

Report of the Henry County, Ohio, Child Custody and Domestic Violence Safety and Accountability Audit

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This report is dedicated to Lauren Saunders and Jacob Saunders
and to their mother, Patty Saunders, who survives them.

“On May 13, 2006, my husband stabbed me, shot and murdered our beautiful children, before
killing himself. Today, each day is an absolute struggle...with Lauren & Jacob living on in my
heart forever.”



Executive Summary

Henry County, Ohio, Child Custody and Domestic Violence Safety and Accountability Audit

In 2010, under the leadership of Judge Denise McColley, Magistrate Richard Altman, and attorney Pamela Weaner, courts and community agencies involved in child custody decisions and the response to domestic violence completed a Safety and Accountability Audit. The local Henry County partners were joined in this work by representatives of Praxis International¹ and the National Custody Project.² The team conducted interviews, observed practices, and analyzed case records to examine how the response to the intersection of domestic violence and child custody was organized and coordinated, and with what implications for the safety and well-being of children and victim parents. The Safety Audit identified a range of gaps and related recommendations that Henry County began grappling with while this account of its work was being completed.

While certain aspects of case processing and interventions related to domestic violence and child custody are distinctly local, what happens in Henry County or any other community occurs within state laws and rules, as well as within structures and theories characteristic of the United States' legal system and professional discourses about children, mothers, fathers, divorce, and domestic violence. The Henry County Safety Audit has raised questions and issues that are common to all jurisdictions and the disciplines and institutional processes that shape responses to domestic violence and child custody. At the same time, there are changes in local practices that can help improve communication and information going to all involved, reduce confusion, clarify processes and rights, and better address the context, severity, and impact of domestic violence and abuse.

A Safety Audit asks *how* something comes about and looks at institutional processes, not individual job performance. The constant focal point is the *gap* between what people experience and need and what institutions provide. This summary provides an overview of the Henry County Safety Audit's key findings and recommendations related to domestic violence and decisions regarding child custody and parental access. The full report includes a detailed analysis and discussion of each gap and a description of the Safety Audit approach to studying community systems and institutions (see Methodology).

¹ Dr. Ellen Pence and Praxis International developed the Safety Audit methodology; <http://www.praxisinternational.org>.

² The National Custody Project seeks to draft a practical framework for identifying, understanding, and accounting for the contexts and implications of domestic violence in custody arrangements and parenting plans. Its partners include the Battered Women's Justice Project, Praxis International, and representatives from the National Council of Juvenile and Family Court Judges and the Association of Family and Conciliation Courts; <http://www.bwjp.org>.

Overarching recommendations

The following recommendations preface all of the subsequent recommendations addressed under each gap:

- Develop and implement sound domestic violence screening and assessment tools that are utilized at all points of intervention and at different points in time in child custody-related cases.
- Strengthen practitioners' knowledge of the impact of battering on parenting and build tools and processes into their work routines that will help them recognize battering when it has or is occurring.
- Enhance or create procedures to provide decision-makers with complete and accurate information about the presence, type, and impact of domestic violence in custody-related cases.
- Build a collective response where part of each intervening agency and practitioner's role is to seek out information about domestic violence and intervene accordingly, with careful attention to battering and the safety of children and adult victims.
- Build a relationship with the children, mothers, and fathers involved in child custody-related cases that fosters dialogue and helps practitioners learn about people's risks and needs, beyond collecting information to complete a procedure.

Gaps and recommendations

Gap 1: Assessment of the context, severity, and impact of violence and the implications for risk, danger, safety, and parental access to children is inconsistent and often incomplete.

Recommendations:

- a. Research and develop effective screening, assessment, and safety planning tools related to domestic violence and child custody decisions.
- b. Develop a differentiated approach to parenting determinations that accounts for the nature, severity, and context of the violence and its impact on parenting and long-term safety of children and adult victims.
- c. Review and revise existing Ohio statutes and rules in order to integrate the specific domestic violence screening and assessment tools that are developed, as well as the provisions related to differentiated parenting plans.
- d. Develop statewide case management guidelines for custody-related cases involving domestic violence.
- e. Revise the state rules and mandated custody affidavit and similar custody-related documents to disclose any prior convictions related to domestic violence, sexual abuse, and stalking by either party or other household members.
- f. Revise the state rules and mandated custody affidavit to allow for additional information to be attached regarding any concerns for the safety, health, or welfare of the children or the adult party, with provisions to keep such information under seal until a further hearing where safety concerns can be addressed.
- g. Revise local rules to allow for judicial discretion in referring parents to parent

- education classes and create guidelines to help the court make informed assessments and decisions about such referrals.
- h. Make changes to the procedures, structure, and content of parent education classes in order to better address the dynamics of battering and specific safety considerations and parenting issues related to domestic violence.
 - i. Develop protocols to guide practitioners in managing those cases involving domestic violence allegations that fall between safety for children, private family law matters, and safety for adult victims.
 - j. Build systemic education and training for the professionals who work in the family court system in order to help them better recognize and distinguish battering from other forms of domestic violence and develop the skills to provide services that meet each family's needs.
 - k. Develop a coordinated community response among the criminal and civil justice systems to help ensure that information is obtained, documented, shared, and used in ways that make it possible for interveners to maximize safety and meet families' short and long-term economic and support needs.

Gap 2: Dispute resolution processes, including litigation and mediation and other alternatives, are routinely utilized without a clear understanding of when and how these paths might be problematic for the safety and well-being of children and adult victims of battering.

Recommendations:

- a. Continue the review of mediation practices initiated by the Safety Audit and answer the questions raised in that discussion.
- b. Develop a more comprehensive mediation screening protocol that addresses the context, severity, and nature of the violence and its impact on parenting. In addition, establish a process for checking in with parties to determine whether there are new concerns about coercion or violence that make mediation inappropriate.
- c. Establish a mechanism for reassessing situations where mediation agreements cannot be reached to determine whether earlier screening has missed domestic violence that is affecting the process.
- d. Develop a local rule and administrative practices that clearly articulate circumstances when mediation is not appropriate and procedures for litigants to opt out.
- e. Develop procedures for referrals to services, risk assessment, and safety planning when domestic violence is identified during mediation or other screening.
- f. Develop informational materials that inform participants about all dispute resolution processes that may apply to child custody-related decisions.
- g. Develop clear information for pro se parties and family law attorneys about the mediation process, including the steps, screening for domestic violence, identification of issues, preparation, and documentation.
- h. Incorporate risk assessment, safety planning, screening, and parenting plan differentiation tools developed as a result of the Safety Audit into the statewide Mediation and Domestic Violence Training Curriculum.
- i. Revise relevant Ohio statutes related to mediation to include screening for the nature, extent and severity of domestic violence and a determination by the court that

mediation is appropriate.

Gap 3: Victims of domestic violence are often poorly positioned to make informed decisions related to parenting rights and responsibilities and the safety implications of different decisions.

Recommendations:

- a. Design and distribute information in various formats that clearly explains the process, legal rights and responsibilities, and potential consequences of applying for public assistance, applying for child support, petitioning for paternity and custody in juvenile court, and filing for a protection order, custody, legal separation, or divorce.
- b. Expand and strengthen victims' access to information about advocacy, economic support, risk assessment, safety planning, and other support services, with distribution via different formats, languages, and locations.
- c. Expand and strengthen the use of the Pro Se Clinic.
- d. Expand and strengthen victims' access to information about the legal processes and their rights and responsibilities in custody cases, mediation, guardians ad litem, court-appointed special advocates, custody evaluations, and child protective services, with particular attention to the kinds of evidence that can assist the interveners in making custody determinations and the procedures for providing it.
- e. Expand and strengthen domestic relations attorneys' knowledge of mediation and how to best represent and prepare their clients for that process.
- f. Expand and strengthen the availability of advocates who are knowledgeable about the complexities of custody-related processes.
- g. Identify key decision points within custody-related processes and develop meaningful informed decision-making opportunities for parents.

Gap 4: Multiple court jurisdictions and other entities mean that victims of domestic violence are drawn into systems with confusing requirements and expectations.

Recommendations:

- a. Define collective intervention goals that promote a common recognition and understanding of battering and other forms of domestic violence.
- b. Strengthen practitioners' knowledge of the impact of battering on children, adult victims, and parenting.
- c. Build processes for dialogue between those who are caught up in legal systems and the intervening practitioners.
- d. Provide accessible, accurate information that clearly explains the different legal processes, rights, and responsibilities in each system.
- e. Increase the availability of and access to skilled legal advocates and family law attorneys.
- f. Examine and revise state laws, rules, and court structures to simplify and clarify legal processes related to intervention in domestic-violence-related cases.
- g. "Draft a practical framework for identifying, understanding, and accounting for the contexts and implications of domestic violence in custody arrangements and

parenting plans” (the National Custody Project).

Gap 5: Assumptions related to parenting can diminish practitioners’ attention to the context, severity, and impact of domestic violence.

Recommendations:

- a. Revise state laws and rules to ensure consistent reporting of prior convictions for domestic abuse, sexual assault, or stalking offenses by either parent or other household members on custody-related affidavits and related forms.
- b. Develop procedures that safely allow for parties to attach additional information regarding any concerns for the safety, health, or welfare of the children or the adult party to custody affidavits and similar documents.
- c. Include considerations of any history of or potential for child abuse, domestic violence, or parental kidnapping by either parent in the best interest of the child factors for any custody and parenting plan determinations.
- d. Require training on the context, severity, and impact of domestic violence; screening and risk assessment; and safety planning for custody evaluators, GALs, CASAs, parenting coordinators, and parenting group facilitators.
- e. Expand and enhance domestic violence-related training for attorneys, mediators, magistrates, and other civil legal system interveners and decision-makers.

Gap 6: Intervening systems make many demands on victims that are often disconnected from, and sometimes in conflict with, individual needs and resources.

Recommendations:

- a. Provide opportunities for interdisciplinary education and dialogue to judges, attorneys, and other legal system personnel; psychologists and other mental health professionals; and social service agency personnel in order to increase intervening systems’ knowledge of (1) how the type and severity of domestic violence can impact parenting and (2) processes for information sharing that guard the safety and well-being of children and adult victims while also protecting the due process rights of the abusive parent.
- b. Revise or write local court rules regarding procedures and forms related to information-sharing among interveners to ensure that information reaches decision makers in a timely manner, increase the consistency of information going to the parties, and help develop timely and safe parenting plans.
- c. Revise Rule 48 (Supreme Court of Ohio) to include mandatory training on domestic violence screening, differentiation in parenting plans, and risk assessment and safety planning for guardians ad litem and CASAs.
- d. Adopt a local court rule to require mandatory training on domestic violence screening, differentiation in parenting plans, and risk assessment and safety planning for custody evaluators appointed by the court.

- e. Develop tools and provide related training to Child Support Enforcement Agency and economic assistance workers on domestic violence screening, risk assessment, and safety planning.
- f. Improve notifications of domestic-violence-specific waivers and protections to applicants for child support and Ohio Works First and increase screening for such waivers and protections.
- g. Expand and strengthen a wide range of economic supports to victims of battering, including: employment services that lead to a living wage, access to day care, transportation services, housing, and emergency relocation and other related assistance to victims fleeing violence.

Gap 7: The absence of domestic-violence-specific supervised visitation and safe exchange services restricts options for parenting time that best fit children's individual circumstances, safety for children and adult victims, and fairness to parents.

Recommendation:

Identify and secure funding to establish a supervised visitation and exchange program for the community that provides services specific to battering and other types of domestic violence, in accordance with the guiding principles of the OVW Supervised Visitation Program.

Gap 8: Immigration status can severely constrict options for battered women and the ways in which immigration laws are applied can sometimes trump the best interests of the child and victim safety.

Recommendations:

- a. Continue to include representation from immigrant advocacy and legal services agencies in community discussions and response to domestic violence and custody-related issues.
- b. Establish and implement a local practice whereby an immigrant victim who appears before the court without an advocate will be connected with an advocacy organization with specialization in immigrant victim issues.
- c. Establish and implement a local practice whereby a victim with limited English proficiency who appears before the court without an advocate will be connected with language interpretation and community organizations that will help determine the person's need for advocacy and other services.

Gap 9: Physical security and other aspects of safety are poorly developed or non-existent in many settings.

Recommendations:

- a. Develop and implement a safety protocol for the court that includes internal and external safety procedures for the courthouse and accounts for the potential volatile

- nature of domestic violence-related cases during court proceedings or other court services, including mediation.
- b. Require any program conducting parent education to develop and implement safety procedures that account for the volatile nature of domestic violence.

Gap 10: Existing law and practice related to Civil Protection Orders are inadequately coordinated with safety considerations in some divorce and custody-related cases.

Recommendations:

- a. Request that the Supreme Court of Ohio Advisory Committee on Domestic Violence convene to review and propose statutory changes that would allow the court with jurisdiction to hear the civil protection order and utilize the CPO to temporarily suspend or modify custody or parenting time pending further review by the court with original jurisdiction in the custody/parenting time decision.
- b. Provide clear, thorough information to victims of domestic violence about CPO provisions and enforcement and how a CPO might best reinforce or work alongside divorce proceedings.
- c. Link attorneys and legal advocates with research about the circumstances under which victims seek civil protection orders and how such orders may or may not be protective, particularly in relation to custody and parenting time.

Gap 11: Batterer intervention programming does not have a consistent curriculum and standard of delivery that addresses the context, severity, and impact of the violence and its implications for parenting.

Recommendations:

- a. Adopt and implement a nationally recognized curriculum for working with men who batter.
- b. Ensure that the BIP curriculum incorporates or includes as an additional component specific attention to fathering and domestic violence.
- c. Adopt and implement a nationally recognized approach or curriculum for working with women who have been directed to attend an intervention group in conjunction with a domestic violence-related offense.³
- d. Train all facilitators in each curriculum adopted.

There is an ever-present caution in considering any of these recommendations from the Henry County Safety Audit. The goal is to eliminate or minimize the harm of domestic violence for as many children and adults as possible, yet there is no single, universal child or mother or father, and hence, no single response. Those seeking to change complex legal and social systems to make them more attentive to strengthening safety and well-being and offering opportunities for change must anticipate how and for whom a particular reform will work and be alert to and mitigate any harmful impacts, however unintended.

³ An example of such a program is *At a Crossroads: Developing Duluth's Prosecution Response to Battered Women Who Fight Back* (Asmus, 2004, Rev. 2007), available at <http://www.bwjp.org>.

Henry County's path to the Safety Audit

How does the legal system take domestic abuse into account in the resolution of child custody and access in ways that protect the safety and well-being of children and adult parties while also assuring due process? – Henry County's Safety Audit Question

The community's questions

On May 13, 2006, Lauren and Jacob Saunders, ages ten and five, were murdered by their father in Fulton County, our neighboring county to the north, when their mother, Patty Saunders, tried to leave her abusive husband. Patty Saunders survived the attack on her.

Our communities were painfully aware of how much work lay ahead if we were to provide truly meaningful help to families; help that not only addressed the immediate crisis, but the kind of long-term support that would help them live free of violence. First and foremost, community partners had to ensure that victims' voices were heard in defining meaningful help and how to best provide it. Second, we had to gain a common understanding of the issues, needs, laws, best practices, services, gaps, and solutions for closing the gaps if we were going to provide a truly comprehensive coordinated community response. Third, community partners had to examine the systemic issues that impede our ability to effectively address domestic and sexual violence. Finally, we had to recognize that domestic and sexual violence are global issues. We cannot fully address or eliminate such violence in our local communities without understanding the larger context and partnering with our regional, statewide, national, and international allies to address the cultural and structural causes that perpetuate it.

On October 17, 2006, the Family Justice Center of Northwest Ohio officially opened to provide comprehensive support services to victims of domestic violence, sexual assault, and stalking, and to their families. The Family Justice Center (FJC) provides services in six counties (Henry, Defiance, Fulton, Williams, Putnam and Van Wert) and at the Migrant Rest Center. FJC staff has been in a continuing dialogue with survivors and community partners to identify strengths and gaps in services in order to best meet the needs of the families seeking help.

Since the opening of the Family Justice Center, judicial leaders (in particular, Henry County Judge Denise McColley and Magistrate Dick Altman), advocates, legal aid attorneys, and other community partners have been immersed in discussions about the challenges the family court faces in identifying domestic violence and addressing the needs of families affected by it. Our questions are many and wide-ranging; for example:

- How does the court obtain the information it needs to make meaningful decisions regarding allocation of parental rights and responsibilities that take into account the presence, context, severity, and impact of domestic violence?

- What support services can be offered to families attempting to reconcile that will address the violence, increase safety, and offer genuine economic options to victims as they decide whether or not to leave the relationship?
- How does the court address cases where one parent is not requesting custody, but it is clear that the other parent is engaging in coercive, controlling behavior that will most likely impact the other parent's position and negatively impact the children?
- What options does the court have at the beginning of a case for obtaining information about domestic violence?
- How can we ensure that it will feel and be safe for a victim of domestic violence to disclose to the court what is truly happening?
- How should the court take into account the emotional, physical, and economic consequences of coercive, controlling violence (i.e., *battering*) and the ways in which victims are drawn into multiple systems?
- How can pro se litigants obtain support services through the court to ensure that they understand their legal rights and understand how to obtain help to address the domestic violence?
- Under what circumstances is it appropriate for the court to apply legal custody, shared custody, unsupervised access, supervised access, or no contact when one parent has abused the other?
- What are the connections between the best interests of the child standard and circumstances where one parent has abused the other?

While looking for answers to the above kinds of questions, we encountered the National Custody Project.⁴ We learned that our concerns were not unique to Henry County, but were similar to discussions across the country about domestic violence and decisions related to child custody and parental access. Henry County was interested in utilizing the Praxis Safety and Accountability Audit (see Methodology) to help us answer our questions and the National Custody Project was looking for a demonstration site. Our judicial leaders and community partners boldly agreed to open Henry County's practices in the complicated and often contentious arena of domestic violence and child custody decisions to the scrutiny of a Safety and Accountability Audit.

