assault, strangulation, stalking, homicide, or sexual assault. On the other hand, behavioral definitions often include certain behaviors that contribute to a pattern of coercion but may not be considered criminal acts. These can include undermining victims' self-esteem, isolating victims from friends and family, or controlling victims' finances. Dynamics-focused resources, along with practice-focused resources, are primarily concerned with providing information on the behavioral definition(s) of intimate partner violence.

West Virginia's Benchbook for Domestic Violence Proceedings states that "[a]lthough psychological abuse may not meet the statutory definition of domestic violence by itself, this type of abuse may be relevant to a proceeding involving domestic violence, because it provides evidence of an abuser's motive, intent, or plan." Additionally, "evidence of psychological abuse may provide insight into the actions of both the abuser and the victim." Similarly, another state's manual for judges states that understanding the behavioral definition of domestic violence can help a judge make informed decisions in what are often complex cases.

Although criminal court interventions specifically address domestic violence crimes, behavioral definitions offer insight into the context of domestic violence and can inform a civil or criminal court's intervention.

### Types of Domestic Violence

Recognizing that judicial decision-making in domestic violence cases is a challenging task, some resources distinguish between types of domestic violence: situational, coercive, separation-instigated, and defensive violence. *Situational* domestic violence refers to mutual violence that is triggered by some event in which neither party uses violence to exert control or dominance over the other party. Importantly, the violence is usually isolated to specific situations, less likely to escalate over time, and is often perpetrated by men and women at similar rates.

Domestic violence is most commonly understood as *coercive violence*, in which one partner commits violence against the other partner in a specific and intentional attempt to exert power and control. Neither situational nor defensive violence, however, preclude the possibility of coercive violence. *Separation-instigated violence* occurs when abusers who likely already engage in coercive violence feel as if they have lost control over the victim. This type of violence is particularly salient for judges and other court staff, since court interventions often result in separation between abusers and victims. Therefore, court proceedings and the resulting separation have a high potential for violence and are

usually considered one of the most dangerous times for a victim. Judges and court staff need to be aware of this when making decisions in domestic violence cases.

*Defensive violence* refers to physical actions taken in self-defense against an abusive partner. Recognizing the signs of defensive violence is important in crafting an appropriate response to defendants who may also be victims of domestic violence. Asking questions may help to contextualize the violence and the defendant's perception of danger and the need for self-defense. Individuals who use defensive violence may admit to using violence without labeling it as self-defense.

## Causes of Domestic Violence

The Colorado Domestic Violence Benchbook includes an extensive discussion of how judges can determine the primary abuser in a domestic violence case. This determination can be complicated, as many victims are not passive and do try to protect themselves when confronted with violence. To elicit subtleties in the evidence in domestic violence cases, consider the following questions:

- What kind of injury is it?
- Where are the injuries?
- What amount of force appears to have been used in inflicting the injury? What disparity of force exists?
- Were injuries caused by a hard object or weapon that may have been an equalizer?
- Were these injuries to the top of back of the head; areas a person being restrained may have been most able to reach on their assailant?
- Did repeated acts of force take place? For example, did one party push the other, only to be punched several times in return?

## THE WHY

Most resources indicate that domestic violence is *not* caused by anger, substance use, or problems inherent in a relationship. Rather, these are factors that may accompany or aggravate already existing domestic violence. Sometimes domestic violence is a product of mental illness, but illness-based violence is distinguishable from coercive domestic violence. There are several ways to distinguish illness-based violence from domestic violence:

- Perpetrators of illness-based violence do not usually select a particular, consistent victim; instead, abuse is directed at any person present when violent impulses arise;
- Illness-based violence is often accompanied by other symptoms of disease, such as changes in speech or gait, or delusional thinking; and
- Poor recall of abuse does not necessarily indicate illness-based violence. Abusers who are not mentally ill often deny or minimize their behavior.

None of the resources identify any single cause of domestic violence, and all suggest instead that domestic violence is a result of a combination of individual and environmental/social factors. The three most commonly identified factors are: 1) learning; 2) opportunity; and 3) choice.

Domestic violence as a learned behavior draws on social learning theory,<sup>2</sup> which posits that adult behaviors are determined by what is witnessed as a child. Perpetrators learn that domestic violence is acceptable when they witness it and their social environment tolerates or encourages it. This concept can extend beyond family and friends to social institutions such as the court system.

That domestic violence is a learned behavior, however, does not mean that every person who is physically abused or grows up in an abusive home will become abusive. Perpetrators must also find the opportunity to commit domestic violence. Opportunities are created when domestic violence is tolerated and perpetrators escape consequences for their violence.

The Michigan and Colorado benchbooks offer specific examples of how a court system might unwittingly tolerate domestic violence, including:

- Failing to identify cases where domestic violence is present;
- Failing to address safety concerns in cases where domestic violence is identified;
- Failing to impose consequences for violations of court orders;
- Blaming the victim for the abuse rather than holding the perpetrator accountable for it;
- Issuing orders that conflict with those issued in other proceedings;
- Issuing mutual protection orders;
- Issuing orders that reward abusive behavior;
- Requiring mediation without regard to the imbalances of power and safety concerns that arise when domestic violence is present;
- Issuing vague custody or parenting time orders that can be easily manipulated, or that allow an abuser to exercise control over a former partner and the parties' children; or
- Requiring the parties to cooperate in carrying out their parental responsibilities without regard to the imbalances of power and safety concerns that arise when domestic violence is present.

2 Albert Bandura, *Social Learning Theory* (New Jersey: Prentice Hall, 1977).

Finally, even if the perpetrator has learned and been given the opportunity to commit domestic violence, the perpetrator still has to choose to commit domestic violence. A common myth is that domestic violence is “out of control” behavior that only happens in times of extreme anger or stress. In reality, domestic violence is often carefully calculated. Courts can discourage domestic violence by responding to it consistently and in a way that holds offenders accountable for their choices.

The Michigan and Colorado benchbooks on domestic violence list the following strategies that courts can use to hold perpetrators accountable:

- Restricting abusers’ access to identifying information about their partners who are in hiding;
- Providing a safe environment for persons who come to the courthouse;
- Requiring the abusive party to bear the financial consequences of abuse;
- Issuing custody and parenting time orders with specific provisions that promote safety, including supervised parenting time orders; and
- Requiring the abusive party to complete appropriate interventions and demonstrate change before modifying more restrictive orders for parenting times.

## THE WHO

Domestic violence can happen to anyone in a relationship, regardless of race, ethnicity, or socioeconomic class. There is no single personality type or profile that predisposes an individual to become a victim. There are, however, common responses to being abused. Many of the resources provide comprehensive lists of victim behaviors inside and outside of the courtroom that judges should be aware of when hearing a domestic violence case. While many of these behaviors may appear strange or incomprehensible, they make sense when the dynamics and context of domestic violence are considered. Further, while these behaviors are common, that does not necessarily mean every victim will exhibit these behaviors; each case is different. Common responses may include:

- Staying with or returning to the abuser out of fear, belief that the perpetrator will stop the violence, or obstacles such as lack of housing or job skills.
- Shock, disbelief, fear, withdrawal, confusion, panic, minimization, denial, rationalization, depression, and/or post-traumatic stress disorder.

Many responses to domestic violence, such as staying with the abuser, may appear illogical, but are actually coping or survival strategies. Common survival strategies include:

- Minimizing or denying the violence;
- Taking responsibility for the violence;
- Using alcohol or drugs;
- Using self-defense;
- Seeking help; or
- Remaining in the relationship.

