NC District Courts' Response to Domestic Violence

Report Regarding Best Practices and Judicial Training
December 2007

NOTICE TO READER

THE CONCLUSIONS AND RECOMMENDATIONS IN THE FOLLOWING REPORT ARE THOSE OF THE AUTHORS AND DO NOT NECESSARILY REFLECT THE POLICY OR CONCLUSIONS OF THE ADMINISTRATIVE OFFICE OF THE COURTS.

THIS REPORT IS THE PRODUCT OF A STUDY CONTRACTED BY THE NC AOC RESEARCH AND PLANNING DIVISION, PURSUANT TO A GRANT AWARDED BY THE GOVERNOR'S CRIME COMMISSION.

IT IS BEING REVIEWED BY JUDGES, OTHER COURT OFFICIALS, AND OTHER INTERESTED PERSONS, IN ORDER TO PROVIDE INPUT AND ADVICE FROM WHICH THE AOC CAN DEVELOP AN APPROPRIATE PLAN FOR IMPLEMENTATION.

WE ARE VERY GRATEFUL FOR THE EXCELLENT AND DEDICATED WORK BY THE AUTHORS,
Juli Kim and Leslie Starsoneck

North Carolina District Courts' Response to Domestic Violence

Best Practices and Judicial Training

Report Submitted to the NC Administrative Office of the Courts
December 2007
Julia Kim and Leslie Starsoneck

Table of Contents

Executive Summary

Domestic violence is a complicated issue that holds particular challenges for the justice system. Those challenges surround the escalating and private nature of the violence, the number of incidents that give rise to both civil and criminal actions, the relationship between the parties, and the criminal and non-criminal acts that constitute patterns of abuse. Complexities aside, one need look no further than volume to understand the diverse needs of districts in managing these cases.

North Carolina district courts handled more than 32,000 filings for domestic violence protective orders between the end of July 2005 and the end of June 2006. During that time period, Mecklenburg County, the most populous county in the state, handled an average of more than fifty (50) civil domestic violence cases a week, while small counties like Camden and Hyde handled fewer than twenty (20) over that same year's time.

As documented in this report, North Carolina districts have developed a variety of ways of handling civil and criminal domestic violence cases - from calendaring cases to prosecution models to utilizing the local domestic violence advocacy agency. In most instances, local consensus - based on resources, community capacity, and local court culture - is the primary determinant in establishing these practices, followed by a degree of influence by models practiced elsewhere in the state or nation. Sometimes the practices of a particular entity or group – the Clerk's Office, the District Attorney, local magistrates, law enforcement, the Abuser Treatment Program – are developed in cooperation with other groups; other times, they are developed in relative isolation borne of tradition or time constraints, or both.

The documentation and analysis contained in this report is based on reporting by a variety of system participants. Chief District Court Judges, District Attorneys, public defenders and defense attorneys, clerks of superior court, abuser treatment programs, domestic violence programs, and legal services attorneys were asked, through written survey, roundtable discussions, and informal interviews, how statutes are implemented in their districts and what practices the district employs, including those that reach beyond statutory directives, and comprise that district's response to domestic violence.

Though many districts share the common principles of victim safety and offender accountability, the result of this inventory is a collection of remarkably varied approaches. Many districts employ strategies that show great promise for positively impacting the lives of North Carolinians who experience and who commit domestic violence. Some know they have challenges in certain parts of the system that can undermine the overall quality of their collective response whether related to prosecution policies, the demeanor of court staff, or the resources available in the community to provide services to victims and offenders. The overall landscape is one of strong commitment and solid policies on the one hand, and serious inefficiencies and a disjointed system on the other. The result in the latter districts is an unfulfilled promise of justice to victims, and a frightening message to offenders that their behavior will go unnoticed or punished.

The report highlights promising practices and suggests how to shift those inefficient or

ineffective practices through the implementation of short and long-term strategies, separating them into resource-neutral (many having to do with leadership) and resource-implicated recommendations, i.e. the development of a strategic training plan and deployment of human resources within the Administrative Office of the Courts to provide technical assistance and consultation to districts.

Several areas are noted for their particular importance. Access to legal representation is woefully inadequate in its availability. Absent legal representation, both parties need to have access to and an understanding of the justice system, particularly at initial contact and through the system's gatekeepers (clerks and magistrates). Both parties should experience a process that contains some degree of predictability – limits on continuances, standard considerations for bond and release conditions – and that clearly demonstrate the shared principles of victim safety and offender accountability – review hearings to determine compliance and to create a deterrent effect, regular referral to Abuser Treatment Programs when convicted of a domestic violence offense, and evidence-based prosecution policies that account for the lack of participation or cooperation by the victim. Also, the court should routinely collect and consider information about the parties including past cases of domestic violence and current business before the court. And finally, a strategic plan for judicial training in domestic violence should be developed.

In recognition of the many practices that are similar to those that have originated outside of the state, this report also documents practices from other parts of the country, which have received national attention. These include strategies that address the specialization of the court, enhanced prosecution, increased offender accountability, victim safety, and the well-being of children.

Chapter 1: Introduction

Objectives

In North Carolina, district courts have jurisdiction over civil domestic violence cases and criminal misdemeanor offenses involving domestic violence. (District courts also have jurisdiction over felonies involving domestic violence if such offenses are Class H and I felony offenses under Structured Sentencing). Within this framework, the 41 judicial districts are guided in their handling of domestic violence cases in part by statute, particularly Chapters 50B (for civil cases), 15 (defining criminal offenses), and 15A (governing criminal process) of the North Carolina General Statutes. Where statutes are silent, policies and practices established by the Administrative Office of the Courts and/or the individual districts direct the manner in which domestic violence cases are handled in district court.

The 100 North Carolina counties, divided among the 41 judicial districts, are diverse in terms of population, geography, and economy. Within certain parameters, the Administrative Office of the Courts has long-recognized the impact of these differences, and has traditionally allowed the judicial districts certain latitude to develop ways of handling cases outside of what is explicitly mandated by statute. Hence, while domestic violence cases may be governed by the same set of state laws, parties similarly situated in terms of facts may have different experiences depending on the district where their cases are adjudicated and disposed.

These differences in processing or handling of domestic violence cases lead naturally to questions of efficiency and effectiveness, whether practices followed in one district are more effective or efficient in dealing with domestic violence cases than practices followed in another, whether practices in one district can be replicated in another, and so on.

Within this context, this study of practices and policies in North Carolina district courts for handling civil and criminal domestic violence cases was undertaken in order first, to identify and report current court practices for handling domestic violence cases, then analyze those practices that appear to be most effective and efficient in handling domestic violence cases. The purpose of this report is to provide information to the North Carolina Administrative Office of the Courts that allows the agency to respond to requests for information, technical assistance, and consultation on the most effective and efficient practices for handling cases. Additional objectives of this study include determining the impact of current judicial training on the handling of domestic violence cases, and recommending the types of data that might be of assistance to districts in their management of these cases that could be provided or coordinated by the AOC.

This project was funded through a Governor's Crime Commission grant awarded to the Administrative Office of the Courts in July 2007. Two part-time, temporary staff were hired in August 2006. The project is housed in the Research and Planning section.

"Effectiveness" and "Efficiency"

Much of the current project relates to categorizing North Carolina districts' polices and practices that display or appear to have the potential to be effective or efficient for handling domestic violence cases. Because adopting specific criteria for determining effectiveness is beyond the reach of this project, and because most domestic violence practices have not been rigorously evaluated, it is important to create a context for reporting and discussion of the data.

Domestic violence has its roots, and continues to be defined, in highly philosophical and theoretical terms. Many of the responses to adult and child victimization have developed out of the broad concepts of victim safety and empowerment and offender accountability.

The goals and objectives associated with reducing or preventing domestic violence have evolved from widespread trial and error and are based heavily on anecdotal feedback from victims, perpetrators (and their spokespersons), and stakeholders. For example, for the first few decades of increased awareness and attention to domestic violence, it was assumed that the permanent severing of the relationship between both parties would be effective in stopping violence and that whatever practices attached to that process – statutes on protective orders, emergency shelters, pro arrest policing policies – should be executed in efficient ways (e.g. expedited hearings for protective orders, adequate funding for shelters, and proper training for law enforcement). Since that time, several researchers have questioned the effectiveness of these policies, for example, noting that violence often increases when parties separate, that some victims do not share the goal of separation but instead want the violence to end, and that arrest can have a detrimental impact on the economics of the entire family.

To further complicate evaluation efforts, many domestic violence advocates, who at least initially framed most of these discussions, endorse the perspective that what is effective for victims should be defined by what the individual victim says is helpful to her in her particular circumstance. Under this view, evaluation efforts have been seen as often futile and sometimes harmful and have been resisted particularly as it relates to the funding of research initiatives. In addition, this type of research can be cumbersome and very challenging due to the need to prioritize privacy and safety of victims, the often-mobile nature of both parties, and ethical challenges to establishing control groups.

Consequently, much of the assessment of these practices is necessarily dictated by the degree of existing consensus that the practices under consideration are effective (i.e., designed with a particular goal in mind), and efficient (i.e., the methods employed in fact help to reach those goals) for a particular community. This project relied heavily on this approach, and took the additional step of soliciting feedback as to the type of data that would aid in determining the degree to which policies and practices were effective. Though the project focused exclusively on court practices, these practices are heavily influenced by and reflective of the broader community. Particularly in civil cases, representatives who are not employed by the court or acting on behalf of the court are often integral participants in the process. Hence, this project took the broad approach of soliciting feedback not only from

those court professionals employed by the state, but also other community professionals actively involved in domestic violence cases.