⁴ The National Custody Project seeks to draft a practical framework for identifying, understanding, and accounting for the contexts and implications of domestic violence in custody arrangements and parenting plans. The Battered Women's Justice Project and Praxis International formed a national workgroup with representatives from the National Council of Juvenile and Family Court Judges and the Association of Family and Conciliation Courts. In consultation with leading researchers and practitioners in the field, the workgroup has begun to examine the institutional processes by which family courts commonly reach and/or facilitate crucial parenting decisions. It seeks to identify the ways in which current practices produce both problematic and helpful outcomes for children and their parents. The National Custody Project draws heavily on the Praxis Safety and Accountability Audit as a framework for analysis. Information about the project is available at <http://www.bwjp.org>.

Audit question, scope, and data collection

The Henry County Child Custody Safety Audit explored this question:

How does the legal system take domestic abuse into account in the resolution of child custody and access in ways that protect the safety and well-being of children and adult parties while also assuring due process?

Because of its role in the National Custody Project, in addition to its local members, the Henry County team also included eight members from outside Ohio who were affiliated with organizations involved in the national study (see Acknowledgements). The team's findings are based on information gathered during and between four on-site visits by the national partners and the following activities:

- ✓ 9 focus groups with 29 participants, including survivors of domestic violence, community-based advocates, domestic relations attorneys, defense attorneys, and guardians ad litem.⁵
- ✓ 37 individual interviews, including: judges, a magistrate, mediators, a mediation screener, court administration personnel, advocates, parenting group facilitators, domestic relations attorneys, defense attorneys, legal aid attorneys, batterer intervention program facilitators, guardians ad litem, court-appointment special advocates, a custody evaluator, child support and economic assistance case workers, child protective services caseworkers, criminal legal system interveners (law enforcement and prosecution), Supreme Court personnel, and survivors of domestic violence.
- ✓ 6 observations, including batterer intervention program groups for men, group for women offenders, parenting classes, and the Pro Se Clinic.
- ✓ Text analysis of 61 case files (protection order, juvenile custody, and divorce custody) and statutes, rules, forms, training curricula, and other documents related to the intersection of domestic violence and child custody.
- ✓ Mapping the processes and steps involved in custody-related actions in the following systems: domestic relations court (married parents), civil protection orders, juvenile court (unmarried parents), child protective services, public assistance, and child support enforcement.

⁵ The Safety Audit attempted to organize several focus groups and individual interviews with men involved in domestic violence and custody-related cases. One interview proceeded as scheduled.

Findings and Recommendations

Each team member had several opportunities to participate in framing the findings and to review and comment on this report, including a two-day debriefing meeting in Henry County, three conference-call reviews, and exchange of commentary via e-mail. Gap statements have been rewritten, clarified, added, and set aside in this collective effort. The goal was to produce an account of gaps and changes that the team agreed on, while making note of questions that required further inquiry or fell outside of the immediate scope of the study. This report sums up the Safety Audit and identifies gaps to address in the ongoing intervention in domestic violence in Henry County. The report includes recommendations for how to close the gaps, highlighting the type of changes that may need to occur.

Recognizing a strong foundation

A Safety and Accountability Audit is designed to identify practices that impede safety and accountability. Its focus is therefore on discovering and articulating problems. A successful Safety Audit requires a certain foundation of relationships and trust, however, and the process of discovering problematic practices also reveals community strengths. In Henry County, those strengths include:

- An evolving response to domestic violence that is characterized by caring practitioners who have the capacity and authority to create change.

This includes strong judicial leadership and commitment that is accessible and open to new ideas and best practices. Judicial leaders encourage training and participation on local, state, and national levels. There is support for the Pro Se Clinic and attentiveness to pro se litigants. Practitioners describe one another as open, curious, and not defensive. Community leaders are committed to improving the system and the family law bar is interested in being part of the process.

- Key agencies willing to work together.

Practitioners know and respect each other. There is a stable base of practitioners with many years of service who know their jobs well, and know each other well. They make use of the advantages of their “small town collaborations,” as one local team member described it, and strong working relationships.⁶ There is open communication across intervening agencies and systems, along with quick interagency access and an atmosphere of community engagement and critical thinking. They summed up their strengths in this way: “We sincerely like and respect each other!”

- Strong advocacy voices and core advocacy support for domestic violence victims and

⁶ Throughout the report, quotation marks are used for comments, descriptions, and terms relayed in interviews and observations conducted during the Safety Audit, along with excerpts from case files, statutes, and other documents reviewed, as well as material cited from research and other sources.

survivors.

The Center for Child and Family Advocacy provides comprehensive advocacy, shelter, and support services in Henry County. PathStone provides wide-ranging outreach and advocacy to immigrant communities, including victims of domestic violence. Legal Aid of Western Ohio (LAWO) provides representation in Civil Protection Order actions and supports the Pro Se Clinic to help prepare individuals for divorce and dissolution proceedings. In 2006, LAWO also established the Family Justice Centers of Northwest Ohio, including a center in Henry County. In addition to advocacy and support to individuals, the FJC has established a Survivors' Network and built alliances with area churches and universities that might be able to assist victims. "We all use the Family Justice Center now – cops, courts, attorneys – we're always referring people there," was how one domestic relations attorney described its place in the community.

- A state-level framework of attention to domestic violence that supports and reinforces local efforts.

In Ohio, mediators working with domestic violence cases must complete sixteen hours of training specific to mediation and domestic violence. Civil Protection Orders include provisions for establishing custody and visitation during the duration of the order. The Supreme Court of Ohio provides training, technical assistance, publications, and other resources to local courts.

Distinctive features of a Safety Audit in a small community

Conducting a Safety Audit in a rural county with a population of 29,000 is both the same as and very different from a Safety Audit in a large urban county. While the method of inquiry is the same, the distinctive features of legal and social service systems in a small community impact the information gathering and recommendations.⁷

In a small community, there is often only one person performing the functions at a particular point of intervention. Personnel are often part-time or work on a contract basis. It can be less likely that there will be policies directing the work of contractual positions and other part-time workers. People frequently wear multiple hats: a therapist and a mediator; an administrator in a social services agency and a custody assessor; a volunteer in a legal clinic and a court-appointed special advocate (CASA); a batterer intervention program facilitator and women's support group facilitator.

It is doubly important in a Safety Audit in a small community to remind team members and readers of the report that the focus is not on individual practitioners, but on the way that their work has been *put together*, i.e., organized and coordinated by rules and regulations, administrative practices, resources, training, and other methods used by institutions to shape and direct their work. Any single job description sits in a larger system, in the standards and traditions of a profession or type of work, and in the approaches and expectations inherited from

⁷ Adapted from the report published by the Bellingham-Whatcom County, Washington, Commission on Domestic Violence, August 2007.

those previously in the position. The Safety Audit is concerned with the routines and practices of different disciplines and professions and the underlying institutional features that frame the process under review.

A small community and its limited number of personnel often create opportunities for closer working relationships and better information sharing. In addition, changes can often be more easily and quickly made as the bureaucracy is minimal, except in more complicated arenas such as a state court system. A well-informed and coordinated action can result in relatively quick systemic improvements. The opposite can also occur, however, when professional discretion is not guided by good understanding and collaboration. In a small community, because one person does have a certain job, that person can influence how the system works and general trends in case outcomes, in ways that can either strengthen or impede safety and well-being for children and victim parents. For example, in a larger community and police department, a single officer who does not believe there is such a thing as marital rape will not cause a department-wide trend of not investigating and prosecuting such crimes. In a small town, however, a single detective holding the same belief could keep a spousal rape case from proceeding.

Definitions and terms

The report uses the following definitions and terms:

Safety is the protection of adult and child victims of battering from continued physical, sexual, and emotional harm, coercion, and threats over the span of time.

Domestic violence is a broad category that has come to include many kinds of violence and behaviors within relationships between intimate partners and, in most states, relationships between family and other household members. It jumbles together actions as different as throwing a shoe at a partner who gambled away a thousand dollars with strangling a woman until she loses consciousness because she wants to end the relationship. The term domestic violence, as used within the legal system and by the public, tends to focus attention on acts of physical violence and obscure attention to ongoing coercion, intimidation, and emotional harm. This report uses the term domestic violence in describing the forms of violence that practitioners involved in decisions related to child custody and parental access encounter. Domestic violence includes battering, as defined below, acts of violence in response to battering, and non-battering violence. The report also uses the terms *domestic violence* and *domestic abuse* interchangeably, as is common in popular usage. As emphasized throughout the report, beginning with Gap 1, the central challenge in maximizing safety is to accurately identify and account for the context (or type), severity, and impact of the violence.

Battering describes a pattern of physical, sexual, and emotional violence, intimidation, and coercion used to establish or maintain control over an intimate partner. While a wide range of behavior is often lumped under the category of domestic violence, battering is distinctive for the variety of coercive tactics used and the level of fear it produces for adult victims and their children, as well as its potential lethality. The Safety Audit report uses *battering* interchangeably with *coercive*, *controlling violence*.

Battering is a term that has historically described men's violence toward and domination of women in intimate partner relationships. While it does not take the same form and pattern in every country and culture, "violence against women by their male partners is common, widespread and far-reaching in its impact" and a "major contributor to the ill-health of women."⁸ In light of this reality, the Safety Audit report often refers to batterers as *he* and victims of battering as *she*, while acknowledging that courts and other community interveners may encounter individual situations where the characterization does not fit.⁹

Ohio law uses different terms for some of the common custody-related terminology. Ohio-specific language includes: parental rights and responsibilities, parenting time, shared parenting, and residential parent and legal custodian. Terms such as custody and visitation remain in common use, however, and the report uses them as well as the Ohio-specific terminology.

Discovering gaps

A Safety Audit looks closely at how work is organized and coordinated for practitioners in their response to domestic violence. In this it is an examination of managerial decisions, assumptions, and practices, rather than a review of individual practitioners.

The Safety Audit presented in this report was primarily concerned with identifying and analyzing gaps related to safety for victims of battering and their children. **As discussions have proceeded in the National Custody Project, it is clear that Henry County has raised questions and issues that are common to all jurisdictions and the disciplines and institutional processes that shape responses to domestic violence and child custody. The report should be read with this caveat: the findings do not apply to all cases under all circumstances or with the same meaning for all children and victim parents, but reflect key ways in which the response is organized within intervening systems and agencies, both in Henry County and nationally.**

The report includes a detailed analysis, discussion, and recommendations regarding each of the twelve gaps identified by the Safety Audit in its examination of the intersection of domestic violence and decisions regarding child custody and parental access.¹⁰

⁸ Garcia-Morenao & Jansen et al., 2005.

⁹ Bancroft and Silverman, 2002, p. 4: "We find this gender ascription to be accurate for most cases in which a professional is required to evaluate a batterer's parenting, and it is reflected both in our clinical experience and in most published research...our gendered language does not apply to lesbian and gay male relationships, but recent literature addressing the prevalence, causes, and dynamics of same-sex domestic violence suggests considerable parallel to heterosexual battering...but professionals should be aware of their need for further education about the particular dynamics of domestic violence in these communities..."

¹⁰ **NOTE:** The report uses examples from case files and other records to illustrate findings. Any dates, individual names, and identifying details have been changed or removed.

Gap 1: Assessment of the context, severity, and impact of violence and the implications for risk, danger, safety, and parental access to children is inconsistent and often incomplete.

Across the cases and processes examined in the Safety Audit, the team found allusions or specific references to violence, but often little or no indication that there had been assessment of the meaning of that information. What type of domestic violence was or is occurring? What is the frequency and severity of the violence? What is the intent, meaning, and impact of the violence? Who is afraid of whom and in what ways? What are the implications for decisions regarding parental rights and responsibilities? How has the violence impacted the abuser's ability to parent or co-parent, and how likely is it to impact that ability in the future? Is the violence clearly over, escalating, or being held in abeyance?

Case records often included references to acts or threats of violence associated with risk and lethality – e.g., strangulation-type actions, stalking, threats to kill, forced sex, access to or threats with a weapon, damage to a victim's property, violence during pregnancy or shortly after birth, and patterns of coercion – with little apparent follow up to such information. This lack of follow-up reflects confusion about the purpose of noting such information and a lack of clarity in the system about how violence should be considered in custody decisions.

What contributes to this gap?

- Practitioners lack tools to clearly identify domestic violence; establish history, context, and severity; differentiate types of domestic violence; and determine the implications for children and adult victims.

Many kinds of violence and behaviors within relationships between intimate partners get lumped together under the category of domestic violence. This broad use of a broad category – characteristic of the legal system's response nationally and by no means limited to Henry County – is problematic in how it oversimplifies complex situations and becomes an almost meaningless term or loses any urgency or assumption of a duty to protect one person from another.

As individuals, practitioners in Henry County clearly expressed concern for victims' safety, but in the absence of a collective, unified set of goals and practices, the safety of adult victims often seemed to disappear and adult and child safety were poorly linked. This is not to say that attention to safety entirely disappeared or safety for adult victims and their children was never well-linked, but they were not clearly and uniformly built into all points of intervention.

The degree of parental communication and cooperation often seemed to garner more attention than the reported violence. In one case the team studied, the father was subject to a temporary protection order, with pending criminal charges for assault and menacing, yet there were no copies of police reports, protection orders, or criminal complaints in the file, nor indications that the evaluator had conducted any kind of risk and danger

assessment. The evaluator reported, “Although there are pending charges regarding domestic violence, it appears that [the parents] are improving their communications” and recommended parenting class. Both parents attended the same class, in spite of the pending charges and temporary protection order.¹¹

Another case presented substantial evidence of the father’s use of coercive control and physical abuse of the mother (including monitoring her conversations and contacts with others, threats to the children, and strangulation-type behaviors), plus an older child’s expressed fear of the father and concerns about contact. While practitioners noted reports and information related to the violence, there was no discussion of the meaning of the information and its implications for the immediate and long-term safety and well-being of the children and their mother or the implications for the recommended unsupervised visitation, particularly in light of the child’s concerns.

In a third case, due to substantiated abuse, evidence of neglectful parenting, and excessive disciplinary practices, the custody evaluator recommended that the father have limited supervised access for one year, followed by the standard visitation schedule. The transition to standard visitation was not tied to any specific indicators of improved safety for the children and their mother or improvement in the father’s parenting capability. There was no explanation of what changes were to be required and expected after a year of supervised visitation, or explanation of how and why the children will be safer in an unsupervised setting in a year’s time. In addition, as addressed in the discussion under Gap 7, no domestic-violence-specific supervised visitation is available in Henry County

The team learned that judicial decision-makers are often unaware of whether domestic violence is present in a divorce or other action involving decisions about parental rights and responsibilities, particularly in uncontested cases. Attorneys or pro se parties are not bringing that information to the court and there is no mechanism for any kind of screening that might draw it out.

Third-party evaluators often conduct some level of inquiry into the presence of domestic violence, but without attention to differentiating the type of violence; specific identification of coercive, controlling, behaviors; and the implications of the violence for parenting. According to one custody evaluator, and reinforced by the case file review, the parties complete nine different forms or tests, but no domestic-violence-specific assessment. Psychological testing and substance abuse screening predominate and the Safety Audit team did not find any similar assessment of risk and danger in intimate partner relationships, even in cases which included major indicators of potential lethality, such as strangulation, threats to kill, and presence of and threats with guns. Guardians ad litem refer to the best interests of the child standard, without any tools, guidance, or

¹¹ As Lutz and Grady (2004, p. 365) note, “The safety of victims must be secured by requiring that parents attend separate sessions on separate days. Providing that parents attend separate sessions is the most effective way to ensure that all parents have access to information regarding parenting without sacrificing safety... Separate attendance typically encourages more open parent participation... mandating that parents attend separate sessions ensures the autonomy of each parent and minimizes chances for manipulation or aggravation of the high-conflict relationship.”

format that would help to identify and evaluate violence, coercion, and intimidation by one parent toward another, and the implications of such behavior for parenting and potential co-parenting.

The “high conflict” parenting class facilitators did not have a clear way to distinguish conflict from battering and the screening tool currently in use (PAS) assumes parity in each parent’s ability to act, negotiate, and speak freely about what is occurring in her or his life. There is no screening of any kind prior to the mandated “A-OK” parents group and few safeguards to ensure that a batterer and victim do not attend the same class. The group for women offenders uses the same basic model as is used for batterers, although all participants appeared to be battered women. Lumping dissimilar things together in this way under a single category – *domestic violence offender* or *batterer* – is problematic, however, for tailoring interventions that distinguish who is at risk and in what ways risk occurs.

Good cause exemptions for domestic violence victims are rarely identified and granted to public benefit applicants (“about six waivers in thirteen years,” as reported in an interview, with three of those issued to the same woman). There is no screening for domestic violence by the Child Support Enforcement Agency (CSEA). When domestic violence is present and known, there is an absence of clear processes to identify its severity, lethality, and impact on parenting.

The domestic relations attorneys interviewed did not utilize any screening tools, but often rely on their “gut sense” to identify the clients who are being subject to coercive controlling violence. Team members heard similar statements from other practitioners as well, including those making custody recommendations and child support decisions: they “just know” or “have a sense” when something is dangerous or not, i.e., to distinguish “real domestic violence.” In the absence of a specific process to assess the context, severity, and impact of violence and abuse, it is not surprising that there is a reliance on a kind of intuition. While an experienced practitioner is often skilled at seeing and reading factors related to coercion and danger, not everyone has that degree of experience, and confidence in one’s intuitive sense can be misplaced, as well as swayed by factors related to a person’s appearance or personality. That “gut sense” is as likely to be off the mark as it is to be accurate.

Mediation screening is one of two points of intervention where there is any kind of specific risk assessment in place that paid attention to factors related to the context, severity, and impact of the violence. By statute, however, the information stays with the mediator and is unavailable to judicial decision-makers or evaluators. Mediation screening helps identify violence and concerns about mediation, but it is not a detailed examination of whether there are coercive controlling behaviors which could affect the victim’s ability to assert herself and speak freely. It is also a one-time event, rather than a process with multiple opportunities to raise concerns and fears.

The Family Justice Center is the second place that conducts any kind of specific risk

assessment. FJC uses the Danger Assessment developed by Jacquelyn Campbell,¹² which is a validated instrument specific to domestic violence.

Across the range of interviews, practitioners acknowledged the lack of tools that would help establish the presence, type, context, and severity of domestic violence and its impact and implications. They welcomed the development of processes that would help them identify and evaluate domestic violence, particularly in the context of decisions related to parental rights and responsibilities.

- Judicial officers often lack access to comprehensive information related to risk and danger, and information that is available may be incomplete or inaccurate.

