

DOMESTIC VIOLENCE  
SAFETY AND ACCOUNTABILITY  
AUDIT

*FINAL REPORT*

Findings and Recommendations for the Resolution of

**Child Custody\* Cases  
Involving Domestic  
Violence**

Winona County, Minnesota

October 29, 2008

\*The term “child custody”, for these purposes, means all issues related to post-separation arrangements for children, including parenting time

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Audits although none had examined child custody issues in the context of domestic violence.

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## Introduction

*“...Five years ago he threatened suicide, went to the woods with a gun. He shot the gun and we had to check on him to see what had happened. Since then he has threatened to blow his head off. He also has said that if I divorce him and he sees me out with anyone else, he will kill him and then kill me. The kids have witnessed the abuse to me, which has only increased their fear of their father.” \**

\*From one of the case files reviewed during the safety audit. Names and identifying details have been changed.

Domestic violence (DV), especially that which involves a history of physical intimidation, threats and ongoing attempts to control the victim, raises many critical questions for a legal system which is dedicated to responding appropriately.

How does the court, or a custody evaluator, or a person’s own attorney, properly assess the allegations? What procedures are most likely to result in a full and contextual assessment?

How can practitioners determine what, if any, impact the violence (or the violent party) has had on the children? And may have on the children in the coming months and years? And what effect should any of that have on a custody or visitation determination?

How has the violence affected the victim parent and how may it affect her/his parental relationship with the children?

What does the use of violence say about the perpetrator’s ability to properly parent in the future?

How would anyone know whether someone who has used violence in the past has learned how and is willing to change?

What processes are most likely to result in safe and just outcomes for the parties and the children?

The truth is that despite thirty years of major progress in the criminal justice system’s response to domestic violence, and despite the fact that in Minnesota and across the country there are highly functional civil protection order systems, the legal system’s ability to respond effectively to families where battering has occurred and the parties are separating has been confounded. Evidence of this abounds: courts express a lack of confidence that they have full information on the abuse, including the effect it has had on the children, and information on what post-separation arrangements might create the best outcomes for the family; custody evaluators complain that their ability to do full investigations in these cases is limited by the resources available; and most telling of all, battered mothers and their attorneys and advocates say that *the* most difficult and

frightening thing to confront when contemplating separation from abusers is the prospect of a bad outcome in parenting and custody issues.

Nationwide, innumerable efforts have been undertaken to design systems that would best address all these questions. So far, no comprehensive plan has emerged. However, another tool to approach this problem has evolved and which the community of Winona, Minnesota, decided to use. The Safety and Accountability Audit (arising from the field of Institutional Ethnography as a sociology construct), described in more detail below, was designed by Dr. Ellen Pence of Praxis International as a means to identify gaps in victim safety and offender accountability and to recommend ways to bridge those gaps. Originally used to “audit” criminal legal system processes and stages such as police response, prosecution practices, courts, etc., and subsequently to examine child protection systems, it had not been employed to explore the very complex child custody system as applied in cases involving domestic violence. The Battered Women’s Justice Project, Sheila Wellstone Institute, Praxis International, the Minnesota Coalition for Battered Women, and personnel from the University of Minnesota’s School of Social Work and Law School Clinical Program saw the potential for adapting the Audit method to custody cases involving domestic violence. It was agreed that it would be best to pilot this in a smaller community where there was a strong commitment to exploring a better way to do things and where there was a strong, capable advocacy organization that could provide support rooted in the daily experiences of battered women. The Women’s Resource Center of Winona was approached and agreed to partner with BWJP and Praxis and to seek funding for this effort.

Many local professionals who later formed the Audit team had already expressed a strong interest in examining how the legal system responds to these most difficult cases. The bench, in particular, was interested in learning how a system could be created that would improve the quality of decision making and of outcomes in custody cases where domestic violence of some kind has been alleged.

## ***Methodology***

The Domestic Violence Safety and Accountability Audit, developed by Praxis International, Inc., uses a local team to look at how work routines and ways of doing business strengthen or impede safety for victims of battering. By asking *how* something comes about, rather than looking at the individual in the job, we discover systemic problems and produce recommendations for longer-lasting change. The Safety Audit is designed to leave communities with new skills and perspectives that can be applied in an ongoing review of its coordinated community response.

The Safety Audit is built on a foundation of understanding 1) institutional case processing, or how a victim of battering becomes “a case” of domestic violence; 2) how response to that case is organized and coordinated within and across interveners; and, 3) the complexity of risk and safety for each victim of battering. To learn about victims’ experiences and institutional responses, the Audit team conducts interviews, including

victim/survivor focus groups; observes interveners in their real-time-and-place work settings where possible; and, reads and analyzes forms, reports, case files, and other documents that organize case processing. Over a series of debriefing sessions, the team makes sense of what it has learned in order to articulate problem statements or “safety gaps” and frame the kinds of changes that need to occur.

Since the Safety Audit focuses on institutional processes rather than individual workers, there are no systematic sampling procedures. Instead, interviews, observations and text analysis sample the work process at different points to ensure a sufficient range of experiences. Interviews and observations are conducted with practitioners who are skilled and well-versed in their jobs. They are co-investigators with the Audit team. Their knowledge of the institutional response in everyday practice and their first-hand experience with the people whose cases are being processed supply many of the critical observations and insights of the audit.

Safety Audit data collection and analysis pay attention to eight primary methods that institutions use in standardizing actions across disciplines, agencies, levels of government, and job function. These “Audit trails” help point the way to problems and solutions.

1. Rules and Regulations: any directive that practitioners are required to follow, such as policies, laws, memorandum of understanding, and insurance regulations.
2. Administrative Practices: any case management procedure, protocols, forms, documentary practices, intake processes, screening tools.
3. Resources: practitioner case load, technology, staffing levels, availability of support services, and resources available to those whose cases are being processed.
4. Concepts and Theories: language, categories, theories, assumptions, philosophical frameworks.
5. Linkages: links to previous, subsequent, and parallel interveners.
6. Mission, Purpose, and Function: mission of the *overall process*, such as criminal law, or child protection; purpose of a *specific process*, such as setting bail or establishing service plans; and, function of a worker in a *specific context*, such as the judge or a prosecutor in a bail hearing.
7. Accountability: each of the ways that processes and practitioners are organized to a) hold abusers accountable for their abuse; b) be accountable to victims; and, c) be accountable to other intervening practitioners.
8. Education and Training: professional, academic, in-service, informal and formal.

In a Safety Audit, the constant focal point is the *gap* between what people experience and need and what institutions provide. At the center of the interviews, observations, and case file analysis is the effort to see the gap from a victim's position and to see how it is produced by case management practices. In locating how a problem is produced by institutional practices, team members simultaneously discover how to solve it. Recommendations then link directly to the creation of new standardizing practices, such as new rules, policies, procedures, forms, and training.