Unfortunately, victims of domestic violence choosing to stay in an abusive relationship can also lead to victim blaming. Victims stay in relationships out of fear and to survive, and because there are often significant obstacles to leaving.

Other obstacles to leaving are:

- Concern for the children's welfare;
- Lack of employment skills, or financial dependence on the abuser;
- Lack of housing upon leaving the relationship;
- Inability to afford legal assistance for divorce, custody, or protection order proceedings;
- Fear of the court system's intervention;
- Fear of losing custody of the children if the violence is reported or revealed in divorce proceedings—some abusers deliberately give their partners misinformation about their legal rights to prevent them from seeking legal recourse;
- Isolation from social or family connections that could otherwise provide support after leaving the relationship;
- Acceptance of the blame for the abuse;
- Belief in the abuser's expressions of remorse and promises to change;
- Lack of self-confidence; and
- Religious or cultural constraints.

Table 3 Sample Chart of Victim’s Risks When Staying or Leaving An Abusive Relationship From Colorado Domestic Violence Benchbook

Risk of Staying	Risk of Leaving
<p><i>Physical Injury</i> He may continue to hit and injure her.</p>	<p><i>Physical Injury</i> He may continue to hit and injure her. Some studies have shown he may be more likely to hurt her after she has left.</p>
<p><i>Death</i> He may kill her.</p>	<p><i>Death</i> Leaving does not ensure that he will not find her and it may increase the chances she will be killed.</p>
<p><i>Psychological Harm</i> His use of violence to keep control will continue to affect her and he can continue to attack her verbally and emotionally.</p>	<p><i>Psychological Harm</i> He may continue to have access to her, particularly if they have children in common and there is ongoing contact due to court-ordered visitation.</p>
<p><i>Physical or Psychological Harm to Children</i> Children can witness the violence against their mother, be the object of physical or psychological attacks, or can be hurt while trying to protect their mother.</p>	<p><i>Physical Injury or Psychological Harm to Children</i> Children may witness violence against their mother or a subsequent partner, be the object of physical or psychological attack, may be hurt trying to protect their mother, or may be at a greater risk while on visitation without their mother present to monitor or intervene.</p>
<p><i>Standard of Living</i> He may control the money and give her little money to live on; he could lose or quit his job; he could make her lose or quit her job.</p>	<p><i>Standard of Living</i> She may live solely on her income; he may lose or quit his job to avoid paying child support; she may have to move out of her home and neighborhood; he could make her lose her job.</p>
<p><i>Threat of Injury to Family or Friends</i> They may be at risk, especially if they try to intervene.</p>	<p><i>Threat of Injury to Family or Friends</i> They may be at risk, especially if they try to intervene or provide her housing. Risk may escalate if she is not accessible to him: “If I don’t know where you are, I’ll get your family.”</p>

Illinois’ Model Domestic Violence Protocol highlights the abusive tactics that making a victim appear or believe that she is mentally unstable. Abusers often tell victims that they are crazy or stupid, and that they are the ones responsible for the violence. Many victims believe these statements and may not tell authorities about the abuse for fear that they are actually mentally unstable.

## Perpetrator Behavior

Although there is no single perpetrator profile, domestic violence perpetrators often exhibit common characteristics and behaviors. Judges still need to treat each case uniquely, but common traits of perpetrators include:

- Controlling;
- Dependent on victim;
- Jealous;
- Overly sensitive;
- “Jekyll and Hyde” personality;
- Continuous use of denial/minimization/blame;
- Unwilling to accept responsibility; and
- Belief in rigid gender roles.

## Culture

The importance of cultural competency among judges and court staff in domestic violence cases is not a new idea. Illinois' Model Domestic Violence Protocol for Law Enforcement, Prosecution and the Judiciary defines cultural competency as: “...the process by which the provider combines general knowledge with specific information provided by the victim about his/her culture, incorporates an awareness of one’s biases, and approaches the definition of culture with a critical eye and open mind.” Cultural competency involves more than reading about another culture; it requires awareness of one’s own biases and does not assume that all members of a particular culture or group will react to or experience domestic violence in the same way. For example, different or additional factors may be present for immigrant victims. There are also different forms of legal recourse for these victims. However, that does not mean that every domestic violence victim who is an immigrant will have the same experiences or obstacles.

Judges also need to be aware of cultural misinformation, defined by the North Dakota benchbook as “associat[ing] a set of attributes with a group and apply[ing] the attributes to the group’s individual members, simply because they belong to that group.”

The Illinois Model Protocol points out that there is a misconception that the most dangerous abusers will present as if they have personality disorders. In reality, the most dangerous abusers are usually those that appear stable, charming, calm, and even rational.

North Dakota’s Domestic Violence Benchbook adapts material from the *Cultural Considerations in Domestic Violence Cases, A National Judges Benchbook* in its chapter on culture and its role in domestic violence cases. In order to assess cultural competence, the benchbook encourages judges to constantly ask themselves the following questions:

- What are my preconceived ideas about \_\_\_\_ culture?
- How have I obtained these beliefs?
- How might these beliefs affect my evaluation of evidence from a person who appears to belong to the culture?
- How might my preconceived beliefs influence my decision in this case?
- Will my preconceived ideas or knowledge preclude me from fairly determining the facts and rendering a decision in this case?
- Am I open to listening and learning from others who challenge my thoughts, attitudes, and actions?

To reduce the influence of cultural misinformation, North Dakota's Domestic Violence Benchbook offers judges the following suggestions:

- Recognize that it is impossible to escape misinformation or stereotypes about different cultures;
- Examine generalizations you hear about different groups to practice identifying cultural misinformation;
- Examine your beliefs and information about various cultures;
- Listen for expressions of cultural misinformation (stereotypes) in the courtroom;
- Reach beyond your comfort level to converse with a person who identifies with a different culture (e.g. race, economic class, and sexual orientation);
- Increase your attention to the cultural information that might be available through interactions with individuals and/or their communities; and
- Gather cultural information from individuals who appear in court and evaluate the information as it relates to that person's cultural experience.

## Special Populations

Some resources discuss domestic violence among populations that include limited English proficiency (LEP) individuals, immigrants, and the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community. Others discuss populations that may be specific to their jurisdiction. For example, one state's domestic violence manual has a chapter on rural communities; Alaska's "Judges' Guide: Handling Cases Involving Domestic Violence, Stalking, and Sexual Assault" discusses how domestic violence will impact native victims; and another state has separate benchbooks devoted solely to domestic violence in tribal and immigrant communities. Another example is the Tribal Court Judges Association, which authored a domestic violence benchbook specifically for tribal court judges.

In dealing with potentially hidden domestic violence among specific populations, the North Dakota benchbook offers the following suggestions for judges:

- Ask parties what language they are most comfortable speaking. Do not assume that a person who speaks English is able to communicate the details of her life in English;
- Attempt to have an interpreter available for victims and children who are not comfortable speaking English;
- Have restraining orders and protection orders translated for parties that are not comfortable speaking English;
- Make a statement that the court understands that there are different reading abilities and that parties should request help from their attorneys or from the court if they have difficulty understanding documents; and
- Make every attempt for the economically disadvantaged to have access to legal assistance services.

## THE HOW

### Abusive Tactics

Domestic violence is a pattern of behavior by the perpetrator, used to gain power and control over the victim. In many cases, the abuser will use physical force to emphasize and increase the impact of emotional, financial, or psychological abuse. Common abusive tactics include:

- Isolation from family and friends;
- Control of finances;
- Control of children and/or using them as a vehicle for abuse;
- Verbal abuse;
- Sexual abuse;
- Stalking/cyber stalking; and/or
- Legal control (i.e., filing retaliatory petitions).

