



Requisites for *Any* Court Handling Domestic Violence Cases – Part I

Requisites Specific to Dedicated Domestic Violence Courts and Dockets – Part II

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Requisites for *Any* Court Handling Domestic Violence
Cases – Part I

**ACCURATE INFORMATION ON CRIMINAL HISTORY,
PAST HISTORY OF VIOLENCE,
VICTIM IMPACT**

- I. At every state of the criminal proceedings, all players should have accurate information about the defendant's criminal history.
 - A. Sources include NCIC, court's own records of arrests, convictions, warrants; order for protection state and federal databases, records of prior protective orders and violations of same, if any;
 - B. The person(s) who presents information to the person making the release decision must gather these data in a timely fashion so that risk assessment can occur before the bond is set or the defendant conditionally released.

- II. All players should have accurate information about the defendant's history of violence.
 - A. At the bail/arraignment hearing: so that risk assessment can occur;
 - B. During plea negotiations so that all participants understand the risks and benefits of the plea bargain being offered;
 - C. During preparation of the pre-sentence investigation and report and at sentencing;
 - D. Defendant's history of violence includes arrests for domestic or other assaults, violations of protective orders or criminal no contact orders, interference with 911 calls, stalking, disorderly conduct, disturbing the peace or other charges which arose out of a domestic assault incident.

- III. At all stages of the proceeding, all players should validate victim input.
 - A. At arraignment, victim's assessment of dangerousness;
 - B. At arraignment, victim's fears;
 - C. Whether or not weapons were used or are available;
 - D. Victim's consequences for confronting the offender;
 - E. Victim's assessment of safety;
 - F. Victim's need for individualized, not standardized, institutional response.

ACCURATE/COMPLETE POLICE REPORTS

- I. Thorough investigations of each alleged act of domestic violence.
 - A. Processing of 911 calls: gather appropriate information and transmit it timely to dispatched officers;
 - B. Interviewing of all witnesses: careful interviewing or questioning of parties and witnesses after separation of the parties;
 - C. Interviewing of children where appropriate: where it will not traumatize them or place the child between the victim and perpetrator, and where it is necessary to establish probable cause or to determine which party is the predominant aggressor. Notation of the welfare of the parties;
 - D. Photographing injuries and the scene where appropriate;
 - E. Collecting and preserving physical evidence.

- II. Writing thorough reports designed to convey to all readers the full details of the investigation, including:
 - A. Statements of each witness or party conveyed in his or her own words where possible (caveat: this does not imply that the witness should be asked to write his or her own statement);
 - B. Full descriptions of the appearance of the scene, including evidence of struggle and of any corroboration of the parties' statements;
 - C. Contact information for all witnesses, including phone numbers and alternate address for victim if known;
 - D. Information about witnesses not interviewed, including children, including the rationale for the lack of interview;
 - E. Photographs of scene and any victim's or perpetrator's injuries;
 - F. Information about the name of any health care provider to whom any party may have gone for treatment of injuries;
 - G. Evidence gleaned from the scene (such as presence of weapons), the parties, the witnesses or other sources that would permit later risk assessment;

- H. Notation of the presence of children at the scene, including whether and how the officer checked on the children's welfare.
- III. Timely availability of the full report, including photographs, to all intervenors.
- A. Before first appearance or arraignment: to the court and any agency making bail and release condition recommendations;
 - B. Before any plea is entered: to the court and the prosecutor;
 - C. Before sentence recommendation is made or sentencing decision made.