This is largely related to the lack of screening and assessment discussed previously. In addition, the Safety Audit found that other information related to risk and safety is often accessible, or could be accessible, but is not or does not get relayed, in part because of the lack of standard processes for sharing that information. In one case reviewed in the Safety Audit, for example, the guardian ad litem submitted a recommendation without a report. The recommendation listed who the GAL talked to, but not the substance of those interviews, yet this was a case that involved a prior civil protection order that described the father's threats to kill and strangulation-type behavior toward the mother. In another case, there is a reference to allegations that the father abused the child and many problems regarding the father's control, neglect, and violence, but little further detail or indication that there was any significant inquiry into that information. There is a recommendation for joint custody, but no reason given for that recommendation.

The Safety Audit team also read cases where available information related to criminal court actions was not always communicated to decision-makers or addressed in evaluators' reports. There were references to repeated law enforcement involvement (e.g., over fifteen calls in one case, eight in another), but little information about the nature of that involvement and the actions that lead to those interventions or how the evaluator paid attention to them. In interviews with court officials, team members learned that there has been no mechanism available to ensure that the judge in a custody-related case has ready access to information about criminal cases.¹³ The court will always consider available information related to criminal court actions when introduced as evidence or available to the GAL or custody evaluator and addressed in their reports. If the case is not contested and the victim is getting all relief requested, however, then the court does not review other available evidence. If evidence related to criminal court actions—or any factors related to the presence, nature, and impact of domestic violence—is not introduced or the evaluator omits it from the report, the judge will not see it.

¹² Jacquelyn Campbell is one of the leading researchers on intimate partner violence. Information and references related to the Danger Assessment are at <http://www.dangerassessment.org>.

¹³ Recent statewide changes will eventually improve access to information such as criminal history, warrants and protection orders, and presentence investigations. The Ohio Courts Network (OCN) is a centralized electronic warehouse of case-related data. Participation is voluntary and as of mid-2010 approximately 27% of historical case data has been loaded and reviewed.

Pro se parties, in particular, are likely to be the least knowledgeable about domestic-violence-related information the court would find useful and relevant to decisions about parental rights and responsibilities. In interviews, domestic relations attorneys also noted that they are not skilled in knowing how and what to ask clients about risk and the connections between abuse and parenting, so they are unlikely to convey such information to the court.

State and local rules governing mediation require that procedures be in place “for the mediator to terminate mediation if he or she believes there is continued threat of domestic violence or coercion between the parties” [Henry County Rule 15.01(J)(4)]. Those same rules require that a mediator report only who attended the mediation session and whether or not the cases settled.¹⁴ They do not include a requirement and process for communicating to the court specific information about the nature of any threats or coercion and how a party or other person might be in danger of harm.

The ways in which case information is discussed, recorded, and disseminated can inadvertently build an official case record that is an inaccurate account of the nature, severity, and impact of the violence that is occurring.

- Practitioners operate from contrasting and sometimes conflicting theories and assumptions about domestic violence.

Many kinds of violence in relationships get lumped into the category of domestic violence and practitioners hold various theories about what produces domestic violence. One practitioner might frame it as a problem of anger control or shame, another as a matter of control and domination, another as a dysfunctional family system or relationship, or yet another as a mental health problem.

The Safety Audit team heard different theories at work in how practitioners approached the cases. Resolving conflict and improving communication often seemed to receive more attention than safety. One third-party evaluator characterized domestic violence as a “subset” of high-conflict between the parties. In a case file, the evaluator noted pending criminal charges, but seemed to place equal if not more emphasis on information that “the parties are improving their communication.” In another case file, a woman’s request for a safety plan for her children was criticized and her apprehensions described as a problem, without attention to how they might be a normal response to the abuse she had revealed. Practitioners assessing good cause waivers asserted that if a woman is having contact with her partner, she is not in fear and therefore does not qualify for a waiver.

In interviews with practitioners in the child welfare system, the team heard the assumption expressed that the mother can leave with the children and thereby protect them, and that the resources provided will be sufficient to assist her in doing so. Under

¹⁴ “At the conclusion of mediation, the mediator shall issue a report, informing the Court who attended the mediation session(s) and whether the case settled. If the case has not settled, then the report shall set out whether the case is scheduled for further mediation or is returned to the Court for further proceedings. No other information shall be communicated by the mediator to the Court” [Henry County Rule 15.01(D)].

such an assumption, if she does not leave, she has made a free and open choice rather than a decision shaped by larger issues of safety or economic survival or other compelling reasons. This view is inconsistent with that expressed by advocates and others who see abusive fathers as responsible for their decisions to use violence and for the effects of that violence on children. As discussed in Gap 6, battered women often face limited resources and significant economic devastation that make it difficult to secure safety for their children and themselves without sufficient community resources related to housing, employment, health care, and other needs. There also remains a persistent assumption across many intervening systems and practitioners that leaving the relationship means that the problem of the violence and abuse is solved. Attempts to leave, however, can mean increased risk of lethal violence and different tactics of coercion, control, and intimidation, such as stalking, threatening to kill or harm the children, and pursuing custody and unsupervised access.¹⁵ Clearly there are circumstances where children need immediate protection and child welfare agencies and the courts, whether in Henry County or elsewhere, must make decisions about how to accomplish that. Assuming that a mother can readily leave with the children and thereby protect them, however, can shift attention away from the parent who is using violence and the range of sanctions, controls, and help that might be possible and protective, as well as shift attention away from fully considering whether the support offered is indeed adequate and realistic. The complex social problem of battering becomes cast as a matter of individual failure.

The Safety Audit saw that the assessment-related tools used by third-party evaluators favor attention to mental health evaluation over attention to the presence, context, severity, and impact of domestic violence. In interviews, some evaluators voiced a perception that the court wants to know more about mental health issues than about the domestic violence going on, although that perception was not reinforced by interviews with judicial decision-makers. The case files included many examples of psychological and mental-health-related testing common to the fields of social work, counseling, and psychology, even when no one had alleged that a party had mental health issues, without comparable attention to the violence and abuse or to parenting strengths and limitations.

Violence in the home certainly takes different forms: sometimes it is coercive control, sometimes it is resistance to ongoing abuse, sometimes it is related to mental health or substance abuse. A great deal of discussion has been occurring in recent years among researchers and interveners about how to accurately differentiate and determine the context, severity, and impact of violence: i.e., to distinguish who is doing what to whom, with what consequences for safety and well-being.¹⁶ The court clearly needs to and seeks to take into account the nature of the violence in determining safety and access issues, as well as fitting the most useful services to the family. One of its challenges is having accurate assessment tools to help identify the nature of the violence and address safety and parental access. In the absence of such tools, practitioners' differing and conflicting assumptions make it less likely that the court will get that information.

¹⁵ See the "Practitioners' Guide to Risk and Danger in Domestic Violence Cases," and Chapter 9, "Research, Literature, and Intervention Model," in the *Blueprint for Safety* (Pence & Eng, et al., 2009).

¹⁶ For example, the work of Kelly & Johnson, 2008; Pence & Dasgupta, 2006.

- Women’s accounts of abuse and harm are often viewed as lacking credibility.

Beginning with the victim-survivor focus groups and carrying through to interviews with attorneys and case file reviews, the Safety Audit found many references to an assumption that domestic violence only comes forward when a woman is trying to “get something” or “gain an advantage” in a divorce or parenting action. Assuming that reports of domestic violence lack credibility can make us less inclined to inquire further and gather information that will help establish who is doing what to whom, and with what impact.

Advocates for immigrant women described how reports of abuse by immigrant women are often treated with suspicion in some jurisdictions because it’s assumed they are raising domestic violence only to gain access to protections under the Violence Against Women Act. The advocates noted that while this is not the approach of the Henry County Family Court, other system professionals that women encounter assume that immigrant women know that they have to make a domestic violence claim and are manipulating the visa process.

Some domestic relations attorneys said that they think people sometimes manufacture allegations of domestic violence to “gain an upper hand in a civil dispute” and that if accusations of domestic violence are raised in the context of a divorce or separation, they may be minimized, disregarded, or used against the victim. A scenario presented to a parenting class reinforced the impression of a woman seeking some advantage by calling law enforcement during an argument with her estranged husband: “I’ll do what my attorney told me to do, I’ll call the sheriff.”

Expressed or visible fear, and practitioners’ interpretation of fear, often seemed to be a sort of litmus test of credibility. If a victim was truly in danger then she would act in certain obvious ways or express fear in certain ways at the particular day or time of a hearing or other official action. For example, if an applicant for economic assistance seeks a good cause waiver on the grounds of domestic abuse, if she has any contact with the abuser it is assumed that she is not in fear and the waiver is therefore denied. (As noted in the discussion under Gap 1, few good cause waivers have been granted.)

Understanding who is afraid and in what way is an important element in determining safety and access in child custody-related decisions. Absent a specific structure and process for addressing context, severity, and impact of violence, practitioners must often make decisions with very little information in front of them. It is not that expressions or visible fear are unimportant – they clearly are and should be heeded by interveners – but survival strategies in the face of ongoing coercion, intimidation, and violence are complex. How and when fear is expressed vary greatly by person, circumstances, and the relationship built between a victim and a practitioner. The nature and impact of battering are such that victims are rarely able to speak freely and openly, even about their fears. The consequences of expressing fear can be significant, including the possibility of losing one’s children.

The Safety Audit found other practices related to victim credibility that can have unintended consequences for some victims of battering. The Ohio civil protection order statute (ORC 3113.31) requires that a motion be filed in order for a CPO to be terminated or modified and that “the moving party has the burden of proof to show, by a preponderance of the evidence, that modification or termination of the protection order or consent agreement is appropriate because either the protection order or consent agreement is no longer needed or because the terms of the original protection order or consent agreement are no longer appropriate.” Henry County allows victims to submit a letter as their motion, which is a more friendly approach for pro se litigants. However, this can also position a victim to put in writing statements such as “I no longer fear for my or my children’s safety” or “it would be in the best interest of our child to have the order dropped” or “I am confident in doing this and the fact that he has changed and I am not in any danger,” as the team read in the case file analysis. Such statements may or may not accurately reflect what is truly happening at that point. A mother who is being battered by her children’s father, for example, may feel that dropping the CPO is the safest course of action at that time, but may nevertheless be very fearful of her children’s father or fearful of losing economic support, becoming unemployed or homeless, or other threats to her and her children’s safety and well-being. She may not be free to openly convey that fear, yet her letter becomes part of the official record and perhaps opens an avenue for questioning her credibility if she later tries to convince interveners and decision-makers of the harm that she and her children have experienced. In making a request to withdraw a CPO she may also be alone and without legal representation. The public legal assistance agency “is not really supportive of dismissing, so we don’t represent them,” as one interviewee noted, although the court may request that representation in some cases.

In any community that is attentive to domestic violence, the question of whether and how to drop civil protection orders is an arena for debate and second-guessing. Conscientious judges do not want to dismiss orders when they feel that the victim or children are in danger. At the same time, they recognize that dismissing the order may be just what needs to happen for a victim to know that she has a voice and that her judgment of what is truly safest for herself and her children at that particular point in time has been heard. Victims sometimes face practitioners who are irritated and impatient at a petitioner’s apparent indecision around keeping a protection order in place. Unlike other civil actions, it is increasingly rare for a petitioner to be taken at his or her word when requesting to withdraw a protection order. The Ohio statute, for example, instructs the court to consider up to twelve factors in deciding whether to modify or terminate a protection order, including “whether the petitioner fears the respondent.” Such requirements reflect a complicated mix of desire to intervene and protect, doubt about a petitioner’s credibility, and attention to concerns about liability if something tragic occurs.

In various interviews with legal system practitioners, the Safety Audit team also heard the assumption that civil protection orders are often filed not for protection, but as a low cost and quick alternative to divorce. Such assumptions raise another hurdle for credibility.

The reality is that most victims have lived with several years of abuse by the same abuser before seeking a CPO.¹⁷ The types of abuse they experience include mild to severe physical assault (including strangulation, forced sex, and beating); threats or injuries with a weapon; intimidation through threats, stalking, and harassment, including threats of death or harm to them, their children, or a relative; punishment, coercion, and retaliation concerning children; and threats to take children or report mothers as unfit to child protective services. For example, the following descriptions of abuse are included in the CPO cases reviewed during the Safety Audit:

“...Police were called [date petition filed] when Respondent was physically abusing Petitioner...leaving marks on her neck, arms, & hand. Respondent became physically abusive and violent with Petitioner after she became pregnant, beginning [approximately one year prior]. He's pushed her down stairs, hit her, pushed her over a gate, causing injury while she was pregnant, requiring medical attention.”

“[Respondent] entered the family residence with a gun, causing extreme panic and fear for petitioner and their two children [names & ages]. As [Petitioner] and her youngest [child] ran upstairs to a bedroom, [Respondent] followed them.”

“...grabbed Petitioner's minor [child] by the arm and struck [child] in the back. When Petitioner tried to intervene, Respondent grabbed Petitioner by the neck and slammed her body into the door. Respondent's actions left a large handprint shaped bruise on [child's] back and scratches on Petitioner's neck...Petitioner is in fear for herself and her children...”

"...grabs my head...[and] lifts me off the ground...grabbed me, choked me, put his full weight on my body, pinning me down...strangled me...I could not get any air...[said] 'I will kill you'."

A civil protection order is rarely the first action victims of battering take to attempt to stop the abuse, but comes after such measures as leaving the abuser, calling police, obtaining counseling, calling a hotline, or going to a shelter.

- Each practitioner does not necessarily adjust how she or he intervenes once domestic violence is disclosed or discovered.

Upon receiving information that reports or suggests that some type of domestic violence is occurring, a practitioner may make a referral to the shelter or local domestic violence program, but will not necessarily treat the case any differently at that point or try to learn more about the context and severity of the violence. There is nothing in place that requires a practitioner to stop, conduct a risk and danger assessment, and determine whether the case should take another path or certain safeguards be put in place. For

¹⁷ See Klein (2008, Part III: Judges, pp. 57-63) for a review of research related to civil protective orders. “Although petitions focus on the most recent, discreet incident, the incident rarely fully reveals the nature of the abuse suffered by the petitioner and risk for future abuse” (p. 60).

example, a mediator might stagger arrival and leaving times and/or have people in separate rooms, but is unlikely to exclude the case from mediation based on a disclosure of domestic violence. While the practice of permitting a “support person or persons” to attend the mediation session (in addition to the party’s attorney) can be helpful to victims, it can also make disclosure less likely and increase the potential for intimidation, depending on who is in the room. While the rule provides that the mediator has the right not to conduct the mediation session if a party “insists upon bringing a person to the session that the mediator believes is inappropriate or would harm the process,”¹⁸ this assumes that the mediator has a full understanding of the nature of the abuse and who would be appropriate or not in light of the specific type and severity of domestic violence involved. It also assumes that the mediator would readily stop the process when much has gone into getting everyone in the room and there is an expectation from the court that mediation will be useful.

Some domestic relations attorneys interviewed noted that information about domestic violence does not necessarily change their approach to the case nor do they take steps to ensure that a victim has ongoing support and advocacy outside of an attorney’s role as legal advocate. Other attorneys noted that if they believe that battering is occurring, i.e., coercive controlling violence, they will ask for different relief, such as trying to obtain a civil protection order or seek to limit visitation by the abusive parent. Disclosures of domestic violence will not necessarily change the approach or content of mandated parenting classes and there is no systematic screening or assessment for risk and danger. Both parents can still end up in the same classroom, or be actively encouraged to attend the same class.¹⁹

The Safety Audit also saw where and how Henry County was moving in the direction of building collective goals and expectations for intervention, such as establishing the Family Justice Centers, support for the Pro Se Clinic, and conducting the Safety Audit itself, but without yet fully defining or realizing those goals. Practitioners are not generally authorized to find out what people need and then fit the response to that need. Rather, their work is organized to fit the person into the response, however poorly the response might fit.

- The impact of battering on parenting gets lost at many points of intervention.

The Safety Audit team did not find any specific attention to the impact of battering on parenting and the primary domains or functions of parenting.²⁰ There is an overall absence of tools to help establish the presence, context, severity, and impact of violence, and a similar absence of tools to examine its impact on parenting. If children were physically harmed there was attention to the implications for parental access, but practitioners did not seem attuned to the how a battering parent might engage with his children and use them in reinforcing a pattern of domination and control over their

¹⁸ Henry County Local Rule 15.01(G).

¹⁹ See comment at Note 8.

²⁰ The domains of parenting are to (1) socialize children and attend to their psychological and social development, (2) provide for their physical care, and (3) educate children and instill values.

mother.²¹ In the interviews, few practitioners addressed the implications that battering has for parenting, whether parenting by the batterer or by the victim. A GAL or CASA or custody evaluator is typically charged with figuring out what configuration of parental access fits the best interests of the child, but their work does not seem well organized to recognize battering and pay attention to its impact on parenting. Batterer intervention program sessions and parenting classes did not explicitly connect battering to parenting. While some level of domestic violence screening was conducted in connection with mediation, Job and Family Services, and Child Support Enforcement Agency intakes, it did not lead to attention to the impact of battering on parenting. With child protective services the Safety Audit saw some consideration of the impact of battering on the *mother's* parenting, but less in connection with the *batterer's* parenting.

As established in interviews, the court sees the physical safety of adult victims and their children as a central focus of attention in making decisions about parenting rights and responsibilities, as well as the safety of children. Across the broader range of interveners, however, child and victim parent safety are treated largely as separate issues, rather than linked and worthy of equal regard. In interviews with child welfare workers, for example, the team heard a strong emphasis on “failure to protect” and the mother treated as “second perpetrator” if multiple incidents of domestic violence have occurred. The team also heard that when there are repeated acts of abuse directed against a victim parent, “the mother is guilty of choosing a dangerous relationship over the children’s safety.” The problem or failure is attributed to the individual woman, with little attention to how the shortcomings of community systems might permit the batterer to continue coercive and violent behavior with little sanction or accountability (see further discussion in Gap 6).

The mandated parenting groups emphasize children’s safety and well-being, but without articulating a comparable regard for adult victims or ways in which children’s safety is linked to safety of the battered parent (usually their mother). Curricula do not address the likely presence of ongoing coercive control and intimidation and the ways in which parenting can be an instrument for and affected by that coercion and intimidation.

What will help address this gap?