### ***Safety Audit question and Data collection***

The Safety Audit explored this question:

*How is the safety and wellbeing of victims of domestic violence and their children addressed and promoted in the process of resolving child custody matters in Winona County, MN?*

Several private and governmental practitioners offered their policies, practices, and case files for review during this audit, as well as contributed members to the Audit team. They include:

1. The Winona County District Court which handles an increasing number of divorces, paternity cases and Orders for Protection (OFP) matters involving allegations of domestic violence. Of these divorces with children, about 20% involve domestic violence OFPs, many of which involved parents with minor children. The process of examining court files involving domestic violence was arduous.

2. Southern Minnesota Regional Legal Services (SMRLS), which is the only source of free representation for low income victims of domestic violence in the county, is approached every year by hundreds of victims of domestic violence who need lawyers to help them with child custody problems. Of those requests, the SMRLS Winona office can only handle a small percentage of cases per year.

3. Catholic Charities, a Catholic social services agency, whose staff person does most of the custody evaluations in the county, including those where domestic violence is alleged to have occurred.

4. Family Services of Winona, which has a staff person who did some of the mediation of child custody matters, including those involving domestic violence. Cases were either referred by the courts or resulted from parties' own efforts to come to a mutual agreement.

5. Private attorneys who practice primarily in the area of family law and who represent a number of actual and alleged victims and perpetrators.

The Audit team began its work by completing a three hour introductory training on audit principles and methods in 2005.

Our findings are based on information gathered locally about what happens when a case involving domestic violence allegations gets into the courts and is resolved. The information was gathered as a result of the following activities:

Early on, a focus group of four battered women was conducted in order to help structure the question that the audit would answer and to begin to flag issues which could be explored in more detail later. The women were chosen because they had obtained Orders for Protection and had contested custody cases which had been resolved in the Winona Courts through either stipulation or court decision.

We sought to identify (in order to examine) court files involving child custody problems and domestic violence. Because court files are not labeled as such, all filings for OFP were examined for the year 2003 and a list of the parties' names created. Then that list was compared to the list of Dissolution of Marriage (divorce) or legal separation cases involving children so that we could identify couples who had filed at least two cases: one Order for Protection case and one custody/divorce case. In some cases there were also criminal assault or OFP Violation criminal cases against one of the parties.

We created a database (using Microsoft Access) with which we could compile information from the court files in the form of quotes taken directly from the filed documents. The database was designed to allow an exploration of the themes which became visible, including the evidence that would lead to an understanding of how the final outcomes in these DV custody cases came about.

We did a detailed review (text analysis) of each of the files, with each relevant phrase coded and entered into the data base.

Staff of BWJP and the Women's Resource Center of Winona (WRC) observed and took detailed notes on the series of Parents Forever classes which separating parents are usually required to attend as a condition of obtaining a final court order on custody.

Interviews with family law attorneys, the local custody evaluator, the local mediator, advocates and the two judges. The purpose of the interviews was to gather information on the custody resolution process applied in domestic violence cases and to identify 1) the need for linkages which needed to be established, 2) the technology and resources needed to improve the process, 3) the rules and regulations which provide the framework for the legal system intervention in these cases, 4) the training and education of local professionals which help to determine their actions, and 5) how the social positions of offenders, practitioners and victims affect the process and outcomes.

While Safety Audits would normally involve observations of practitioners, the confidential nature of information and processes involved with child custody cases (either custody evaluations, mediation, or attorney-client relationships) confounded that effort in

this Audit. Accordingly, our information on how practitioners approach their work and what procedures they use and why is primarily based upon interviews of the practitioners as well as discussions at Audit team meetings of practitioners.

We reviewed forms and written materials used by practitioners who handle child custody cases, such as client intake forms, and other information and handouts given to clients.

### ***Cues from the focus groups***

Focus groups help ground a Safety Audit in the actual experiences of victims of battering. They open questions for the team about how people experience different practices and provide cues about where to dig deeper in other interviews and in the observations and text analysis. The survivor focus group conducted early on in this Audit contributed first-hand accounts of interactions with intervening systems, which were supplemented interviews with advocates who work with battered mothers on many issues and in many forums, from OFPs and criminal cases to economic and social issues to child custody problems. These two sources helped us focus on identifying *disconnects* or gaps between what the legal system thinks would be protective of battered parents and their children and what the victims had *hoped for* in the way of protection and assistance when they approached the legal system for assistance.

## **Findings and Recommendations**

The Audit team put untold hours into its consideration of the findings and proposed recommendations. The goal was to produce an account of gaps and changes that the team as a whole could agree on, while making note of questions that require further inquiry or fall outside of the immediate scope of the audit.

### ***Design and purpose***

This report provides a summary of the Audit team's work and identifies gaps to address in the ongoing intervention in domestic violence cases involving children in Winona County. It uses quotes, excerpts and summaries of information gleaned from focus groups, individual interviews, case files, forms, policies, and observations to support the findings.

The following format was used to analyze each gap so the resulting recommendations could easily guide the community's work to close the gaps, thereby increasing the safety and wellbeing of children and adult victims in the community:

- Statement of the gap
- How is it a problem? For which victims of domestic violence?

- What contributes to the gap?
- How do we close the gap?
- Who should be involved?

### *Discovering Gaps*

The team discovered gaps in the fabric of safety that the practitioners in Winona County have tried to weave. The Audit process primarily identified gaps in the type and quality of information on domestic abuse (and its effect on children and victims) gathered and used by the legal system. Two themes emerged when we examined these gaps: one theme relates to the practices of attorneys, custody evaluators and mediators and the second relates to the practices of the criminal and family courts themselves. The Audit findings center on several aspects of the legal system which need additional attention in order to maximize the safety and well-being of both adult victims and children.

#### **Theme One: Information Sought by Attorneys, Custody Evaluators, and Mediators**

In some cases, one or both parents (or the children) may allege that domestic violence has been committed by a parent. The attorneys, custody evaluators and mediators who handle custody cases have the obligation to assess these allegations, in part to determine what evidence there might be to support them, and in part to determine the effect of the violence or other abuse tactics on the victim and the children.

But the paucity of full and contextual information on abuse cases causes practitioners to be unsure that they are handling them effectively as they could. It also causes survivor parents to believe that the legal system does not have the full picture of the violence and its effect and, therefore, cannot act to ameliorate the pain and damage. In the end, the adult victim's and children's needs for safety and healing may not be fully addressed in temporary or final orders (whether agreed upon through negotiation or court decision) or in the custody dispute resolution process itself.

Practitioners' practices related to assessment and evaluation of abuse allegations and the effect of the violence would be improved if they were informed by current tools and if they were research-based.