### Signs of Domestic Violence in the Courtroom

Following a discussion of common perpetrator traits and tactics, some resources explain how domestic violence may manifest in the courtroom. The Colorado Domestic violence benchbook refers to this as “Survival and the Court System,” and points out that many of the victim’s behaviors may be a direct effort by the victim to stay safe and minimize his/her risk.

Other commonly listed victim behaviors include:

- Abandoning or withdrawing from court proceedings;
- Denying or minimizing violence;
- Avowing love for an abuser;
- Being combative during proceedings; and
- Speaking aggressively with the judge and other court staff.

New Mexico’s Domestic Violence Benchbook identifies the following ways perpetrators use children as a tool of abuse:

- Deliberately abuse their adult victims in the presence of the children;
- Interrogate the children about the victim’s activities;
- Force the victim to be in the company of a child always;
- Take the child away after a violent episode to prevent the victim from fleeing;
- Threaten violence against the child or against a pet or object that is important to the child;
- Encourage the child to participate in the physical or emotional abuse of the victim; and
- Isolate the child along with the victim.

Table 4 Domestic Violence Injunction Case Process and Issues Associated at Each Stage, from Florida Domestic Violence Benchbook

Case Process Stage	Issue
<p>First: Petition filed for protection from domestic violence</p>	<p>Access to court/courthouse                      Employment, children, transportation, office hours                      Completion of forms – usually pro se                      Lengthy confusing forms                      Language/literacy                      Denial/minimization of abuse as survival strategy                      Emotional upset/agitation</p>
<p>Second: Court issues ex parte order granting or denying temporary injunction; return hearing set; in jurisdictions that permit, the petitioner may decline a return hearing in writing without the protection of an ex parte injunction</p>	<p>Increased danger                      Safety of persons and pets                      If temporary injunction issues (or if judge wants more info), respondent is served with injunction and notice of hearing – often a very angry reaction                      Most dangerous time for petitioners/victims – separating or attempting to separate from partner                      Especially dangerous if court has scheduled a hearing without issuing a temporary injunction</p>
<p>Third: Court holds return hearing to determine whether final injunction will be granted</p>	<p>Access to court/courthouse                      Employment, children, transportation, office hours                      Safety of persons and pets                      Threats, violence to coerce petitioner to drop case, directly or through others                      Courthouse/courtroom safety issues                      Respondent’s access to children through shared custody                      Unsupervised visitation                      Firearms issues                      Family support                      Custody and visitation provisions                      Child support/alimony                      Counseling, other services for victim and children (not part of injunction order)</p>
<p>Fourth: Enforcement of compliance with terms of injunction</p>	<p>Safety                      No contact                      No violence                      Firearms surrender                      Treatment/family support                      BIP/other treatment for respondent                      Custody and visitation provisions                      Child support/alimony                      Fear – who is responsible for tracking and enforcing compliance?</p>

Victims may not trust the court system due to previous negative experiences, concerns that the court does not understand domestic violence, or fears about safety. The court process can be extremely stressful and even re-traumatizing for victims, especially if the victim had a negative past experience in the court system. Factors that may contribute to a negative experience include: procedural delays, complex court proceedings, discourteous court employees, misinformation about the court system given by the abuser, uninformed service providers, vague court orders, and court orders that require the victim to cooperate with the abuser or to have regular personal contact with the abuser.

To convey this message to judges, the Texas Family Violence Benchbook describes an applicant’s journey through the legal system and provides a sample calendar for many victims. The benchbook suggests that judges can best mitigate victims’ frustrations by being transparent and explaining delays in the court process.

The Wyoming Domestic Violence Benchbook and Michigan's "Domestic Violence: A Guide to Civil and Criminal Proceedings" offer extensive lists of possible behaviors by abusers in courtrooms, such as:

- Physical assaults or threats of violence against the abused person, those providing refuge, and others inside or outside the courtroom;
- Threats of suicide;
- Threats to take the children;
- Harassment intended to coerce the abused person to dismiss proceedings or to recant previous testimony;
- Following an intimate partner in or out of courts;
- Sending an intimate partner notes or “looks” during proceedings;
- Bringing family or friends to the courtroom to intimidate the abused person;
- Long speeches about how an intimate partner “made me do it”;
- Statements of profound devotion or remorse to the intimate partner and to the court;
- Repeated requests for delays in proceedings;
- Requests for changes of counsel or failure to follow through with appointments of counsel;
- Intervening in the delivery of information from the court to the abused person so that the abused person will be unaware of when to appear in court;
- Continually testing the limits of parenting time or support arrangements, e.g., arriving late or not appearing at appointed times;
- Requests for mutual orders of protection as a way to continue controlling the abused person and manipulating the court;
- Threats and/or initiation of custody fights to gain leverage in negotiations over financial issues;
- Assertions that the abusive individual is actually the victim in the case;
- Initiating retaliatory litigation against the abused person or others who support the abused person;
- Enlisting the aid of parents’ rights groups to verbally harass the abused person (and sometimes the courts) into compliance with demands; and
- Using any evidence of the effects of the abuse as evidence that the abused person is an unfit parent.

Some behaviors on this list are also examples of how perpetrators exert control over the victim through court processes or through “litigation abuse.” If judges or courts do not address intimidation and abusive tactics as they are occurring in court, victims are more likely to return to the abusive relationship and lose trust in the court system. Victims may perceive the court as allowing and permitting such abusive behavior, which contributes to victims’ distrust in the system and to perpetrators’ opportunities to commit domestic violence.

Judges also need to be mindful of abusers’ ability to manipulate the court system and make every effort to prevent perpetrators from using the court system as a mechanism of control or abuse. This requires coordination and communication between civil and criminal courts if there are multiple types for one family case.

The Colorado Benchbook suggests that courts implement the following practices to address the victims’ fears and perceptions of the court system:

- Craft consistent orders in all court proceedings;
- Craft orders that hold the abuser accountable for the abuse;
- Craft specific, readily-enforceable orders tailored to address the abused person’s safety concerns;
- Maintain the confidentiality of information in court documents that would identify the abused person’s whereabouts if that person is in hiding from the abuser;
- Provide clear information about court proceedings to unrepresented parties;
- Provide domestic violence training for court personnel;
- Provide for expedited proceedings in cases involving domestic violence; and
- Work with other units of the court system and with social service agencies to develop a clear, coordinated policy for situations involving domestic violence.

## Courtroom Safety

Court proceedings often result in periods of separation for the parties in domestic violence cases, and these periods have a high potential for violence. Aside from recognizing signs of domestic violence in the courtroom, there are concrete steps that judges and courtroom staff can take to mitigate the potential danger for victims and others inside the courthouse. The two most common suggestions in the resources reviewed are case coordination and minimizing the potential for contact between parties at the courthouse. For some jurisdictions, specialized dockets allow judges and courtroom staff to be aware of and prepared for domestic violence cases. However, a case on a domestic violence docket may not be the only case between the two parties, and judges need to be aware of any proceedings or orders issued from other courts. This minimizes the chances for conflicting orders that confuse victims, abusers, and law enforcement.

Courts can also take steps in the actual space and operations of the courthouse to increase victim safety.