Key measures to improve attention to the context, severity, and impact of domestic violence include:

- Develop and implement sound domestic violence screening and assessment tools that are utilized at all points of intervention and at different points in time in child custody-related cases.
- Strengthen practitioners’ knowledge of the impact of battering on parenting and build

²¹ Bancroft and Silverman (2002, pp.29-37) describe the following characteristics of a batterers as parents: (1) authoritarianism; (2) under-involvement, neglect, and irresponsibility; (3) undermining of the mother; (4) self-centeredness; (5) manipulateness; and (6) ability to perform under observation. Hansen-Kramer, et al. (2009), address six primary methods that batterers use to draw children into the abuse of their mothers: (1) using excessive and coercive discipline and demanding that the mother discipline the children in the same way; (2) undermining the mother-child relationship; (3) isolating the children from their mother and the mother from her children; (4) using children to control his partner; (5) using children to hurt his partner; (6) hurting the children to hurt his partner.

tools and processes into their work routines that will help them recognize battering when it has or is occurring.

- Enhance or create procedures to provide decision-makers with complete and accurate information about the presence, type, and impact of domestic violence in custody-related cases.
- Build a collective response where part of each intervening agency and practitioner's role is to seek out information about domestic violence and intervene accordingly, with careful attention to battering and the safety of children and adult victims.
- Build a relationship with the children, mothers, and fathers involved in child custody-related cases that fosters dialogue and helps practitioners learn about people's risks and needs, beyond collecting data to complete a procedure.

These measures are largely overarching and preface each of the subsequent discussions about how to address the problematic practices identified in the Henry County Safety Audit.

Henry County is also considering the following steps to improve attention to and understanding of the context, severity, and impact of domestic violence, drawing on local, state, and national policymakers and expertise as it proceeds.

- a. Research and develop effective screening, assessment, and safety planning tools related to domestic violence and child custody decisions. To begin the conversation, Henry County is reviewing screening and assessment tools developed for state courts in Maryland, Michigan, and Minnesota.
- b. Develop a differentiated approach to parenting determinations (Jaffe, et al, 2008) that accounts for the nature, severity, and context of the violence and its impact on parenting and long-term safety of children and adult victims.
- c. Review and revise existing Ohio statutes and rules in order to integrate the specific domestic violence screening and assessment tools that are developed, as well as the provisions related to differentiated parenting plans.
- d. Develop statewide case management guidelines for custody-related cases involving domestic violence.
- e. Revise the state rules and mandated custody affidavit and similar custody-related documents to disclose any prior convictions related to domestic violence, sexual abuse, and stalking by either party or other household members.
- f. Revise the state rules and mandated custody affidavit to allow for additional information to be attached regarding any concerns for the safety, health, or welfare of the children or the adult party, including such items as a personal affidavit, police reports, protection orders, and medical reports, with provisions to keep such information under seal until a further hearing where safety concerns can be addressed.

- g. Revise local rules to allow for judicial discretion in referring parents to parent education classes and create guidelines to help the court make informed assessments and decisions about such referrals.
- h. Make changes to the procedures, structure, and content of parent education classes, such as: intake screening for domestic violence and an opt-out provision; conducting classes in a manner that assumes victims of domestic violence will be present and addressing domestic violence issues in the program content; requiring former partners to attend sessions on different days or at different locations; establishing safety plans for parent education groups, including security personnel that are present or readily nearby; confidentiality of class attendance; and, addressing domestic violence-related parenting issues.
- i. Develop protocols to guide practitioners in managing those cases involving domestic violence allegations that fall between public safety for children (i.e., triggering a criminal or child protection process), private family law matters, and safety for adult victims.
- j. Build systemic education and training for the professionals who work in the family court system (including judges, lawyers, custody evaluators, guardians ad litem, and court-appointed special advocates) in order to help them better recognize and distinguish battering from other forms of domestic violence and develop the skills to provide services that meet each family's needs. Revise statutory training requirements to include specific domestic violence training on screening, risk assessment, safety planning, and differentiation in parenting plans.
- k. Develop a coordinated community response among the criminal and civil justice systems to help ensure that information is obtained, documented, shared, and used in ways that make it possible for interveners to protect children and adult victims, hold batterers accountable for the harm they have caused, and meet families' short and long-term economic and support needs.

Other ideas for addressing this gap came from the intersecting work of the Henry County Safety Audit and discussions between local team members and those involved in the National Custody Project. For example, could a set of short, core risk assessment questions be developed that practitioners could ask and answer when they come into contact with an adult who might be the victim of battering or a child who might have one parent who is battering the other? Such a tool could help identify which children and victim parents are in need of a higher level of support and safety planning, as well as signal the court and other decision-makers that more information is needed and perhaps different parenting determinations should be considered than would otherwise be assumed. There is an example of such an approach from the criminal justice system that suggests possible adaptations in other settings.²² The questions include: (1) Do you think he/she will seriously injure or kill you, your children, or someone else close to you? What makes you think so? What makes you think not? (2) How frequently does he/she intimidate, threaten, or assault you? Is it changing? Getting worse? Getting better? (3) Describe the time you were most frightened or injured by him/her.

²² See *The Blueprint for Safety*, 2009, p.35.

Could custody evaluations include an evaluator with expertise in the dynamics of battering and other forms of domestic violence, instead of or along with an evaluator whose expertise is in mental health or substance abuse assessment? The Henry County Safety Audit and the National Custody Project have found that custody evaluations in cases involving domestic violence are heavily weighted toward mental health assessments, with a wide range of psychological screening tests and assessment, but little corresponding attention to the existence, type, severity, and impact of the abuse on children, adult victims, and parenting.

Gap 2: Dispute resolution processes, including litigation and mediation and other alternatives, are routinely utilized without a clear understanding of when, how, and for which victims and their children these alternative paths might be problematic for safety and well-being.

When domestic violence is involved, no single pathway to custody-related decisions will work in all circumstances for all victims. Alternatives, such as mediation or decision-making via Child Support Enforcement Agency agreements or hearings, can be a useful and important route in many situations. In others, it can decrease the likelihood that there will be an accurate assessment of the context, severity, and impact of the violence and leave victims more vulnerable to ongoing harm.

What contributes to this gap?

The Safety Audit found examples of cases that were sent repeatedly to mediation, even when it was clear that agreements could not be reached or were not being honored. The team observed that some cases, particularly those that enter the legal system through CSEA or where both parties are pro se, are automatically referred to mediation and other forms of dispute resolution without a reliable, systematic mechanism in place for determining: (1) whether the referral is safe and appropriate under the specific circumstances of the case; (2) whether the parties have enough information to make informed decisions about the issues to be resolved through the mediation or other process; and (3) whether it might be preferable for the parties to utilize a more formal process where a record can be established. For example, CSEA will try to work out custody/parenting time arrangements in the brief hour or so that parents are with the hearing officer, then send them to mediation if a full agreement is not reached. Parents arrive ill-prepared to address such questions, however, and there is no mechanism in place to ensure each parent is free to speak openly and safely.

Interviews with victims provided mixed examples of the extent to which they found mediation useful and appropriate for their situation. Practitioners and some victims expressed differing perceptions of the system's effectiveness, particularly with respect to mediation. A wider range and larger number of interviews would have been helpful in taking a more complete look, although the interviews conducted illustrate the kinds of issues that need to be addressed.

One victim interviewed said that mediation was "fine," i.e., she had no problem being in the

same room, but they did not work out some important details about child care and transportation and later she had safety concerns for her child and had to go to court to address them. Advocates in general said they felt mediation was not appropriate in domestic violence cases. They reported that some women they worked with felt physically unsafe and/or that agreements made in mediation may not have been freely made. They said that some women are afraid that the mediator is taking the side of the batterer. According to some participants in the focus group with domestic relations attorneys, mediation was not really seen as a choice in some cases. Another attorney reported that in cases where the victim did not want to face her abuser in court or in cases where victims may be experiencing issues that could impact a custody decision unfavorably, mediation in separate rooms with the attorney actively involved in the negotiations worked favorably for the clients. Yet attorneys do not always attend mediation sessions with their clients and some provide their clients with little information and preparation on what to expect and how to best prepare and negotiate.

Practitioners involved in providing mediation services emphasized their efforts to take precautions to identify safety concerns, have the parties come at different times and put them in separate rooms before the mediation, if necessary, and stop the mediation if one of the participants was fearful or not acting voluntarily or if the mediation was unproductive. At the same time, there was an emphasis on mediation being “about the future, not the past” and the existence of battering being largely irrelevant, other than whether it might impact the process of mediation or the goal of reaching an agreement. Whether and how a mediator takes information about past violence and abuse into the process can vary across individuals. Where one might use it as a “reality check” with the parties and use it to develop sound, workable parenting plans, another may set it aside as history that is largely unrelated to the need to move forward.

Interviews with practitioners involved in or familiar with mediation suggested that there is a common assumption in domestic violence cases that whatever agreement is reached is truly voluntary and is in the child’s best interest. Again, the Safety Audit heard from different mediators that the mediator’s job is more focused on the process than the outcome and the goal is to help parents reach agreements for the future, not focus on the past, and to communicate with one another. In cases involving battering, however, what has happened in the past is significant and has a direct bearing on the extent to which a victim can speak freely and truly negotiate from a position of safety and parity. Because it is hard to tell whether a party is voluntarily agreeing to a proposal, a statement that a party is not intimidated is taken at face value. In interviews with victims, team members spoke with women who told us that it did not matter what they agreed to in mediation because they knew from the start that their abuser would not honor the agreement. In one of the case examples, the parents were sent to mediation repeated times. Each time they would reach an agreement, then the agreement would fall apart. They were both ordered to attend the same parenting class, despite evidence of abuse.

In Henry County, mediation is the form of alternative dispute resolution most likely to be used at some point in custody cases involving domestic violence. The Safety Audit therefore raised a number of questions to pursue in order to ensure that domestic abuse is taken into account in ways that protect the safety and well-being of children and adult parties while also assuring due process. These include:

- Is mediation appropriate in cases addressing parental rights and responsibilities where coercive controlling violence, i.e., battering, is at issue?
- If yes, when and under what conditions?
- How do judges and mediators effectively screen to determine if domestic violence is at issue and the context, severity, and impact of that violence?
- How should the presence and type of domestic violence impact the decision to mediate and the structure of the mediation?
- How can mediators accurately determine whether a decision to begin mediation is voluntary or involuntary?
- How do mediators determine whether decisions made during mediation are voluntary or involuntary?
- How do mediators know that each party to mediation is able to speak openly and freely?
- If a victim does not disclose domestic violence during the screening process, proceeds to mediation, and enters into an agreement that is not truly voluntary and compromises safety, how does she or he know how to get that information back to the court for further deliberation?
- What is appropriate preparation for mediation?
- Who is responsible for ensuring that litigants are properly prepared?
- If litigants are not properly prepared, should mediation go forward? Can participants make truly informed decisions that are fair and equitable and in the best interest of the children if they are not prepared?
- Is there a mechanism by which mediated agreements can or should be evaluated to ensure that they promote safety, accountability, and the best interests of the child?

What will help address this gap?

In any Safety Audit, the gaps that are discovered are often largely linked and interconnected. The key measures identified in the previous discussion go a long way toward addressing all of the problematic practices identified in the Henry County inquiry. In addition, the following measures under consideration in Henry County will help improve the parties' understanding of the different dispute resolution processes and ensure that the process used is appropriate to the circumstances and considerations of risk, harm, and parenting plans. Most of the recommendations pertain to mediation because it is the predominant alternative to litigation or a major facet of litigation in Henry County.

- a. Continue the review of mediation practices initiated by the Safety Audit and answer the questions raised in that discussion.
- b. Develop a more comprehensive mediation screening protocol that addresses the context, severity and nature of the violence and its impact on parenting. In addition, establish a process for checking in with parties to determine whether there are new concerns about coercion or violence that make mediation inappropriate.
- c. Establish a mechanism for reassessing situations where mediation agreements cannot be reached to determine whether earlier screening has missed domestic violence that is

affecting the process.

- d. Develop a local rule and administrative practices that clearly articulate circumstances when mediation is not appropriate and procedures for litigants to opt.
- e. Develop procedures for referrals to services, risk assessment, and safety planning when domestic violence is identified during mediation or other screening.
- f. Develop informational materials that inform participants about all dispute resolution processes that may apply to child custody-related decisions.
- g. Develop clear information for pro se parties and family law attorneys about mediation; address the steps, screening for domestic violence, how to identify issues to be mediated, how to prepare for mediation, and the kind of documents that should be brought to mediation.
- h. Incorporate risk assessment, safety planning, screening, and parenting plan differentiation tools developed to address Gap 1 into the Mediation and Domestic Violence Training Curriculum delivered through the Dispute Resolution Section of the Supreme Court of Ohio.
- i. Revise relevant Ohio statutes related to mediation to include screening for the nature, extent and severity of domestic violence and a determination by the court that mediation is appropriate.

Gap 3: Victims of domestic violence are often poorly positioned to make informed decisions related to parenting rights and responsibilities and the safety implications of different decisions.

Women living under coercive, controlling violence by an intimate partner – women living with battering – face pressures from many directions to *just leave*. Everyone from their children and family members to friends and co-workers might be offering that advice, often accompanied by the message that *I'd never take it; I'd never let someone treat me that way*. Separating from a batterer is extraordinarily difficult and can be very dangerous. A woman's attempt to leave the relationship is often the precipitating factor in intimate partner homicides of women.²³ Women may have faced frequent threats that *if you ever leave, I'll kill you*, or *if you ever leave, you'll never see those kids again*, or *if you ever leave I'll take the kids; just watch, I'll get custody*. Ending the relationship means testing those threats.

Seeking to stop a partner's violence or to end the relationship usually brings many systems and processes into a battered woman's life, some of which she may have sought out and others that are mandated by the legal framework related to marriage, divorce, and children (see Gap 4).

²³ As established through the research of Carolyn R. Block and Jacquelyn Campbell, et al.

Ending a relationship that has not involved any abuse or violence is complicated, with many decisions about children, finances, and property, as well as the emotions that accompany such a major life change. It is far more complicated for victims of battering and all the more critical that they receive adequate information and are well-prepared to make informed decisions.

The Safety Audit included focus groups with survivors who described gaps in essential communication and information. In general, women did not understand their cases and how things happened. They described a near constant state of worry about children, custody, economic devastation, jobs, housing, immigration status, and other aspects of daily survival.

What contributes to this gap?

- Notice and understanding of the right to due process and of the avenues for correcting inaccurate or incomplete case information are sometimes limited.

Interviews indicated that there are sometimes chance encounters and/or informal conversations between practitioners which can involve information that is not necessarily carried to the parties or the official record. Such practices can produce an inaccurate or incomplete account of what is really occurring. Parties have limited access to some of the reports prepared on their cases, making it potentially difficult to contest information contained therein. Recent changes in the rules governing GAL and CASA reports have made more information available, although most third-party evaluators interviewed were not in favor of the change.

State law and local rules provide that “if the parties wish, their attorneys and other individuals they designate are allowed to accompany them and participate in mediation” [Rule 15.01(I)(1)]. This may help some victims feel safer, although the Safety Audit learned that advocates rarely attend and sometimes attorneys do not attend either. GALs and CASAs routinely attend mediation, which means the proceeding is not confidential from them, an aspect of the proceeding that may be poorly understood by the parties.

People often appear before different agencies and decision-makers without an attorney or advocate, which increases the likelihood that mothers and fathers might consent to a variety of agreements and orders without fully understanding them. A father interviewed by team members did not appear to understand the legal process, where he was represented pro se: “I didn’t know that by signing the paper, I couldn’t see my kids.” Mothers in the focus groups spoke of “voluntary” case plans without any way to voluntarily opt out. One mother spoke of how she had no idea that she had to be in court and she lost custody when she failed to appear. Three mothers who were undocumented immigrants and married to men who had legal status believed that they could not seek help or speak up about the harm they and their children were subjected to without deportation. Each woman’s partner threatened to have her deported and refused to fax or mail forms and documents necessary for her to apply for legal status. The women were in a precarious position: failure to report abuse could result in denial of a U-Visa petition, but mistrust of law enforcement and federal immigration authorities made reporting risky.

Information from third parties, such as GALs, custody evaluators, and CASAs, is particularly influential in custody-related actions. Their role in the legal process is to provide information to the court to help it make an informed decision. The court, in turn, relies on the parties' attorneys to present any additional evidence not included in the reports, evidence that the reports are inaccurate, and any other relevant information. When an attorney does not fulfill that role, however, or where one or more of the parties is pro se, inaccuracies are likely to go unquestioned. In interviews, evaluators made comments to team members such as, "my cases settle," "I learned what the court is looking for," and "the court read off my whole report." In the case reviews, the Safety Audit saw instances where the evaluator's observations or impressions were written or interpreted as fact. If an evaluator misreads what is occurring, however, and presents an inaccurate account of the presence, context, severity, and impact of the abuse, there can be little opportunity to challenge and correct that information.

- Victims of battering often lack clear information about process and consequences before or early on when coming into the courts and processes related to child custody.

To manage their own and their children's safety, battered women need sufficient and accurate information to make informed decisions. The Safety Audit found very few decision points built into processes related to custody where women could say, *Hold on. I want to think about what this might mean for me and my kids*. Administrative practices drive the process and as one victim-survivor focus group participant put it, a victim "can't get off the train" once the process is underway. This was particularly evident in women's experiences related to public welfare benefits and child support enforcement.

A victim seeking to protect herself and her children can be drawn into processes that instead make them more vulnerable to coercion and violence. Victims often enter the system prior to having access to any advocacy programs that can assist them with learning about and discussing options and consequences. Furthermore, the systems related to economic support, parenting rights and responsibilities, and parenting time are so interrelated and complex that the professionals and advocates most directly involved sometimes lack the knowledge to fully comprehend the short- and long-term consequences of the options and choices a victim faces.

For example, applying for public benefits leads to a CSEA child support order, which leads to parenting time and custody decisions via negotiation in the child support hearing or mediation. An unmarried mother has full custody of her children until parentage is established and a parenting plan is established by the Court. The CSEA action can bring an abusive partner back into her and her children's lives in ways that she may not expect nor desire nor fully comprehend. With more complete information, some women might decide that they and their children are better off trying to deal with economic risks and uncertainties rather than gain an uncertain measure of child support (particularly in light of fathers' widespread unemployment and underemployment). Women in the focus groups spoke of fathers who were uninterested in their children and rarely saw them until they were ordered to pay child support. "My husband knew where I was, never sent money, never visited the children. When he got the child support letter he started to fight

for custody.”

