

Increasing Collaboration between Criminal and Civil Courts in Domestic Violence Cases

Best Practices for Increasing Access to Justice

by Rebecca Thomforde Hauser, Nida Abbasi,
Kathryn Ford

 Center
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Court
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Authors

Rebecca Thomforde Hauser

Nida Abbasi

Kathryn Ford

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« *In five years in the court system, I had 14 separate cases in seven different courtrooms before seven different judges. I am not only a victim of domestic violence, I am a victim of a court system that is confusing, unfriendly and dangerous to victims.*

– Orchid G., statement in support of the Constitutional amendment for New York State court reform

Why Does Coordination between Criminal and Civil Courts Matter?

Litigants involved in domestic violence cases often report being overwhelmed by the legal process. As evidenced by the quote above, when the same domestic violence incident gives rise to simultaneous cases in civil and criminal court, survivors may be shuffled around between multiple courtrooms and courthouses and be required to repeat their stories before several judges. Moreover, in addition to criminal matters and civil protective orders, additional legal issues may arise for families experiencing domestic violence including child custody and visitation, child support, child abuse and neglect, housing, employment, and public benefits.

In a study conducted by the National Center for State Courts of a sample of jurisdictions across the United States, only 68 out of 106 courts screened domestic violence cases for related cases, and only 37 courts applied what they learned to the design of civil protection orders, demonstrating that case screening and coordination are not standard practice in courts.¹ Multiple, uncoordinated proceedings may jeopardize the safety of a family, whether through a lack of information-

sharing, inefficient case scheduling, or conflicting judicial orders. Most importantly, a fractured court response may limit survivor voices by undermining their ability to make informed and voluntary decisions.

In order to support victim safety and meaningful accountability, court systems should work towards providing a holistic, coordinated response to domestic violence based on comprehensive information about all legal cases involving the parties before them. This fact sheet provides some considerations to work through as court planning teams address current practice and design new strategies for strengthening coordination.

What is Legally and Ethically Permissible in Your Jurisdiction?

In order to streamline the legal process in domestic violence cases, your jurisdiction may want to consider coordinating your civil and criminal domestic violence dockets. Some communities have adopted integrated approaches to hearing overlapping civil and criminal cases based on the *one judge, one family* principle, which prescribes that one judge oversee all domestic violence criminal and civil matters involving the same family, including criminal cases, custody, visitation, divorce, child support and protection orders.

The **New York Integrated Domestic Violence Court (IDV)** model was developed pursuant to §141 of the Rules of the Chief Administrator, which enables IDV court judges to review potential domestic violence cases and determine whether transferring the case to the IDV would promote the administration of justice.² New York IDV courts must adhere to strict record-sharing rules and preserve the integrity and distinct characteristics of each type of case or proceeding, including regarding information-sharing and burdens of proof. IDV court judges preserve defendants' right to due process by considering the merits of each case separately and deciding each based only on the evidence presented in that case and the standard of proof required in that proceeding. For example, IDV court judges might grant civil protective orders under a preponderance of the evidence standard, while dismissing the criminal case, which requires proof beyond a reasonable doubt.³ IDV court judges must justify their decisions on appeal based only on the record in that particular proceeding.

Other courts have developed a coordinated response to domestic violence criminal cases that facilitates collaboration between civil and criminal systems. This approach involves several interrelated components that ensure effective case management, including comprehensive case screening, information-sharing protocols to address potential conflicts, a designated resource coordinator to manage cases and monitor compliance, on-site victim and offender services, and ongoing community stakeholder involvement.

COORDINATED DOMESTIC VIOLENCE COURT



Winnebago County (Illinois) Domestic Violence Coordinated Court staff noticed that many litigants came to the courthouse for both civil and criminal cases arising from the same incident, which persistently created confusion for both the parties and court personnel. While searching for ways to improve their case management, the court decided to create a new role of Case Docket/Resource Coordinator to handle case docketing for orders of protection, information gathering and sharing between civil and criminal court, and monitoring of both non-probation compliance and civil compliance with abusive partner intervention programs. The coordinator also communicates with domestic violence advocates to monitor the docket.

If your court is considering implementing a domestic violence court or utilizing other practices to coordinate criminal and civil cases, keep in mind the following.

IMPLEMENTATION QUESTIONS

How is your court system currently structured? How are the following cases processed?

- Civil protective orders
- Child custody and visitation
- Child support
- Divorces and post decree
- Child protective issues

What are the legal rules in your state regarding criminal and civil jurisdiction? Is one judge allowed to hear both criminal and civil cases? Under what circumstances? What rules are in place to maintain due process?

What Practices Can Facilitate Informed Decision-Making?

Sharing information between judicial officers and courts is a vital component of ensuring a holistic and safe response to domestic violence, as is enabling criminal and civil judges to access prior litigant legal history, court decisions, and orders generated by the other courts. This allows judges to review the terms and conditions of probation and civil and criminal protective orders in order to assess the level of risk that is present and exercise more effective and informed judicial decision-making. It also helps to prevent the unintentional issuance of conflicting orders and/or omission of critical components of the order, which could not only compromise the safety of survivors and their families but also obscure offender accountability.