- Gap #1            *Attorneys do not have tools and procedures for*
- (a) screening for and assessing allegations of DV made by their clients.
  - (b) assessing the impact of the DV on the children.
  - (c) determining what might be the relationship between abusers' violence and their parenting skills and practices.
  - (d) recognizing and addressing the impact of DV on the parenting of the victim parent.

Gap # 2        *Attorneys* do not have adequate *training* in screening for and assessing domestic violence cases and their significance to custody arrangements.

Gap # 3        *Custody evaluators* do not have *tools* for  
(a) screening for and assessing allegations of DV made by their clients.  
(b) assessing the impact of the DV on the children.  
(c) determining what might be the relationship between abusers' violence and their parenting skills and practices.  
(d) recognizing and addressing the impact of DV on the parenting of the victim parent.

Gap #4        *Custody evaluators* do not have enough training in using tools and procedures for screening for and assessing domestic violence cases and their significance in custody arrangements.

Gap #5        *Mediators* do not have *tools* for  
(a) screening for and assessing allegations of DV made by their clients.  
(b) assessing the impact of the DV on the children.  
(c) determining what might be the relationship between abusers' violence and their parenting skills and practices.  
(d) recognizing and addressing the impact of DV on the parenting of the victim parent.

Gap #6        *Mediators* do not have enough training in using effective tools and procedures to screen for and assess domestic violence cases and the significance of the abuse to custody arrangements and dispute resolution processes.

Gap #7        *Early Neutral Evaluation* may be a process which, in its current form, results in custody arrangements which are less likely to protect children and battered parents from dangerous and inappropriate custody arrangements.

Gap #8        Attorneys, custody evaluators, and mediators do not usually seek and cannot easily obtain *domestic violence police* reports from law enforcement or courts in other jurisdictions where incidents may have occurred.

## **Theme Two: Information Available to the Courts**

Courts handling custody cases, whether in the context of divorce, child custody matters, or Orders for Protection, often lack the information which would allow them to respond most effectively to the needs of each affected child. The paucity of full and contextual information on matters related to the abuse causes courts to be unsure that they are making good custody decisions. In the last analysis, the adult victim's and children's needs for safety and healing may not be fully addressed in temporary or final orders (whether agreed upon through negotiation or court decision) or in the custody dispute resolution process itself.

There are reasons that the courts have inadequate information about whether domestic violence occurred, the true nature and impact of the violence, (especially on the child) and the historical and practical context of the abuse. For many reasons listed on page 15, it is common that abused parents do not disclose information about the abuse to the court and this is especially true among *pro se* litigants. Therefore, the court knows nothing about it and cannot respond. This confounds the court's ability to intervene effectively. In order to improve the quality of the court's picture of the family, the legal system must work to ensuring that parties *know something about domestic violence* and its many meanings and range of potential effects, and also about resources and options. The legal system must also improve the likelihood that these better-informed parties, especially those that are *pro se*, provide full information about their experiences with domestic violence to the court and that the outcomes better meet the needs of the children, the victims and the perpetrators.

Gap # 9 Attorneys representing victims of DV may put information on the violence and abuse in the pleadings initially, but the information given to the court is rarely very detailed as to the impact of the violence and abuse, especially on the children. And it rarely ties the violent and abusive behavior of the batterer to the parenting prospects of that parent, which new research and writings on the subject now makes more possible.

Gap # 10 Most battered parents cannot afford to fund ongoing litigation nor to pay for custody evaluations, and as a result, are less likely to be able to rely on the court's protective decision-making power. This means that final orders are more likely to be based upon stipulations which contain little evidence related to how the child and victim parent's safety and well being is addressed.

Gap #11 Custody evaluators' reports examined in this audit do not show evidence that where one party asserted that domestic violence was an issue, the evaluator sought corroboration from sources outside the family, such as police reports.

Gap # 12 Judges handling family law matters do not necessarily know about other pending or past criminal or OFP or juvenile court cases involving the couple (especially domestic assault charges).

Gap # 13 Even if the court were to be given information on criminal cases involving the couple, and if convictions were to influence the outcome (treatment of the case by custody evaluations, attorneys, mediators, courts, etc), most criminal DV cases are not resolved for approximately 8 months (according to the Winona Domestic Assault Project (WDAP) database), limiting their impact on a custody case. This situation appears to be getting much worse as the court's budget crisis worsens, with public defenders, prosecutors and courts struggling to handle more cases with fewer resources. Increasing delays are happening and will get worse until a major influx of resources occurs and these delays will further damage the ability of the court to respond to domestic violence custody cases effectively.

Gap # 14 The issue of domestic violence and the impact it has in a given child custody case may not be addressed in the custody order even where there exists a prior or continuing OFP. This could be true for several reasons. The domestic violence may have been properly determined to be unremarkable and irrelevant to the custody arrangements. The parties have negotiated to an agreement whereby the victim obtains what she needs on condition that the domestic violence is not referenced in the final order. But where the safety of children is at stake it is important to strike the balance between the benefits of addressing the violence *directly* in the case (and so establishing a record for future action and making accountability more likely) and, on the other hand, avoiding the expense and pain of a trial by settling for what the victim and children need even if the agreement does not directly address the issue of the abuse.

Gap #15 There is no mechanism for the court to triage or otherwise assess cases for the existence of domestic violence, which is especially problematic in *pro se* cases. Courts must often rely on ill-informed and/or unrepresented litigants to provide information or evidence related to the abuse, risk of future harm, or impact on the child.

Caveats and cautions

Exploring the court system’s responses to domestic violence cases is a tall order. The work of many kinds of practitioners, including private and legal services attorneys, judges, domestic violence advocates, custody evaluators, mediators, court administrators, and even police and prosecutors, all have an impact on how things go. The Audit team had much ground to cover and many paths that it took and could have taken. Future efforts should look further into each of these practitioner groups with a goal of designing best practices.

Readers are also cautioned to remember that the gaps identified are not the only paths that could be pursued in examining the community response to battering and domestic violence. A Safety and Accountability Audit raises as many questions as it answers. It is meant to be a dynamic process. It is as much an ongoing way of looking at and asking questions about how we intervene as it is a time-limited, defined inquiry.

BWJP, the WRC and the Audit Team has committed to continuing what must be an ongoing process of plugging the gaps identified by this Audit and to addressing other gaps as they become visible.

## Where Do These Gaps Come From? How Can We Close the Gaps?

**Theme One: Attorneys, custody evaluators, and mediators have inadequate information about whether domestic violence occurred, and what the true nature, context, risk and impact the violence may have had, especially on the child.** As a result, adult victim and children's needs for safety and healing may not be fully addressed in the temporary or final orders or in the custody resolution process itself.