Domestic violence has its own set of particular challenges for the justice system, many of them noted in this report. For example, the science of discerning degrees of risk posed by certain types of batterers is still developing. Some of the learning on this topic has been integrated into judicial tools such as bench guides developed by the National Council for Juvenile and Family Court Judges and "lethality checklists." Some judges (and litigants and their legal counsel) express concern that the tools are designed to predict risk and that they are too readily applied to all defendants appearing before the court. Also, many of the actions involved in committing domestic violence are non-criminal (though many are captured within the civil statute and may constitute violations of protective orders, a misdemeanor offense in North Carolina) and part of a pattern though the justice system is designed primarily to deal with discrete incidents.

Project Activities

The primary activities undertaken by project staff in furtherance of the goals of the project were: development, administration and interpretation of survey instruments; execution of site visits to a percentage of districts for further examination of policies and practices; and examination of "best practices" occurring in the state and across the nation.

Surveys

Civil and criminal domestic violence cases can and often are handled differently across the 41 judicial districts. In order to document current practices, solicit feedback on those and other practices, and to determine the degree of agreement and understanding of practices within each district, a number of court official and stakeholder groups were surveyed.

The surveys were sent to the following:

- All chief district court judges;
- All clerks of superior court;
- All elected district attorneys (survey to be completed by the elected district attorney or his or her designee);
- All fourteen public defenders (serving 22 counties) (survey to be completed by his or her designee);
- All twenty-four Legal Aid offices serving the state through single or multi-county service areas;
- All abuser treatment program providers approved by the Domestic Violence Commission[1] serving a total of 65 counties; and
- All state-funded domestic violence service providers (hereinafter referred to as

[1] Although abuser treatment programs have been in operation for a number of years in North Carolina, a formal process for granting approval status to programs was not established until 2004. Administrative rules currently govern the approval of these programs and district courts are directed by civil and criminal statute to refer defendants only to programs approved by the NC Department of Administration.

"domestic violence programs").

The initial plan included surveying family law attorneys through the North Carolina Bar Association; however, implementation of the survey was delayed and ultimately unsuccessful.

Each stakeholder group was consulted in the design and methodology of each survey instrument, and in many cases, as noted below, was involved in the actual administration of the instrument.

Copies of each survey instrument can be found in Appendices A - G.

Survey Administration and Response Rates

All surveys were administered electronically with a secondary option of completing the survey manually and faxing or mailing it to project staff. Six of the seven surveys were web-based. Legal Aid of North Carolina hosted the survey administration for abuser treatment programs, Legal Aid attorneys, and domestic violence programs. The Administrative Office of the Courts hosted the survey administration for chief district court judges, district attorneys, and public defenders and defense attorneys.

Clerks of Superior Court: Surveys were disseminated to each of the 100 clerks of superior court through a variety of methods. Paper copies of the survey were distributed by School of Government faculty to the clerks at their spring conference. Letters were also mailed to each clerk of superior court with a copy of the survey. As a follow up, AOC associate legal counsel sent the survey with a reminder by email. Lastly, project staff made phone calls to counties whose clerks had not responded.

Ninety-three of the 100 clerks of superior court responded to the survey for a 93% response rate.

Domestic Violence Programs: Surveys were disseminated to 93 state-funded domestic violence programs through letters mailed to each state-funded domestic violence program in the state with a link to the survey. In addition, the North Carolina Coalition Against Domestic Violence advertised the project through their monthly mailings to member programs and sent email reminders to programs urging them to complete the project survey.

Fifty-five surveys were returned from the 93 domestic violence programs yielding a 59% response rate.

Abuser Treatment Programs: Surveys were disseminated to 56 state-approved abuser treatment providers. North Carolina currently has 60 approved programs that provide services in a total of 65 counties.[2] Judicial districts that do not have any abuser treatment program services are Districts 2, 3B, 9, 9B, 15A, and 16A. At the time the survey was administered, 56 programs were approved. The Domestic Violence Commission mailed

[2] A list of these programs can be found at http://www.doa.state.nc.us/cfw/abtpro07.pdf

letters containing a link to the on-line survey to the 56 programs approved at the time of the survey. In addition, the survey was advertised several times by email through the NC Providers of Abuser Treatment, a coalition of providers, and a presentation was made to the group prior to distribution of the survey for purposes of gathering input as to design, format and content.

Seventeen programs, representing service providers in 27 counties, responded to the survey yielding a 31% response rate (one letter to a provider was returned undeliverable).

District Attorneys: Surveys were disseminated to each of the 41 elected district attorneys through a variety of mechanisms. Letters containing paper copies of the survey were mailed to each elected district attorney by the Conference of District Attorneys in a monthly mailing to members. In addition, the Conference sent an email to their members directing them to the survey that was located on a hidden directory on the AOC website. Project staff individually emailed all district attorneys who had not responded within three weeks of the Conference email, and three weeks later, telephoned all district attorneys who had not responded.

Thirty-eight surveys were received from district attorneys or their designees representing 35 or 83% of the 41 prosecutorial districts.

Public Defenders: The survey was posted to the AOC website. Indigent Defense Services announced the survey to public defenders and private defense attorneys through their listservs and a link to the survey with a corresponding message was posted on the Indigent Defense Services website.

Fifty-three surveys were completed representing 28 or 68% of the districts.

Chief District Court Judges: The survey was posted to a hidden directory on the AOC website. A memorandum from AOC Director Judge Ralph Walker was emailed to each of the 41 chief district court judges requesting their assistance with the project and their response to the survey. A link to the survey was included in the memo. Project staff individually emailed all chief judges who had not responded within three weeks of Judge Walker's email. Project staff individually telephoned all chief judges who had not responded within three weeks of the second email.

A total of 37 of the 41 surveys were returned for a 90% response rate.

Legal Aid Attorneys: The survey was posted to a survey website used by Legal Aid of North Carolina (LANC) for its attorneys. LANC sent an email containing a link to the survey to all Legal Aid of North Carolina and non-Legal Aid of North Carolina attorneys working on domestic violence cases. Non-LANC attorneys include those working for Pisgah Legal Services of Western North Carolina and Legal Services of Southern Piedmont.
Thirty-two surveys were completed and returned.

Site visits

Site visits to certain judicial districts were conducted in order to further examine practices in a number of different types of settings within the state. Districts selected for site visits were chosen based on a variety of factors including whether the district was a Family Court site; the geographical setting and area (i.e. single county or multi-county, urban or rural); and the content and volume of responses to survey questions from respondents in a given district.

Site visits included roundtable discussions (two to three hours in duration) convened by the chief district court judge, with relevant court officials and stakeholders, many of whom represented surveyed groups. Discussions were facilitated through a standard set of questions regarding local policies and practices, and questions designed to further develop and promote discussion regarding themes or findings from the surveys. Roundtable discussion agendas can be found in Appendices H – N.

In addition, project staff observed court sessions when civil and criminal domestic violence cases were being heard. The purpose of court observation was to see in practice some of what was reported in the surveys, and to collect additional information regarding the handling and processing of cases that might not have been shared through surveys or roundtable discussion. Court observation served the additional purpose of allowing for an "environmental scan" of the courthouse and courtrooms to determine the level of access – broadly speaking – available to parties with business at the courthouse. For example, the ease with which one could negotiate the courthouse, the physical layout of the courtroom in terms of safety and security, the culture of the courtroom staff including the character of their communications among one another as well as with parties with business before the court, were all factors recorded during observations.

Lastly, project staff made unannounced and unplanned visits to offices of clerks of superior court and local magistrates. The visits included, where possible, tours of the physical space and interviews with staff regarding the standard practices associated with handling domestic violence cases.

In the case of clerk's offices, areas of inquiry and observation included whether there was a private space for plaintiffs to fill out forms; how the office coordinated its efforts with the local domestic violence program; whether clerks routinely checked for related cases; and at what volume and under what type of conditions Chapter 50C orders were being filed.

In the case of magistrate's offices, project staff routinely noted whether or not the office was located in the jail or detention facility (and how the magistrate's office was situated within the building); whether magistrates were authorized to issue ex parte orders under Chapter 50B and/or Chapter 50C of the NC General Statutes; what types of relief, if any, magistrates were authorized to order under Chapter 50B; how the office coordinated its efforts with the local domestic violence agency; a description of the circumstances under which most plaintiffs arrived at the magistrate's office (i.e. accompanied by law enforcement, alone, or with an advocate), and the number of magistrates in the office.

Site visits were conducted in the following districts:
District 1 (Camden, Chowan, Currituck, Dare, Gates, Perquimans, Pasquotank);

District 14 (Durham);
District 4 (Onslow, Jones, Duplin, Sampson);
District 26 (Mecklenburg);
District 28 (Buncombe);
District 20A (Anson, Stanly, Richmond); and
District 20B (Union).

Survey and Site Visit Privacy and Anonymity

Attempts were made during site visits to reassure survey respondents and round-table participants, and other interview subjects that their candor was not only appreciated but also important to the project, and that efforts to cloak identity, when identity was unimportant, would routinely be made in the course of the project.

Impact of Judicial Training

Determining the impact of judicial training in domestic violence through scientific evaluation was beyond the scope of this project. In fact, a survey of states, detailed elsewhere in this report, confirm that the methodology required for that type of inquiry is beyond the scope and resources available to most state administrative court offices.

