

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

Executive Summary

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TABLE OF CONTENTS

Introduction	3
Methodology	3
Findings and Recommendations	4
1. Assessment	4
2. Dispute Resolution Processes	7
3. Informed Decision-Making	8
4. Competing Demands	9
5. Parenting Assumptions	10
6. Disconnected Needs and Expectations	11
7. Supervised Visitation and Safe Exchange	12
8. Immigration Status	12
9. Security	13
10. Statutory Limitations	13
11. Batterer Intervention	14
Conclusion	14

I. Introduction.

The Henry County, Ohio Child Custody and Domestic Violence Safety and Accountability Audit (“Ohio Audit”) examines how the local family court system takes domestic abuse into account in the resolution of child custody and parental access cases. It was undertaken in connection with the National Child Custody Demonstration Project, a federally-funded collaboration among the Battered Women’s Justice Project, Praxis International, and representatives from the National Council of Juvenile & Family Court Judges and the Association of Family & Conciliation Courts. Recognizing that the safety and wellbeing of children and their battered and battering parents are often inadequately accounted for in custody cases where domestic violence is alleged, the National Child Custody Demonstration Project seeks to develop a more practical framework for identifying, understanding, and accounting for the contexts and implications of domestic violence in child custody cases. The overarching goal is to produce safer, healthier, and more just outcomes for children and parents alike. Both the Ohio Audit and the National Child Custody Demonstration Project rely heavily upon the *Safety and Accountability Audit* as a framework for analysis.

II. Methodology.

The *Safety and Accountability Audit* (“*Safety Audit*”) is an analytical tool drawn from the field of institutional ethnography. It examines how institutions that process domestic abuse-related cases centralize (or marginalize) attention to safety for both adults and child victims. The *Safety Audit* explores the ways in which managerial processes operate to standardize and organize concepts and work on cases. Whenever a trend of problematic outcomes for groups of people being processed in an institution is identified, it is often possible to locate a key source of the problem in how workers are organized to do their work (as opposed to individual skill deficiencies or biases). The Ohio Audit was designed to locate systemic problems in protecting adults and child victims of domestic violence when processing custody disputes in family court. This was accomplished through a series of in-depth interviews, observations, and case file reviews conducted by members of a local and national audit team¹ and included:

Nine focus groups with 29 participants, including survivors of domestic violence, community-based advocates, domestic relations attorneys, defense attorneys, and guardians ad litem.

Thirty-seven individual interviews, including judges, magistrates, mediators, a mediation screener, court administration personnel, advocates, parenting group facilitators, domestic relations attorneys, defense attorneys, legal aid lawyers, batterer intervention program facilitators, guardians ad litem, court-appointed special advocates, a custody evaluator, child support and economic assistance

¹ The local audit team was coordinated by Pamela Weaner, Esq. of Legal Aid of Western Ohio and consisted of representatives from the Henry County Clerk of Courts, the Center for Child & Family Advocacy, the Defiance County Sheriff’s Office, Crime Victim Services of Putnam County, the Family Justice Center of Northwest Ohio, PathStone Migrant Rest Center, Sarah’s House, the private family law and criminal defense bar, and the community-at-large. The national audit team consisted of representatives from the Battered Women’s Justice Project, Praxis International, the National Council of Juvenile & Family Court Judges, and the Association of Family & Conciliation Courts.

case workers, child protective services case workers, criminal legal system interveners (law enforcement and prosecution), supreme court personnel, and survivors of domestic violence.

Six observations, including a batterer intervention group for men, a group for women offenders, parenting classes, and pro se clinic sessions.

Text analysis of 61 case files (protection order cases, juvenile court custody cases, and family court custody cases), as well as 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, civil protection orders, juvenile court, child protective services, public assistance, and child support enforcement.

Through a series of structured debriefing meetings, conference calls, videoconferences, and email exchanges, members of the local and national audit teams identified and accounted for the gaps between what people experience and need from the family court system, on the one hand, and what the institution provides, on the other hand.

III. Findings and Recommendations.

The principle findings and recommendations of the Ohio Audit are as follows:

1. ASSESSMENT

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

- a. Practitioners lack tools to clearly identify domestic violence; establish the history, context, and severity of violence; differentiate among types of domestic violence; and determine the implications of violence for children and their battered and battering parents.
- b. Judicial officers often lack access to comprehensive information related to risk and danger, and information that is available may be incomplete or inaccurate.
- c. Practitioners operate from contrasting and sometimes conflicting theories and assumptions about domestic violence.
- d. Women’s accounts of abuse and harm are often viewed as lacking credibility.
- e. Practitioners do not necessarily adjust how they intervene once domestic violence is disclosed or discovered.