**Gap # 1. Attorneys do not have *tools* and procedures for**

- (a) screening for and assessing allegations of DV made by their clients.**
- (b) assessing the impact of the DV on the children.**
- (c) determining what might be the relationship between abusers' violence and their parenting skills and practices.**
- (d) recognizing and addressing the impact of DV on the parenting of the victim parent.**

### How is this gap produced?

There are reasons for the inability, reluctance or failure of attorneys to obtain full information about whether domestic violence occurred, the true nature and impact of the violence, (especially on the child) and the historical and practical context of the abuse.

1. Parents who are victims of ongoing coercive controlling and threatening domestic violence may not identify it as relevant to the custody case and may not understand the impact of the violence on themselves and the children.
2. They may not be fully apprised of what the abusers' belief system, values and propensity for violence says about his or her abilities to safely and effectively parent the children.
3. They may not have had access to advocates or other community members who could help them realistically assess the risk to themselves and their children.
4. Parents who have been abused or whose children have may just decide not to disclose it even if directly asked about it, especially the first time they are asked by a practitioner.
  - a) They may believe that even if they do disclose the abuse they will not be believed, or that the court will not intervene effectively.
  - b) They may be embarrassed and want to protect their privacy and not want the public to find out about the abuse.
  - c) They may fear violent retribution for disclosing. Many abusers threaten to kill the victims, the children or other family members if the victims disclose the fact of the abuse – most killings of women by their batterers occur as the victims are attempting to separate from their abusers. The worse and more dangerous the violence, the more likely that the victims will fear disclosing the abuse.

- d) They may fear other forms of retaliation by their abusers: they may be confronted with a custody battle they cannot financially afford to wage; they may suffer economic devastation; they may be ostracized from their social networks.
- e) Advocates report that some abused women are afraid to raise the issue of abuse and its effect on their children because they believe that they (the mothers) will be seen as uncooperative and “unfriendly” parents, and their concerns dismissed or undervalued.
- f) Even when they have disclosed the abuse to their attorneys, some victims instruct their attorneys not to raise the issue of abuse in the case.

Attorneys say that they do not have tools to guide them towards the most effective methods of interviewing and talking with clients about abuse and the effect of the abuse on the children.

### How do we close the gap?

The high likelihood that clients will not fully disclose this critical information means that practitioners must be skilled at fleshing out the facts. This requires tools and new procedures for assessing the violence and what its implications about what custodial arrangements would best serve the family’s needs.

Attorneys indicate that they would benefit from being provided with tools and procedures. BWJP has access to such tools (such as the American Bar Association Commission on Domestic Violence screening tool, and the Danger Assessment – a risk assessment tool created by Dr. Jacqueline Campbell). Fortunately, as well, there are other efforts underway in other jurisdiction in the United States and Canada which integrate new research and thinking on differentiation between domestic violence cases to create tools for assessment of the effect of the abuse on the victim, the children and the parenting abilities of the parents (see especially Jaffe, Johnston, Crooks, Bala. “Custody Disputes Involving Allegations of Domestic Violence: Towards a Differentiated Response” Family Court Review Vol. 46, Issue 3, July 2008). BWJP will assist in the adaptation of these tools for use in Winona county.

**Gap #2. Attorneys do not have adequate training in screening for and assessing domestic violence cases and their significance to custody arrangements.**

How is this gap produced?

Law schools do not place a heavy emphasis on such matters. CLE courses rarely cover these topics, at least in a way that would lead a family lawyer to change her or his practices with individual clients. Much of the information and research on these topics has only been developed within the past few years.

How do we close the gap?

Attorneys should be offered local training on the issues and in use of the above tools. BWJP will gather information from the U of M and other sources and the team will offer the Winona County Bar Association a CLE on the topic.

Advocates should be better trained to help victims of battering to identify how the violence might be affecting their children so that the women can provide higher quality information to their attorneys and the court.

A joint training (attended by advocates and family lawyers) on how to work better together in DV cases has been offered elsewhere in the state and could be provided locally for CLE credit.

**Gap #3. Custody evaluators do not have tools for**

- (a) screening for and assessing allegations of DV made by their clients.**
- (b) assessing the impact of the DV on the children.**
- (c) determining what might be the relationship between abusers' violence and their parenting skills and practices.**
- (d) recognizing and addressing the impact of DV on the parenting of the victim parent.**

How do we close the gap?

Custody evaluators would benefit from being provided with tools such as the ABA Commission on Domestic Violence screening tool, a risk assessment tool, the most recent information and tools for evaluating the impact of DV on children and on the parenting of abusers and victims; as well as the new screening tool which is going to be released for publication in a national journal in fall of 2007.

BWJP will assist in the provision of these tools for the team's consideration.

**Gap #4. Custody evaluators do not have enough training in using tools and procedures for screening for and assessing domestic violence cases and their significance in custody arrangements.**

How do we close the gap?

Custody evaluators would benefit from further training in issues related to the impact of DV on children, on what relationship there is between battering and parenting, risk assessments and other DV assessment instruments.

In light of the few evaluators in the area, it does not appear that local training would be possible, but provision of financial support to evaluators who need to travel for training should be pursued. BWJP will continue to forward new research, custody evaluation protocols and tools to evaluators as these resources become available.

**Gap #5. Mediators do not have tools for**

- (a) screening for and assessing allegations of DV made by their clients.**
- (b) assessing the impact of the DV on the children.**
- (c) determining what might be the relationship between abusers' violence and their parenting skills and practices.**
- (d) recognizing and addressing the impact of DV on the parenting of the victim parent.**

How do we close the gap?

Mediators would benefit from being provided with tools such as the ABA Commission on Domestic Violence screening tool, a risk assessment tool, the most recent information and tools for evaluating the impact of DV on children and on the parenting of abusers and victims; as well as the new screening tool which is going to be released for publication in a national journal in fall of 2007 also on screening for DV specific to ADR providers.

BWJP will assist in the provision of these tools for the team's consideration.

**Gap #6. Mediators do not have enough training in using effective tools and procedures to screen for and assess domestic violence cases and the significance of the abuse to custody arrangements and dispute resolution processes.**

How is this gap produced?

Mediation training traditionally did not place a heavy emphasis on such matters. Continuing education courses rarely cover these topics, at least in a way that would lead a mediator to change her or his screening or other practices used with couples.

How do we close the gap?

Mediators would benefit from further training in issues related to the impact of DV on children, on what relationship there is between battering and parenting, risk assessments and other DV assessment instruments, and screening for DV specific to ADR providers.

In light of the few ADR providers in the area, it does not appear that local training would be possible, but provision of financial support for attendance at trainings in other communities should be pursued.

**Gap #7 Early Neutral Evaluation may be a process which, in its current form, results in custody arrangements which are less likely to protect children and battered parents from dangerous and inappropriate custody arrangements**

How is this gap produced?