There were three main activities associated with this objective. First, project staff worked with a researcher based at North Carolina State University who had been retained by the National Council for Juvenile and Family Court Judges to evaluate training provided through the Council's Judicial Institute. Project staff worked with this researcher in order to evaluate North Carolina judges participating in the training.

Second, project staff contacted and interviewed states regarding their domestic violence training initiatives for (their equivalent of) district court judges.

Third, questions regarding judicial training were included in some of the survey tools, yielding mostly subjective data on the efficacy or impact of judicial training.

State and National Research

National research was reviewed on best practices related to the court's role in reducing the prevalence and severity of domestic violence. In addition, a number of important research projects conducted in and about North Carolina domestic violence court practices were considered. (See Chapter 2, National Best Practices, page 17 for discussion of best practices.)
At the time of the project, District 12 (Cumberland County) had contracted with the National Center for State Courts to assist in the establishment of an integrated domestic violence court. The data that was collected and analyzed, and the recommendations that were made, were shared with project staff and to the extent that they are helpful, have been integrated into this report.

Recent Public Policy

Administrative and legislative policies regarding domestic violence have changed significantly in the past decade in the nation and in North Carolina. The passage of the 1994 Violence Against Women created a number of federal laws affecting issues such as restraining orders, interstate violations, court fees, and immigration policies, and produced millions of federal dollars administered through every state for development of strategies to address domestic violence and sexual assault. Funding for these strategies were and continue to be federally prescribed using a formula that assures support and innovations for certain sectors of the community, including specifically, law enforcement, prosecutors, the courts, and community-based advocacy services.

North Carolina district courts have experienced the impact of this federal legislation and funding and the concurrent impact of substantive and implementation changes in domestic violence policy adopted by North Carolina's executive agencies and the legislature in the past decade. Of particular note are significant changes to the state's civil domestic violence protective order statutes and the creation or enhancement of criminal penalties.

Several government-sponsored or organized entities have been responsible for many of the reforms and proposals impacting the courts. Among the most notable are:

- The Governor's Task Force on Domestic Violence, established by Governor Jim Hunt in October 1998, and later codified by the legislature as a permanent division within state government. Presently known as the Domestic Violence Commission, a multi-disciplinary commission[3] formed within the Department of Administration to develop and monitor the state's response to domestic violence, this entity was later merged with the Council for Women, a division also within the Department of Administration, whose responsibilities include approving abuser treatment programs to be utilized by the district courts for civil respondents and criminal defendants, and administering state funds to community-based domestic violence programs.

- The House Select Committee on Domestic Violence, established by the North Carolina General Assembly in 2002, and co-chaired by Rep. Wilma Sherrill and Rep. Marian McLawhorn. The work of the committee culminated in an omnibus bill[4] on domestic violence with legislative revisions and additions of particular relevance and impact on the court system, including:

  - A directive to AOC to study training for judges and others;[5]

[3] *See* N.C. Gen. Stat. 143B-394.15 (2005). The 44 member commission includes a seat for a clerk of superior court, a US Attorney, a member of the NC Bar Association, two district court judges, two law enforcement representatives, a district attorney, a legal services representative, and a magistrate.

[4] House Bill 1354, S.L. 2004-186

[5] SECTION 20.1. The North Carolina Supreme Court is respectfully requested to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases. SECTION 20.2. The Administrative Office of the Courts shall study the issue of training for court personnel in the area of domestic violence. The study shall examine the following: (1) the extent to which training is currently being done. (2) The need for additional training. (3) The amount and

- Coding of criminal domestic violence cases by the courts upon disposition of a case involving assault or communicating threats between two persons with a personal relationship as defined by Chapter 50B;
- Changing referral to an approved Abuser Treatment Program from a special to a regular condition of probation;
- Creating a strangulation offense;[6]
- Amending the offense of habitual misdemeanor assault[7] to broaden its scope;
- Creating a fee of $.95 to fund legal services for domestic violence victims;
- Directing the North Carolina Sentencing and Policy Advisory Commission (hereinafter "Sentencing Commission") to study misdemeanor class offenses, including the predominant offense classes for domestic violence acts;
- allowing warrantless arrest for violation of pre-trial release conditions;[8]
- Amending the aggravating factors statute[9] to include taking advantage of a position of trust…including in a domestic violence relationship;
- Conforming state firearms law to federal law;[10]
- Allowing magistrates to issue cross warrants;[11]
- Creating a requirement that when hearing requests for civil protective orders under Chapter 50B judges consider requests for child custody and temporary visitation rights,[12] and enumerating a variety of factors for consideration in these decisions;[13]
- Requiring private areas for 50B plaintiffs to fill out forms[14] and
- Training for court officials on domestic violence.

❖ Initiatives designed to make connections across various types of victimization, including domestic violence and child abuse, including the Child Well Being and Domestic Violence Task Force, convened and co-chaired by then Chief Justice of the Supreme Court, I. Beverley Lake. This task force began work in 2002 to focus on the overlap of child maltreatment and domestic violence as well as the effects of domestic violence on children. The work of the task force was modeled after a national initiative established by the National Council for Juvenile and Family Court Judges[15] to develop model policies and practices among the courts, public child protection agencies, and domestic violence programs to adequately address child maltreatment and domestic violence.

The Task Force issued 44 recommendations including two with specific

---

types of training that would be most appropriate. (4) The potential costs and sources of funding for any additional training.

[6] N.C. Gen. Stat. 14 -32.4 (b) (2005).

[7] N.C. Gen. Stat. 14-33.2 (2005).

[8] N.C. Gen. Stat. 15A-401(b)(2) (2005).

[9] N.C. Gen. Stat. 15A-1340.16(d) (2005).

[10] *See* N.C. Gen. Stat. 14-415.1 (2005).

[11] N.C. Gen. Stat. 15A-304(d) (2005).

[12] *See* N.C. Gen. Stat. 50B-3 (2005).

[13] *Id.*

[14] *See* N.C. Gen. Stat. 50B-2(d) (2005).

[15] The Greenbook Initiative http://www.thegreenbook.info/

ramifications for the court system: to routinely address custody within domestic violence protective order actions (which was enacted as part of the 2002 omnibus legislation noted above); and to create a new offense criminalizing committing an assault on an intimate partner in the presence of a child.[16]

- A report entitled, "Safe at Home? Fighting Family Violence in North Carolina" released by the NC Center for Public Policy Research in 2005[17] promulgating nine major policy recommendations. Seven were particularly relevant to the court system:
  - Examine the disparity across districts of conviction rates for domestic violence criminal offenses;
  - Review criminal class for assaults with an emphasis on strengthening penalties as acts escalate;
  - Expand Family Courts *because of the model's capacity for hearing all matters involving the same family by the same judge* (italics added);
  - (The Chief Justice of the Supreme Court should) appoint a study group to explore the issue of child custody and the impact of family violence on custody decisions;
  - Expand Supervised Visitation Centers;
  - Improve data on domestic violence by tracking the numbers of persons charged with and convicted of domestic violence crimes; and
  - Create a Joint Legislative Committee on Domestic Violence.

  The Joint Legislative Committee on Domestic Violence was created in August 2005 and reauthorized in 2006. Among its initiatives has been the statutory mandate to clerks of superior court to create, when feasible, a private waiting area for plaintiffs for court hearings.[18]

Other legislative proposals relevant to North Carolina district courts handling of domestic violence cases include bills resulting in:

- The creation of a new no-contact order[19] for parties whose relationship to one another does not qualify them for relief under Chapter 50B of the North Carolina General Statutes governing domestic violence. The legislative intent was to cover sexual assaults where the parties are unrelated with no romantic involvement, and instances of harassment in the workplace;
- The establishment of specialized courts for domestic violence cases;
- Legislation that created a specific right for a plaintiff in a domestic violence protective order actions to apply for a gun permit (a proposal developed and lobbied for by Grassroots North Carolina, a firearms rights organization).[20]a

The General Assembly has also approved expansion of Family Court sites through study

[16] N.C. Gen. Stat. 14-33(d) (2005). The NC Attorney General's Office led the effort to establish a new offense criminalizing the assault of an intimate partner, as defined by Chapter 50B in the sight and sound presence of a minor.

[17] The report appeared as the lead article in the March 2005 edition of North Carolina Insight, Vol. 21 No 4.

[18] House Bill 46, S.L. 2007-15.

[19] *See* Chapter 50 of the NC General Statutes.

[20] N.C. Gen. Stat. 50B-3(c1) and 14-415.15 (2005).

commissions and introduction of individual bills. Currently, eleven Family Court districts are formally recognized as such by the Administrative Office of the Courts. Additionally, state commissions in recent years examining issues relating to domestic violence public policy have undertaken several studies.

A 2002 study by the Governor's Crime Commission's Statistical Analysis Center at the request of the NC Domestic Violence Commission examined the types of relief most often requested by plaintiffs compared to the types of relief most often granted by courts.[21] The Commission had received mostly anecdotal feedback from lawyers and advocates that the forms of relief provided by North Carolina statutes related to the care and placement of children in domestic violence cases were frequently not considered as a matter of routine by the court. Judges concurring with this assessment provided additional feedback that the time available within the setting for considering requests for domestic violence protective orders was often inadequate to consider this important issue, that sometimes parties pursue custody in this setting under false pretense and for the purposes of gaining a later advantage as part of a divorce action, or that domestic violence court is perceived to be a swifter and less expensive mechanism for resolving custody or visitation disputes.