Table 5

Steps to Increase Safety During Injunction Hearings from the Wisconsin Benchcard on Safety Issues at Injunction	
Before...	<ul style="list-style-type: none"> <li>- Consider a specialized entrance for petitioners which respondents cannot access;</li> <li>- Provide security check points for all parties including weapons screening;</li> <li>- Consider a security escort for petitioner to and from courtroom. If not possible in all cases, provide in cases of highest threat as identified by petitioner and/or advocate;</li> <li>- Have court security present before hearing to interrupt any contact between petitioner and respondent. Remind all parties contact is a violation of the law;</li> <li>- Keep parties separate before each hearing, preferably in different locations;</li> <li>- Notify security as to expectations for behavior and when to make an arrest for violation of the temporary restraining order, and make sure all parties are aware;</li> <li>- Allow the petitioner to have someone accompany him or her for support; and</li> <li>- Provide information to petitioner and/or advocate at time of issuance of the temporary restraining order as to what security measures are possible and how to obtain them in your county.</li> </ul>
During...	<ul style="list-style-type: none"> <li>- Provide seating arrangements to keep petitioner and respondent separated in the courtroom. For example, have court security between parties during the hearing;</li> <li>- Seat petitioner and respondent such that respondent cannot make any eye contact with petitioner to minimize being stared at or intimidated by the respondent;</li> <li>- Take control of courtroom behavior. Stop tactics such as asking irrelevant questions on cross, interrupting petitioner during testimony, accusing petitioner of behaviors irrelevant to hearing, begging petitioner to return to respondent or their child(ren), asking if petitioner still loves respondent, or revealing petitioner’s private information;</li> <li>- Do not allow respondent to ask for petitioner’s address or allow petitioner to provide;</li> <li>- Educate petitioner to look at the judge or court commissioner while testifying; and</li> <li>- Impress upon the parties that there are legal penalties for violation of the temporary restraining order or injunction, whether those violations happen within the court or outside of the courtroom.</li> </ul>
After...	<ul style="list-style-type: none"> <li>- Stagger departures, with victim leaving first. Escort victim to vehicle in high-risk cases;</li> <li>- Have respondent, their family, and friends wait at least 15 minutes after hearing; and</li> <li>- Monitor respondent while he/she is waiting; inform respondent when he/she can leave.</li> </ul>

## OTHER CONSIDERATIONS

### Impact on children

Adult victims of domestic violence are rarely, if ever, the only victims who suffer in an abusive relationship. Children of an abuser are also victims and can face many challenges as a result of experiencing or witnessing domestic violence in the home. Some states' domestic violence benchbooks provide a thorough discussion of this issue and address the range of physical, emotional, cognitive, behavioral, developmental, academic, and subsequent adult behavioral consequences of being raised in a violent home, along with examples of how to build children's resiliency. Although these resources list the many negative consequences domestic violence can have on children, they also caution that courts should only remove children from homes as a last resort. Judges are encouraged to conduct thorough assessments of the impact of domestic violence on children.

The Georgia Domestic Violence Benchbook discusses possible custodial and visitation arrangements and what considerations are necessary for each situation. The benchbook discourages weeknight visits because of the increased level of coordination necessary to arrange these visits—especially if visits are unsupervised. It then offers a sample safety parenting plan judges can use that covers a range of topics, from visitation hours to responsibility for day-to-day or major decisions.

### Custody and Visitation

Another common topic is how domestic violence can or should factor into custody and visitation decisions. Many resources specifically explore the “best interest” consideration as defined by their respective states. Several resources also point out that domestic violence often complicates custody and visitation arrangements, because visits often require victims and abusers to interact and children can become the vehicle for the abuser to assert control over an adult victim.

### Firearms

Not surprisingly, access to firearms is the greatest lethality factor in domestic violence cases. Use of firearms in domestic violence assault cases is common; in 2008, 51% of all intimate partner homicides in the U.S. involved the use of a firearm<sup>3</sup>. Despite these statistics, discussion of judicial practices for firearms removal remains minimal. Most resources reviewed include a discussion of relevant federal and state laws. However, few delve further into the topic and offer concrete practice recommendations for the removal of firearms.

Recognizing the importance of this issue, Oregon has a separate guide for judges on how to handle firearms in domestic violence cases. In addition, the Oregon Firearms and Domestic Violence Task Force saw a lack in guidance in local laws on how to handle firearm surrender procedures, and created a short model protocol in 2011 that can be replicated by any county (see Appendix D).

Similarly, in Texas, the 388th Judicial District's Domestic Violence Firearms Surrender Protocols Project Advisory Committee created the Firearms Replication Manual in 2011. The manual is intended to be a

<sup>3</sup> U.S. Department of Justice, Bureau of Justice Statistics, Homicide Trends in the U.S.; “Intimate Homicide” (visited August 14, 2013), available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2221>

resource for courts hearing domestic violence cases to ensure the safe surrender and return of firearms. According to the committee, there are six key elements to a firearms surrender protocols project: 1) judicial leadership, 2) setting common goals, 3) collaboration and coordination, 4) personnel and resources, 5) research and evaluation, and 6) training. The manual then discusses specific steps to be taken regarding each of these elements. Some of these include developing memoranda of understanding to formalize roles and responsibilities, identify key staff, and maintain funding.

The Pennsylvania Domestic Violence Benchbook offers several “emerging practices” related to firearms for judges to consider incorporating into their own practices.\*

- Ask, order, and enforce
  - Be aware of federal and local laws around weapons surrender;
  - Ask a plaintiff if defendant possesses weapons at the temporary order stage;
  - Ask defendant if defendant possesses weapons at the final hearing;
  - Craft an order that removes weapons from offenders; and
  - Strictly enforce order.
- Provide advisory warnings for defendants
  - Warn verbally and in writing; and
  - Inform the defendant that failure to provide notice will not prevent prosecution.
- Refuse to allow friends/family to act as weapons repository
- Implement a firearms returns procedure
  - Schedule a hearing;
  - Notify the Protection from Abuse plaintiff in advance of the hearing so that the victim can decide whether to oppose the weapons return;
  - Direct that a county official, either the district attorney or sheriff, complete the appropriate background checks; and
  - Determine, at the hearing, whether the respondent/defendant is subject to other state or federal disabilities before permitting the return of firearms.
- Prioritize victim and community protection
  - Recognize that failure to seize firearms and other deadly weapons from offenders or returning weapons without ensuring safety can endanger victims, children, law enforcement officers, court staff, and judges.

*\* This material was adapted from the Pennsylvania Domestic Violence Benchbook, published by the Pennsylvania Coalition Against Domestic Violence.*

## Orders of Protection<sup>4</sup>

Orders of Protection are one of the most heavily used legal remedies by victims of domestic violence. Some states and organizations even have benchbooks devoted solely to Order of Protection proceedings and to the issue of the full faith and credit. Key points include:

- Mutual orders should never be allowed;
- Orders should keep petitioner’s address confidential if requested;
- Judges should always ask petitioners to appear if a request for modification or termination is made to ensure that he/she is not being intimidated; and
- Courts should have clear protocols for distributing orders to law enforcement officials.

4 “Orders of Protection” is used in this memo to refer to all civil or criminal protective orders

## Lethality Assessments

When hearing domestic violence cases, judges need to be especially attuned to factors that indicate an increased risk for lethality. Lethality assessments and risk assessments are often conflated, but the two are distinct. Lethality assessments evaluate the risk for death or homicide, while risk assessments look for signs of increased chances that the perpetrator will be violent again.