Early Neutral Evaluations (being piloted in the Third District) are done in some cases and has been shown to result in high levels of settlement of custody disputes. Parties meet, usually without counsel, and tell their stories to the evaluator(s). The evaluator informs the parties what the likely outcome of a full evaluation would be and what the recommendation to the court would likely be. Whether the evaluator is able to make an accurate assessment depends in large part on the ability of the parties to (in the presence of the other party, of course) to describe the family situation and articulate fully their concerns.

It is sometimes unworkable to hold this ENE process so early in the process; parties are being asked to enter into the negotiating process before their attorneys have had the opportunity to get to know the full range of issues the abuse might have created. Sometimes the ENE could happen before the attorney has been able to establish the kind of trusting relationship with the client that is most likely to result in full disclosures about the abuse. And sometimes domestic violence cases which can be quite volatile and dangerous would be less a few months after the proceedings were commenced. These common qualities of domestic violence cases mean that ADR processes should not assume that early resolution is helpful or even safe.

It is not known whether the outcomes (the agreements reached after ENE) for children are as good as results obtained without ENE, whether outcomes are as good for kids as they could be, nor whether there is a way to do the process in domestic violence cases in a way that does not result in unworkable or undesirable custody arrangements.

While Winona has less experience with ENE than does Hennepin County, our system should be watched for the existence of the kind of problems which have come up in Hennepin County:

- Parties are pressured into attending or do not realize that participation is optional. Are parties *required* to attend an ENE session before the court will allow a temporary relief hearing to be scheduled?
- Parties feel intimidated and pressured into custody/parenting time agreements that are not in the best interest of themselves or their minor children.
- ENE facilitators minimize the father's use of domestic violence and the risks to children and their mothers. Use of violence is not seen as a parenting time issue even when the violence is severe.
- ENE facilitators presume joint custody is in the children's best interests despite information about serious domestic violence and/or serious parenting deficits (e.g. drug use, no involvement with child previous to the court case).

- ENE facilitators encourage parties to make agreement so quickly that many issues are never addressed.
- If a case is not settled through ENE, the matter ends up in trial because one parent believes they will prevail based on the opinion of the ENE facilitator.

### How do we close the gap?

Provisions should be built into the model that address these concerns and make the model more responsive to the needs and safety concerns of battered women and their children. Because a significant number of the people filing and responding to divorces are not represented, it is important for the model to work for pro se litigants.

Some of the attorneys and advocates in other jurisdiction where ENE is employed have made a number of observations and suggestions which could be considered as Winona continues to explore the custody processes best suited for domestic violence cases.

**Gap #8. Attorneys, custody evaluators, and mediators do not usually seek and cannot easily obtain domestic violence police reports from law enforcement or courts in other jurisdictions where incidents may have occurred.**

### How is this gap produced?

Past attempts to obtain records have met with failure in many cases. Some practitioners are successful some of the time in getting access to these reports when they request them. It is not clear what principles or laws are being interpreted to make release of these records difficult.

It is not easy for attorneys to determine whether such records even exist, whether arrests have occurred, and what police response has been required.

### How do we close the gap?

Most arrest reports are public record by law. Minnesota law requires law enforcement agencies to provide copies of arrest records to victims or their advocates at no cost.

County and city attorneys should advise the Winona Police Department and the Winona County Sheriffs department on their obligations to provide reports to parties or their counsel.

Local law enforcement should engage in discussions with the local bench, bar, custody evaluators and advocates on the issue of when and how law enforcement will provide copies of police reports as allowed by law (whether to victims themselves or to attorneys representing victims or to attorneys with an interest in a report involving a suspect who is opposing party in their cases).

As an outcome of these discussions, a written policy should be adopted on the subject and distributed to local attorneys and other practitioners.

Attorneys could ask the court to enter orders requiring law enforcement agencies to turn reports over to attorneys or parties; courts could issue such orders in Order for Protection cases and in child custody matters.

Attorneys could request such reports from other jurisdictions in every case where their clients indicate police were involved in response to an incident of domestic violence.

## Theme Two: Information Available to the Courts

Courts handling custody cases, whether in the context of divorce, child custody matters or Orders for Protection, often lack the information which would allow them to respond most effectively to the needs of each affected child. The paucity of full and contextual information on matters related to the abuse causes courts to be unsure that they are making good custody decisions. In the last analysis, the adult victim's and children's needs for safety and healing may not be fully addressed in temporary or final orders (whether agreed upon through negotiation or court decision) or in the custody dispute resolution process itself.

**Gap # 9. Attorneys representing victims of DV may put information on the violence and abuse in the pleadings initially, but the information given to the court is rarely very detailed as to the impact of the violence and abuse, especially on the children.**

### How is this gap produced?

While the attorneys representing the parents who had alleged domestic violence in the nine very voluminous cases examined may have done so, the text analysis of the files showed little *evidence* that the attorneys assessed the effect of the domestic violence on the abuser's parenting, on the children or on the victim. There were few occasions (as measured by our examination of the case file) when these details were conveyed to the court beyond the initial pleadings - if the abuse was addressed in the initial pleadings at all. There was no evidence that adequate connection was being made between the behavior (violence, controlling intimidation, etc) of the perpetrator and his/her ability to parent the children in a non-violent, non-threatening fashion. It appears that few cases are brought to contested hearing on the issue of the existence of domestic violence, the effect it had on the child or its significance to the decision of what custody arrangement would be appropriate. Detail on any of this in the files is often sketchy, which fact mirrors the belief of the focus group of victims that "no one seemed to understand the situation" and the reports of courts nationwide that they get inadequate information to make good decisions.

Some of the causes of this gap are as identified in the section above (the availability of tools and training, the inadequate evaluation or screening resources, etc.).

Sometimes the invisibility of these assessments, facts and connections could be due to the fact that attorneys are omitting the details in order to gain a concession from the other party – which concession is in the interests of the parent or child.

One cause of the invisibility of this critical information is the difficulty in obtaining an expert to assess the effect of the domestic violence on the child or victim parent (the cost may be too high, the delay it may cause may be unacceptable, the assessor with experience and availability too difficult to locate).

Another cause might be the fact that attorneys are not generally trained in identifying the connections between different kinds of domestic violence and trained in what parenting arrangements are appropriate and safe for each kind of case.

### How do we close this gap?

Attorneys could begin to utilize the screening and assessment tools, and their clients should have easier and more affordable access to full domestic violence assessments and full domestic violence – specific evaluations of the child’s welfare and the impact of the domestic violence on the child.

Upon being provided with such information, they could offer it to custody evaluators and any ADR provider at the initial and at subsequent stages of the proceedings. They should also consider offering it to the court in the form of admissible evidence in a contested hearing context.