An almost automatic and poorly-informed process begins when someone applies for public economic support through Job and Family Services. Does a victim of battering clearly understand that she can apply for good cause waiver? What happens when she applies? Does she get a choice about whether there is a parenting determination and/or parenting time schedule established? Who helps her think this through in an informed thoughtful way before entering into a consent decree, or declining an agreement? There is little time to make decisions in the administrative hearing.

A victim who applies for public benefits and discloses domestic violence faces a likely referral to CPS if she has children, either automatically or under certain conditions. Safety Audit interviews revealed differing assumptions about what happens in such circumstances. In one interview with an economic support worker, team members heard that if domestic violence is disclosed and children are in the home, as a mandated reporter the worker sends case information to the CPS unit, in addition to considering a good cause waiver²⁴ and reviewing resources and services available. In another interview, team members were told that there is no automatic referral to CPS unless there is an indication that the children are also being abused. Interviews with victim-survivors indicated a widespread belief that revealing domestic violence to Job and Family Services meant an automatic referral to CPS and a very real possibility of losing one’s children. Interviews with CPS practitioners indicated that at least some workers define a child’s presence in a home where there is violence by one parent toward another as child maltreatment. “When in doubt, screen it in.”

As noted previously in the report, good cause waivers appear to be rare in Henry County. Via caseworker interviews, the team learned that a victim would have to have external evidence of domestic violence, such as a police report or civil order for protection, in order to be granted a waiver. It did not appear that a victim affidavit alone would be sufficient. In cases going through the administrative process for parentage determinations and child support, there is no screening tool to determine if there is domestic violence occurring (or the context, severity, and impact) and often few, if any, questions get asked about domestic violence.

The Safety Audit learned that legal preparation for mediation is often incomplete or sometimes nonexistent. Attorneys do not attend the mediation sessions and victims may not know what to expect or how to respond. In interviews, domestic relations attorneys indicated that they prepared their clients for mediation by describing the process of mediation, but did not indicate that they spent time informing the clients about the law and their rights or discussing the client’s positions and rationale thereof. As a result, clients may enter mediation ill-informed and, for victims of battering, even less prepared to successfully promote their views of what parenting arrangements are in the best interests of their children.

²⁴ Job and Family Services can issue a waiver of the work requirements and time limits associated with public benefits. The Child Support Enforcement Agency can issue a waiver of the duty to assist in the collection of child support. Both waivers are considered at the time a person applies for public assistance.

The number of skilled advocates who can walk through the complexities of custody-related processes with victims is very limited.

What will help address this gap?

In their interactions with intervening systems, victims of battering can almost never speak freely and openly about what is happening to them and to their children. The information that they share with intervening professionals, from police to mediators or child support workers, can lead to retaliation; cooperation with legal systems is almost always complex and can have dangerous implications.²⁵ Battered women are often isolated from friends and family and skilled, knowledgeable advocacy, whether via a community agency or private attorney, can be difficult to find. Such realities complicate their efforts to seek help and protection for themselves and their children. A wider, collective community response is necessary to create the conditions under which they can make informed decisions related to their own and their children's safety and to parenting rights and responsibilities in child custody-related actions. The necessary foundation includes information, resources, dialogue, and trust.

The Henry County Safety Audit included several team members who were survivors of battering. One characterized one of the problems and solutions in this way: "From the first phone call for help to an attorney or to 911, when there are kids involved there needs to be some type of tool for the woman or the kids or both to use that asks them to write things down, to describe what's going on, but recognizing that speaking out will result in harm to her or the kids. It needs to be something that helps the woman think about the tactics of abuse. It needs to be something easy and simple, like a card, so that the same information can go to the court and advocates and attorneys."

For Henry County, addressing this gap includes the following kinds of changes:

- a. Design and distribute information in various formats (e.g., brochures, clinics, video, Internet) that clearly explains the process, legal rights and responsibilities, and potential consequences of applying for public assistance, applying for child support, petitioning for paternity and custody in juvenile court, and filing for a protection order, custody, legal separation, or divorce.
- b. Expand and strengthen victims' access to information about advocacy, economic support, risk assessment, safety planning, and other support services, with distribution via different formats and languages, through system partners and in other public places.
- c. Expand and strengthen the use of the Pro Se Clinic to provide access to forms and instructions related to legal processes, screening for domestic violence, risk assessment, safety planning, and referrals to domestic violence advocates, Legal Aid, and *pro bono* attorneys.

²⁵ This discussion draws on the *Blueprint for Safety* (Pence, et al., 2009) and its discussion of victim engagement as a central element in effective intervention.

- d. Expand and strengthen victims' access to information about the legal processes and their rights and responsibilities in custody cases, mediation, guardians ad litem, court-appointed special advocates, custody evaluations, and child protective services, with particular attention to the kinds of evidence that can assist the interveners in making custody determinations and the procedures for providing it.
- e. Expand and strengthen domestic relations attorneys' knowledge of mediation and how to best represent and prepare their clients for that process.
- f. Expand and strengthen the availability of advocates who are knowledgeable about the complexities of custody-related processes.
- g. Identify key decision points within custody-related processes and develop meaningful informed decision-making opportunities for parents.

Gap 4: Multiple court jurisdictions and other entities mean that participants are drawn into systems with confusing requirements and expectations.

Ohio law has established multiple courts and systems that can become involved in decisions related to parental rights and responsibilities. Each court has its own process, which requires that victims understand several processes and systems. In addition to courts, other systems, such as those involving Job and Family Services or the Child Support Enforcement Agency, have their own equally complex processes. A victim of battering might be involved in two or three of these intervening entities and perhaps the criminal justice system as well, in addition to a variety of community support services, from shelter to legal advocacy to counseling, that she or he has either sought voluntarily or been ordered to utilize.

As discussed in Gap 3, the parties may be making decisions under a high level of confusion, uncertainty, or even erroneous information, particularly if acting pro se or lacking experienced counsel. Focus group participants spoke of how they did not understand their cases and how things “got to this point,” such as a “voluntary” case plan that they could not opt out of and that then became the basis for custody and parenting time. Victims of battering, whose autonomy and freedom to act have been under frequent and relentless attack by their abusive partners, can be quickly caught up in a spiral of decisions that can inadvertently cause more harm to them and their children.

What contributes to this gap?

The Safety Audit team developed several case processing maps to illustrate the key entry paths to establishing custody, child support, and parenting time (see Appendix 1). These maps are but the ‘tip of the iceberg’ in illustrating the multiple systems and levels of government that might be involved in the daily life of a victim of battering in Henry County. The maps capture only the broad steps at each point of intervention and they do not include the intersecting criminal court processes that might be occurring simultaneously with custody-related actions. Nor do they

capture the many intersecting systems that might be involved, such as CASA, GAL, custody evaluation, and child welfare, as well as those related to housing, employment, immigration, and economic assistance.

A victim of battering could simultaneously be trying to understand and navigate a civil protection order case in family court, a misdemeanor criminal case in municipal court, a felony case in common pleas court, and a paternity action in juvenile court, and each court would not necessarily have ready access to information about the other cases. In interviews with practitioners, the team heard that there was no mechanism to ensure that the judge in a custody case got information about pending criminal charges. There is no formalized, court-wide file review system in place to search for domestic-violence-related cases.

To remind the Safety Audit team of this complex reality, the team kept two graphics in front of it during its discussions. Figure 1 illustrates the many levels of government and systems that victims of battering face when they turn to or are drawn into public forms of intervention. Each interaction at each step also sits within the realities of everyday life: “her son needs to get to band practice, her sister wants to plan a surprise party for their mother, she’s missing too much time at work, she’s behind with the bills and the phone has been shut off, her daughter wants a friend to sleep over, taxes are due, the kids both get chicken pox, they ask repeatedly about when their father is coming home, and her partner calls alternately wanting to work things out and threatening that she’ll ‘be sorry’.”²⁶ Figure 2 provided a reference for thinking about the complexity of risk and safety, as well as a reminder that institutional responses can generate their own risks and reinforce those presented by a batterer and life circumstances.

In addition, the team found the “three planets” analysis helpful in examining the multiple systems that victims of battering can be drawn into. Adapted from the work of Marianne Hester, this analysis speaks to how a battered woman can be caught up in three different court systems, each with its own history, culture, laws, and interest in the abuse that she and her children are experiencing.²⁷ Figure 3 illustrates the three systems. Radford and Hester (2006, 143-144) describe the possible impact on a mother in this way:

The mother ends up in a particularly difficult dilemma on Planet [FC: Family Court]. She has attempted to curb his violent behaviour by calling the police and supporting his prosecution on Planet [CC: Criminal Court]. She has left her violent partner following instruction from social services on Planet [JC: Juvenile Court] that she leave in order to protect her children. However, Planet [FC] in effect has the opposite approach – that families should continue to be families even if there is divorce and separation. On Planet [FC], she is therefore ordered to allow contact between her violent partner and the children, leaving her not only bewildered and confused, but also yet again scared for the safety of her children.

For victims, these different systems have a significant impact on how, when, and how many times she or he must tell the story of what has happened. They also have an impact on how that information gets used. The same account will be viewed differently depending on the audience—

²⁶ Pence & Sadusky, 2005, p. 4

²⁷ Hester, 2004.

i.e., whether the criminal court, family court, or juvenile court/CPS—and in some cases minor inconsistencies in how the story is told are treated as evidence of fabrication. In Henry County, the existence of the Family Justice Center mitigates this somewhat for certain victims, but not for those without advocates or those involved in multiple systems.

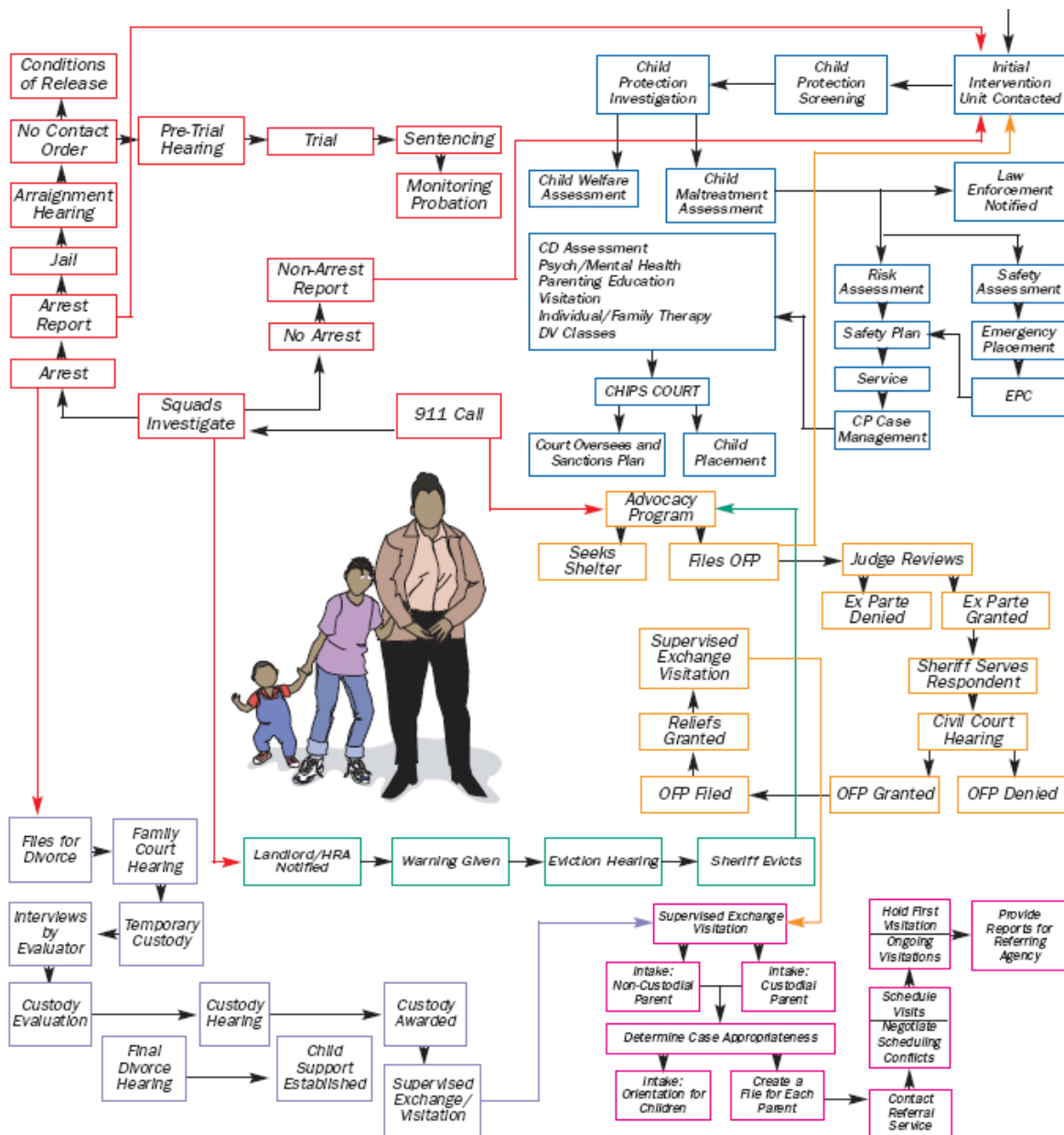
What will help address this gap?

Complex legal systems are rarely established with the needs of individuals at the center. Such institutions exist in and through a standardization of process, procedure, and action which best fits the objectives of the institution and which are not necessarily responsive to the actual circumstances of individual lives. Each legal system is its own “planet,” with its own time frame and definition of what constitutes an actionable case and its own standards for closing, clearing, and settling cases. Practitioners within those systems often see and can clearly articulate how they are complex, confusing, slow, and inadequate for meeting the needs of the individuals who are drawn into them.

Addressing this gap requires attention on a local, state, and national level and includes many of the measures referenced elsewhere in the report, as well as:

- a. Define collective intervention goals that promote a common recognition and understanding of battering and other forms of domestic violence.
- b. Strengthen practitioners’ knowledge of the impact of battering on children, adult victims, and parenting.
- c. Build processes for genuine dialogue between those who are caught up in legal systems and the intervening practitioners.
- d. Provide accessible, accurate information that clearly explains the different legal processes, rights, and responsibilities in each system.
- e. Increase the availability of and access to skilled legal advocates and family law attorneys.
- f. Examine and revise state laws, rules, and court structures to simplify and clarify legal processes related to intervention in domestic-violence-related cases.
- g. “Draft a practical framework for identifying, understanding, and accounting for the contexts and implications of domestic violence in custody arrangements and parenting plans” (the National Custody Project).

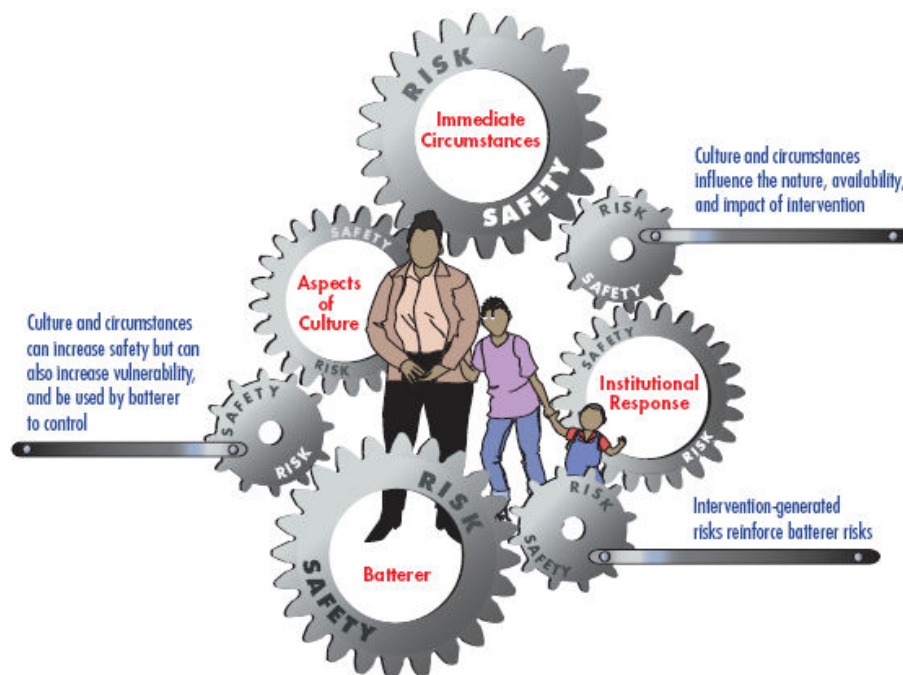
Figure 1: “Institutional Intervention in Rachel’s Life”²⁸



²⁸ Pence & Sadusky, 2005, p. 4

Figure 2: “The Complexity of Risk and Safety”²⁹

For each woman and her children, what risks are generated by...



