



A SAFER APPROACH TO DECISION-MAKING IN DOMESTIC VIOLENCE-RELATED CHILD CUSTODY

DISPUTES

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INTRODUCTION

Child custody decision-making in the context of intimate partner violence (“IPV”) allegations can be controversial, unpredictable, and challenging. The family court system struggles to protect the safety and wellbeing of children and their battered parents in IPV-related child custody cases.¹ It is also concerned about protecting the rights and interests of parents who are accused of IPV and/or unjustifiably estranged from their children.² This document describes a four-pronged approach to decision-making in IPV-related parenting cases known as “SAF^eR.”³ The SAF^eR approach is designed to produce safer, more workable outcomes for battered parents and their children.

A NEW METHODOLOGY

The SAF^eR approach to child custody decision-making consists of four parts: (1) **screening** for IPV; (2) **assessing** the full nature and context of IPV; (3) **focusing on the effects** of IPV on parenting, co-parenting and the best interests of the child; and (4) **responding** to the lived experience of IPV in all family court recommendations, decisions, and interventions.

¹ See Kaur, M., Melara, S., Scott, E. & Vasan, A. (2013). *Family Law Remedies for Domestic Violence Across California: A Survey*. California Partnership to End Domestic Violence; Dragiewicz, M. (2012). *Gender Bias in Courts: Implications for Battered Mothers and their Children*. *Family and Intimate Partner Violence Quarterly*, 5(1):13-35.

² See Jocelyn Elsie Crowley, *Adopting ‘Equality Tools’ from the Toolboxes of their Predecessors: The Fathers Right Movement in the United States*, in *FATHERS’ RIGHTS ACTIVISM AND LAW REFORM IN COMPARATIVE PERSPECTIVE* 81 (Richard Collier & Sally Sheldon eds., 2006).

³ Many of the ideas expressed herein were developed under Award 2009-TA-AX-K025 from the Office on Violence Against Women, U.S. Department of Justice and are more fully explored in Gabrielle Davis, (2015). *A Systematic Approach to Domestic Violence-Informed Decision Making in Family Law Cases*, *Family Court Review*, 53(4):565-577. The opinions, findings, conclusions and recommendations expressed herein are those of the author and do not necessarily reflect the views of the U.S. Department of Justice.



The SAF^eR approach seems intuitive, but its implementation requires attention to information that is too often ignored. In many instances, family court professionals take shortcuts. They often skip over the intermediate steps of the SAF^eR approach (attending to the nature, context and effects of IPV) and come to quick and seemingly simple conclusions. In reality, the intermediate steps are the most crucial, yet frequently overlooked, elements of the SAF^eR analysis.

The strength of SAF^eR is that it steers practitioners away from making unfounded assumptions about IPV and people's experience of it. Practitioners must not assume that IPV is an issue in every custody dispute. Instead, they need to find out if that is the case. Practitioners mustn't assume that every IPV case involves serious physical harm or a long history of coercive controlling abuse. Rather, they need to explore what is actually going on. Practitioners mustn't assume that the presence of IPV always has a negative effect on children or parenting. Instead, they need to determine whether that is so. And, practitioners mustn't assume that every IPV case ought to result in some predetermined outcome. Rather, they must craft outcomes that address the full nature, context and implications of IPV, whatever they may be. SAF^eR guides this work.

Screening for IPV.

The first element of SAFER is to screen for IPV. It calls on family court professionals to identify whether domestic abuse is or may be an issue in the case. Like other screening functions in non-court settings, the goal of this first step is simply to explore whether there is reason to take a closer look at IPV. This first element is somewhat akin to airport security. Before entering the gate area, all passengers must pass through a metal detector or body scanner to uncover whether they might pose a threat to airline safety. Most people pass through security without incident. Sometimes, a passenger trips an alarm. The alarm might go off because that passenger left keys in his pocket, or has a metal pin in his knee – or, much less frequently, because he has a bomb stuffed down his pants. The screening device can't tell the difference. Rather, it signals to the security agent that she needs to take a closer look. It's not the screening device, but this closer look, that tells the security agent what she really needs to know. It's the same with IPV. The screening protocol (which is represented by the first element of SAFER) merely tells the family court professional that he has to do a more thorough IPV assessment.

Assessing the Nature and Context of IPV.

The second element of SAFER represents this more thorough IPV assessment. It calls on family court professionals to explore the full nature and context of any potential IPV that is detected during the screening process. The assessment is important because IPV is not a fixed or uniform condition. It is carried out and experienced differently by different people in different relationships and even at different times within the same relationship. Consequently, it's not enough to know that IPV has occurred or has been alleged. Family court practitioners

need to know what is actually going on in people’s real lives. They have to know, for instance, whether the IPV they have detected is an isolated incident or part of a larger pattern or history of abuse. They need to know whether the IPV is designed to instill fear or compliance with unilateral and self-proclaimed rulemaking authority – or whether it represents resistance to violence that has been perpetrated against that partner. Family court practitioners need to know whether the abuse they have detected includes markers of lethal danger – and/or whether it is associated with other life stressors, such as major mental health problems or substance abuse. In short, family court professionals must attempt to gain a full and complete understanding of IPV in context – to discern who is doing what to whom and why. Otherwise, they’ll end up treating everything and everybody the same, and that can endanger children and battered parents, embolden abusers, and undermine effective interventions.