Courts could be more assertive in their dealings with counsel who are not providing full information about the nature of the domestic violence being alleged or about the relevance of the abuse to the parties’ parenting, the children’s welfare and the kind of parental access that is being sought. Courts could adopt the practice of insisting on full information in every case involving allegations of domestic violence, as is suggested by the National Judicial Institute on Domestic Violence. Whether the court should consider setting a matter on for hearing when it appears that the safety of the child might be jeopardized by a proposed custody arrangement (especially where the parties are *pro se*) was a topic of discussion at Audit Team meetings, but no conclusion was reached.

**Gap # 10. Most battered parents cannot afford to fund ongoing litigation nor to pay for custody evaluations, and as a result are less able to avail themselves of the court's protective decision-making power. This means that final orders are more likely to be based upon stipulations which contain little evidence on to how the child and victim parent's safety and well-being is being addressed.**

### *Representation*

#### How is this gap produced?

Southern Minnesota Regional Legal Services is not funded well enough to represent all low income parents who are victims of domestic violence; the private bar's pro bono efforts cannot meet the need, either. Most lower-middle income parents cannot afford either extensive litigation or custody evaluations. *Pro se* parties often do not know anything about domestic violence and its effects, nor about the law, nor about the court's options in ordering protective court custody orders and, as a result, do not present adequate information to the court.

#### How do we close the gap?

There needs to be increased funding for representation of parents who are victims of domestic violence, especially money for legal services.

Appellate courts should recognize the existence of a civil "Gideon" right to counsel in family court matters, especially in cases involving domestic violence which can have such an impact on children and victims.

### *Role of courts in resolving family law matters*

#### How is this gap produced?

There has been increasing pressure to move family law (and some other kinds of civil cases) out of the courts and into other venues for dispute resolution. Sometimes this move is driven by a lack of resources for funding the courts, sometimes it is driven by a belief that the courts are not an appropriate forum for resolving family law disputes. No matter what the source of the pressure to settle cases or move cases out of the courts, the impact on parties with domestic violence problem can be quite negative. For example, mandating some kinds of ADR is seen by many local practitioners as very problematic in domestic abuse cases which require the immediate attention of the one community institution that can interrupt the violent controls being exercised by the perpetrators.

### How do we close the gap?

The Audit team believes that the courts must be accessible – in a timely manner – especially to victims of abuse and their children, and must not raise unnecessary barriers such as mandated meetings, classes or other activities in a manner which delays or denies justice. Case processing and dispute resolution practices in Winona county should reflect more than the need to cut corners and speed cases through because of inadequate funding. ADR and other court procedures must also avoid raising unnecessary barriers to true justice for these adult and child victims of ongoing violence. Further, the state must provide a level of court funding which would make it possible to respond fully and effectively in violence and abuse cases.

### ***Dealing with pro se parties***

#### How is this gap produced?

In many cases, parties appear *pro se* with a stipulation and there is evidence that domestic violence is an issue (either party alleged DV or there were criminal, OFP or juvenile court cases with domestic violence involvement). Courts dealing with these *pro se* stipulating parties – and who have been offered no information about how the proposed arrangement protects the child or victim parent – need fair, impartial and effective mechanisms for determining whether the terms of the stipulation will work. Current practice is to rarely inquire further of such parties.

#### How do we close the gap?

It is appropriate and beneficial for courts to inquire enough into the matter to be able to make a determination on whether the proposed custody arrangement is in the best interests of the child and does not endanger the adult victim. Because the court must retain its impartiality, this inquiry is difficult. The court would benefit from training and/or materials on dealing with *pro se* parties in a manner which is impartial but also allows the court some confidence that its order is in the best interests of the child.

### ***Lack of domestic violence custody evaluations***

#### How is this gap produced?

Approximately half of all contested custody cases involve custody evaluations, according to estimates by local practitioners. The courts and other family law practitioners express frustration with the unavailability of full custody evaluations which address the critical issues raised in domestic violence cases involving children. The cost of such evaluations are high enough (for lack of government or other financial support for them) that some parents must forgo them. As a result, in many cases the court has no independent

information upon which to rely in assessing whether the proposed custody arrangement is protective of the child and battered parent.

### How do we close the gap?

The government (the state? the county?) should pay for custody evaluations in cases where parties cannot afford them, especially where domestic violence has been alleged. These evaluations should employ new approaches to investigating allegations, determining the context of the violence where it exists, and gathering information on the level of violence, risks posed, pattern of coercive controlling tactics and impact on parenting.

### ***Testimony of children***

In some cases, children might have valuable information about the alleged abuse of the parent. However, there is disagreement by experts in the field (reflected in the divergent practices in courts in Winona County) about whether it is a good policy to ask children to testify in child custody or OFP cases.

**Gap #11. Custody evaluators' reports examined in this audit do not show evidence that where one party asserted that domestic violence was an issue, the evaluator sought corroboration from sources outside the family, such as police reports.**

How do we close this gap?

New material on best practices for custody evaluators to utilize in domestic violence cases is being created by the National Council of Juvenile and Family Courts and should be provided to all local evaluators. In addition, the new thinking on this issue is resulting in new practice guidelines, which BWJP can make available to local bench and practitioners. All evaluations in cases involving domestic abuse allegations should employ new approaches to investigate them, determine the context of the violence where it exists, and gather information on the level of violence, risks posed, pattern of coercive controlling tactics and impact on parenting.

Courts and attorneys should clearly convey to custody evaluators the expectation that custody evaluators adhere to these emerging professional standards. Judges and attorneys should seek out evaluators who have shown competence in handling domestic violence cases.

**Gap # 12. Judges handling family law matters do not necessarily know about other pending or past criminal or OFP or juvenile court cases involving the couple (especially domestic assault charges).**

### How is this gap produced?

The Winona Domestic Assault Project database shows that 81% of all arrests for domestic assault result in a conviction for some crime (with women pleading guilty to the underlying charge more often than men, who are more likely to negotiate a plea to a lesser charge), so there would be a clear benefit to the custody court of having information on those cases.

There is no policy that encourages or requires court administration staff to examine court records for other cases and provide those files to the judge handling the custody case. In light of the limits on court administration resources, the staff feel that such searches would be impossible. In fact, even *pleadings* that are filed by parties sometimes are not placed in court files in a timely fashion because of resource problems.

*In one recent divorce case involving child custody, the parties, who were represented by counsel, appeared before the court to enter a stipulation which would provide for joint custody and requiring substantial communication and cooperation between the parents. A week later, the written stipulation was submitted to the court and the judge had signed a final order accordingly. Days later, the judge happened to notice that the father in the case had just been arrested for felony domestic assault against his wife. The judge had not been told of the incident nor of the pending charges because the attorneys had not told him (for some reason the parties had not informed them). The attorneys did not have any other way of knowing about the arrest and the judge had not been told by court administration that there was another case pending involving the couple. No system was in place to alert the court to the criminal case.*

### How do we close the gap?

First, every practitioner must read the Winona Daily News every morning to see whether any clients or opposing parties have been arrested or charged. (Yuk, yuk.)

