

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

Executive Summary

January 2011



179 Robie Street East, Suite 260
St. Paul, MN 55107
(651) 699-8000
www.praxisinternational.org

This project was supported by Award 2004-WT-AX-K052 from by the Office of Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, or recommendations expressed herein are those of the author(s) and do not necessarily reflect the view of the U.S. Department of Justice.

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>.