Many of the resources encourage judges to refer to both assessments, and emphasize the need for judges to familiarize themselves with common lethality factors. Common lethality factors are:

- Prior physical abuse/serious injury
- Increasing frequency or severity of physical abuse/injury
- Increasing abusive behavior in public settings
- Threats to kill
- Strangulation
- Stalking
- Sexual assault
- Recent separation
- Access to firearms/weapons
- Prior use of weapons during an assault
- Extreme jealousy and possessiveness over victims
- Prior arrests for intimate partner violence
- Substance abuse issues
- Psychiatric or mental illnesses
- Pending or current divorce or custody issues
- Presence of step-children
- Unemployment

The Colorado and Ohio benchbooks discuss pregnancy as a risk factor, because the leading cause of death among pregnant women is homicide. According to one benchbook, abusers are more likely to re-offend if 1) the victim is pregnant at the time of the offense; 2) the victim is pregnant and offender has previously abused her during pregnancy; or 3) the batterer believes the baby is not his (regardless of the reality).

Unlike many other resources, the Pennsylvania Domestic Violence Benchbook discourages judges from relying on lethality assessments, because they have not been shown to have high predictive power. Instead, the benchbook suggests that judges should defer to victim accounts of what the perpetrator will do, and treat all promises as credible threats.

Examples of risk and lethality assessment checklists and tools appear in Appendix B.

## Judge-Specific materials

In addition to the dynamics of domestic violence, some of the resources include a discussion of issues unique to judges. These issues include the intended goals of judicial intervention in domestic violence cases, ethical concerns, and steps judges can take to educate themselves about domestic violence.

A commonly discussed issue is the concern some judges may have that taking a stance against domestic violence is contradictory to the neutrality of the judicial role. Two benchbooks cite the Code of Judicial Conduct and indicate that reducing the barriers in the judicial system for domestic violence victims is part of judges' administrative responsibilities.

Other resources go further and call on judges to become leaders in the fight against domestic violence. Specifically, these resources articulate that judges are already in leadership positions within the legal community and should use their authority to encourage coordination among courts, prosecutors' offices, and advocacy organizations. Another benchbook states that judges are in the best position to lead, organize, and direct a coordinating council that would streamline the court process for domestic violence cases. All the resources that address this issue also emphasize the need for judges to provide appropriate responses to domestic violence. Anything else would suggest to victims that there is no real protection or justice for them.

The Ohio Domestic Violence Benchbook defines goals of judicial intervention as:

- A just result;
- Safety for the victim;
- Offender accountability; and
- Elimination of recidivism.

Some resources offer judges a script or checklist of what needs to be done and said during an Order of Protection proceeding. Scripts and checklists serve two purposes: 1) ensuring consistency throughout proceedings; and 2) ensuring that judges ask, say, and do everything necessary during court proceedings. Consistency and thoroughness in court interventions are critical to offender accountability and victim safety. New judges can benefit from scripts as they become more familiar with domestic violence dynamics and proceedings. Scripts and checklists can also serve as a helpful reference or tool for more experienced judges to reflect on their practices and make changes if necessary.

To address this ethical concern, the Alabama Domestic Violence Benchbook states that “[a]ll crimes are unacceptable and part of a judge’s role is to communicate this message to the community; therefore there is no inherent conflict between the role of a judge as a neutral arbiter and the role of a judge in opposing domestic violence.”

## RECOMMENDED PRACTICES

Although all of the reviewed resources are helpful, the five most frequently cited state benchbooks are from Michigan, Ohio, Tennessee, Washington<sup>5</sup>, and New Mexico. The materials and discussions of domestic violence dynamics in these benchbooks are thorough and adaptable for any jurisdiction. The American Judges' Association's "Domestic Violence & the Courtroom: Understanding the Problem... Knowing the Victim," is another frequently referenced judicial resource.

### Benchcards/Checklists

Most judges will not have the time to review hundreds of pages of information as they are hearing a case. In addition to lengthy benchbooks or manuals, courts can benefit from shorter bench cards or checklists.

Several resources include a copy of the Judicial Checklist from the American Bar Association's Commission on Domestic & Sexual Violence. The checklist contains a general discussion of domestic violence dynamics, along with a short discussion of federal laws. State-specific bench cards often include state statutes and rules as well.

When thinking about creating checklists or bench cards, topics that lend themselves to this format are:

- Signs of domestic violence in the courtroom (victim and perpetrator behaviors)
- Abusive tactics
- Lethality factors
- Custody/visitation issues
- Topics to address in an Order of Protection
- Protection order hearing steps

One particularly useful resource is a checklist titled "50 Things A Judge Can Do About Domestic Violence" (see Appendix C). The steps outlined in this checklist can take place inside or outside of the courtroom. There are three themes throughout the list: 1) education, 2) coordinated response, and 3) safety. The author, a former domestic relations court judge, calls on judges to educate themselves in the dynamics of domestic violence and judicial interventions in domestic violence cases. He urges judges to learn from and connect with community members ranging from shelters to state legislators to discuss domestic violence. Finally, he suggests steps judges can take to promote victim safety, such as ensuring that law enforcement officers remove all weapons from a defendant's possession or control.

The Virginia Domestic & Sexual Violence Reference Manual for District Court Judges includes notes and summaries of panels and presentations from the Annual Juvenile and Domestic Relation District Court Judges Family Violence Discussion Group. All of the topics at these conferences were chosen based on expressed interest from judges, and ranged from protective orders for juveniles to violations of protective orders.

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5 When discussing dynamics of domestic violence, resources also frequently cite to "Domestic Violence: The What, Why, and Who, As Relevant to Criminal and Civil Court Domestic Violence Cases," by Anne Ganley in the Washington Domestic Violence Manual.

## Potential Unintended Consequences of Court Intervention

Court interventions can be positive opportunities for victims and families, but there is a possibility that court interventions in domestic violence cases can have unintended negative consequences for the victim. For example, many abusers exert financial control over their victims by not allowing them to be employed. If an abuser loses his job due to a criminal conviction or incarceration, then the victim and children may also lose their only source of income and access to benefits.

Unintended consequences are not a reason to ignore domestic violence or avoid court intervention, but they serve as a reminder that courts should be mindful of these possibilities when hearing domestic violence cases.

The Colorado benchbook lists the following as possible consequences of court intervention:

- Loss of employment for the perpetrator and/or victim;
- Loss of housing;
- Loss of support of a religious community;
- Loss of support of family and friends; and
- Social stigma/shame.

## Intimate partner sexual assault

Many of the resources reviewed discuss sexual assault as a lethality factor or abusive tactic for judges to consider in court proceedings. Unfortunately, the myth that sexual assault cannot occur in an intimate or marital relationship still exists. As a result, some jurisdictions also have resources devoted specifically to sexual assault cases. Few resources, however, discuss the unique dynamics of sexual assault in the context of a domestic violence case. According to Illinois’s Model Protocol, there are three general categories of intimate partner sexual assault:

1. Those who abuse and sexually assault their partners;
2. Those who do not batter otherwise in the relationship, but use only enough physical or emotional force necessary to rape; and
3. Those who are sadistic and obsessive, frequently use porn, and often force painful, deviant, or unusual sexual acts.

Understanding the dynamics of intimate partner sexual assault is important not only because of its prevalence, but because sexual assault can greatly increase the risk of lethality in an intimate partner relationship. Intimate partner sexual assault can also have a severe psychological impact on victims.

Examples of such impacts are:

- Anxiety
- Depression
- Lack of sleep
- Eating disorders
- Lack of interest in sex
- Fear of men
- Other social problems
- Substance abuse to self-medicate
- Suicidal ideation
- Post-traumatic stress disorder

If judges are aware of intimate partner sexual assault and the potential negative impact it can have on victims, they can shape court interventions to address the victim’s needs.

Wisconsin’s Sexual Assault Bench Card lists the following as dynamics of sexual assault in a domestic abuse context:

- Delayed reporting of sexual assault is common;
- Many victims do not physically resist the assault;
- Many victims will have an incomplete memory of the assault;
- Very few sexual assaults involve the use of a weapon by the perpetrator; and
- Very few victims of sexual assault sustain any visible physical injury to the vagina.