The study concluded that child custody and visitation and child support were routinely not being ordered in North Carolina district courts, even when requested by the parties. Findings and recommendations made in the study supported the amendment to Chapter 50B pursuant to HB 1354 directing courts to consider, when requested, custody and visitation when hearing motions for protective orders.

A second study undertaken by the GCC Statistical Analysis Center in 2007 examined child support applications by domestic violence protective order plaintiffs.[22] The study was requested as part of the implementation of the Child Well Being and Domestic Violence Task Force report, which included findings that child support was routinely not addressed within "50B" court. The study tested strategies in pilot districts to increase 50B plaintiffs' applications for permanent (IV-D) child support. Study results indicated that the strategies were not successful though the authors concluded that considering temporary child support during the 50B hearing is important to a victim's financial well-being.

Pursuant to HB 1354, the Sentencing Commission undertook a study of misdemeanor offense classes, to examine "[i]n particular…the classification of assault offenses in relation to property offenses, crimes against society, and felony assault offenses.[23] The study concluded with nine recommendations that included repealing the current offense of assault on a female, adding new offenses to misdemeanor offenses where a personal relationship

[21] "Dispositional Outcomes of Domestic Violence Ex-Parte and Domestic Violence Protective Orders," Winter 2002 edition of *SystemStats*, a publication of the North Carolina Statistical Analysis Center, Governor's Crime Commission. Report available on line at http://www.ncgccd.org/systemstats/winter02.pdf

[22] "Child Support Application Filing Rates and Domestic Violence Protection Order Cases." Summer 2007 edition of SystemStats, a publication of the North Carolina Statistical Analysis Center, Governor's Crime Commission. Report available on line at http://www.ncgccd.org/PDFs/SystemStats/summer07.pdf

[23] "Report on the Study of Misdemeanor Offense Class Pursuant to Session Law 2004-186, Section 12.1" North Carolina Policy and Sentencing Advisory Commission, April 2006.

exists, and eliminating enhancements for second and subsequent violations of the same offense. No legislative action has been taken to date on these or other recommendations in the report.

Initiatives undertaken by the Administrative Office of the Courts' Family Court Advisory Committee include recommending policy and practice changes as they relate to the handling of domestic violence cases. The Committee has examined, for example, combining hearings for civil and criminal domestic violence cases.[24] Within AOC, court programs develop and implement their own sets of formal and informal guidelines and policies on domestic violence, most notably, the Custody and Mediation Program and the Guardian Ad Litem Program.

[24] Committee Memorandum, Cheryl Howell, School of Government, June 9, 2003.

Chapter 2: National Best Practices

According to some authors, the first group within the justice system to institute major reforms in their response to domestic violence was law enforcement, followed by prosecutors and probation, with courts as the recent newcomer. A decades-long focus on drug treatment courts, and family or unified courts, and concern that involvement in the issue of domestic violence might compromise a court's neutrality are among the explanations given for this delay.[25] The following discussion presents some of those practices receiving national attention. These "best practices" are defined as areas that have received the most focus on a national level, including but not limited to those that have been evaluated, and have produced evidence that they are effective. Many of these strategies have been developed based on a set of shared principles and values. Because of the relative infancy of innovative court practices to address domestic violence, and due to the heavy reliance on reform by consensus based on theoretical principles, many of the practices described in this chapter have not endured rigorous scientific evaluation for impact and effectiveness. Nevertheless, such practices are important to consider recognizing that many communities in North Carolina have structured their practices similarly, and that efforts to disseminate these practices are widespread and often federally funded.

Principles and Values

Most best practices have been developed within a framework of values or principles that are remarkably consistent. This common set of court principles is consistent with broader recommendations for a "coordinated community response" to domestic violence. The primary guiding principles are prioritizing victim safety and holding perpetrators accountable.

The Family Violence Prevention Fund, in "Creating a Domestic Violence Court: Guidelines and Best Practices"[26] recommends attention to the following issues for establishing a domestic violence response from the courts:

- Victim and child safety;
- Keeping the victim informed;
- Offender accountability;
- Information sharing and informed decision making;
- Coordination of procedures and services;
- Training and education;
- Judicial leadership;
- Effective use of the system; and
- Accountability of courts and programs.

Key principles have also been developed by the Center for Court Innovation. They include:

- Providing victims with immediate access to advocates;

[25] Keilitz, Susan, "Specialization of Domestic Violence Case Management in the Courts: A National Survey, J.S. Department of Justice, February 2001.

[26] Sack, Emily, JD, Family Violence Prevention Fund funded by the State Justice Institute, May 2002, pgs 5, 6.

- Quickly linking victims with social services;
- Keeping victims informed;
- Scheduling cases promptly; and
- Creating safe places within the courthouse.

From these principles emerge certain "best practices" which can be divided into the following main categories:

A. Issues related to the organization of the court;
B. Prosecutorial strategies employed for domestic violence crimes;
C. Strategies for addressing offender accountability;
D. Strategies for interfacing with victims, including those that enhance safety; and
E. The integration of domestic violence into a range of issues facing parties with business before the court.

Organization of the Court

Court organization schemes are presented in three main ways in the literature. One scheme assumes that a specialized organization (dedicated, dockets, calendars, judges and other staff) is superior for hearing these cases. A second scheme presents the elements or components of what is adjudged to be an effective response to domestic violence cases that can be integrated into a variety of models. The third presents various domestic violence court models.

Specialized Organization

In "Creating a Domestic Violence Court: Guidelines and Best Practices,"[27] the authors distinguish "domestic violence courts" (defined as having a specialized caseload) from other specialized courts; for example, drug courts focus on non-violent offenders, whereas domestic violence courts focus on violent offenders with a targeted victim; drug treatment has a track record of proven effectiveness unlike treatment for batterers; and the rehabilitative approach is ineffective and sometimes dangerous for domestic violence situations.[28]

Keilitz proposes the following potential benefits of specialized domestic violence case management:

- Enhanced coordination of cases and consistent orders in different cases involving the same parties;
- More comprehensive relief for survivors an at earlier stage of the judicial process; advocacy services that encourage survivors to establish abuse free lives;
- Greater understanding by judges of the dynamics and effects of domestic violence on victims and their children;
- More consistent procedures, treatment of litigants, rulings and orders;
- Increased batterer accountability and improved batterer compliance with orders;

[27] Sack, Emily, JD, Family Violence Prevention Fund funded by the State Justice Institute, May 2002.
[28] Ibid, pgs 2, 3.

- Greater confidence in the community that the justice system is responding effectively to domestic violence; and
- Greater system accountability.[29]

Critical Elements of a Domestic Violence Response

A benefit of identifying elements of court responses effective in handling domestic violence cases is that courts with varying resources and organizations may access any number or combination of elements. The associated detriment, however, is that adopting only some or a few of these elements may not significantly impact the response overall. Perhaps because this model offers the most flexibility, most courts are at the stage of adopting some, but not all, of these elements with varying degrees of consistency and success.

A sampling of findings from a national survey of domestic violence courts[30] supports this observation.

- 66% reported that they screen domestic violence cases for other related cases to coordinate case processing and that most accomplish this by electronic means;
- 29% had exclusive judicial assignment to domestic violence cases; AND
- 29% of courts held hearings to review compliance.

The Family Violence Prevention Fund recommends the following court elements:

- Early access to advocacy and services;
- Coordination of community partners;
- Victim and child friendly courts;
- Specialized staff and judges;
- Even-handed treatment (by promoting access to counsel for all parties, and through judicial demeanor);
- Leveraging the role of the judge;
- Integrated information system; and
- Evaluation and accountability[31]

The National Center for State Courts identifies the following "key components" of domestic violence courts:

- Case screening to identify appropriate cases for the court;
- Staff training on domestic violence;
- Agency protocols that create a consistent systemic response;
- Adequate staffing of qualified and interested personnel;
- Computer systems that support court operations and reporting;
- Victim-friendly policies and practices;

---

[29] Keilitz, Susan, Specialization of Domestic Violence Case Management in the Courts: A National Survey, U.S Dept of Justice, February, 2001, page 5.

[30] Courts were included in the sample if they self identified as having some type of specialization processes or structural components for managing domestic violence cases.

[31] Sack, Emily, "Creating a Domestic Violence Court: Guidelines and Best Practices, Family Violence Prevention Fund, May 2002, page 5.

- Specially trained dedicated judge to lead the court program;
- Coordinated responses between court program team members;
- Carefully structured stages to begin program implementation;
- Judicial review hearings with input from agencies and providers;
- Victim support services and offender accountability programs; and
- Program evaluation and refinement of operations.[32]

Guidelines for addressing specific topic areas within the domestic violence court are also suggested. For example, the following guidelines are recommended for the judge (in an integrated domestic violence court) considering child support requests within a civil domestic violence case:

- Not ignore child support issues;
- Inquire into the need for child support, and not wait for it to be raised;
- Make an order for temporary support;
- Immediately order medical insurance coverage, if it is available;
- Make the support order payable through the support collection unit; and
- Monitor cases for compliance with support orders.

Also, parties should not be required to go to another court to file a petition or to make further service.[33]

Domestic Violence Court Models

The Center for Court Innovation is currently conducting a national study of domestic violence courts in the country. The goal of the study, funded by the National Institute of Justice, is to compile a "national portrait" of domestic violence courts and make recommendations for best practices.[34]

[North Carolina districts employ a variety of organizational approaches for handling civil and criminal domestic violence cases. Each of the models presented here is represented in one or more North Carolina districts.]