OFFENDER MONITORING

- I. Rule-making and the enforcement of rules are the stock in trade of perpetrators of domestic violence. While the scope and detail of the rules vary, the imposition of extensive, egregious rules by batterers on their partners is certain, as is the belief in their inalienable prerogative to impose and enforce these rules.¹
- II. Abusers interpret the court's failure to intervene, or its ineffective intervention attempts, as affirmation of their right to impose and enforce rules on their victims and, in an effort to maintain their control of their victims, often engage in strategies to test the court's resolve.²
- III. Tight scrutiny and close supervision of domestic violence perpetrators appear to deter recidivism, perhaps best when coupled with counseling or educational programs for abusers. Thus, though these practices require the investment of system resources on a short-term basis, their long-term effect is to prevent domestic violence and reduce the court's docket.³
- IV. Effective handling of each case from the post-arrest stage begins with monitoring the release conditions imposed on the defendant pre-trial.⁴
- V. Domestic violence court orders typically contain provisions for multiple types of intervention – batterers programs, substance abuse, counseling, parenting classes, etc. – in addition to sanctions, and thus require multiple instances of monitoring.⁵
- VI. An effective monitoring system requires specialized domestic violence units within departments of probation and parole.⁶ (addresses the obstacle of lack of training and coordination among systems players and affords interface with such agencies as CPS)
- VII. One central agency should coordinate the monitoring of conditions of probation and compliance with terms of protection orders, including treatment orders.⁷
- VIII. Courts should establish a regular review docket with increased criminal sanctions for abusers' repeated non-compliance and acts of subsequent violence against their victims. The sentencing judge should be the reviewing judge.⁸ (enhances certainty and clarity of what is expected and therefore encourages defense-bar buy-in)

¹ Hart, B. *Rule-Making and Enforcement*.

² Id.

³ Hart, B. *Safety and Accountability: The Underpinnings of a Just Justice System* (May 1998)

⁴ Karan, A. et al., *Domestic Violence Courts: What Are They and How Should We Manage Them?*

⁵ King County, WA Unified Family Court Referral Information Sheet

⁶ Karan, et al.

⁷ Id.

⁸ Id.

- IX. The sentencing/reviewing judge and the probation officer responsible for coordinating the monitoring of a particular case should have close communication to that the judge is afforded details of compliance or lack thereof prior to each review hearing.

**USER-FRIENDLY INTAKE,
VICTIM ACCOMMODATION,
ACCESS TO ADVOCACY**

- I. User Friendly Intake System:
 - A. Have separate restraining order office;
 - B. Inform women of legal options – access to advocate and legal advocate;
 - C. Make building accessible to persons with disabilities;
 - D. Have translators available;
 - E. Court staff is trained in dynamics of domestic violence and procedures to use.

- II. Victim Accommodation:
 - A. Women required to tell stories only once or as few times as possible – preferably services grouped in one location, which might be regional if large geographic area;
 - B. Child care and separate waiting rooms available; other physical building issues addressed;
 - C. Transit vouchers available;
 - D. Orders enable women to be independent economically;
 - E. Pay attention to judicial demeanor and other recommendations by Ptacetk.

- III. Access to Advocacy:
 - A. Connect victims to appropriate services based on need and cultural considerations;
 - B. Advocates engage in strength-based safety planning;
 - C. Provide civil legal assistance – child support, custody, housing assistance, relocation.

COURTHOUSE/COURTROOM SECURITY

- I. Access to advocate for victim at every stage of proceedings;
- II. Protection order intake office physically separate from respondent's entrance/access;
- III. Adequate **physical** presence of security officers;
- IV. Trained bailiffs, security officers, court clerks and staff;
- V. Separate waiting areas for protection order petitioners and respondents, separate waiting area for victims in criminal cases;
- VI. Escort services;
- VII. Time delay for defendants/respondents to leave courtroom/house
- VIII. Metal detectors, search for weapons;
- IX. Separate waiting area for children.

CONTINUITY OF CASE HANDLING

- I. All intervening agencies should assign one staff person to a case:
 - A. Can become well-versed in all facts and subtleties of each victim's case and life issues;
 - B. Can refer to services/resources;
 - C. Builds rapport with the victim.
 - D. Builds a comfortable working relationship;
 - E. Facilitates open communication so that victim's interests are heard and protected;
 - F. Bridges barriers between victim and intervenors;
 - G. Overcomes victim's distrust of system.

- II. Vertical Prosecution – one prosecutor per case (in addition to above):
 - A. Cross-deputized to be able to handle felony or misdemeanor;
 - B. Insures that cases will not “fall through the crack”;
 - C. Facilitates open communication and strong cooperative support with law enforcement;
 - D. Mitigates against the violence “disappearing”;
 - E. Mitigates against ignorance, bias, hostility;
 - F. Produces less “pressure” to settle.