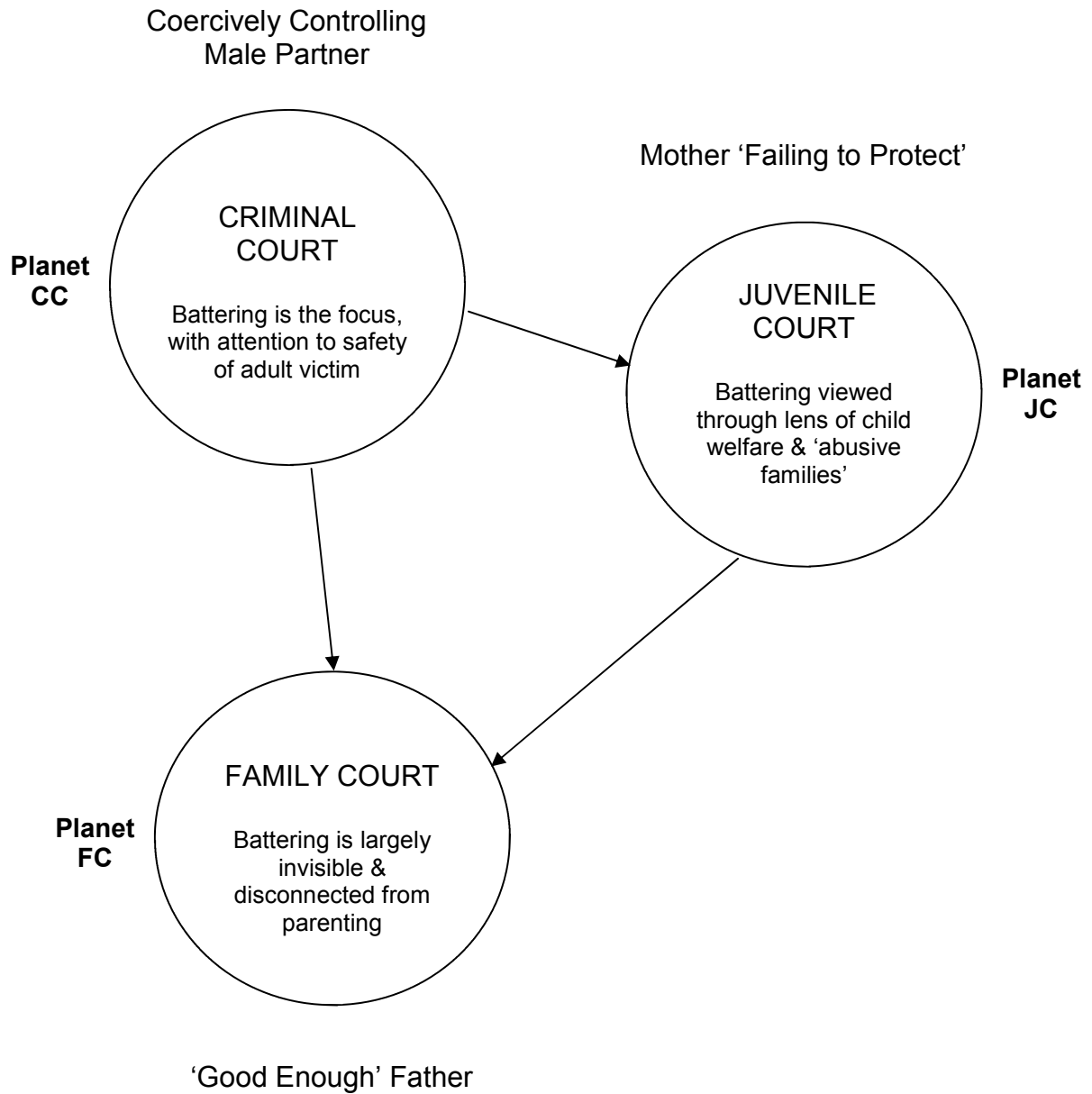
Immediate Circumstances		Aspects of Culture		Institutional Response	
<ul style="list-style-type: none"> • Immigration status • Limited English proficiency • Poverty • Lack of skills or education • Professional or social position • Abilities 	<ul style="list-style-type: none"> • Mental illness • Age • Sexual Identity • Alcohol/drug use • Rural isolation • Dependence on adults • Other 	<ul style="list-style-type: none"> • Race • Nationality • Cultural Norms & Standards • Childhood Socialization • Community 	<ul style="list-style-type: none"> Practices • Belief Systems • Ethnic Pride • Language • Class • Religion • Other 	<ul style="list-style-type: none"> • Imposition of dominant culture response or adaptation to cultural needs • Promotion of victim autonomy or use of coercion • Anticipate or ignore unintended consequences of intervention (e.g. arrest, deportation) • Enhance or further damage victim's relationship with children • Make battering visible or ignore it in custody and visitation • Other 	
Batterer					
<ul style="list-style-type: none"> • Physical Violence • Sexual Violence • Psychological cruelty and manipulation • Economic abuse • Damages her relationship to children 					

What is the Risk?

- In the immediate situation?
- Of retaliation?
- Of ongoing abuse & violence?
- Of unintended consequences of intervention?

²⁹ Pence & Sadusky (2005, p. 7). Graphic based on the work of Davies, Lyon, and Monti-Catania (1998), Jaaber and Das Dasgupta (2003), and the Battered Women's Justice Project.

Figure 3: The “Three Planets” Analysis: Contradictions in Laws and Professional Practices



Adapted from Hester (2004)

Gap 5: Assumptions related to parenting can diminish practitioners' attention to the context, severity, and impact of domestic violence.

Assumptions often reflect discourse, i.e., the concepts, theories, and philosophies that shape how different professions and interveners talk about and act on cases. Such terms as *shared parenting* and *co-parenting* are part of the discourse that shapes decisions about custody and parental access, as are assumptions related to the notion of the *friendly parent* and *parental alienation*. The Safety Audit found several assumptions at work that can divert attention away from full consideration of the abuse, including assumptions about what the court wants to hear, the degree to which a victim parent can speak freely, and the high value placed on communication and cooperation as a primary parenting goal. Such assumptions can be particularly influential in the absence of specific screening and assessment tools that guide practitioners to pay attention to the context, severity, and impact of the abuse.

What contributes to this gap?

- Some third-party evaluators expressed the perception that the courts have a preference for shared parenting (or *joint custody*) and therefore they present information to the court that supports that priority.

The team heard from different practitioners that “the judge is looking for shared parenting” and “courts are very much in favor of shared parenting.” Judicial decision-makers in Henry County were equally clear, however, that what they are looking for is a solid, well-documented recommendation, whatever that recommendation might be. As discussed previously under Gaps 1 and 2, however, identification and assessment of domestic violence and the implications for risk, danger, safety, and parental access are inconsistent and often incomplete.

Understanding what is meant by shared parenting seems to be a factor in the differing perceptions. Some GALs interviewed, for example, expressed disagreement with what they called shared parenting, as applied in domestic violence-related cases, and favored a primary residential home, but then said that visitation should be equal. Judicial decision-makers interviewed indicated that the term shared parenting is a very broad, flexible concept that can include “substantial restrictions on access.” While there was no expressed judicial preference for shared parenting, “significant time with both parents is encouraged,” although where domestic violence is involved, “shared parenting usually doesn’t make sense.”

Alongside the lack of specific screening and assessment tools to help determine the harm, risk, and danger related to coercive, controlling violence—and particularly its impact on parenting—recommendations for shared parenting are likely to prevail, without knowing whether it is in the best interests of safety and well-being for children and adult victims.

- Intervenors assume that parents have parity in authority, position, and voice, without fully accounting for the context, severity, and impact of domestic violence.

Parents are generally interviewed together by the custody assessor (distinct from the custody evaluator) and by Court Appointed Special Advocates, if they are involved. Most mediation sessions related to custody, whether coming via divorce or paternity or child support actions, occur with the parties in the same room. Parents are sometimes directed to attend the same mandated parenting group and then evaluated on their level of participation, with a report going back to the court. Such practices reflect an assumption that each participant operates from a similar standing of power and can speak openly and freely. A victim of battering, however, can almost never speak freely, particularly when in immediate physical proximity to the batterer.

There is an assumption that the presence of a third party or the reassurance to a victim that she or he can step aside from a proceeding is enough to counter any intimidation or coercion. Some practitioners suggested that requiring a victim and batterer to be in the same mediation session or parenting class was preferred. “They’re both looking at each other across the table. They get really frustrated with the court and here they can sit across from each other and say what’s really bothering them.” Or, “I don’t want them screened out.” For someone who has experienced abuse, being in the same room says “today you’re not a victim.” Yet, the setting may not be safe and she or he may be experiencing ongoing abuse, perhaps heightened by the act of the leaving the relationship.

- Intervention related to parenting rights and responsibilities often emphasizes shared parenting, cooperation, and co-parenting over attention to the context, severity, and impact of violence.

There is much in the framework of state law, as well as other aspects of custody-related decisions and services that emphasizes shared parenting, cooperation, negotiation, communication between parents. The conceptual framework within which custody-related decisions occur, for example, emphasizes “equality of parental rights and responsibilities...they shall stand upon an equality as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children, so far as parenthood is involved” [ORC 3109.03]

The mandated parenting classes, for example, speak of a “business” model of parenting as the goal: “The goal is to get parents to work as business partners.” The screening tool used in one class emphasizes qualities that reflect parents who cooperate, make a good team, and share the same goals. It is possible that a battered parent who answers forthrightly in screening and subsequent class participation (e.g., strongly disagrees that “we work out a good solution together” or “the other parent pays a good deal of attention to our child” or “my child’s other parent is a good parent.”) could appear as far more problematic, inflexible, and uncooperative than a batterer who is skilled at “manipulativeness” and “ability to perform under observation,” as Bancroft and Silverman note.³⁰ As discussed in Gap 1, there is no screening that similarly addresses the presence of and dangers related to one parent using coercive, controlling violence against

³⁰ Bancroft & Silverman, 2002, p. 36.

the other. A true partnership requires equity in standing, with each partner able to assert their needs with a similar degree of freedom and authority to speak and negotiate.

In interviews with practitioners, team members heard frequent descriptions of parental “fighting” or “arguing” as the problem, without specific attention to whether or not certain behaviors reflect coercion, intimidation, and domination versus a genuine dynamic of disagreement where each party feels free to speak openly and neither party is afraid of or dominated by the other.

For example, in one case reviewed during the Safety Audit, one evaluator emphasized that the “history of verbal conflict and poor resolution and collaboration skills is entrenched,” but with little mention of the violence and abuse the mother and child had reported, or attention to how that violence and abuse might affect the children or the interactions between the parents. The evaluator offered that “there is no good reason the [Name] family cannot all learn adapt to the tried and true standard plan that thousands of other families have had imposed upon them,” with no apparent consideration of how the violence and abuse might make that unsafe and contrary to the best interests of the children. The mother’s request to establish a safety plan for the children was characterized as alienating and her apprehension described as a problem and not as a result of abuse and possibly an appropriate protective stance. Another evaluator characterized the problem as one of family conflict, as a long divorce battle between parents who need verbal communication coaching. Overall, there was little attention to whether and how the divorce and parental behavior reflected the result of violence and abuse.

In another case there were indicators of serious abuse of the mother by the father (including violence and subsequent injury while she was pregnant), as well as abuse of the child by the father, that were listed by the evaluator but largely unexplored with respect to the impact on parenting. The evaluator noted that the parents could not communicate, but also recommended joint custody. The parents were repeatedly sent to mediation as well as to the same parenting class on three occasions, but without any provisions to deal with the issues of abuse and whether and how those might impact communication and parenting.

What will help address this gap?

The prevailing discourse in family law, both in Ohio and nationally, puts much emphasis on shared parenting, explained in these kinds of terms: “...every child has a right to meaningful relationships with both of his or her parents, and it is in the child’s best interest to have those relationships protected...The court system can serve conflicted families by expanding and utilizing educational opportunities and processes where parents can work together to improve communication and co-parenting skills...Both parents should continue to parent their children.”³¹ It is therefore not surprising that many evaluators and decision-makers in custody-related cases believe or assume that shared parenting is a primary goal of the process. The emphasis on shared parenting also reinforces assumptions that parents have parity in authority,

³¹ Ohio Task Force on Family Law & Children Report, 2001, Summary.

position, and voice and are hence more or less prepared, with coaching in some situations, to co-parent.

Shared parenting is presented as a solution to conflict. *Parental conflict*, however, is a large category into which many disparate kinds of acts involving argument, disagreement, opposition, and force get lumped together. *Parental conflict* takes in the couple who argue about an extramarital affair or the division of property, as well as the couple where the husband routinely degrades, humiliates, and assaults his wife and she reacts and resists.

It is undeniably important for children to be and feel safe and secure in their homes and in their relationships with their parents. In the absence of a full understanding and accounting of the context, severity, and impact of domestic violence, however, decisions can be made that are contrary to children's best interests and safety.

Addressing the assumptions and framework related to shared parenting and more fully accounting for the context, severity, and impact of domestic violence is another subject where the Henry County Safety Audit work intersects with the National Custody Project. Here, too, the measures previously included under Gaps 1 through 4 also apply. In addition, Henry County will seek to:

- a. Revise state laws and rules to ensure consistent reporting of prior convictions for domestic abuse, sexual assault, or stalking related offenses by either parent or other household members on custody-related affidavits and related forms.
- b. Develop procedures that safely allow for parties to attach additional information regarding any concerns for the safety, health, or welfare of the children or the adult party to custody affidavits and similar documents, including such items as a personal statement, police reports, protection orders, and medical reports.
- c. Include considerations of any history of or potential for child abuse, domestic violence, or parental kidnapping by either parent in the best interest of the child factors for any custody and parenting plan determinations.
- d. Require training on the context, severity, and impact of domestic violence; screening and risk assessment; and safety planning for custody evaluators, GALs, CASAs, parenting coordinators, and parenting group facilitators.
- e. Expand and enhance domestic violence-related training for attorneys, mediators, magistrates, and other civil legal system interveners and decision-makers.

Gap 6: Intervening systems make many demands on victims that are often disconnected from, and at times in conflict with, individual needs and resources.

This was a recurring and significant theme throughout the Safety Audit. Victims often face a daunting schedule of mandated meetings, hearings, and appointments for themselves and their children, particularly when a third-party evaluator has become involved. Successfully navigating such requirements requires maximum flexibility of time and economic resources and employment, as well as language fluency and literacy. When a woman has children, options and paths for getting away from an abusive partner can be even more limited. Victims often face impossible choices or conflicting expectations, such as acquiescing to a parenting plan that she would otherwise challenge because he has threatened to quit his job and sabotage child support; or being required to attend and participate in the same mandated parenting class as the person who has been harming her.

What contributes to this gap?

- Many women involved in custody-related proceedings face a level of “economic devastation,” as one practitioner described it, that compromises their efforts to craft safety for themselves and their children.

Focus group participants and a range of practitioners, and advocates in particular, spoke to the complexity of risk and safety, including those related to such aspects of life as employment, education, housing, and health. One team member summed up the dilemmas many victims face in this way:

There’s no public transportation, and some batterers disable the woman’s car to stop her from working or being independent, thus forcing her return... You can’t be safe if you’re living on a farm because it takes too long for police to respond or for the victim and the children to get away if they have a car; the neighbors are not close by; and there are many places for the abuser to be hide. There are few jobs and those that are available are low wage jobs, second shift, so women never see their kids, or night shift, which means they don’t have child care without the father in the home. Wages are also often bad for the abuser making it impossible to support two households. If the victim is on the abuser’s health insurance plan, the victim loses health insurance after a divorce. Community resources are few for rent or utility supplementation. The low income housing list is long and child care is difficult to find.

As discussed in Gap 3, victims are often poorly informed and may or may not have an opportunity to stop a process that affects parenting rights and responsibilities before it has a detrimental impact on their lives. Despite the court’s best efforts in granting protection orders and ordering offenders to maintain housing and support for victims and their children (as indicated in the case file review), many offenders do not maintain housing and support, either as an aspect of ongoing battering tactics or due to limited economic

resources. A victim who returns to the relationship has to make a public, written statement of why she wants to withdraw the CPO and facing the disapproval of interveners who disagree with dropping a CPO once it has been requested and issued.

While contempt hearings and jail time may increase accountability for batterers, such actions do not reduce the immediate and often long-term adverse economic consequences for many victims. Almost every legal proceeding, including those in the child welfare and economic support arenas, requires that a battered woman must attend multiple appointments and court hearings and repeatedly face the person who has harmed her and her children, and who most likely continues to use different coercive, controlling tactics in an attempt to force her to return to the relationship or separate her from her children.

As the Safety Audit heard in victim-survivor focus groups and interviews, some women who would otherwise choose to live independently face either returning to the relationship or relying on the batterer for resources after separation (whether or not a civil protection order is in place). Some women give up custody or agree to parenting time that they know is not in the best interest of safety for them and their children. Some flee their home community while others turn to substance abuse or struggle with the impact of coercion and violence on their physical and mental health.

While Henry County's community response includes strong advocacy voices and core support for domestic violence victims and survivors, those are not enough to meet the needs of all battered women and their children, nor are there sufficient economic resources in place to bring families out of poverty. While the Family Justice Center has worked to create a Survivor Network and relationships with area churches and universities that provide invaluable resources to victims, it does not alleviate the continual struggle for economic stability that many victims and their children face.

- At many points of intervention in custody-related cases, there is an underlying assumption that mothers who are victims of battering can ultimately control their abusive partner's behavior, particularly with respect to keeping him away from her and the children or successfully negotiating and enforcing agreements related to the children and the relationship.

Mediation assumes that each participant will be able to freely and completely enter into an agreement that is voluntary and uncoerced. While a degree of screening occurs prior to mediation, with an effort to identify domestic-violence-related cases and concerns, the court's directive to mediation exerts a certain pressure and expectation that mediation is the preferred approach. The mediation process assumes that a battered woman will be able to successfully negotiate an agreement that will in effect control her abusive partner, i.e., he will agree to act in ways that will uphold the mediated agreement, and that the mediator's presence and perhaps a decision to place the parties in separate rooms will be sufficient to make any agreement voluntary. She may know, however, from the reality of living with the batterer and surviving thus far that he is unlikely to truly abide by any agreement or that she cannot effectively advocate for her family's safety without some negative repercussion, either immediately or in the future.

In the child welfare system, if there are multiple incidents of domestic violence against her over time, a mother risks losing her children for *failure to protect*, i.e., for not controlling the batterer. As we heard in interviews, multiple incidents over time means that there are now “two perpetrators” of child abuse and a “mother is guilty of choosing a dangerous relationship over the children’s safety.”

The emphasis on parents working together assumes that a victim parent can ultimately influence a batterer’s behavior and secure his cooperation to negotiate and enforce agreed-upon terms. The Safety Audit saw various examples of this assumption, particularly in directives and expectations that parents would work out supervised visitation or exchange agreements (without the existence and support of a domestic violence-specific program, as discussed in Gap 7).

- Practitioners often present conflicting expectations about how a battered woman who is a mother should act.

On the one hand, she is expected to leave and sever ties with the abuser, otherwise she is “guilty of choosing a dangerous relationship over the children’s safety,” as was expressed in practitioner interviews. On the other hand, she is also expected to enter into a “business partnership” and maintain a relationship with her children’s father that maximizes parenting time, regardless of what he has done to her and the children.

On the one hand, she is expected to maintain employment and provide stability for her children. On the other hand, she is not to rely on their father for child care and seeking safety in a domestic violence shelter may not be considered a stable environment by some evaluators and decision-makers. While the current Henry County judicial leadership uses the shelter as a resource and actively refers women there for assistance with housing, employment, and other needs, focus group participants offered examples from neighboring jurisdictions where that was not the case, particularly for immigrant women.