The Family Violence Prevention Fund delineates the following models and their strengths and/or weaknesses:

A ***Dedicated Civil Protection Order Docket*** shares many of the strengths of the dedicated domestic violence court including increased safety, educated judges, sensitivity to victims, an understanding of the dynamics of abuse, and access to advocacy. It is also often the starting point for many victims entering the justice system.

---

[32] Cumberland County Integrated Domestic Violence Court Project report, National Center for State Courts, September 2007, page 43.

[33] Aldrich, Liberty and Reichler, Judy, *"Best Practices for Integrating Child Support into the Integrated Domestic Violence Court,"* Child Support Protocol: A Guide for Integrated Domestic Violence Courts, *a paper from the Center for Court Innovation, 2004.*
http://www.courtinnovation.org/_uploads/documents/child_support.pdf

[34] Electronic mail correspondence from National Center for State Courts, July 30, 2007.

A ***Criminal Model*** accounts for the often repeated and escalating nature of domestic violence offenses; however, it does not address what may be a related, pending civil case.

Domestic Violence Courts with Related Caseloads is a comprehensive approach that consolidates all issues facing the parties, thereby promoting consistency and a centralized point of contact for the parties. This model requires judges to have a broad knowledge base in many types of cases. The three main versions of this model include:

- **Integrated Domestic Violence Court**, which is triggered by the criminal domestic violence cases and handles that case as well as *related* civil matters;
- **Unified Family Court,** which handles all cases involving the family including, but not limited to, domestic violence cases; and
- **Coordinated Court,** which handles criminal domestic violence cases and related civil matters within the same court division, but not necessarily before the same judge.

Competing arguments define the issue of consolidating all matters relating to the same parties before one judge or a few judges. Advocates applaud the benefits of having a "full picture" or information regarding the facts and dynamics, strengths of and challenges faced by a family or litigating parties. Detractors focus on the risk of placing power over one family or parties in one or a few sets of hands. Advocates also argue that in order to handle domestic violence cases effectively, judges must not only be well trained in domestic violence, but regularly exposed to and presiding over these cases. Detractors argue that this kind of concentration raises the risk of seeing all domestic violence cases as the same and minimizing case specifics.

One practice that has emerged from the integrated court is hearing civil and criminal domestic violence cases simultaneously or contiguously within the same hearing. This approach is predicated on promoting efficiency by hearing civil and criminal cases that emerge from the same incident "together" with the result that parties are not required to return to court multiple times regarding the same incident. Concerns regarding this model include the challenge of distinguishing the different burdens of proof, admission of evidence, confusion of the parties regarding their rights and the intent of the proceedings, and that the outcome of one case may strongly influence the handling or outcome of the other. (No published research or reviews of this model were discovered.)

Finally, two hybrids of the Unified Family Court model have emerged. In one model, the court hears only domestic violence and related child welfare cases. In another, a juvenile domestic violence court provides a rehabilitative setting and often includes the participation of parents in disposition decisions. Both models entertain what may be a small number of cases overall.

Prosecution

Models for prosecuting criminal cases of domestic violence that account for the lack of participation or cooperation of the victim/complaining witness have gained significant

attention across the nation in the past decade. For the last 17 years, the National District Attorneys Association has held a national conference on domestic violence. The association also provides on-line courses for prosecutors on evidence-based prosecution strategies, and education regarding timely and important topics related to the prosecution of domestic violence cases, such as the watershed case, *Crawford v. Washington.*[35]

One of the most logical and important components to evidence-based prosecution models is having well-conducted investigations by law enforcement in order to produce the evidence upon which to base prosecutions of offenders.[36]

Offender Accountability

Accountability is frequently expressed in terms of an immediate and consistent response to noncompliance; however, practices do not often meet this standard. In a national survey of batterer intervention programs in 260 communities[37] researchers looked at how courts respond when offenders are noncompliant and documented a lack of agreement regarding the quality of that response among probation officers, courts, and treatment providers, as well as an overall lack of consistent response to non-compliance. For example, in order to monitor noncompliance, 62% of courts reported that offenders have to return to court periodically, but only 58% require convicted offenders to return for monitoring within four weeks of the mandate being imposed.[38] The lack of specific protocol, and substantial delays between receiving reports of noncompliance and bringing the offender back to court, were noted as particular challenges.[39]

Judicial Review Hearings

Judicial review hearings operationalize the principle of close monitoring and swift and certain consequences for non-compliance.[40] Milwaukee County, Wisconsin has instituted regular probation reviews in domestic violence cases, whereby every offender placed on probation is scheduled for a hearing before the same judge three months after being placed on probation. The offender attends court with his probation officer, and legal representation, if the offender wishes. Reporting occurs on progress in treatment, victim contact information, and sobriety screens. Data indicates that since instituting reviews, fewer domestic violence offenders have been revoked, more offenders complete treatment, probation officers feel like they have more control over the case, and victims enjoy improved communication (with the

---

[35] 541 U.S. 36 (2004). In *Crawford v. Washington*, the U.S. Supreme Court held that if witness statements were "testimonial" in nature, they could not be introduced unless the witness was available for cross-examination by the defendant. The court deferred the question of exactly what types of statements should be considered "testimonial."

[36] Alabama Coalition Against Domestic Violence, "Guidelines for Prosecution of Domestic Violence Cases, 2004, pgs. 11, 12, 13, 21. Full report at http://www.acadv.org/Prosecutionguidelines.pdf

[37] Labriola, M., Rempel, M., O'Sullivan, C., and Frank, P. "Court Responses to Batterer Program Noncompliance: A National Perspective" Report submitted to the National Institute of Justice, Center for Court Innovation, March 2007.

[38] Ibid. page 51.

[39] Ibid, page viii.

[40] "Creating a Domestic Violence Court," Family Violence Prevention Fund.

probation officer.)[41]

It would appear that these hearings also have the potential to produce a deterrent effect, serving the dual purposes of reacting to non-compliance or violations, and preventing them because the offender is aware that he must return to court within a prescribed period of time for the purposes of evaluating his progress. Also, "judges use the influence of the court and graduated sanctions and rewards to encourage those who are doing well and to assure that those with poor compliance either change or are held accountable."[42] Some of the sample rewards include public praise; fewer, less frequent reviews; less intensive probation reporting; and reduction or waiving of certain court fines or costs.[43]

Abuser Treatment Programs/Batterer Intervention Programs

The effectiveness of batterer intervention programs has been a subject generating disagreement among researchers and domestic violence stakeholders. As the primary tool for responding to battering, programs have been viewed alternatively as tools for behavior change (most are educational in nature and do not purport to have therapeutic approaches or outcomes), mechanisms for monitoring, and strategies to protect victims (most state rules governing programs require regular contacts with victimized partners).

Most programs are required to collect and report statistics on recidivism rates of participants, however, well-controlled and designed studies to evaluate effectiveness are not widely available for this intervention. Challenges to the research include the high percentage of offenders who do not complete the intervention and the over-reliance on victims for self-reports, which can be unreliable due to fears of retaliation or other reasons. In North Carolina, for one calendar year, 67 programs received 4,317 referrals. Of those, 3,451 were accepted into a program; 1,661 persons completed a program and 1,490 were terminated. [44]

One of the largest research projects to look at the effect of programs on violence and to compare those rates of re-assault to "types" of batterers reported the following major findings:

- *The re-assault rate for the participants in the four programs reviewed was between 32% and 39%.* Nearly one-third (32%) of the men re-assaulted a female partner according to the women's reports.
- *A much lower percentage of women were actually physically injured during the follow-up.* Over half of the men (60%) who re-assaulted a partner (19% of the total with responding partners) physically bruised or injured their partner, but only 20% of the injured partners (4% of the total respondents) sought medical attention for their injuries.

---

[41] Presentation, NC Conference for District Attorney's domestic violence conference, by ADA Jeff Greipp, Milwaukee County, Wisconsin, 2007.
[42] "Judicial Review Hearings: Keeping Courts on the Case," Promising Practices from the Judicial Oversight Demonstration Initiative, Vera Institute of Justice.
[43] Ibid, page 14.
[44] Annual Statistical Report, 2005/06, Council for Women & Domestic Violence Commission.

- *A surprising number of the re-assaults occur shortly after program intake.* Nearly half (44%) of the men who re-assaulted a partner did so within three months of program intake. The total percentage of new re-assaults dropped from 14% at the three month follow-up to 3% at the nine month follow-up and continued at that level through the remainder of the follow-up.

- *A small portion of men appears unresponsive to the intervention and severely abusive.* Over half (59%) of the men who re-assaulted (19% of the total with responding partners) committed more than one re-assault, and a third (32%) of the men who re-assaulted a partner did so during more than one of the three month follow-up intervals.

- *A higher percentage of women reported other forms of abuse.* Seventy percent of the men were verbally abusive; nearly half (45%) used controlling behaviors; over one-third (43%) of the men threatened their partners, and 16% stalked them. The arrest records indicate that only 10% of the batterers had been rearrested for domestic violence, 14% had been arrested for some other violence, and 16% had been arrested for some other offense during the follow-up period (40% had been arrested for some offense during the follow-up).