- III. Team Approach – interagency team that works as in 1 & 2 above.

- IV. Victim less likely to “drop out” of system.

- V. Results in staff satisfaction – less burnout.

COMMUNICATION AMONG SYSTEM PLAYERS

- I. Each component of the justice system enjoys a certain degree of effectiveness of its own. But when these components come together with a focused effort, the combined effectiveness of the whole system becomes synergistic.
- II. The domestic violence court/docket works most effectively when defendants, victims, system players, and the general public perceive the justice agencies as working together as an interrelated system, with members collaborating and communicating with each of the of the other members to affirm and verify the defendants' accountability and to ensure the safety and empowerment of victims and children. When response and enforcement are swift, certain and appropriate, confidence in the system is enhanced, both within and without.
- III. Most obstacles to communication can be overcome when the judge, or a person who speaks for the judge, coordinates or oversees the process and establishes a strong education program for component agencies and individuals, including the judiciary and the defense bar.

CROSS-TRAINING AND EDUCATION

- I. Ongoing training is important for all players in the system, including judges, court personnel, prosecutors, defense attorneys, victim advocates, probation officers, police, child welfare caseworkers, criminal and other justice system personnel, and service providers.
- II. Include in training people who may not come readily to mind as specifically involved in the D.V. project, but may in fact have integral roles – e.g., security officers who work the front door of courthouse, guard courtrooms, etc. They may be the first persons meeting the victim seeking help or they maybe the ones who most need to be alert to potential confrontation of the victim by the abuser.
- III. Trainings are also ways of team-building – for instance, in the above example, the security officers feel more engaged and identified with the project when they are invited and included in all partner meetings and trainings.
- IV. Make sure that trainings include a range of topics which address needs of different partners. For example, try to focus on some issues of concern to defense bar – e.g., at training on immigration issues, have experts both on immigration law relating to battered women, and on effect of convictions under immigration law. Make some training more legal in nature and some more relevant to social workers or service providers.
- V. If possible, develop different levels of training. In initial stages of court planning, everyone involved should receive training in basic issues of domestic violence – e.g., dynamics of battering relationships, definitions of domestic violence and identifying it, effect of abuse on victim behavior, risk assessments, etc. As people involved become more informed, trainings can move on to more specific topics, or more detailed presentations on some of the basic domestic violence issues. However, the basic domestic violence trainings should be repeated periodically to make sure that as staff turns over, everyone involved continues to be educated on bsic issues. Do not assume people know basics just because they have been assigned to the “DV Unit” of the court, agency, etc.!
- VI. Trainings should include not only “domestic violence” topics, but also:
 - A. Explanations of the Domestic Violence Court operations – e.g., what does the resource coordinator do?
 - B. Explanations of any court systems – e.g., how does the state order of protection registry work? Who has access to it, etc?

- C. Trainings on court process – i.e. the arrest to arraignment process, etc. Again, many partners may not have worked in or with the court system before.
- VII. Cross-training of many sorts is crucial. Training on process in criminal court versus family court is important for practitioners who may work only in one system: child welfare workers and domestic violence advocates; court personnel and social workers. In order to develop successful collaboration, partners need to understand each other's concerns, viewpoints, etc.
- VIII. There needs to be both trainings for the whole collaboration and trainings targeted to specific groups. For example, police need specific ongoing training on new legislation creating new domestic violence crimes, predominant aggressor, etc., crime scene procedures in domestic violence cases, etc. This training should be separate from and in addition to their participation in the general domestic violence trainings developed for the partnership. Individual groups also need the opportunity to share concerns or ask questions of their peers without other partners present. For example, judges sometimes feel more comfortable raising issues about handling of dv cases with their peers.
- IX. Cultural considerations should be included in the trainings, not just as separate trainings on different cultural issues, but integrated into all trainings as relevant. When planning trainings focused on specific populations, solicit the advice of community partners so as to ascertain the issues of most concern.
- X. When possible, have various members of the coordinated response team with particular expertise provide the training. This values the partner's expertise and engages more partners in the collaboration.
- XI. A domestic violence court and designated judge can play a crucial role in hosting trainings. Sponsorship by the court and invitations by the judge will increase attendance and convey the message that the court takes training seriously.
- XII. Training needs to be considered a central element of any coordinated community response to domestic violence, including the development of a Domestic Violence court. It is not an "extra." The best structure, staffing plan, etc. for handling cases will not function well without sensitive, knowledgeable personnel. Administrators and supervisors at all agencies, including the court system, prosecutor's office, etc. need to consider training time an important component of staff job.