Court administration should adopt a policy that in custody cases involving allegations of domestic violence, staff examine Winona County court records for other cases involving the couple (especially criminal and OFP) and provide those files to the judge handling the custody case.

State resources for court administration need to be increased to make this easier to accomplish.

**Gap # 13. Even if the court were to be given information on criminal cases involving the couple, and if convictions were to influence the outcome (and treatment of the case by custody evaluations, attorneys, mediators, etc), most criminal DV cases are not resolved for approximately 8 months (according to WDAP data base), limiting their impact on a custody case.**

### How is this gap produced?

It is not clear what forces combine to create these long delays in resolution of criminal cases. Inadequate resources (court, defense and prosecution), relative prioritization of cases by criminal system practitioners, and other issues are likely causes.

### How do we close this gap?

Best practice for domestic violence prosecutors is to resolve cases within a as short a time as possible, given the fact that any re-assault is likely to occur within weeks of the initial incident and the fact that a combination of monitored probation and participation in the Counseling for Abusive Men program offers some hope of change. Where the defendant is also a parent involved in a child custody matter, this expeditious response is even more critical. Therefore, the Winona City Attorney's office and the Winona County Attorney's office should be encouraged to place a high priority on speedy resolution of criminal cases where the defendant is a party to a child custody matter.

Of course, courts do not need to rely on the existence of a criminal conviction to make a finding of domestic violence in the custody case (as noted above) and they could hold a hearing and make the determination in the custody case upon motion of the victim parent or her/his counsel.

**Gap # 14. The issue of domestic violence and the impact it has in a given child custody case may not be addressed in the custody order even where there exists a prior or continuing OFP.**

### How is this gap produced?

This gap is the result of several factors operating independently:

First, few OFPs include a finding that domestic abuse occurred. This occurs because most parties agree to the issuance of the order without findings, which the court encourages and which parties agree to in most cases. Courts encourage this practice in part because each OFP case is allocated only 15 minutes on the calendar, which can (if all parties show up for their hearings) mean that when additional time is needed, it is not available. It does appear, however, that because some parties do fail to appear, the courts are usually able to provide enough attention to the remaining matters. There are several other causes for the high number of stipulated cases. Petitioners may agree to the order without findings because they may be insecure about being able to prove their cases if pressed to do so by a preponderance of evidence; and respondents may agree because they would rather not run the risk of having the finding entered if they lose after an evidentiary hearing.

Second, evidence which would tie the violence to the issue of child custody and child safety in the OFP case is often missing. Few unrepresented parties are able to draft an OFP affidavit in a way that conveys with clarity (and legal relevance) the range of the respondent's abusive behaviors and the effects, if any, upon the children

Third, attorneys in subsequent custody cases do not request a ruling by the court on the issue of whether DV occurred so that the issue is directly addressed.

### How do we close the gap?

Where the respondent admits to the abuse, the court should make a finding.

The state should increase court resources to make it easier for the court calendar to accommodate full hearings wherever requested or where the court needs more information on the abuse and the impact it has on proposed custody arrangements.

Where petitioners request it, the matter should be given a full hearing in order to allow the court to make a finding of domestic abuse.

Advocates should improve their ability (through training and occasional case consultation with SMRLS staff attorneys, Battered Women's Legal Advocacy Project staff or the Battered Women's Justice Project staff) to help petitioners to be concise, complete and legally relevant in their OFP application affidavits.

The court has recently adopted a policy that limits to the eleven lines on the state approved form a petitioner's description of the abuse underlying the request for relief. This policy decreases the likelihood that the court will get full information about the impact of the domestic abuse on the children or the range of issues that the court should address in any resulting OFP and should be supplanted with other measures which will both improve the quality of *pro se* pleadings and increase the relevant information provided to the court, including on child-related issues.

Where DV is an issue, even where there is a "no-finding" OFP, attorneys representing victims should consider asking the court in the custody case to rule on the issue of whether domestic abuse occurred.

**Gap #15. There is no mechanism for the court to triage or otherwise assess cases for the existence of domestic violence, which is especially problematic in *pro se* cases. Courts must often rely on ill-informed and/or unrepresented litigants to provide information or evidence related to the abuse, risk of future harm or impact on the child.**

## *Assessments*

### How is this gap produced?

As one practitioner put it when expressing concerns about how cases are resolved, “*A lot of what happens is frankly because we do not know the implications of the violence*”.

No one associated with the court is charged with triaging new cases involving children to examine whether domestic abuse has occurred, to assess the kind of violence (the intent, meaning, history, interventions, etc.) and the effect on the victim and children. This means that it is far less likely that the court will know whether something needs to happen to protect victims and children or to stop a violent parent from continuing to abuse his/her family members. A very few jurisdictions in the U.S. are beginning to attempt such assessments, none in Minnesota.

### How do we close the gap?

Winona County (directed by the Audit Team) should work to develop a program for providing an independent assessment of the cases involving alleged domestic violence (similar to a GAL?) who would do an initial examination of the case and any corroborating evidence and provide referrals for advocacy, assistance, and other safety information. BWJP will provide more information on the tools currently being piloted elsewhere, such as the screening tool being released in Fall 2007 referenced above and the DOVE screening being used in Toronto, CA.

In response to the gap caused by victim’s lack of information about how the violence might be affecting their children and what it says about the violent parents’ ability to care for and guide the development of children, it is fortunate that the forty hour WRC advocate training that is a pre-requisite for employment or volunteering has a substantial component on children witnessing and other effects of domestic abuse on children.

WRC advocates are in a good position to help battered mothers consider these things and become better advocates for themselves and their children. Remaining unresolved is the intriguing question of whether and how the WRC could play a larger role in assisting more parents who are filing custody matters to screen themselves for domestic abuse, do risk assessment and consider what they think the court should know about it. A few jurisdictions employ advocates in this fashion and such efforts might be the subject of further discussion by the Audit Team.

Funding to support this process should be sought out and the members of the Audit team will work to explore the options and assist in application as appropriate.

### ***Use of Guardians Ad Litem (GAL)***

#### How is this gap produced?

State law allows for appointment of GALs where the child may be endangered. This rarely happens, however, for several reasons;

- a. There is no state funding for GALs in family law cases and few county resources to dedicate.
- b. Parties don't know that GALs can be appointed if there is reason to believe the child is endangered, so they do not ask for one.
- c. Where parties do not raise the issue, the court would not necessarily know that appointment was appropriate because there exists no court-annexed screening or assessment as noted above.