Overall, participants in victim-survivor focus groups and interviews emphasized their frustration at what they saw as different and higher standards of accountability and behavior for victim parents than for battering parents.

- There is inconsistent awareness of and attention to the many ways that a batterer might seek to interfere with a victim’s involvement in systems related to child custody and public benefits.

There remains a persistent assumption across professions, interveners, and communities that the solution to domestic violence is to simply leave the relationship. Sometimes that makes a difference and victims are able to move on to new, safe lives. Sometimes that makes no difference whatsoever, particularly with coercive, controlling violence. *Just leaving* is likely to increase risk, heighten the abuse, and shift tactics to those related to using children, undermining economic stability, and manipulating intervening systems. Such tactics can include: stalking, filing repeated legal motions in a custody-related case,

filing child abuse reports with CPS, or threatening to have her deported if she is undocumented. The Safety Audit found little specific, consistent attention to battering tactics in third-party evaluators' reports or clear indication of whether and how that possibility was addressed.

What will help address this gap?

Addressing this gap requires a collective understanding of and response to battering and other forms of domestic violence that will help mitigate the ways in which legal and other intervening systems fragment experience into multiple cases (see Figure 1 in the discussion of Gap 4).

Addressing this gap requires creating and maximizing conditions that contribute to the economic, physical, and emotional safety for children and adult victims, rather than treating this large social problem as primarily a matter of individual dysfunction. For example, where the impact of living with battering has left a mother poorly situated to care for her children's needs – whether because of trauma, substance abuse, poverty, or a combination thereof – there will be structures and resources in place to help her recover, protect her family, and strengthen her relationship with her children. The collective intervention will do all that is possible to keep her children safe without making custody and parenting determinations that in effect reward the person who has caused the harm.

In addition, Henry County will consider measure to:

- a. Provide opportunities for interdisciplinary education and dialogue to judges, attorneys, and other legal system personnel; psychologists and other mental health professionals; and social service agency personnel in order to increase intervening systems' knowledge of (1) how the type and severity of domestic violence can impact parenting and (2) processes for information sharing that guard the safety and well-being of children and adult victims while also protecting the due process rights of the abusive parent.
- b. Revise or write local court rules regarding procedures and forms related to information-sharing among interveners to ensure that information reaches decision makers in a timely manner, increase the consistency of information going to the parties, and help develop timely and safe parenting plans.
- c. Revise Rule 48 (Supreme Court of Ohio) to include mandatory training on domestic violence screening, differentiation in parenting plans, and risk assessment and safety planning for guardians ad litem and court-appointed special advocates.
- d. Adopt a local court rule to require mandatory training on domestic violence screening, differentiation in parenting plans, and risk assessment and safety planning for custody evaluators appointed by the court.
- e. Develop tools and provide related training to Child Support Enforcement Agency and economic assistance workers on domestic violence screening, risk assessment, and safety planning.

- f. Improve notifications of domestic-violence-specific waivers and protections to applicants for child support and Ohio Works First and increase screening for such waivers and protections.
- g. Expand and strengthen a wide range of economic supports to victims of battering, including: employment services that lead to a living wage, access to day care, transportation services, housing, and emergency relocation and other related assistance to victims fleeing violence.

Gap 7: The absence of domestic-violence-specific supervised visitation and safe exchange services restricts options for parenting time that best fit children’s individual circumstances, safety for children and adult victims, and fairness to parents.

Almost every practitioner interviewed by the Safety Audit team cited the need for supervised visitation and safe exchange as a “huge” missing piece in custody cases involving domestic violence. When asked about the biggest concern of his clients who were battered women, one attorney said, “there’s virtually nothing for supervised visitation, so the court takes bigger risks than they should or would if there was a center.”

What contributes to this gap?

The case file reviews included frequent references to exchanges that were to take place at the police department or in a restaurant parking lot, or a supervised visit that would occur at a family member’s house. There were no corresponding specifics about what the police were expected to do, whether an officer had to be available, or how family members were expected to act as monitors of a supervised visit. The limited visitation services that currently exist in Henry County or nearby are “fee-based or faith-based,” as one practitioner described them. It has been several years since Henry County has had any extensive supervised visitation and safe exchange services in place. Financial support that had been available via the Child Support Enforcement Agency and the courts through federal Access funding was lost and the center it supported closed.³² While those working most closely on issues related to domestic violence and child custody wanted to pursue a grant through the OVW Supervised Visitation Program, they could not secure the necessary support from local government to proceed with an application.

Supervised visitation and safe exchange that is grounded in an understanding of the dynamics and complexities of domestic violence is relatively new anywhere in the country. Many communities find it challenging to establish and maintain such programs, in part because of resource limitations. Attention and funding through the Office on Violence Against Women (OVW) has been in place for scarcely a decade. That work has produced a set of guiding

³² The U.S. Department of Health and Human Services provides grants to states to support access and visitation services for non-custodial parents, primarily those involved in the child welfare system. For FY 2008, the amount available to the entire state of Ohio (including the state match) was \$387,919.

principles that are also applicable in many respects to custody-related actions.³³

What will help address this gap?

Henry County will work with state and national partners to identify and secure funding to establish a supervised visitation and exchange program for the community that provides services specific to battering and other types of domestic violence, in accordance with the guiding principles of the OVW Supervised Visitation Program.

Gap 8: Immigration status can severely constrict options for battered women and the ways in which immigration laws are applied can sometimes trump the best interests of the child and victim safety.

In a focus group with immigrant women who were trying to escape a violent relationship, the Safety Audit heard about severe situations of abuse and encounters with large, complicated, and often unfriendly systems. Participants also described specific ways in which advocacy organizations had made a fundamental difference in their lives and their children's lives by providing a secure, long-term place to live; providing counselors and workers who spoke women's languages; and helping them learn English and other skills. "I didn't have to struggle for a place to stay; I could stay as long as it took to resolve my immigration status."

What contributes to this gap?

The limited resources available to undocumented victims of abuse severely restrict their options for safety. Advocates working with immigrant women described the nearly impossible situation that many women face in custody-related actions: a woman has to have a job and a place to live to establish that she has a stable home for her children, but she cannot get a job without legal residency and cannot get legal residency because her abusive partner has control of the necessary documents. Residing in a shelter may not be considered a stable residence.

Each of the women the team spoke with was married to a man with legal status, while she was undocumented, and each of their partners used her illegal status against her, with threats to report her to immigration authorities, threatening that she will be deported if she contacts the police, and controlling and refusing to turn over forms and documents necessary for her to apply for legal status. In submitting a U-Visa petition, failure to report abuse may result in the petition being denied, yet a woman may see reporting the abuse as too risky because of mistrust of law enforcement and fear of deportation.

When someone has limited English proficiency, access to skilled interpreter services is limited, particularly in court proceedings and mediation or when law enforcement is called to a home.³⁴

³³ The Guiding Principles include: (1) equal regard for the safety of child and adult victims; (2) valuing multiculturalism and diversity; (3) incorporating an understanding of domestic violence into center services; (4) respectful and fair interaction; (5) community collaboration; and (6) advocacy for child and adult victims.

³⁴ Limited access to skilled interpreters also applies to speakers of American Sign Language, but somewhat less so than for other languages.

Victims are often reliant on family members for help and interpretation, sometimes including their abusive partner's family, whom they may be living with. "In that situation, if I call police, it would be worse for me later. They're always harassing and threatening me."

What will help address this gap?

Immigrant women are caught in the larger political and social controversies related to immigration, including sometimes significant levels of hostility by other residents of the community. The Henry County partners will take the following measure to help maximize protection and safety for immigrant victims of battering and their children:

- a. Continue to include representation from immigrant advocacy and legal services agencies in community discussions and response to domestic violence and custody-related issues.
- b. Establish and implement a local practice whereby an immigrant victim who appears before the court without an advocate will be connected with an advocacy organization with specialization in immigrant victim issues that will help determine the person's need for services, including but not limited to: advocacy, language interpretation, legal services, immigration services, housing, and economic support services.
- c. Establish and implement a local practice whereby a victim with limited English proficiency who appears before the court without an advocate will be connected with language interpretation and community organizations that will help determine the person's need for advocacy and other services.

Gap 9: Physical security and other aspects of safety are poorly developed or non-existent in many settings.

Similar to Gap 7 regarding the absence of supervised visitation and safe exchange services, almost everyone the Safety Audit spoke with cited concerns about physical security and other aspects of safety in domestic violence-related cases and services.

What contributes to this gap?

Legal proceedings, mediation screening, and mediation sessions occur in a building that does not include security features that are now common in similar buildings, such as weapons screening or law enforcement personnel posted at a single public entrance. Mediation occurs in an open setting and there are no officers nearby. The panic button has not been tested in the courthouse and there is no panic button in the off-site space where mediation sessions are held. The family court administrator serves as the bailiff and court security.

Facilitators of mandated parenting groups typically do not know whether or not participants are subject to an active protection order. There is no requirement that parents attend such classes separately and in some cases they may be directed to attend together.

What will help address this gap?

The Henry County partners will consider the following measures to increase physical security and other aspects of safety:

- a. Develop and implement a safety protocol for the court that includes internal and external safety procedures for the courthouse and accounts for the potentially volatile nature of domestic violence-related cases during court proceedings or other court services, including mediation.
- b. Require any program conducting parent education to develop and implement safety procedures that account for the potential volatile nature of domestic violence.

Gap 10: Existing law and practice related to Civil Protection Orders are inadequately coordinated with safety considerations in some divorce and custody-related cases.

In the past thirty years, civil orders for protection have been one of the central features of legal system reform in response to domestic violence. They remain one element in the array of measures that can be useful to victims of domestic violence in crafting safety, although their potential effectiveness rests in large part on how well they are enforced and whether an individual batterer sees the order as any kind of authority. Requesting or withdrawing a civil protection order is usually a complicated decision for a victim of battering. On the one hand, there is the promise of keeping a violent partner away; on the other hand, women often face a combination of economic realities, children's needs, uncertainty about the next best step, ongoing threats, and the common message that *it's just a piece of paper*.

Ohio's Civil Protection Order (CPO) provides an avenue for temporary custody and support, which is significant to many victims in considering whether a CPO might be useful. At the same time, it has limitations if a prior custody order exists, regardless of the urgency and immediacy of the safety issues. While a restraining order issued as part of a divorce serves a similar purpose to a CPO, the portability of a CPO across jurisdictions and state lines and its entry into state and national databases, as well as the ready ability for law enforcement to take action in the event of a violation, can make it more useful as an aspect of safety planning.

What contributes to this gap?

- Ohio law limits the scope of a CPO to address custody when a prior custody order is in place.

Where a prior custody order is in place, the Ohio civil protection order statute (ORC 3113.31) prohibits the court from addressing custody, regardless of whether the prior order is several years old or there are immediate safety issues at stake. The practice does not account for situations where the safety needs may be urgent and the more immediate

restrictions available via a civil protection order could be important while the underlying custody order is addressed. Addressing the prior order may involve a legal process that is subject to multiple continuances and delays over many weeks or months. In Henry County, the court will make emergency determinations to protect the victim parent and children pending review by the court that issued the original custody order, but such measures are subject to challenge.

- The CPO is sometimes dismissed when the divorce action begins or the CPO hearing is combined with the hearing on divorce orders.

The Safety Audit saw examples of this practice in the case file reviews and in interviews with domestic relations attorneys. It appeared more common when the parties were represented by private attorneys or acted pro se, and less common when Legal Aid was involved. Some of the actions were related to timing, such as a protection order filed after a divorce action had been initiated. Dismissing the CPO can reflect the results of negotiations during or concluding the divorce proceedings. Like many aspects of the complicated legal proceedings that characterize custody-related actions (and the cases that the Safety Audit reviewed), this may not be problematic for victim safety for all victims in all cases. For others, however, dismissing the CPO at the front end of a divorce proceeding may be problematic, particularly when there has been a high level of ongoing coercion and intimidation and a victim parent may be pressured into an agreement to withdraw the CPO.³⁵ The practice is concerning when there is ongoing abuse and provisions similar to the terms of the CPO are not incorporated into the final divorce decree.³⁶ It can lead to inadequate attention to safety issues and contribute to the notion that the CPO was sought not for protection, but as a quicker way to achieve some of the remedies available in a divorce or parenting time action.

- There is a common assumption by some legal system practitioners that civil protection orders are often filed not for protection, but as a low-cost and quick alternative to divorce.

In various interviews, the team heard the perception expressed that CPOs are often filed primarily as a route to divorce and custody (see the earlier discussion under Gap 1). If that assumption is a starting point, when a divorce action is filed there is already a disinclination to request continuation of the terms of the CPO, regardless of the

³⁵ One team member described the potential advantages of combining the CPO and divorce hearings in this way: “Once the court has issued an order in a custody proceeding, you cannot request the court to address custody issues in a CPO. If you do the proceedings separately, the victim and all the witnesses have to testify twice. If different attorneys handle each case, conflicting testimony may be given by the victim or witnesses that could be used against them at future hearings. If a CPO is issued prior to the divorce hearing on temporary custody, the attorney may not present all the domestic violence-related evidence under the assumption that the court is already aware of it (if in the same county) or that the violence has already been addressed. The court cannot consider evidence presented in one case in another case, even if it is the same judge and the same court, without having the testimony and evidence formally entered into evidence again. If the evidence is presented in a combined hearing, the court is more likely to issue consistent orders that take into consideration the nature and context of the violence and its impact on parenting and the court and the parties are in a better position to understand why the continuation of the CPO is necessary.”

³⁶ Statutorily, the CPO itself cannot be transferred to or directly incorporated into the divorce action. They are separate actions.

circumstances.

What will help address this gap?

Civil protection orders are one option that can be useful in placing sanctions and restraints on a batterer, particularly when issued within a community that enforces them with swift, sure consequences. Risk and danger can change significantly over the months or years that a separation or divorce proceeds, or long after a parenting determination has been made. Threats, coercion, and assault can diminish or disappear, then return suddenly once a final divorce hearing is on the calendar, a survivor becomes involved in a new relationship, or a child becomes a teenager. There can be new and sudden dangers to children, from threats to harm, kill, or abduct to physical or sexual violence. The standard processes for revising custody and parenting plans in the court with original jurisdiction typically take many weeks or months. There needs to be a mechanism in place whereby custody or parenting time can be modified quickly on an interim basis, pending that review.

To address this gap, the Henry County partners will consider the following measures pertaining to civil protection orders:

- a. Request that the Supreme Court of Ohio Advisory Committee on Domestic Violence convene to review and propose statutory changes that would allow the court with jurisdiction to hear the civil protection order and utilize the CPO to temporarily suspend or modify custody or parenting time pending further review by the court with original jurisdiction in the custody/parenting time decision.
- b. Provide clear, thorough information to victims of domestic violence about CPO provisions and enforcement and how a CPO might best reinforce or work alongside divorce proceedings.
- c. Link attorneys and legal advocates with research about the circumstances under which victims seek civil protection orders and how such orders may or may not be protective, particularly in relation to custody and parenting time.

Gap 11: Batterer intervention programming does not have a consistent curriculum and standard of delivery that addresses the context, severity, and impact of the violence and its implications for parenting.

Many victims of battering hope that a batterer intervention program (BIP) will address the harm they have experienced and help stop it from continuing. In situations involving children and custody decisions, they may hope that it will address and help correct the impact of coercive, controlling violence on parenting. A batterer intervention program can also be a tool for the court as it seeks changes in behavior before it is willing to grant less restrictive access to children. To maximize its potential for messages of help and accountability, and send consistent messages across the community partners, a BIP needs to deliver a consistent curriculum that addresses the context, severity, and impact of domestic violence, with primary attention to coercive controlling

violence, i.e., battering. The Safety Audit found that the structure and delivery of BIP services in Henry County can vary significantly in content and approach between facilitators.

What contributes to this gap?

It is not uncommon for a batterer intervention program to begin with an approach that is initially consistent, but that begins to vary, sometimes significantly, as different facilitators come and go. Some of the variation reflects a necessary flexibility in adapting to participants' needs, but it can also lead to significantly different approaches and sometimes different messages being relayed across groups.

In observations of groups and interviews with BIP staff, it was apparent that facilitators have wide leeway to develop individual content and approaches to group sessions. Some elements of the program have been picked up or modified from a program developed in another state, but Henry County does not use a validated curriculum. Participation can vary in length, up to fifty-two weeks, depending upon the participant's progress, as gauged by the facilitator. Beyond a letter notifying a victim that her or his partner is in the program, the BIP has minimal contact with victims and relies on participants' self-reports to determine actual changes in behavior or the level of re-assault or ongoing coercion occurring outside of the session.³⁷ The program materials and process assume a high level of literacy and skill in written expression. Advocates noted that the program is particularly challenging for anyone whose first language is not English, even when they may be fairly proficient in daily conversations.

In the case reviews it was not always clear why one person was ordered to anger management and another to batterer treatment. The BIP seemed more likely in custody-related cases involving a criminal charge.

Program distinctions between batterers and victim defendants were unclear. The program for women is new and had not yet completed its first cycle during the Safety Audit's data collection period. It largely resembles the men's curriculum, but uses different pronouns to refer to victims and offenders. Neither curriculum addresses in any significant way the impact of battering on the core functions of parenting (i.e., socialization, physical care, and instilling values) or the relationships between children and their fathers and mothers.

What will help address this gap?

Batterer intervention programs typically have not addressed issues related to the impact of battering on children and parenting or the ways in which children are used as a tactic of abuse. That is beginning to change as a few programs have started to pay more attention to children and to men in their roles as fathers and the impact of battering on fathering.³⁸ Henry County thus has

³⁷ In his literature review, Andrew R. Klein cites a multi-state study of four batterer programs and notes that "approximately half of the men reassaulted their initial or new partners during the 30-month follow-up...most of the reassaults occurred within the first 6-months of program intake. Nearly a quarter (23%) of the men repeatedly reassaulted their partners during the follow-up" (Part III: Judges, pp. 46-47).