Requisites Specific to Dedicated Domestic Violence
Courts and Dockets – Part II

COMMUNITY BUY-IN

- I. The ability to develop a court that meets the needs and concerns of the community it serves is often the domestic violence court/docket's strongest selling point. Accessibility to the justice process and understanding of that process are critical to community support and to victim's utilization of the system.
- II. Whether a domestic violence court or docket is created on a civil, criminal or combination model, a common factor influencing success appears to be the concentration of community resources and direct services for both victims and perpetrators.
- III. Community involvement and support are essential to the conception, development and operation of the domestic violence program. An ideal vehicle to generate and enhance community involvement is the establishment of a coordinated community response or task force. This would allow the community and justice system to identify the community's strengths and weaknesses and plan the allocation of resources.
- IV. The development of an interagency memorandum of understanding among providers of services to the court and its litigants would allow each agency to share information about its services for victims and/or perpetrators, as well as learn of the services provided by other agencies within the community which may be accessed by victims and perpetrators.

PARTNERS/COORDINATION

- I. Some judicial districts restrict judges' participation on domestic violence councils/committees, but many allow significant involvement. Additionally, some districts have legislative directives for judicial chairing of such councils/committees and other leadership roles. If judicial participation on domestic violence councils/committees is not allowed, judges still have significant roles in addressing the issue of domestic violence in areas such as "court operations committees."
- II. Where permitted, judges are essential in the development and maximization of domestic violence councils/committees. The domestic violence council/committee should be comprised of representatives from entities within and outside of the courtroom the issue of domestic violence impacts.
- III. A domestic violence council/committee is a vehicle through which the participants can establish a coordinated response to domestic violence and can provide an intra- and interagency channel of communication for those representatives. The council/committee needs to clarify its purpose and determine that all appropriate representatives are included on the council/committee.
- IV. While entity representatives serve on the domestic violence council/committee, subcommittees may be formed to address more specific issues and may incorporate representatives from the community at large and other entities not represented on the council/committee.
- V. Domestic violence councils/committees also are "springboards" for the development of other collaborations and partnerships in the community for addressing the issue of domestic violence.
- VI. Periodic self-evaluation of the domestic violence council/committee should be performed to ensure that the purpose is being fulfilled and that the necessary participants are serving on the council/committee.

RESOURCES

- I. It is important to identify staffing needs for a dedicated Domestic Violence Court or docket at every phase of the court process and among all involved partners. A Domestic Violence Court is really a broader collaboration of which the court is just one piece. In order for the court to be truly effective, all partners need to examine their staffing structures.

- II. Partner Staffing – where possible – dedicated staffing (certain staff assigned exclusively to the Domestic Violence Court) is the ideal. If caseload does not merit a full time assignment, it is still extremely helpful to identify only certain staff who will receive domestic violence assignments. This is highly important for meeting several priorities of the Domestic Violence Court:
 - A. Continuity of information – avoiding information “falling through the cracks” by having the same staff involved;
 - B. Expertise and sensitivity – trained knowledgeable staff handling domestic violence cases;
 - C. Development of partnership and collaborative response – the development of a “team” depends on consistent players, which is helped by assignment of specific staff.

- III. Court Staff – suggestions for possible dedicated staff:
 - A. “Usual” Court Staff – Judge, Court Clerk, Court Officers (sensitive, trained security officers very important for domestic violence court);
 - B. “Additional” Court Staff:
 1. Resource Coordinator (court employee responsible for obtaining information from diverse sources and conveying to the judge, e.g. compliance information from mandated programs, rearrest information, reports on victim status);
 2. Project Coordinator (depending on size of the project, someone to oversee staff and be responsible for policy development, trainings, etc.);
 3. Dedicated Intake Unit – court clerks dedicated to handling petitions for civil orders of protection, doing order of protection history checks on state domestic violence registry, and coordinating information between criminal/family/matrimonial dockets, etc.