- *Most women, however, feel their circumstances have improved as a result of the batterer intervention.* Two thirds (66%) of the women indicated at the 15-month follow-up that they were "better off" overall than when their partner was sent to the batterers program, but 12% indicated they were "worse off." The area of the least improvement was financial. Almost three-fourths (72%) of the women reported feeling "very safe" at each follow-up interval.[45]

Four separate studies were conducted over the past decade using experimental techniques that assigned offenders at random to an abuser treatment program or a control condition in an effort to provide evidence of whether or not the program produced a reduction in re-abuse. They showed no effect on recidivism.[46]
Pretrial innovations were implemented in Dorchester, Massachusetts, Milwaukee, Wisconsin, and Washtenaw County, Michigan, as part of the Judicial Oversight Demonstration project[47] to include developing consistent and timely procedures for judges to

[45]Gondolf, Edward, "Characteristics of Batterers in a Multi-Site Evaluation of Batterer Intervention Systems," Mid-Atlantic Training Addiction Institute, April 1996.
[46] Davis, R.C., Taylor, B.G., and Maxwell, C. M., "Does Batterer Treatment Reduce Violence: A Randomized Experiment in Brooklyn," Journal of Consulting and Clinical Psychology, 2000; Dunford, F.W., "The San Diego Navy Experiment: An Assessment of Interventions for Men who Assault their Wives," 68:468, 2000; Feder, L. and Wilson, "A Meta-Analytic Review of Court-Mandated Batter Intervention Programs: Can Courts Affect Abusers' Behavior," D. B. Journal of Experimental Criminology 1: 239-262, 2005; Labriola, M., Rempel, M., and David, R.C., "Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a Randomized Trial at the Bronx Misdemeanor Domestic Violence Court." Report submitted to the National Institute of Justice, New York: Center for Court Innovation, 2005.
[47] "Pretrial Innovations for Domestic Violence Offenders and Victims: Lessons from the Judicial Oversight

use in handling pretrial matters in domestic violence cases, restructuring court processes to focus on the unique characteristics of domestic violence cases, monitoring defendants prior to trial and responding to violations of bond conditions, and connecting victims to support services early in the process. The results highlighted the importance of judicial involvement and willingness to coordinate case procedures; restructuring court processes to permit better coordination among agencies; procedures to monitor or educate defendants and provide a quick court response to violations and non-contact orders and other bond conditions; and connecting victims to support services. The major challenges to implementation noted by the project included resource issues related to staff training and expanding staff; developing consistent judiciary practices; balancing pretrial policies and procedures with due process; and defining the roles and mandates of different service providers. [48]

[One issue noted by a number of respondents interviewed for the current project relates to the defendant's ability to retain employment. In particular, defense attorneys noted the need for services for defendants that occur after work hours, and court orders that do not impair the defendant's ability to retain employment. Defense attorneys also noted that fees related to Abuser Treatment Programs are sometimes problematic for defendants. None of the national best practices reviewed noted the importance of economics or the ability of the offender to retain employment.]

Victim Interface & Safety

Economist Amy Farmer and co-author Jill Tiefenthaler[49] identify the provision of legal services for victims of intimate partner abuse as among the most important determinants for women's reduced victimization (both in terms of severity and prevalence). The authors postulate that "if battered women can support themselves, they are both more likely to leave and have more power within their relationships if they stay,"[50]and that having an attorney makes it more likely that victims can access the forms of relief available under many civil statutes that are related to economics, including child support, marital support, possession of the residence and vehicle.

Many victims of domestic violence seeking civil relief for domestic violence are unrepresented. If they are represented, it is likely to be by a Legal Aid attorney at the permanent order hearing stage, or for enforcement of a current order. The American Bar Association's Commission on Domestic Violence has adopted *Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases.*[51]

Demonstration Initiatives, Research for Practice, NIJ, US Dept of Justice, August 2007.

[48] Ibid, pages 9, 10.

[49] "Explaining the Recent Decline in Domestic Violence," Contemporary Economic Policy, Oxford University Press, Volume 21, April, 2003, pgs 158-172.

[50] Ibid, page 2.

[51] Approved August 13, 2007 by the American Bar Association as recommended by the ABA Commission on Domestic Violence.

As noted earlier in this chapter, it is a common principle or suggested element to focus on the victim's understanding of the court process in order to enhance her cooperation, safety, and comfort. One particular strategy examined in the literature focuses on working with the perpetrator in order to enhance the victim's safety. The Judicial Oversight Demonstration Initiative established an initiative in 1999 in Dorchester District Court outside of Boston, Massachusetts to enhance victim safety by more actively and fully engaging respondents in civil protection orders. The program works with defendants to increase their understanding of the conditions of the order against them to reduce violations that are unknowingly committed, and to appeal to defendants whose anger may dissipate with increased understanding of the conditions. An important component of the program is an outreach worker who assists respondents in accessing community-based services and resources. The theoretical framework of the program is reflected in comments by the Dorchester District Court Chief Judge: "To the degree that respondents feel they have been treated respectfully and compassionately, and offered help to change the behavior that brought them to court, they will be more likely to respect the terms of the restraining order and the rights of the victim." A well-controlled but brief evaluation might confirm the theory, and therefore strengthen the program's chances of replication.

No consensus exists in the research literature regarding the efficacy of protective orders. For example, one study reported a significant decline in the probability of abuse following the issuance of a protective order,[52] but less so for women at very low socioeconomic status and African-American women.[53] Another reported that permanent but not temporary orders are effective at reducing violence.[54] Still another reported that the level of violence was reduced for parties whether the order was granted or not.[55] The majority of plaintiffs in one study (72%) reported that they experienced no problems after they received an order of protection.[56]

Research does uniformly agree about the benefits that most protective orders[57] can confer on the victimized parties, including custody, child support, visitation and temporary possession of the home and vehicles. Additionally, most studies point to the benefit of crafting specific orders so that both parties clearly understand the parameters of permissible conduct. A bench guide published by the National Council for Juvenile and Family Court Judges, concludes that "protection orders are effective only when the restrained party is convinced the order

---

[52] "Do protection orders reduce the likelihood of future partner violence and injury?" Holt, Victoria L., et al, American Journal of Preventive Medicine, Volume 24, Issue 1, January 2003, pg. 16.

[53] "Protective Orders and Domestic Violence: Risk Factors for Re-Abuse, Journal of Family Violence, Volume 13, No. 2, June 1999, pg. 205.

[54] Civil Protective Orders and Risk of Subsequent Police-Reported Violence. The Journal of the American Medical Association, Vol. 288, No. 5, August 7, 2002. pg. 589.

[55] McFarlane et al., "Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women," American Journal of Public Health, 2004, pg. 613.

[56] Keilitz, Susan, Hannaford, Paul, and Efkeman, Hillery, "Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence," National Center for State Courts, State Court Journal 19 (1996/1997).

[57] A 2003 study examined the trends in states' protective order statutes to include financial remedies, orders for longer periods of times. "Protective Order Legislation: Trends in State Statutes," Journal of Criminal Justice, Volume 31, Issue 5, Sept-Oct 2003, pg 411.

will be enforced".[58] The guide provides tools for effective issuance and enforcement and highlights the following:

- Providing broad relief that is available under the protective order statute;
- Maintaining confidentiality for the victim;
- Supporting victims' choices about filing for orders and about types of relief requested;
- Providing continued assistance even when orders are dismissed and parties reconcile;
- Eliminating barriers such as language barriers, physical access barriers and financial barriers; and
- Assuring training of system participants. [59]

Integration of Domestic Violence

A considerable amount of evidence has been collected documenting the overlap of domestic violence and child abuse within the same families.[60] Particularly in the child welfare arena, significant efforts have been made to develop programs and policies to account for this overlap. Primary among the organizations developing these strategies is the Family Violence Department of the National Council of Juvenile and Family Court Judges (NCJFCJ), which works to "advance social change in courts and communities across the country by providing cutting-edge training, technical assistance, and policy development on issues of family violence."[61] The most notable and far-reaching project for the purposes of this report is the Federal Greenbook Initiative. Starting with the publication of "Effective Interventions in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice" in 1999, the initiative has sustained momentum through federal funding of pilot sites across the nation working to adopt the guidelines through careful planning and evaluation. The Council is also home to the National Judicial Institute on Domestic Violence and the Resource Center on Domestic Violence: Child Protection and Custody, and has developed a variety of materials, including bench books, a searchable database of state statutes on domestic violence, and other tools for courts.
The Family Violence Prevention Fund works to improve community and system responses for children and their families through their Children's Program, and have developed a range of initiatives including national curriculum for judge's training on children's issues including custody and visitation.

It has long been recognized that children's safety and well-being can be implicated in cases of domestic violence. Although most states provide for the temporary custody and visitation of children with their fathers within civil protective order statutes, it is still an area that is inconsistent in practice. Rather than backing away from addressing child custody and visitation, researchers argue for clear and consistent orders that account for the adult and

[58] "A Guide for Effective Issuance & Enforcement of Protection Orders, National Council for Juvenile and Family Court Judges, Pg. 3.
[59] Ibid. "Guiding Principles," Chapter, pgs 7 – 14.
[60] "Co-occurring spouse and child abuse: Implications for CPS practice," Appel, A.E., & Holden, G.W. (1998); "The overlap between child maltreatment and women battering." Edleson, J. APSAC Advisor, (1999).
[61] http://www.ncjfcj.org/content/view/20/94/

child's safety and well-being, and include contact with the abusive party when possible and where safety can be assured. A number of states have adopted (and repealed) rebuttable presumption statutes for custody in cases of domestic violence and scholars have examined the application of the best interest standard within domestic violence cases.[62]

Coordination among cases is something that must be planned and nurtured regardless of court structure.[63] The concept of sharing information within the courts (probation, judges, prosecutors), and among community partners (victim advocates and batterer's intervention programs, most notably) is embedded in most practices effective in dealing with domestic violence cases. Various mechanisms and models for coordination from across the country are documented and reviewed in great detail and presented for replication in "How Are Courts Coordinating Family Cases."[64] In regard to the necessary coordination between Courts and Human Service Agencies, "courts often must order, monitor, and enforce treatments recommended by human services professionals, sanctions sought by law enforcement agencies, and mandates imposed by federal and state legislation. In many instances, court are service coordinators of last resort for dysfunctional families, matching the needs of individuals to the services available in the community,[65] through mechanisms such as Jackson County, Oregon's "community family court"[66] that screens for related cases, "bundles" them before one judge, and creates a family plan. These models often integrate other issues facing the family, including those related to children's well-being.