Focusing on the Effects of IPV.

The third element of SAF^eR is focusing on the effects of IPV. Here, practitioners are directed to explore what the experience of abuse means for the parties and the children – both in the broadest and most narrow sense. In the broadest sense, this means discovering what it is like to live in an environment of IPV, to parent and to be parented in an atmosphere of abuse. The framework directs family court professionals to consider how IPV shapes everyday life and communication, daily responsibilities and authority in the home, and general parenting beliefs, attitudes and practices. It guides family court professionals to discern the relative needs and interests of the children and parents, to determine whose needs are satisfied and whose interests are protected. In the more narrow sense, the third element of SAF^eR asks family court professionals to determine why IPV matters – how it is relevant to the decision or action

at hand and how it is connected to the standards by which the decision or action that must be taken is to be made.

In this way, the third element of SAFER dictates a differential analysis that seeks to assess the impact of IPV in different ways depending upon what the practitioner is trying to do. If, for instance, the practitioner is trying to decide what sort of access arrangement is appropriate, the pertinent implications of IPV revolve around such things as the physical and emotional safety of the child, the capacity of the abuser-parent to recognize and respond to the child's individual needs, the degree to which the abuser-parent takes responsibility for past abuse or continues to use the child as an instrument of abuse, the extent to which the child and the victim-parent trust the abuser-parent's parenting, and so forth. If, on the other hand, the practitioner is trying to decide the parents' competence to make joint parenting decisions, the relevant implications of IPV include slightly different considerations, such as the ability of the parents to communicate in a direct, civil, constructive and child-focused manner, the willingness of the abuser-parent to support the parental authority of the victim-parent, and the abuser-parent's ability to separate his role as parent from his role as partner, among other things. Just as the standards for decision-making differ depending upon the issues to be decided, so too does the task of determining the effects of IPV.

Responding to the Lived Experience of IPV.

The fourth element of SAFER is responding to the lived experience of IPV. This is especially important because research indicates that even when IPV is detected, cases often

proceed to resolution without regard to safety, power differentials, and other effects of abuse.⁴

The goal of this last element is to respond directly to – and to correct, if possible – the harm resulting from IPV, whatever it is, and to minimize the opportunity for ongoing abuse and future unwelcomed intrusion into the lives of battered parents and children.

By way of illustration, suppose a custody evaluator performs an initial IPV screen pursuant to the first element of SAF^eR and learns that one of the parents has been emotionally abused by the other parent. This signals to the evaluator that she should take a closer look, pursuant to the second element of SAF^eR, to figure out what is actually going on. The evaluator investigates further and discovers that the emotionally-abusive parent is intentionally withholding necessary and available financial support in order to punish the victim-parent for leaving the relationship. The evaluator also learns that the child does not want to spend time with the emotionally-abusive parent. The evaluator proceeds to the third element of SAF^eR to determine why and how that matters. Upon inquiry, the evaluator learns that the child's basic needs are not being met, the victim-parent is anxious and depressed about finances, the child feels resentful of the abuser-parent for not supporting him, and the child feels betrayed by the victim-parent for breaking up the family. Equipped with this knowledge, the evaluator must figure out how to craft a parenting recommendation that accounts for the nature, context and effects of IPV pursuant to the fourth element of SAF^eR. The evaluator might consider incorporating terms into the parenting recommendation that set clear and enforceable financial obligations for the abuser-parent, impose some form of financial oversight to ensure those

⁴ Mary Kernic, Daphne Monary-Ernsdorff, Jennifer Koepsell & Victoria Holt (2005). *Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Abuse*, Violence Against Women, 11(8):991-1021; James Bow (2006), *Review of Empirical Research on Child Custody Practice*, Journal of Child Custody, 3(1):23-50.

obligations are being satisfied on a consistent basis, support the victim-parent's health and economic self-sufficiency, and restore the child's trust in both of his parents.

When put this way, the methodology outlined above makes perfect sense. Yet, it is neither widely practiced nor self-executing. Although SAFER is intuitive and easy to understand, it can be very challenging to implement. Consequently, BWJP has developed a compendium of worksheets and practice guides to operationalize the SAFER approach. The compendium includes an initial IPV screening guide, an IPV-informed interview protocol, a tool for assessing parenting in the context of IPV, a best interest analysis, case planning guides, IPV assessment guides for mediation and early neutral evaluation, and a co-parenting assessment guide. The practice guides are available online at <https://www.bwjp.org/assets/compiled-practice-guides-may-2018.pdf>

CONCLUSION

SAFER is designed to transform a family court system that is poorly organized to respond to IPV into one that produces safer, more workable outcomes for battered parents and their children. The key to that effort is to follow an approach that effectively identifies if and when IPV is an issue in the case; explores the full nature and context of any abuse that is detected; examines the real-life implications of the abuse that is or has been occurring; and accounts for IPV in all parenting recommendations, decisions and interventions – all in a way that facilitates the family court practitioner's ability to act in the best interests of the child living with IPV.