4. Depending on the structure of the court, the Domestic Violence Judge may handle all case processing from arraignment through post-disposition monitoring. However, if this is not possible, you may want to dedicate a second judge or group of judges to handle specific functions – e.g., domestic violence judges, or judge to handle post-disposition monitoring.
- IV. Partner Staff – Suggestions for possible dedicated staff: Prosecution team; Probation Unit; Victim Advocates; Treatment Providers; Pre-Trial Services; Defense Attorneys; Police Unit. Each agency may need dedicated unit at more than one stage of processing, e.g. there may need to be dedicated victim advocates on-site at the Domestic Violence Court, but also a dedicated domestic violence advocate at the court where arraignments take place, or at the police precinct – various places where victims may be engaged with the process. This represents a core group of partners who should be considered dedicated staff for a Domestic Violence Court. There are many more partners in the community collaboration who may wish to dedicate a person as a contact for the Domestic Violence Court, i.e. additional treatment providers, community advocates, corrections, etc.
 - V. Resources – While additional financial resources are always helpful, greater resources are not really necessary to get a Domestic Violence Court started. The first step is for both the court and the partner agencies to analyze their caseloads. Frequently, domestic violence cases take up a substantial portion of the time of their staffs and dedicated staffing involves simply re-deploying existing staff, rather than hiring new people. For example, if domestic violence cases are 25% of 4 prosecutors' caseload, then dedicating one fulltime prosecutor may be far more efficient and better enable the prosecutor's office to meet project goals. Similarly, with judicial resources, when the caseload is reviewed, it is frequently are more efficient and easier to concentrate cases before one judge. In many areas, general crime is falling, while reported domestic violence crime is rising. This means that domestic violence cases are making up an increasingly large percentage of the caseloads in criminal courts and among criminal justice agencies. Therefore, concentration of caseloads in this manner often makes sense not just because of the Domestic Violence Court needs, but for better organizational management.
 - VI. Often, the increased domestic violence caseload can justify any additional staff that is needed. The court system may also be able to support the one or two extra court people that are necessary (e.g. resource coordinator). If not, often other positions can be used as substitutes, e.g. a senior court clerk position could be filled as a resource coordinator.
 - VII. It is important to remember that frequently domestic violence caseloads **rise** initially as a result of a domestic violence court and coordinated collaboration – more domestic violence arrests are made; prosecutors may charge more often;

more victims may want to go forward with cases; fewer dismissals, etc. Therefore, it is not unusual to see the need for additional staff several months into a domestic violence court project. While declining domestic violence recidivism and case numbers are the goals, lowering this initial rise in cases is a sign of more effective domestic violence policies and should be viewed as a success.

VIII. Funding Sources – Additional funding is of course helpful to develop special projects. Federal VAWA funding is an important source – both Grants to Encourage Arrest Policies and STOP state formula grants. However, there are frequently several other more local sources – local city councils, county governments, etc. often have either formal grant programs or discretionary funds for community-based projects. Again, tremendous amounts are not necessarily required – small targeted grant to fund specific projects, i.e. money to organize training for court, partner personnel, and the public, or money for one new staff position at a community-based victim agency are focused grants with community impact that local political bodies often favor. All partners in collaboration should be encouraged to apply for grants that help to support their efforts in relation to the court. For example, there are several funding streams available only to victim groups. Additional support for partners helps to strengthen the entire Domestic Violence Court project.