*"We (in the Winona community) are going to pay for it one way or the other,"* one practitioner observed about the lack of funding for GALs and other services to address domestic violence and the legal system's response.

#### How do we close the gap?

Recognizing that there is inadequate funding for appointment of GALs, the state court system should increase funding for GALs in these cases, and the county and the district should also implement programs for funding.

In order to increase the likelihood (especially in cases where the parties are unrepresented) that the court would know that domestic violence was an issue affecting the children, the court should inquire of attorneys and unrepresented parties in DV cases whether the children are endangered.

### **Pro se divorce forms**

#### How is this gap produced?

The forms available at Court Administration for the use of *pro se* parties who want to file for divorce do not direct the party to inform the court about the existence of domestic abuse until the very end of the form.

## How do we close the gap?

Questions about domestic abuse and endangerment of children should be asked on the first page of the *pro se* pleadings, not “lost” somewhere later in the document. The Audit team should inquire of the State Supreme Court Administration to determine whether the state-provided form could be amended accordingly.

## ***More Audit Trails***

Yet to be fully explored by this Audit but of interest for future consideration are the following:

### 1. Parents Forever

Parents Forever, the parenting skills/divorce classes being offered in Winona County pursuant to MN Stat. 518.157, provides 6-10 hours of information to parents on the legal, emotional and other processes involved in separation, especially related to children and custody. While there is one session dedicated to addressing domestic violence, the issue actually is very relevant and should be addressed at several other points in the sessions. Exactly how and where it would be raised is a topic for more detailed consideration by the Audit team working in concert with other community members involved in the Parents Forever course.

### 2. Early Neutral Evaluation (ENE)

We need to examine how, if at all, the ENE process is appropriate for DV cases and if so, which kinds of domestic violence cases. Where some form of ENE processes that are determined to be appropriate, they must be designed to reflect the level and impact of the violence and abuse and to meet the needs of the parties. The courts in rural counties in northwestern Ohio are considering the prospects of developing a more DV-sensitive version of ENE and Winona County could work with them to pilot such a program.

One issue that has already arisen is this: When a couple uses the ENE process, but subsequently fails to reach agreement and needs a full custody evaluation, the evaluator who did the ENE is not appropriate to do the full evaluation. One Winona custody evaluator reported that the use of ENE in other surrounding counties has resulted in an increase in the number of requests for her to do the full evaluations in those other counties. Use of a custody evaluator from another county is more expensive for the litigants and might be prohibitive for a battered parent to afford.

Issues which have been raised about ENE in other jurisdiction should be explored in Winona:

#### Voluntariness of the process:

A key element of the ENE process is that is voluntary. Minnesota family law recognizes the problems inherent in mediation for battered women and is clear that mediation and mediation processes cannot be mandatory for battered women. If ENE is to be a voluntary process, it is essential that judges and court personnel insure that parties, particularly pro se parties, understand that it is truly voluntary and that opting out of the ENE process will not negatively impact their cases.

Recommendations:

1. Prior to the first court appearance, provide written information to parties about the Initial Case Management conference and the ENE process. Mail materials with the letter that sets the first court appearance. Materials should be made available at the court and on the court website. The materials should clearly state who a party should contact if s/he has questions.
2. Examine the judicial presentations on ENE. Judges should make clear that the ENE process is optional and should provide information that if domestic violence is present, the parties should carefully consider whether the ENE option will be safe for them. Judges should encourage the parties to inform ENE facilitators of any safety concerns. Judges should clearly communicate to parties that opting out of the ENE process will not be used against them by the court.

Screening for battering:

In order for the ENE process to be effective, the parties must feel that they can share abuse and parenting issues and other areas of concern freely. To be most effective, ENE facilitators should know whether battering has occurred.

Recommendations:

1. Court records should be checked for current and previous OFPs/HROs and criminal charges.
2. If domestic violence is alleged in the dissolution pleadings, that information should be forwarded to the ENE facilitators.
3. The initial ENE intake should include a basic screening for domestic violence.
4. Anyone doing screening should receive training on the screening tool and screening process.
5. ENE intake forms should include a section reflecting domestic violence screening questions.
6. As part of the opening for the first ENE session, facilitators should address battering and do an informal screening.

Differentiated response when there is battering:

Screening for domestic violence is only useful if it means that once battering issues are identified, a differentiated response follows. Just because a party identifies domestic violence does not mean they cannot use the ENE process. It does mean that different options and procedures should be offered. Each battered woman will make a different decision on what modifications she needs in order to be safe. There are general practices/procedures that should be built into the ENE model to allow for those choices.

## Recommendations:

1. Reiterate throughout the process the voluntary nature of ENE and let the parties know that if they no longer want to continue with the process, they can stop.
2. Provide advocacy resource information.
3. Set up separate waiting areas.
4. Stagger arrival times for the parties. Provide escort service information.
5. Notify the facilitators that domestic violence is an issue.
6. Allow pro se battered women to have an advocate/support person present during the ENE session.
7. Start the ENE session with a brief individual meeting with each party to assess and respond to safety concerns.
8. Consider modifying the ENE session e.g. consider “shuttle” negotiations, more frequent breaks or individual check-ins with the parties during the ENE session.
9. Be clear that the statutory presumption, when domestic violence is present, is for sole custody to the non-abusing parent.
10. Include a list of parenting time considerations for ENE facilitators to consider when negotiating parenting time e.g. use of parenting time exchange centers, other types of supervised contact, safety options when exchanging children, batterer treatment programs, communication methods between the parents.

## ***Next Winona Safety Audit Steps***

The audit question was:

*How is the safety and wellbeing of victims of domestic violence and their children addressed and promoted in the process of resolving child custody matters in Winona County, MN?*

The Winona County Audit team has over the past three years explored many of the aspects of the legal system’s handling of cases involving domestic violence. This report articulates fifteen gaps in the custody system’s response to cases involving domestic violence identified by the Audit Team.

Victims of battering and their children are the center of this Safety Audit. The 15 Gaps were discovered by asking the question: Does this practice or policy make it safer for victims of battering and their children? Is there a gap between a particular practice or policy and what a victim and her children need in order to be safe from ongoing violence and abuse?

As the Audit Team identified gaps, it developed an understanding of how each gap was created by the ways the work processes are currently organized, while also pointing out the ways those processes could be improved to close the gaps. This report is not the end of our examination of our system, but a starting point from which to work to improve the way each kind of practitioner approaches and handles cases. Each Audit Team member will carefully review this report and its recommendations. Implementation will necessitate continued attention to making the recommendations a reality in Winona County.

Finally, the Safety Audit Team members are to be commended for their past and ongoing commitment to examining their own processes, their own approaches and their own assumptions about how to do the work. Much has been done so far, and more will be required in order to make Winona County's response to battered victims and their children as protective as possible.