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

Recommendations to improve attention to the context, severity, impact and implications of domestic violence:

- a. 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.
- b. 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.
- c. 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.
- d. Build a collective response where part of the role of each intervening agency and practitioner is to seek out information about domestic violence and intervene accordingly, with careful attention to battering and the safety of children and adult victims.
- e. Encourage dialogue (i.e., learning a person's circumstances and needs rather than collecting data to fill in a form or complete a procedure) in all interactions between practitioners and the children, mothers, and fathers involved in child custody-related cases in order to better learn about risks and needs.
- f. Other initiatives under consideration by the local audit team include efforts to:
 - 1. Research and develop effective screening, assessment and safety planning tools related to domestic violence and child custody decisions.
 - 2. Develop a differentiated approach to parenting determinations that accounts for the nature, severity, and context of violence and its impact on parenting and long-term safety of children and adult victims.
 - 3. Review and revise existing state 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.
 - 4. Develop statewide case management guidelines for custody-related cases involving domestic violence.
 - 5. 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.

6. 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 pending further hearing where safety concerns can be addressed.
7. 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.
8. Make changes to the procedures, structure, and content of parenting 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.
9. 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.
10. 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 have the skills to provide services that meet families' specific needs. Revise statutory training requirements to include specific domestic violence training on screening, risk assessment, safety planning, and differentiation in parenting plans.
11. Develop a coordinated community response among 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.

2. DISPUTE RESOLUTION PROCESSES

Dispute resolution processes are routinely utilized without a clear understanding of when and how they might be problematic for the safety and well-being of children and adult victims of battering.

All cases that come before the family court are generally processed in the same manner, regardless of the presence of domestic violence. The family court system has no reliable, systematic mechanism in place for determining whether:

- a. particular dispute resolution processes are safe and appropriate under the specific circumstances of the case;
- b. the parties have enough information to make informed decisions about the issues to be resolved through the dispute resolution processes in which they are engaged; and
- c. preference should be given to more or less formal dispute resolution processes given the particular circumstances of the case and the desirability of establishing a record of the proceedings.

Recommendations to improve the parties' understanding of different dispute resolution processes and ensure that processes used are appropriate to the circumstances and considerations of risk, harm, and parenting plans:

- a. Develop a more comprehensive mediation screening protocol that addresses the context, severity, and nature of 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.
- b. Establish a mechanism for re-assessing situations where mediation agreements cannot be reached to determine whether earlier screening processes have missed domestic violence that is affecting the process.
- c. Develop a local rule and administrative practices that clearly articulate circumstances where mediation is not appropriate and procedures for litigants to opt out of mediation.
- d. Develop procedures for referrals to appropriate services, risk assessment, and safety planning where domestic violence is identified during mediation or other screening.
- e. Develop informational material that informs participants of all dispute resolution processes that apply to child custody-related decisions.
- f. 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 kinds of documentation that should be brought to mediation.

- g. Incorporate risk assessment, safety planning, screening, and parenting plan differentiation tools into the Mediation and Domestic Violence Training Curriculum delivered through the Dispute Resolution Section of the Supreme Court of Ohio.
- h. Revise relevant state 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.

3. INFORMED DECISION-MAKING

Victims of domestic violence are often poorly positioned to make informed decisions relating to parenting rights and responsibilities and the safety implications of those decisions.

- a. Notice and understanding of the right to due process and of the avenues for correcting inaccurate or incomplete case information are sometimes limited.
- b. Victims of battering often lack clear information about processes and consequences *before* coming to court, or early on in the processes related to child custody.
- c. The number of skilled advocates who can walk through the complexities of custody-related processes with victims is very limited.

Recommendations to improve opportunities for informed decision-making related to parenting rights and responsibilities and the safety implications of alternative parenting decisions:

- a. Design and distribute information in various formats (e.g., brochures, clinics, videos, internet technologies) that clearly explains the processes, 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 protection orders, custody, legal separation, and divorce in family court.
- b. Expand and strengthen victims' access to information about advocacy, economic support, risk assessment, safety planning, and other support services, with distribution in multiple formats, through system partners and in other public places, in accessible language(s).
- c. Expand and strengthen the use of pro se clinics 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.
- 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 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.

4. COMPETING DEMANDS

Victims of domestic violence are drawn into multiple systems that are confusing and sometimes involve contradictory requirements and expectations.

- a. A victim of battering could be trying to simultaneously 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. There is no formalized mechanism to search for domestic violence-related cases across systems.
- b. The requirements and expectations of battering victims are different, and often contradictory, among the various compartments of the system. For instance, in a criminal domestic violence case, the victim might be expected to cooperate with the prosecutor by testifying against her abuser and protecting her children from exposure to the abuser's violence. At the same time, in a related custody case, the victim might be expected to cooperate with her abuser and facilitate a relationship between her children and their abusive father. In this way, the victim is caught in a classic double bind. She is simultaneously encouraged to keep the children away from the abuser and to make sure that the children maintain a relationship with the abuser.

Recommendations to improve navigation across systems:

- 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.