## Cyber Stalking

Stalking is an example of an abusive tactic and lethality factor in domestic violence cases. It is defined as willful, repeated harassment, and is most commonly associated with physically following or constantly calling and harassing another individual. Abusers are often jealous and dependent individuals who will stalk or closely monitor their victims to exert control and manipulate.

An increasing number of abusers are using the internet as a means of harassment. For example, abusers may use e-mail to constantly harass victims or even post a victim’s private information online to encourage third party harassment. Although cyber stalking usually does not involve any direct physical contact, these methods are no less intimidating or upsetting to victims than traditional methods of stalking. Furthermore, abusers’ presence in the “cyber” realm does not change their intention to intimidate and manipulate victims. As a result, in some states cyber stalking is distinct from traditional stalking; other states interpret their stalking statute to encompass cyber stalking. In domestic violence cases, recognizing the potential for cyber stalking and taking steps to address it is critical to victim safety. Judges and courts can address cyber stalking by asking about internet behavior and including specific provisions in protective orders.

## CONCLUSION

Judicial education regarding the dynamics of domestic violence is critical to promoting offender accountability and victim safety. In many states, judges are required to attend annual or semi-annual trainings in domestic violence. While these are valuable, domestic violence-specific resources such as benchbooks, bench cards, and manuals are helpful tools that judges can use and refer to at their convenience. In particular, these resources provide judges with the necessary knowledge and tools to better determine and assess the context of domestic violence cases.

### ATTACHMENTS

Appendix A – “Common Themes of Domestic Violence Dynamics and/or Practice-Focused Resources”

Appendix B – Examples of risk and lethality assessment tools and checklists

Appendix C – “50 Things a Judge Can Do about Domestic Violence Today” by Judge Mike Brigner and Kerry Hyatt Bloomquist

Appendix D – Oregon’s “Model Domestic Violence Firearm Surrender Protocol”

## TECHNICAL ASSISTANCE

The winner of the Peter F. Drucker Award for Non-profit Innovation, The Center for Court Innovation is a unique public-private partnership that promotes new thinking about how the justice system can solve difficult problems like addiction, quality-of-life crime, domestic violence, and child neglect. The Center functions as the New York State court system's research and development arm, creating demonstration projects that test new approaches to problems that have resisted conventional solutions.

Nationally, the Center disseminates the lessons learned from its experiments in New York, helping court reformers across the country launch their own problem-solving innovations. The Center contributes to the national conversation about justice through original research, books, monographs, and roundtable conversations that bring together leading academics and practitioners. The Center also provides hand-on technical assistance, advising innovators across the country and around the world about program and technology design.

Domestic violence experts from the Center can guide communities through the planning and implementation of a domestic violence court and to equip planners with skills and knowledge to ensure the ongoing effectiveness of the court. The Center is dedicated to offering assistance that is responsive to the needs, resources, and challenges of individual jurisdictions.

With support from the Office on Violence Against Women, the Center is able to provide a variety of technical assistance services, including:

- Assistance building successful, multi-disciplinary planning teams;
- Intensive, on-site work with individual domestic violence courts in all stages of planning and implementation;
- Practitioner-to-practitioner guidance, in which Center staff, drawing on their extensive hands-on experience creating and running domestic violence courts, help other jurisdictions to learn from each other;
- Site visits to domestic violence courts (including Office on Violence Against Women-designated mentor courts);
- Guidance with creating strong judicial compliance reviews, promoting victim safety, and developing effective partnerships with other agencies; and
- Model documents, assessment and evaluation tools, and publications of special interest to a domestic violence court audience both nationally and internationally.

To request assistance, please contact Liberty Aldrich at [aldrichl@courtinnovation.org](mailto:aldrichl@courtinnovation.org).

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## APPENDIX A

COMMON THEMES IN DOMESTIC VIOLENCE DYNAMICS AND PRACTICE FOCUSED RESOURCES		
THEME	ISSUES	JURISDICTIONS
Definition of DV	Behavioral vs. legal definitions Coercion/Power+Control	17
Types of DV	Coercive Situational Violent-resistance Separation-instigated Illness-based	5
Causes of DV	Learned (environment) Opportunity Choice NOT illness, drugs/alcohol, anger, stress	14
Victim Behaviors/ Responses	Shock Trauma Minimization Survival tactics Denial Obstacles to leaving Supporting abuser Fear for children Isolation	23
Perpetrator Personality	Dependency/jealousy Entitlement over women Jekyll and Hyde Refusal to accept responsibility Minimizing/denying violence Blaming victim for violence Controlling	19

Types of Abuse/Abusive tactics	Physical Emotional Verbal Psychological Financial Sexual Legal/litigation	16
Abusive behaviors in the courtroom	Staring Family members in the audience Claims of love for victim Delaying court proceedings	10
Impact on Children	Emotional Physical Psychological Developmental	16
Custody/Visitation	Safety concerns Abusive tactic Visitation orders	7
Risk or Lethality Factors/ Assessments	Checklists Sample assessments	19
Courtroom Safety/ Management	Waiting areas Dockets Continuances Trained court officers Seating arrangements	10
Orders of Protection	Modification Language Contents Mutual orders Enforcement	17
Victim reluctance/non-cooperation in criminal cases	Survival Abuser's manipulation Ways to encourage cooperation	11

Firearms	Federal and state laws What crimes constitute misdemeanor DV Lethality	17
Judicial information	Goal of judicial process Ethical considerations Judges' roles and responsibilities Coordinated Community Response	11
Special populations	Immigrants/non-citizen	11
	LEP	5
	Elders	6
	Disabilities	5
	LGBTQ	5
	Teen	1
	Rural	2
	Tribal	4

## APPENDIX B

### DOMESTIC VIOLENCE RISK ASSESSMENT BENCH GUIDE

*A research-based bench guide for use by Minnesota judges at all stages of family, Order for Protection, civil or criminal involving domestic violence*

Note: The presence of these factors can indicate elevated risk of serious injury or lethality. The absence of these factors is not, however, evidence of the absence of risk of lethality.

1. Does alleged perpetrator have access to a firearm, or is there a firearm in the home?
2. Has the alleged perpetrator ever used or threatened to use a weapon against the victim?
3. Has alleged perpetrator ever attempted to strangle or choke the victim?
4. Has alleged perpetrator ever threatened to or tried to kill the victim?
5. Has the physical violence increased in frequency or severity over the past year?
6. Has alleged perpetrator forced the victim to have sex?
7. Does alleged perpetrator try to control most or all of victim's daily activities?
8. Is alleged perpetrator constantly or violently jealous?
9. Has alleged perpetrator ever threatened or tried to commit suicide?
10. Does the victim believe that the alleged perpetrator will re-assault or attempt to kill the victim?  
*A "no" answer does not indicate a low level of risk, but a "yes" answer is very significant*
11. Are there any pending or prior Orders for Protection, criminal or civil cases involving this alleged perpetrator?

These risk assessment factors are validated by a number of studies. See Campbell, Jacquelyn, et al., "Intimate Partner Violence Risk Assessment Validation Study: The RAVE Study Practitioner Summary and Recommendations: Validation of Tools for Assessing Risk from Violent Intimate Partners", National Institute of Justice (December, 2005); Heckert and Gondolf, "Battered Women's Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault", Journal of Interpersonal Violence Vol 19, No 7 (July 2004).