Documenting Best Practices

A number of states have developed manuals, bench guides, or other documents that seek to memorialize those practices that they have identified as most effective for their jurisdiction and often those they seek to replicate and expand. Some materials provide a particular focus on areas within domestic violence court practice, for example, bench books for orders of protection[67] including protection orders and full faith and credit provisions,[68] and custody and visitation evaluations in domestic violence cases.[69] Others are designed to ensure an informed, consistent response across the system, sometimes on a statewide basis,[70] and

---

[62] Levin, Amy, "Child witnesses of domestic violence: How should judges apply the best interests of the child standard in custody and visitation cases involving domestic violence?" UCLA Law Review, February 2000.

[63] Flango, C., and Flango, V., "How are Courts Coordinating Family Cases?" National Center for State Courts, 1999.

[64] Flango and Flango, National Center for State Courts, 1999.

[65] Ibid, page 57.

[66] Ibid, page 60.

[67] "Benchbook for Orders of Protection and Injunctions Against Harassment in Domestic Violence Cases," Judicial College of Arizona, September 1996; "A Guide for Effective Issuance and Enforcement of Protection Orders." National Council of Juvenile and Family Court Judges, 1999.

[68] "A Guide for Effective Issuance & Enforcement of Protection Orders," National Council of Juvenile and Family Court Judges, Family Violence Department, 2005.

[69] "Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide," State Judicial Institute & National Council of Juvenile and Family Court Judges, 2006.

[70] "Domestic Violence Manual for Judges." Washington State Gender and Justice Commission. 2001; "Domestic Violence Procedures Manual." State of New Jersey. November 1998; "Domestic Violence Benchbook: A Guide to Civil and Criminal Proceedings." Michigan Judicial Institute, 1998.

sometimes for individual districts.[71]

[71] Slamzman, Elena, "The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention," 74 B.U. L. Review 329 1994.

Chapter 3: Statutory Process

The processes for obtaining civil protective orders and adjudication and disposition of criminal offenses involving domestic violence are independent processes set out in statute. Chapter 50B of the North Carolina General Statutes governs civil domestic violence protective orders. The processes for initiating, adjudicating, and sentencing criminal offenses involving domestic violence are governed by Chapter 15A, the Criminal Procedure Act, which applies to all criminal offenses, though several statutory provisions specifically address charges involving domestic violence. This chapter discusses those specific statutory provisions governing domestic violence cases within the jurisdiction of the district court.

Civil Cases in District Court

Any resident of North Carolina may seek relief under Chapter 50B of the North Carolina General Statutes for himself or herself or a minor child residing with or in the custody of such person.[72] One need not have legal counsel to seek such relief (nor is one statutorily entitled to legal counsel); a plaintiff seeking relief under Chapter 50B may file appropriate motions in the district court division of the General Court of Justice pro se and without court costs.[73]

Statutory definition of domestic violence

To be eligible for relief under Chapter 50B, the defendant and the plaintiff must have one or more of the following relationships:

- Current or former spouses;
- Persons of the opposite sex who live or have lived together (the plaintiff does not have to allege or prove an intimate relationship);
- Persons who have a minor child in common;
- Persons in a parent-child or grandparent-grandchild relationship;
- Current or former household members (this category may include same sex couples who live or have lived together, roommates, or relatives who live or have lived together);
- Persons of the opposite sex who are dating or have been in a dating relationship.[74]

Additionally, the person with whom the party seeking relief has had a personal relationship as defined above must have committed one of the following acts:

- Attempt to cause bodily injury or intentionally causes bodily injury; or
- Place another person in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3 (stalking), that rises to such a level as to inflict substantial emotional distress; or
- Commit a sexual assault as defined in G.S. 14-27.2 through G.S. 14-27.7 (e.g., rape,

[72] N.C. Gen. Stat. 50B-2(a) (2005)
[73] *Id.*
[74] N.C. Gen. Stat. 50B-1(a) (2005).

sex offense, sexual battery).[75]

Assaultive behavior committed in self-defense is excluded from the definition of acts required for the issuance of a protective order.[76]

Application for protective order

The clerk of superior court of each county is required by statute to provide pro se complainants and magistrates all forms that are necessary or appropriate to enable 50B plaintiffs to proceed pro se.[77] An applicant for a domestic violence protective order is required to complete:

- Three copies of the Complaint and Motion for Domestic Violence Protective Order form,[78] a three-page form containing 28 questions;
- Three copies of the Notice of Hearing on Domestic Violence Protective Order form,[79] (complainant completes only county and names of parties' sections);
- One copy of the ex parte Domestic Violence Protective Order,[80] (complainant completes only county and names of parties' sections);
- Three copies of the Civil Summons Domestic Violence form,[81] (complainant completes only county and names of parties' sections)
- One copy of the Identifying Information About Defendant/Domestic Violence Actions form,[82] a one-page form that asks for driver's license, vehicle, work, and weapons information about the defendant.

A sixth form, Affidavit as to the Status of the Minor Child,[83] a one-page form which asks for custody information about children, must be completed if the complainant is asking for temporary custody of the children.

Whenever feasible, the clerk is required to provide a private area for plaintiffs to complete forms and ask questions.[84] In an informal survey,[85] 68 clerks of superior court reported providing this private area (or a semi-private area) while 32 clerks reported not having a private area at all. Four clerks who reported not providing this private area noted that 50B application forms are completed at the local domestic violence advocacy agency.

During site visits, various arrangements of these private (or semi-private) areas were observed, including tables divided by low built-in table top partitions, counter space

---

[75] *Id.*
[76] N.C. Gen. Stat. 50B-1(a) (2005).
[77] N.C. Gen. Stat. 50B-2(d) (2005).
[78] AOC form #: AOC-CV-303
[79] AOC form #: AOC-CV-305
[80] AOC form #: AOC-CV-304
[81] AOC form #: AOC-CV-317
[82] AOC form #: AOC-CV-312
[83] AOC form #: AOC-CV-609
[84] *Id.*
[85] *See* Appendix O for survey results. The survey was conducted by Jo McCants, Associate Legal Counsel, AOC in February 2007.

available in a vault, desks set up behind partitions in an area of the clerk's office, small general use conference rooms, and courthouse law libraries. In some cases a deputy or assistant clerk's office is used as the private area.

In addition, House Bill 46 enacted during the 2007 legislative session, requires that "[w]here practical, upon request of a domestic violence victim, the Clerk of Superior Court of any county shall coordinate with the county Sheriff to make available to the victim a secure area, segregated from the general population of the courtroom, to await hearing of their court case. The Clerk shall notify the presiding judge on the date of the hearing that the victim is present in a segregated location."[86] During site visits some clerks commented on this provision of the law noting that it would be difficult to communicate with the plaintiff that their case was being called. One clerk felt the provision was unfair to other victims of crime awaiting their court hearings, including victims of sexual assault. Most clerks simply noted how difficult it is to identify unused courtroom or other reasonably accessible space for this purpose.

Ex parte orders

A party may file a motion for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child.[87] An ex parte order for relief from acts of domestic violence may be issued by a district court judge[88] or a magistrate so authorized by the chief district court judge[89] if it clearly appears from specific facts shown that there is a danger of acts of domestic violence against the plaintiff or a minor child.

Survey data from 37 chief district court judges (of 41 current judicial districts) reveal in which districts magistrates are authorized to issue 50B (and 50C) ex parte orders and under what circumstances as shown in the table below:

[86] Session Law 2007-15 ratified on April 2, 2007. The act further requires that the Administrative Office of the Courts report to the Joint Legislative Committee on Domestic Violence no later than May 1, 2008, on the progress of providing the space in each courthouse.
[87] N.C. Gen. Stat. 50B-2(b) (2005).
[88] N.C. Gen. Stat. 50B-2(c) (2005).
[89] N.C. Gen. Stat. 50B-2(c1) (2005). The chief district court judge may authorize a magistrate or magistrates to hear any motion for emergency relief ex parte. An authorized magistrate may hear a motion for ex parte relief when the district court is not in session and a district court judge is not and will not be available for a period of four or more hours. At least 23 districts have magistrates who are authorized to hear motions for ex parte orders. (*See also Magistrate Protocol for Domestic Violence Cases: Guidelines with Emphasis on Issues Related to Children.* Child Well-Being and Domestic Violence Project, Prevent Child Abuse North Carolina, October 2005.)

12	2	1
	4	14

In two of the districts where magistrates are authorized to issue 50B and 50C ex parte orders in emergency situations only when a judge is not available, the emergency situation is defined as when all judges are away at a conference. In one district, the emergency situation is also limited: magistrates may issue ex parte orders when a judge is unavailable but must be in contact with a judge.