³⁸ For example, the work of the Fathering After Violence Project, available via the Family Violence Prevention Fund at <http://www.endabuse.org>. Also, *Addressing Fatherhood with Men Who Batter*, a BIP curriculum developed by Advocates for Family Peace, Grand Rapids, MN; <http://www.stopdomesticabuse.org/>.

new resources to draw upon in addressing this gap. The BIP program and its partners plan to:

- a. Adopt and implement a nationally recognized curriculum for working with men who batter.
- b. Ensure that the BIP curriculum incorporates or includes as an additional component specific attention to fathering and domestic violence.
- c. Adopt and implement a nationally recognized approach or curriculum for working with women who have been directed to attend an intervention group in conjunction with a domestic violence-related offense.³⁹
- d. Train all facilitators in each curriculum adopted.

³⁹ An example of such a program is *At a Crossroads: Developing Duluth's Prosecution Response to Battered Women Who Fight Back* (Asmus, 2004, Rev. 2007), available at <http://www.bwjp.org>.

Next Steps...and Cautions

As noted in the opening section of this report, Henry County has raised issues that are common to all jurisdictions and the disciplines and processes that shape their responses to domestic violence and child custody. For example, a Safety Audit conducted in 2006-2007 in Winona County, Minnesota, identified gaps and themes similar to those in Henry County:

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 ... 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 victims' 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 decisions) or in the custody dispute resolution process itself.⁴⁰

Ongoing national discussions between family court professionals and domestic violence researchers and advocates have begun to address these questions, as reflected in the work of the Wingspread Conference on Domestic Violence and Family Courts in 2007 and the more recent formation of the National Custody Project.⁴¹

While certain aspects of case processing and interventions related to domestic violence and child custody are distinctly local, what happens in Henry County or any other community occurs within state laws and rules, as well as within structures and theories characteristic of the United States' legal system and professional discourses about children, mothers, fathers, divorce, and domestic violence. As reinforced by the National Custody Project and the Wingspread Conference, addressing the questions raised by the Henry County Safety Audit is a matter of national discussion and debate. At the same time, there are changes in local practices that can help improve communication and information going to all involved, reduce confusion, clarify processes and rights, and better address the context, severity, and impact of domestic violence and abuse. The next steps, therefore, include further exploration and development of the recommendations specific to Henry County, as well as continued national discussion.

In Henry County, as in most communities, there are many practitioners who respond to domestic violence and make decisions related to child custody and access who do so with thoughtfulness,

⁴⁰ Frederick and Williams, 2008.

⁴¹ The July 2008 issue of *Family Court Review* presents the report from the Wingspread Conference and related papers. It identifies five "tensions" that need to be addressed: (1) how to differentiate among families who experience domestic violence; (2) effective screening, assessment, and triage of cases involving or potentially involving domestic violence; (3) whether to include, modify or exclude families from various court process and social services when they have experienced domestic violence; (4) assuring appropriate outcomes for children, including parenting arrangements that balance safety and access; and (5) the impact of declining resources for family courts at a time of increasing demands.

attention, and compassion. They are located in complex systems and institutions, however, and their work is often put together in ways that constrict rather than enhance safety, as the Safety Audit demonstrated. Furthermore, if legal and social service systems are to consistently act in ways that maximize safety and well-being for children and victim parents, as well as provide due process and offer opportunities for batterers to change harmful behaviors, they cannot rely on outstanding individuals who go above and beyond their job descriptions. Such expectations must be built into the roles and responsibilities of average workers.

Beginning with the reality of Lauren and Jacob and Patty Saunders' lives, there were many times when the Henry County Safety Audit team was reminded of the consequences of battering and the reality that a woman who is being regularly intimidated, coerced, threatened, or assaulted can rarely speak freely and openly without harm to her children or herself. Attorneys and advocates spoke of women who experienced severe intimidation and abuse, yet who could not trust that bringing such information forward into custody-related legal proceedings would be safe for themselves and their children. There is an ever-present caution, therefore, in considering any of the recommendations made by the Henry County Safety Audit. The overarching goal is to eliminate or minimize the harm caused by battering and other forms of domestic violence for as many children and adults as possible. There is no single universal child or mother or father, however. Those seeking to change complex legal and social systems to make them more attentive to strengthening safety and well-being and offering opportunities for change must anticipate how and for whom a particular reform will work and be alert to and mitigate harmful impacts, however unintended.

One element in a framework for next steps on a local or national level might be the "Hallmarks of Effective Intervention in Child Custody Cases Involving Domestic Violence" that the National Custody Project is using to guide its work.⁴² They include:

1. Safety of child and victim parent (highest priority)
2. Confidential screening and referral for safety planning and to community services
3. Access to effective representation and advocacy
4. Informed choice of dispute resolution methods
5. Child custody decision-making that:
 - a. Accounts for context
 - b. Considers the needs and strengths of each child
 - c. Considers the ability of each parent to meet each child's needs
 - d. Results in a parenting plan tailored to meet the needs of the family

A companion element might be the decision-making priorities presented to the Wingspread Conference by Janet Johnston.⁴³

- Priority 1: Protect children
- Priority 2: Protect the safety and well-being of the victim parent

⁴² The hallmarks evolved out of conversations between Loretta Frederick, Senior Attorney with the Battered Women's Justice Project, and Nancy Ver Steegh, Professor of Law, William Mitchell College of Law.

⁴³ Johnston is a professor in the Department of Justice Studies, San Jose State University. See Ver Steegh and Dalton (2008, p. 464).

- Priority 3: Respect the right of adult victims to direct their own lives
- Priority 4: Hold perpetrators accountable for their abusive behavior
- Priority 5: Allow child access to both parents

While the goal is to establish processes and reach decisions about custody and access that achieve all five priorities, ultimately the priorities are ranked. Those at the bottom, from Priority 5 upward, will be set aside to achieve those at the top, with protecting children and then victim parents paramount.

The Henry County partners have taken up the challenge to ask questions of their practices and seek changes in the processes related to domestic violence and child custody that will ensure that these principles and priorities are met for as many children, mothers, and fathers as possible.

Methodology

Praxis International uses a unique method of analyzing the actions of institutions. The Safety and Accountability Audit (Safety Audit), developed by Ellen Pence, combines Praxis staff and consultants with a local interdisciplinary team to look at how work routines and ways of doing business strengthen or impede safety for victims of battering and their children.⁴⁴ By asking *how* something comes about, rather than looking at the individual in the job, the process reveals systemic problems and produces recommendations for longer-lasting change. The Safety Audit is designed to leave communities with concrete suggestions for changing daily practices that lead to problematic outcomes, along with new perspectives that can be applied in an ongoing review of its response.

It is one thing for systems and communities to examine their own work; it is another matter for them to share the results with others, particularly when the focus of the inquiry is identifying problems. Most practitioners responding to domestic violence and working with families do so from good intentions and a commitment to making things better and safer. Peoples' lives are complex, however, as are the elements of risk and safety for any child or adult living with battering. Equally complex institutions, such as the civil legal system and family law, are often a poor fit for meeting what individual victims need to stay safe and protect their children. Building safe communities, however, requires ongoing attention to making a better fit between the institutional response and individual needs. The Safety Audit's mix of local and national team members provided a lens for looking at local practices and the broader disciplines and fields that shape custody-related decisions. Most of this Safety Audit's findings are not unique to Henry County, but reflect national practices that are shaped by local conditions.

The Safety Audit is built on a foundation of understanding: (1) institutional case processing, or how a child or adult victim of battering becomes a *case*, i.e., a custody case, a domestic violence case; (2) how response to that case is organized and coordinated within and across interveners; and (3) the complexity of risk and safety for (a) each child whose long-term living is being decided by complex institutional and personal processes and (b) each adult victim whose connections to her or his batterer through the children magnifies the vulnerability to long-term abuse and coercion. To learn about individual experiences and institutional responses, the Safety Audit team conducts interviews, including victim/survivor focus groups; observes interveners in their real-time-and-place work settings; 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, support them with evidence, 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 case file reviews sample the work process at different points to ensure a sufficient range of experiences.

⁴⁴ Over forty communities nationwide have used the Safety and Accountability Audit to explore criminal and civil legal system response to domestic violence, the intersection of domestic violence and child abuse, and the role of supervised visitation and exchange in post-separation violence. See examples of reports at <http://www.praxisinternational.org>.

Interviews and observations are conducted with practitioners who are skilled and well-versed in their jobs. 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.

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.

- Mission, Purpose, and Function: mission of the *overall process*, such as domestic relations or family law; purpose of a *specific process*, such as conducting a custody evaluation; and, function of a worker in a *specific context*, such as the court-appointed mediator in a divorce action.
- Concepts and Theories: language, categories, theories, assumptions, philosophical frameworks.
- Rules and Regulations: any directive that practitioners are required to follow, such as policies, laws, and memorandums of understanding.
- Administrative Practices: any case management procedure, protocols, forms, documentation practices, intake processes, screening tools.
- Resources: practitioner case load, technology, staffing levels, availability of support services, and resources available to those whose cases are being processed.
- Education and Training: professional, academic, in-service, informal and formal.
- Linkages: links to previous, subsequent, and parallel interveners.
- 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.

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 the position of the person whose case is being processed – in the Henry County Safety Audit, from the position of children and their mothers and fathers – and to see how it is produced by case management practices. In locating how a problem is embedded in institutional practices, the Safety Audit simultaneously discovers how to solve it. Recommendations then link directly to the creation of new standardizing practices, such as new rules, policies, procedures, forms, and training.

The Safety Audit also considers the ways in which the nature of institutions contributes to problematic practices. It pays attention to inherent qualities of institutions that are always somehow related to poor case outcomes and the gap between what people need and the

institution's response. These "twelve features of institutions" are present in all aspects of institutional work and cannot be eliminated, but they can be recognized and controlled and their impact minimized.⁴⁵ A Safety Audit therefore seeks to recognize when institutions (1) employ fragmented approaches to complex situations; (2) rely on the use of categories to process large numbers of cases; (3) engage in conceptual practices or "discourses" that organize how workers think and act; (4) create communication patterns that restrict opportunities for dialogue; (5) coordinate and standardize workers' actions through "texts," i.e., through forms, reports, case files, policies, and other media that carry the official case; (6) use coercion to gain compliance; (7) mask institutional limitations and failures; (8) operate on a time different from peoples' lived time; (9) maintain inadequate systems of accountability; (10) create standards based on fictitious "universal" people; (11) put institutional functioning over individual needs; and (12) individualize complex social problems.

⁴⁵ Pence, 2009.

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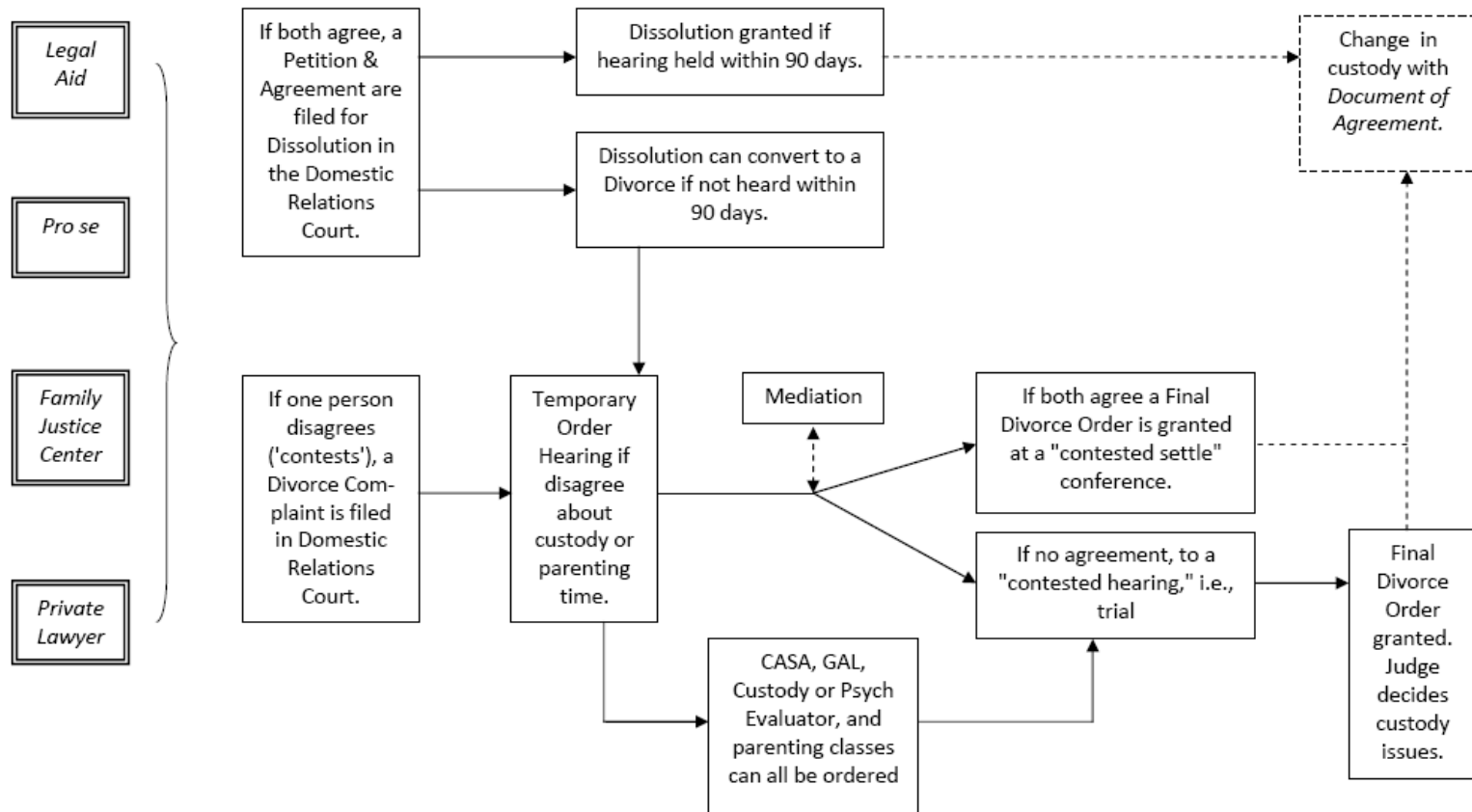
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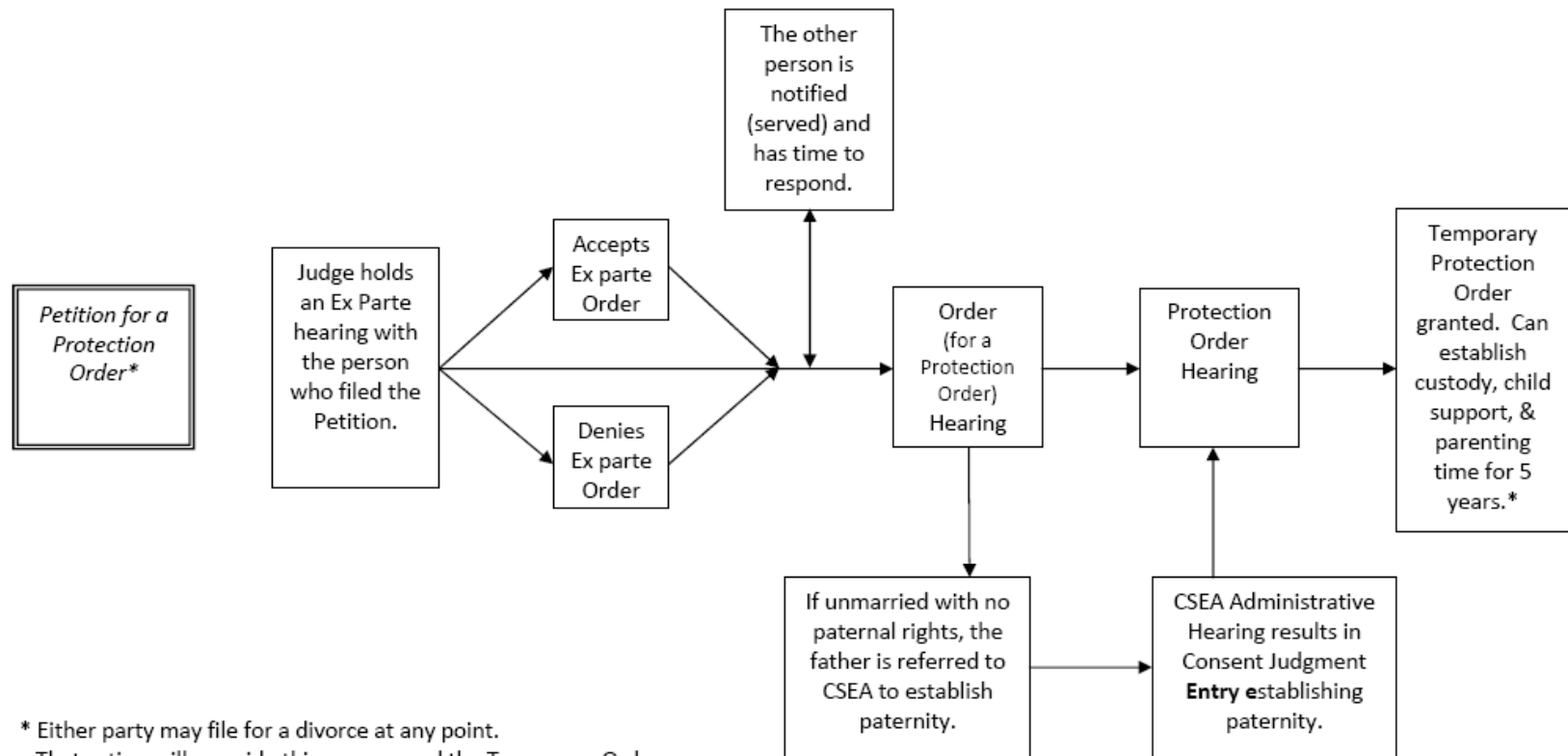
Appendix: Case Processing Maps

The Safety Audit team developed the following case processing maps to understand the key paths in Henry County to establishing custody, child support, and parenting time. **These maps capture only the broad steps** at each point of intervention and they do not include the intersecting criminal court processes that might be occurring simultaneously with custody-related actions. The full picture is even far more complex.

Entry Paths to Establish Custody, Child Support, and Parenting: Married Parents
Henry County, Ohio



Temporary Custody and Child Support Established Through a Protection Order
Henry County, Ohio



* Either party may file for a divorce at any point.
That action will override this process and the Temporary Order.

Path to Establish Custody, Child Support, and Paternity: Unmarried Parents
 Henry County, Ohio – Child Support Enforcement Agency (CSEA)