5. PARENTING ASSUMPTIONS

Assumptions about parenting sometimes diminish practitioners' attention to the context, severity, and impact of domestic violence.

- a. 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.
- b. Interveners assume that parents have parity in authority, position, and voice, without fully accounting for the context, severity, and impact of domestic violence.
- c. Intervention related to parenting rights and responsibilities often emphasizes shared parenting, cooperation, and co-parenting over attention to context, severity, and impact of violence.

Recommendations to address untested parenting assumptions:

- a. Revise state laws and rules to ensure consistent reporting of prior convictions for domestic abuse, sexual assault, and stalking related offenses by either parent or household member on custody-related affidavits and related forms.
- b. Develop procedures that safely allow for parties to attach supplemental information to custody affidavits and related documents regarding any concerns for the safety, health, and welfare of the children and adult parties, including such items as a personal statement, police reports, protection orders, and medical reports.
- c. Include consideration 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 or 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, guardians ad litem, court

appointed special advocates, parenting coordinators, parenting group facilitators, and batterer intervention facilitators.

- e. Expand and enhance domestic violence-related training for attorneys, mediators, magistrates, and other civil legal system interveners and decision-makers.

6. DISCONNECTED NEEDS AND EXPECTATIONS

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

- a. Many women involved in custody-related proceedings face a level of “economic devastation” that compromises their efforts to manage safety for themselves and their children.
- b. 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.
- c. Practitioners often present conflicting expectations about how a battered woman who is a mother should act.
- d. 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.

Recommendations to better align interventions with the individual needs and resources of the parties:

- 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 abusive parents.
- b. Adopt or revise local court rules regarding procedures and forms related to information-sharing among interveners to ensure that information reaches decision-makers in a timely manner, to increase the consistency of information going to the parties, and to help develop timely and safe parenting plans.
- c. Revise Supreme Court Rule 48 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 and economic assistance workers on domestic violence screening, risk assessment, and safety planning.
- f. Improve notifications to applicants for child support and economic assistance of domestic violence-specific waivers and protections 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.

7. SUPERVISED VISITATION AND SAFE EXCHANGE

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.

There is almost universal agreement that the absence of a supervised visitation and safe exchange program limits the ability of the family court system to provide safe access in the context of domestic violence.

Recommendation to increase access to supervised visitation and safe exchange services:

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.

8. IMMIGRATION STATUS

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.

Limited resources available to undocumented victims of abuse severely restrict their options for safety.

Recommendations to expand options for undocumented battered women:

- a. Continue to include representation from immigrant advocacy and legal service agencies in community discussions and responses to domestic violence and custody-related issues.

- b. Establish and implement a local practice whereby an undocumented 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.

9. SECURITY

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

Many services and interventions occur in places that do not have security features, such as weapons screening equipment, panic buttons, or law enforcement presence.

Recommendations to increase physical security and safety in family court settings:

- 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 and other court services, including mediation.
- b. Require any program conducting parenting education to develop and implement safety procedures that account for the potential volatile nature of domestic violence.

10. STATUTORY LIMITATIONS

Existing laws and practice related to civil protection orders are inadequately coordinated with safety considerations in some divorce and custody-related cases.

- a. Ohio law limits relief in civil protection order cases where a prior custody order is in place.
- b. Civil protection orders are often dismissed when a divorce action is filed or the civil protection order hearing is combined with the hearing on divorce orders.
- c. 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, quick alternative to divorce.

Recommendations to coordinate civil protection order laws with safety considerations in divorce and custody-related cases:

- a. Request that the Supreme Court of Ohio Advisory Committee on Domestic Violence convene to review and propose statutory changes that would allow a court with jurisdiction to hear a civil protection order petition to utilize the civil protection order to temporarily suspend or modify an existing custody or parenting time arrangement 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 civil protection order provisions and enforcement, and how a civil protection order might best reinforce or work alongside a divorce proceeding.
- 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 arrangements.

11. BATTERER INTERVENTION

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.

The structure and delivery of batterer intervention services vary significantly among facilitators in content and approach.

Recommendations to standardize batterer intervention programming to address the context, severity, and impact of domestic violence and its implications for parenting:

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

IV. Conclusion.

In Henry County, Ohio – as in most communities across the country – there are many practitioners who respond to domestic violence and make decisions related to child custody and

access with thoughtfulness, attention and compassion. As the Ohio Audit demonstrates, however, those practitioners are located within complex systems and institutions, and their work is often organized in ways that constrict, rather than enhance, safety. 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 protections and opportunities for batterers to change their 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.

There is an ever-present caution in considering the recommendations set forth in this report. While the overarching goal is to eliminate or at least minimize harm for as many children and adult victims as possible, it is important to bear in mind that there is no single universal child or mother or father. Consequently, those seeking to change complex legal and social systems to make them more attentive to domestic violence in ways that strengthen safety and well-being and offer opportunities for change must anticipate how and for whom a particular reform will work and be alert to unintended consequences.