Produced by the Gender Fairness Implementation Committee; 2009

## HOW TO USE THE DOMESTIC VIOLENCE RISK ASSESSMENT BENCH GUIDE

### **Obtain information regarding these factors through all appropriate and available sources**

- Potential sources include police, victim witness staff, prosecutors, defense attorneys, court administrators, bail evaluators, pre-sentence investigators, probation, custody evaluators, parties and attorneys

### **Communicate to practitioners that you expect that complete and timely information on these factors will be provided to the court**

- This ensures that risk information is both sought for and provided to the court at each stage of the process and that risk assessment processes are institutionalized
- Review report forms and practices of others in the legal system to ensure that the risk assessment is as comprehensive as possible

### **Expect consistent and coordinated responses to domestic violence**

- Communities whose practitioners enforce court orders, work in concert to hold alleged perpetrators accountable and provide support to victims are the most successful in preventing serious injuries and domestic homicides

### **Do not elicit safety or risk information from victims in open court**

- Safety concerns can affect the victim's ability to provide accurate information in open court
- Soliciting information from victims in a private setting (by someone other than the judge) improves the accuracy of information and also serves as an opportunity to provide information and resources to the victim

### **Provide victims information on risk assessment factors and the option of consulting with confidential advocates**

- Information and access to advocates improves victim safety and the quality of victims' risk assessments and, as a result, the court's own risk assessments

### **Note that this list of risk factors is not exclusive**

- The listed factors are the ones most commonly present when the risk of serious harm or death exists
- Additional factors exist which assist in prediction of re-assault
- Victims may face and fear other risks such as homelessness, poverty, criminal charges, loss of children or family supports

### **Remember that the level and type of risk can change over time**

- The most dangerous time period is the days to months after the alleged perpetrator discovers that the victim
  - might attempt to separate from the alleged perpetrator or to terminate the relationship
  - has disclosed or is attempting to disclose the abuse to others, especially in the legal system

## LETHALITY ASSESSMENT: FACTORS TO CONSIDER

1. Perpetrator's access to the victim
2. Pattern of the perpetrator's abuse
  - Frequency/severity/escalation of the abuse in current, concurrent, past relationships
  - Use of weapons and use of dangerous acts
  - Threats to kill adult victim, children, self
  - Imprisonment, hostage taking, stalking
3. Perpetrator's state of mind
  - Obsession with victim, jealousy
  - Ignoring negative consequences of their abusive behavior
  - Depression/desperation
4. Individual factors that reduce behavioral controls of either adult victims to protect themselves or perpetrators to monitor consequences
  - Substance abuse
  - Certain medications
  - Psychosis
  - Brain damage
5. Suicidality of victim, children, or perpetrator
6. Adult victims' use of physical force
7. Children's use of violence
8. Situational factors
  - Separation violence/victim autonomy
  - Presence of other stresses
9. Past failures of systems to respond appropriately

## LETHALITY FACTOR CHECKLIST

*Lethality factors should be used as guidance in the determination of dangerousness in individual cases. No individual factor is necessarily to be given greater "weight" any one factor may or may not be indicative of high lethality.*

### A. Severity of Violence

- serious injury
- threats to kill
- use of weapons
- threats with weapons
- strangulation / choking of victim
- sexual assault / abuse
- abuse of animals
- sadistic / terrorist / hostage acts
- abuse during pregnancy
- property damage to intimidate or control
- forcible entry to gain access to victim
- repeated / escalating violence

### B. Child Engagement

- child abuse
- violence in presence of child(ren)
- threats to abduct child
- threats to harm child

### C. Centrality of Victim to Defendant

- obsessive behavior (phone harassment, monitoring, wiretapping)
- stalking
- ownership (sees victim as property)
- isolation of victim (social/physical/financial)

### D. Anti-Social Behavior

- assaults on others
- violence or threats in public
- threats/harassment of victim's family/friends

### E. Failed Community Control of Defendant

- violated protection/restraining orders
- violated Probation/Community Control
- prior batterer intervention/treatment

### F. Defendant Criminal History

- numerous police calls
- prior arrests for domestic violence
- prior charges for domestic violence
- prior convictions for domestic violence
- charges are pending
- other criminal history

### G. Psychological Indicators of Defendant

- suicidal threats
- extreme life stressors (job loss, death in family)
- hospitalized and/or treated for depression
- hospitalized and/or treated for other mental illness

### H. Other Danger Indicators

- victim is separating, or recently separated, from partner
- defendant has access to weapons
- defendant has weapons training
- defendant abuses alcohol/drugs
- parties have intimate/romantic relationship
- defendant interferes with victim's access to emergency services (pulled phone from wall, etc.)
- other unusual behavior of defendant

## APPENDIX C

### 50 THINGS A JUDGE CAN DO ABOUT DOMESTIC VIOLENCE TODAY

1. Arrange a personal site visit to a domestic violence shelter.
2. Prepare a plain language form motion for victims without lawyers to apply for protection orders. (In areas with mandated forms, provide assistance to victims in crisis filling them out)
3. Arrange for brochures from your local domestic violence service agency to be placed in all women's restrooms in the court building.
4. Find out *exactly* what your court staff tells domestic violence victims who ask for help from your court.
5. Find out *exactly* what your court clerk tells domestic violence victims who ask for help from your court.
6. Read "What Therapists May See That Judges May Miss," *The Judges' Journal*, (ABA) Spring, 1988.
7. Ask your prosecutor whether domestic violence cases are being prosecuted regardless of whether the victim wishes to proceed.
8. Compare the number of domestic violence *arrests* in your jurisdiction with the number of protection order applications.
9. Order a copy of "The Impact of Domestic Violence on Children" from the American Bar Association, (312) 988-6077.
10. Organize a group to write a protocol for your community on the preferred procedure for handling domestic violence cases from the police call through final disposition of the case.
11. Ask the head of the local domestic violence agency to tell you the best and the worst things victims describe about your court.
12. Ask a newspaper editor to spend an hour in your court during a domestic violence hearing docket.
13. Ask your jail whether complainants are *notified* by phone when a defendant charged with domestic violence is released.
14. Prepare a domestic violence lethality assessment checklist for your use.
15. Decide how you will use the information revealed by your domestic violence lethality assessments.
16. See if the standard amount of bond which domestic violence defendants can post for release from jail before arraignment satisfies your judicial assessment of the *danger* posed by them.
17. See if the law of your jurisdiction allows holding individuals arrested for domestic violence until a *personal appearance* before a judicial officer.
18. Establish a domestic violence *death review committee*.

19. Arrange for one speaking engagement to describe the role of your court in handling domestic violence cases in your community.
20. Find out how many domestic violence police calls in your community last year resulted in the arrest of both parties.
21. Ask law enforcement officials to assign *high priority* to the personal service of all domestic violence protection orders issued by your court.
22. Order a copy of "Domestic Violence & The Courtroom, Understanding The Problem. ..Knowing the Victim," from the American Judges Foundation, (804) 259-1841.
23. Pull your court's files on every case in the past year which you can identify as involving a *domestic violence death*, and review them for ideas on court and community practices.
24. Try to persuade every judicial officer in your community to attend one seminar on the dynamics of domestic violence.
25. Find out whether domestic violence convictions and protection orders are being properly reported to law enforcement agencies for handgun purchase disqualification.
26. Write an article for a local newspaper on domestic violence protection orders.
27. Post in your courthouse the National Domestic Violence Hotline number, 1-800-799-SAFE.
28. Organize a domestic violence coordinating council for your community.
29. *Persuade* your local bar association and legal services agencies to arrange legal representation for domestic violence victims seeking protection orders.
30. Read "Not in My County, Excerpts from a Report on Rural Courts and Victims of Domestic Violence," *The Judges' Journal*, (ABA) Summer, 1992.
31. Make sure law enforcement officers who serve protection orders remove all *weapons* from the defendant's possession or control.
32. Prepare a victim information packet to explain procedures for obtaining help in escaping domestic violence.
33. Order a copy of "The Courts' Response to Domestic Violence' from the National Association for Court Management, (757) 259-1841.
34. Make sure law enforcement officers who remove domestic violence defendants from victims' homes take all keys and garage door openers from the defendant.
35. Establish a visitation center that can *protect children* by supervising visitation periods and by supervising the physical exchange of children.
36. Ask about your court's *security precautions* for domestic violence cases.
37. Assign someone on your staff to call all domestic violence victims who fail to appear for a hearing.
38. Find out whether batterer's counseling services in your community *report all threats* made by defendants to harm victims.