COMMUNICATION

The following points are taken from *Unified Family Courts: How Will They Serve Victims of Domestic Violence?*:

- I. A court other than a unified family court must work out case management issues so that judges sitting on related cases can have the information they need in a context that nevertheless protects the due process rights of all participants.
- II. Any such system must shield the victim's confidentiality so that personal contact, etc. information is not made available to the abuser or anyone on the abuser's behalf. This requires court personnel trained on confidentiality issues and how to maintain confidentiality for specific prevention.
- III. If the court has both civil and criminal jurisdiction, it must preserve the distinction between the appropriate burdens of proof and evidentiary standards of the two. There must be no use against the testifier in a subsequent proceeding, civil or criminal, of testimony offered in expectation of confidentiality; matters admissible in one proceeding must not be subject to review in a subsequent proceeding where such evidence would not otherwise be admissible; since the court has access to all information, it must be rigorous in safeguarding and applying the usual standard of admissibility. There must be no judicial notice of evidence from a prior related case.
- IV. Where there are automated court records, security systems must be designed so as to disclose information only to those with a right to know and to distinguish who has a right to know based on the type of case.
- V. Judges must devise ways of sifting through and managing the mass of information they will have under an open system and must be able to determine what is and is not relevant to each particular proceeding.

The following points are taken from *Domestic Violence Courts: What Are They and How Should We Manage Them?*:

- I. Planning for a domestic violence court requires interagency collaboration at the planning stage. Representatives from all involved systems should have representation on the planning team, which should document the existing system, identifying its strengths and its gaps; develop a plan and identify funding for its implementation; and draft protocols and procedures to implement the plan.
- II. Any such plan should provide for comprehensive victim advocacy that both partners with the criminal justice components of the system and establishes formal links to the chief executive officer of the jurisdiction and the state.

- III. The state Attorney General should establish statewide domestic violence law enforcement policies and practices, and each local police agency should have written policies and procedures that call for coordination with the prosecutor's office and require that accurate information concerning the service and validity of protection orders be sent promptly to the state's protection order registry.
- IV. There should be one multi-agency intake for all cases, criminal and family, involving the same parties. The coordinating agency should be staffed by representatives from each of the member agencies and the intake should coordinate all necessary interviews, law enforcement, prosecutor, victim advocate, child protection among them. The coordinating agency should do a comprehensive crosscheck for all related cases.
- V. The system should provide for integrated case processing in a plan designed by the bench, the administrator of courts and the clerk's office so that all judges assigned to the various cases between the parties have information about all the other case between the same parties.
- VI. Services available by referrals through the system should include services for defendants as well as for other family members, so that the defendant is included in the process and can eventually benefit from it.
- VII. Effective operation of a domestic violence court requires an integrated data collection and distribution system capable of collecting and synthesizing data from all system participants with the results available to those participants.
- VIII. The community should engage in an audit to determine its resources, needs and the role each agency and community partner can best play to ensure the system accomplishes the jurisdiction's objectives. Such an audit can also identify existing unevenness in the quality of the various services and reflect possible resources for improving the quality of any that are determined to be substandard.
- IX. All agencies should negotiate agreements among themselves concerning their responsibilities and obligations to each other.
- X. The partners in the system should engage in an ongoing process of training each other and building trust with each other.

WILL IT FIX WHAT'S BROKE?

- I. Use deliberative process to determine whether to move ahead with a dedicated domestic violence court.
 - A. Involve all community partners.
 - B. Consider availability/potential coordination of local resources.

- II. Fundamental values and goals of *any* local system for handling domestic violence cases.
 - A. What are the fundamental values that your court *should* embody?
Broadly, for example:
 - 1. Enhancing victim safety;
 - 2. Holding offenders accountable;
 - 3. Overcoming barriers to access;
 - 4. Providing access to victim services that are comprehensive, community-based, and culturally welcoming.
 - B. What are specific values and goals within each major area?

- III. Components of current system and proposed system.
 - A. Identify major system components, from time victim first encounters system, of current and any proposed court;
 - B. Assess problems in current system components.

- IV. Relationship between fundamental values/goals and system components.
 - A. For each system component, identify underlying fundamental values/goals;
 - B. Consider whether current system can be altered to embody fundamental values/goals.

- V. Would the proposed domestic violence court incorporate fundamental values and goals?
 - A. Perform same analysis for each proposed component;
 - B. Change or omit proposed components that do not further fundamental values/goals.

- VI. Do not establish a specialized court or docket unless it would embody your fundamental values and achieve your goals.