The court may wish to convene stakeholder meetings to discuss policies and practices impacting the court such as confidentiality of victim information, and to specifically engage agencies, such as victim and offender services. Some strategies that may help the court ensure adherence to confidentiality rules include redacting information from documents prior to sharing; training court staff on information-sharing policies; and engaging with technology to design a safe, streamlined, and reliable process for sharing information.

If your court is examining strategies to share information between criminal and civil courts, or between the court and other agencies, consider and discuss the following.

IMPLEMENTATION QUESTIONS

- What kinds of databases do the courts use?
- If your jurisdiction has multiple databases or case management systems, who is allowed to access them?
- What are your jurisdiction's statutes regarding sharing case information between courts?
- Are there mechanisms in place to limit the type of information shared?
- What kinds of information do criminal judges have at arraignment regarding open family or juvenile court cases involving the same litigants? Who provides that information?
- What kind of information do family or juvenile court judges have regarding open criminal court cases involving the same litigants? Who provides that information?
- What are your jurisdiction's ethical rules regarding confidentiality of court records and proceedings?

The **Indiana Commission on Judicial Qualifications** issued an advisory opinion that a judge who takes judicial notice of his or her own court's, or another court's, records pursuant to Indiana Rule of Evidence 201, complies with the Code of Judicial Conduct. A judge considering an emergency *ex parte* petition for a civil protection order may, without advance notice to the parties, review electronic court records to determine whether there are other cases (or orders) involving the protected person(s) or the person whose conduct is sought to be restrained. A judge presiding over a case on the record may also review and take judicial notice of court records. In both situations, the judge must notify the parties as soon as is practical and give them an opportunity to be heard on the propriety of judicial notice.⁴

Defense attorneys and civil legal services attorneys can also benefit from access to information about all of their clients' legal matters as well as training on legal skills that can be utilized in both the criminal and civil contexts. For example, while planning the Brooklyn Integrated Domestic Violence Court, the court and stakeholders identified the need to have one attorney represent each defendant in all of their court cases. The court worked with the district attorney's and public defender's offices to create a cross-training process that allows attorneys to do just that, thereby facilitating more effective, efficient, and holistic representation. The Beltrami County Domestic Violence Court in Minnesota, which handles criminal cases, has taken a different approach: the local civil legal attorney for victims participates in the court's stakeholder meetings, provides free civil legal services to victims, and sits in the courtroom

while the court is in session to explain the legal process to survivors. These practices ensure that the court is providing holistic legal services to all victims in need.

The Stearns County Repeat Felony Domestic Violence Court in Minnesota handles serious repeat felony cases. Their team includes a full-time Legal Aid attorney who provides civil representation to the victims on these cases, including child support, child custody and visitation, orders for protection, housing, consumer credit, disability/health care, and other legal needs. There is no fee required and no time limit on the services. Legal Aid coordinates with the court's victim assistance coordinator and community-based advocates to ensure that each victim's legal and support needs are addressed holistically.

Because families may have multiple cases, each with their own conditions and court expectations, it is important for the court to receive timely compliance reports so that judges can make informed decisions regarding the level of risk, service needs, and potential sanctions for noncompliance. Regardless of whether the cases are heard in front of one judge or multiple judges, courts should work with their stakeholder agencies to decide how often compliance calendars will be held, who needs to attend, what types of information will be provided to the court and in what way, and what kinds of sanctions are available in criminal and family court. The theoretical orientation of AIPs provides parameters that guide the program design and implementation, as well as the day-to-day functioning of the program. These shared principles include the following:

In the Winnebago County (Illinois) Domestic Violence Coordinated Court, the criminal and family court coordinators share compliance information to ensure that both judges are aware of any compliance issues. The courts created compliance forms for use by abusive partner intervention programs and probation and created protocols regarding regular reporting. The court coordinator meets with both the criminal and civil domestic violence court judges prior to the compliance calendar to review cases and share any additional information needed to ensure the judge is fully informed regarding compliance status. In addition, probation can use the court's information-sharing software system to immediately document any concerns with respondents, which judges can then access prior to the compliance review.

If your court is searching for ways to create sustainable collaboration between the civil and criminal systems, consider the following.

IMPLEMENTATION QUESTIONS

- What types of training for judges, court staff, and stakeholders would facilitate greater collaboration?
- Do you convene stakeholder meetings? Are both civil and criminal justice practitioners invited to participate? Who else needs to be at the table to ensure access to justice and effective civil-criminal collaboration?

Conclusion

Many jurisdictions have struggled to holistically address the needs of domestic violence litigants while seeking to enhance offender accountability and victim safety in both criminal and civil cases. While domestic violence cases can present challenges for the courts, collaboration and information-sharing can strengthen the court's ability to make informed decisions, assess the level of risk, monitor civil and criminal compliance, and connect litigants with the resources they need.

Endnotes

1. Keilitz, Susan. Specialization of Domestic Violence Case Management in the Courts: A National Survey. 2004.
2. PART 141.4 Transfer of IDV- and DV-Eligible Cases
3. nycourts.gov, Kluger
4. Indiana Commission on Judicial Qualifications. Judicial Notice of Electronic Court Records. Advisory Opinion #2-17. 2017.

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520 Eighth Avenue
New York, NY 10018
p. 646.386.3100
courtnnovation.org