39. Visit this website: <http://www.ncirs.org>.
40. Make sure domestic violence information is provided as part of any courtordered parenting classes in your community.
41. Request that a local radio or television station produce a public service announcement on how to obtain a domestic violence protection order.
42. Prepare standardized domestic violence *forms* for use in your court.
43. Prepare *instructions* to help unrepresented parties understand the standardized domestic violence forms.
44. Have lunch with a state legislator concerning domestic violence issues in your court.
45. Order a copy of `Family Violence: A Model State Code` from the National Council of Juvenile & Family Court Judges, (702) 784-4463.
46. Establish a court website which includes domestic violence laws, procedures, forms, and instructions, such as Seattle's website, <http://www.pan.ci.seattle.wa.us/seattle/courts/dvweb.htm>.
47. Assign a court employee to assist unrepresented parties apply for protection orders.
48. *Require* pre-sentence investigations to include a lethality assessment.
49. Investigate Department of Justice Violence Against Women Act grant funding for domestic violence projects, (202) 307-6026.
50. Make information available at the courthouse concerning state crime victim compensation funds.

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## APPENDIX D

### MODEL DOMESTIC VIOLENCE FIREARM SURRENDER PROTOCOLS

The statewide Firearms and Domestic Violence Task Force has developed model surrender procedures for use with courts orders that prohibit defendants or respondents from possessing firearms. These are suggestions. Each county should bring judges, court staff, law enforcement, prosecutors, and others together to adapt procedures for local use.

#### Need For the Protocol

No Oregon statute sets out how firearms should be removed from persons after a judge has ordered that the person is prohibited from possessing firearms. These procedures offer one approach.

#### Application of this Protocol – Nexus

These procedures may be used in domestic violence cases or other cases in which: 1) a court order prohibits possession of firearms, and 2) a nexus exists between the incident and firearms. To target the most serious situations without unduly burdening law enforcement, a nexus exists when Defendant/Respondent used, attempted to use or threatened to use a firearm against Victim/Petitioner in the case before the court, or Defendant/Respondent has a history of firearm use against any Victim/Petitioner. Cases in which firearm prohibitions may be ordered include Family Abuse Prevention Act Orders (FAPA restraining orders), Stalking Orders, Elderly Persons and Persons with Disabilities Abuse Prevention Act Orders (EPPDAPA restraining orders), conditions in Conditional/Security Release Agreements, and sentence judgments in criminal cases (including conditions of probation).

#### Affected Agencies

Persons and agencies involved in implementing these procedures:

- Judges will issue orders.
- Court staff will prepare orders, file orders and notify law enforcement.
- Law enforcement will serve orders, receive and store firearms, return firearms when appropriate, and run background checks on defendants/respondents when necessary.
- District attorneys will negotiate surrender of firearms in plea negotiations and/or recommend firearms surrender at release hearings and at sentencing and may initiate prosecution when Defendants/Respondents fail to comply with court orders.
- Victims' assistance staff and victim advocates will work with victims.
- Public defenders and defense counsel will advise their clients regarding surrender orders and procedures.
- Community Corrections staff will help implement the orders.

## Methodology

These procedures rely on various forms to notify law enforcement of court ordered surrender, to give notice to Defendants/Respondents, to designate where and when Defendant/Respondents must surrender firearms, to explain how to return surrendered firearms, and to ensure court surrender orders are followed.

This procedure has two parts: one for courts and one for law enforcement.

## Court Protocol

1. If a court order prohibits Defendant/Respondent from possessing firearms, a judge should determine whether to order surrender of firearms.
2. Surrender of firearms may be ordered when a nexus exists between the current incident and firearms: when the court finds that Defendant/Respondent used, attempted to use or threatened to use a firearm against Victim/Petitioner in the case before the court, or Defendant/Respondent has a history of firearm use against any Victim/Petitioner.\* To order surrender, the judge should sign a Firearms Order of Surrender.
3. The judge or court staff will fill in a compliance hearing date and time on page one of the Firearms Order and give a copy to Defendant/Respondent in the courtroom if Defendant/Respondent is in court at the time the Order is signed. If Defendant/Respondent is not in court, the court shall order service of the Order on Defendant/Respondent and ensure that a copy of the Order is delivered to law enforcement for service. A compliance hearing is not necessary if, prior to the compliance hearing: 1) Defendant/Respondent signs and files with the Court a Firearms Affidavit of Non-Possession, or 2) Defendant/Respondent transfers all firearms to a third party and files an Affidavit of Third Party transfer with the Court. The Third Party also must sign and file an Affidavit of Third Party Transfer and follow procedures for the transfer, or 3) Defendant/Respondent files an Affidavit of Surrender with proof of surrender attached.
4. Jurisdictions should develop protocols to ensure compliance with surrender orders when Defendants/Respondents fail to appear for compliance hearings, including development of a charging policy for contempt of court or other sanctions.
5. Court will schedule a hearing on Defendant/Respondent's Motion for Return of Firearms. An Order to Return Firearms will issue only if Defendant/Respondent files, prior to or at a Return Hearing, a Background Check form that shows Defendant/Respondent is not disqualified from possessing firearms.

## Law Enforcement Protocol

1. Law enforcement will establish procedures to receive and store firearms surrendered pursuant to Court orders.
2. If the Court has not set a compliance hearing, law enforcement will issue a date for Defendant/Respondent to appear, write it on page one of the Firearms Order, and serve it on Defendant/Respondent. Law enforcement should use the next general out-of-custody arraignment date or other date specified by the court and notify the court of the appearance date. If Defendant/Respondent is in custody, jail staff should fill in the hearing date on the Order, serve the Order on Defendant/Respondent, and notify the court of the hearing date.
3. Law enforcement will receive firearms as ordered and give receipts or copies of evidence reports to Defendants/Respondents.
4. Law enforcement will conduct a background check on Defendant/Respondent before the Court issues an Order for Return of Firearms (for example, upon Defendant/Respondent's request after expiration or termination of a protective order). Law enforcement should forward a completed Background Check form to the Court.
5. If Defendant/Respondent wishes to transfer firearms to a third party rather than surrender them to law enforcement, the third party must submit to an ID Services background check. Defendant/Respondent and the third party must sign the Affidavit of Third Party Transfer and include the ID Services background check number on the affidavit.
6. Law enforcement will return firearms when a court order authorizes return, the Defendant/Respondent or third party may legally possess firearms, and the firearms are not needed for evidence. Law enforcement will conduct background checks on Defendants/Respondents before return of firearms. A third party must submit to an ID Services background check and provide the ID Services background check number as proof that he/she may legally possess firearms.

### NOTE:

\*Sheriffs and judges in each county should consider expanding the scope of the nexus if there is a finding of enhanced danger to Petitioner/Victim by Defendant/Respondent.