When a complainant files a request for ex parte relief the clerk of superior court must schedule a hearing within 72 hours of the filing of the motion, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever shall first occur.[90] If a magistrate issues an ex parte order, the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed.[91] Information gathered during site visits suggests that in practice, in some districts, scheduling is not an issue (e.g., large districts where court is in session every day), but in many districts where access to judges is limited (e.g. small districts or multi-county districts) scheduling can be more difficult.

When an ex parte order is issued by a district court judge, the clerk of superior court must set a date for a hearing within ten days for the issuance of the order (or within seven days from the date of service of process on the defendant, whichever occurs later; typically hearings are set for ten days after the ex parte is issued), issue a notice of hearing, and effect service of process through the appropriate law enforcement agency where the defendant is to be served.[92] Sixty-six percent of Legal Aid attorneys surveyed report that on average a domestic violence case is scheduled twice before a domestic violence protective order is entered.

Permanent protective orders

A protective order issued following notice to the defendant and a hearing on the merits is effective for a period not to exceed one year.[93] The court may renew a protective order for a period not to exceed two years, including an order that has previously been renewed upon motion by a plaintiff filed before the current order expires; however, a temporary award of

[90] N.C. Gen. Stat. 50B-2(c) (2005).
[91] N.C. Gen. Stat. 50B-2(c1) (2005).
[92] N.C. Gen .Stat. 50B-2(c) (2005).
[93] N.C. Gen. Stat. 50B-3(b) (2005).

custody entered as part of a protective order may not be renewed to extend beyond one-year.[94]

Right to apply for a gun permit

When a protective order issued is filed with the clerk of superior court, the clerk shall provide to the plaintiff an informational sheet developed by the Administrative Office of the Courts that explains the plaintiff's right to apply for a gun permit.[95]

In practice, according to survey responses from clerks of superior court, 54 (or 59%) of respondents reported that they provide the AOC form on plaintiffs' right to apply for a gun permit. Twenty-one (or 23%) of respondents reported that they verbally told plaintiffs about their right to apply for a gun permit. Seven respondents (or 6.5%) did both and 23 (or 25%) did neither. Of the 23 respondents that said they neither provided a form nor verbally informed plaintiffs of their right, some clerks said the Sheriff or the local domestic violence programs handled that function. Others said they were unaware of the requirement, and a few surveys suggested that respondents thought it was inappropriate for them to advise plaintiffs of their right to apply for a gun permit.

When any order is entered and filed under Chapter 50B, each party and the police department of the city where the plaintiff resides or the sheriff in the county where the plaintiff resides (if the plaintiff does not live in a city or the plaintiff's city does not have a police department) must receive a copy of that order.[96] If the defendant is ordered to stay away from a child's school, a copy of the order must be delivered promptly by the sheriff to the principal or, in the principal's absence, the assistant principal or the principal's designee of each school named in the order.[97] Generally, the clerk of superior court bears responsibility for ensuring that parties or the appropriate law enforcement agency receives these orders. Some clerks interviewed reported having arranged with the sheriff's department informal procedures for expediting service of process particularly in counties where the sheriff's department has a deputy dedicated to responding to and investigating domestic violence calls. In one county, for example, as soon as a judge issues an ex parte order, the clerk primarily responsible for processing domestic violence cases calls the deputy assigned to domestic violence cases to notify him that service of process on a defendant in a domestic violence case is ready for service.

Relief Available Under 50B

Upon finding that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence.[98] The protective order may include any of the following types of relief provided in G.S. 50B-3(a):

- Direct a party to refrain from [acts of domestic violence];

---

[94] *Id.*
[95] N.C. Gen. Stat. 50B-3(c1) (2005).
[96] N.C. Gen. Stat. 50B-3(c) (2005)
[97] *Id.*
[98] N.C. Gen. Stat. 50B-3(a) (2005).

- Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;
- Require a party to provide a spouse and his or her children suitable alternate housing;
- Award temporary custody of minor children and establish temporary visitation rights…;[99]
- Order the eviction of a party from the residence or household and assistance to the victim in returning to it;
- Order either party to make payments for the support of a minor child as required by law;
- Order either party to make payments for the support of a spouse as required by law;
- Provide for possession of personal property of the parties;
- Order a party to refrain from doing any or all of the following:
  - Threatening, abusing, or following the other party,
  - Harassing the other party, including by telephone, visiting the home or workplace, or other means, or
  - Otherwise interfering with the other party;
- Award attorney's fees to either party;
- Prohibit a party from purchasing a firearm for a time fixed in the order;
- Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission;[100] and
- Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

According to survey responses from Legal Aid attorneys, forms of relief typically requested by the plaintiff include:

- Defendant refrain from acts of domestic violence;
- Possession of household or residence;
- Eviction of a party from the household or residence;
- Temporary custody of a personal property;
- Prohibit purchase of a firearm by a defendant; and
- Surrender firearms by the defendant.

Legal Aid attorney survey respondents reported that the courts generally grant these forms of relief.

---

[99] If temporary custody is requested by the plaintiff at the ex parte hearing, N.C. Gen. Stat. 50B-2(c) (and (c1) governing magistrates) sets out the legal standard for awarding temporary custody directives for visitation between the defendant and minor child or children in question. If a party requests the court to consider temporary custody at the hearing after notice or service of process, N.C. Gen. Stat. 50B-3(a1) sets out criteria the court must consider in determining whether to award custody or visitation rights.

[100] North Carolina currently has 60 approved programs that provide services in a total of 65 counties. Judicial Districts that do not have any abuser treatment program services are Districts 2, 3B, 9, 9B, 15A, and 16A. To view a copy of the state certification rules see http://www.doa.state.nc.us/cfw/docs/flyer-1.pdf.

Legal Aid attorney survey respondents suggested that temporary custody and visitation may also be commonly requested by plaintiffs and granted by courts in some districts, though anecdotal evidence indicates that this may not be true in all districts.[101] In the districts observed, judges addressed custody and visitation in a limited way in the 50B setting. Judges interviewed noted that the 50B setting does not afford the time necessary to fully consider custody and visitation issues nor are parties sufficiently prepared to present income or other financial information necessary for judges to make child support calculations based on child support guidelines. In recognition of these challenges, some judges in Family Court districts reported efforts to move domestic violence cases with significant custody and visitation issues to the Family Court.

Other forms of relief commonly requested by plaintiffs though less commonly granted by the court include spousal support and that the defendant enroll in an abuser treatment program. Although referrals to abuser treatment programs are allowed by statute, only nine of 37 chief district court judges surveyed reported that defendants in civil domestic violence actions are typically ordered to attend abuser treatment programs as a term of the protective order in their district.[102]

Some districts do not have state-certified abuser treatment programs, however, judges interviewed during site visits and abuser treatment programs surveyed cited the inability to monitor compliance with civil orders or enforce civil orders without a contempt motion filed by the plaintiff as the primary impediment to ordering abuser treatment in civil cases. During site visits representatives from abuser treatment programs echoed abuser treatment program survey responses suggesting that infrequent use of abuser treatment in civil cases is due to a lack of court knowledge about the existence of a local abuser treatment program or lack of confidence in the local abuser treatment program to hold a defendant ordered to the program

[101] *See also* "Systems Stat: Dispositional Outcomes of Domestic Violence Ex-Parte and Domestic Violence Protective Orders," North Carolina Criminal Justice Analysis Center, Governor's Crime Commission, September 2001. This study, conducted at the request of the Domestic Violence Commission, found that child support was authorized in only 21% of civil domestic violence protective orders when the victim specifically requested such financial support.

[102] Statewide statistics indicate that for the period April 2006-March 2007, 60 agencies received a total of 4,317 referrals to their abuser treatment programs. Of that total, 3,370 or 78% were from criminal court. Only 184 or 4% of the total referrals came from district court. This data shows that referrals appear to occur with some frequency in some districts and never in others rather than being generally low across all districts; for instance, 34 counties reported no referrals at all from civil court, while Rockingham County reported 74 referrals from civil court for the year. *See* Year End Statistical Report, Council for Women, correspondence from Kathleen Balogh, Sept 2007. Data from the 17 Abuser Treatment Programs who responded to the survey also suggests that abuser treatment programs may receive increasing numbers of referrals the longer it is in operation.

[redacted]	44%	44%	11%
	8%	8%	83%
	0	33%	66%

through a civil order accountable. During site visits, some judges interviewed also reported "saving" the abuser treatment program resource for criminal domestic violence cases and that often, a defendant subject to a civil protection order is also subject to a criminal sentence that includes abuser treatment.

Some Legal Aid attorneys interviewed during site visits reported that where a consent agreement is reached on the civil protective order matter, the defendant may agree to attend an abuser treatment program. But otherwise, civil defendants and judges may refrain from including the defendant's participation in an abuser treatment program as part of the civil order so as to avoid any suggestion of the defendant's guilt when a companion criminal matter arising out of the same facts is scheduled to be disposed of at a later date than the civil matter.

Firearms

Pursuant to G.S. 50B-3.1(b) the court must inquire of the plaintiff whether the defendant owns or otherwise has access to firearms, ammunition, permits to purchase firearms, or permits to carry concealed firearms. The statute also directs the court to include in the ex parte order, whenever possible, identifying information regarding the description, number and location of firearms, ammunition, and permits to purchase or carry firearms.[103] If the court issues an ex parte order, the statute further requires the court to "order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant" upon a finding of any of the following factors:

- The use or threatened use of a deadly weapon by the defendant (against the victim or child) or a pattern of prior conduct involving the use or threatened use of violence with a firearm against (any) persons;
- Threats to seriously injure or kill the aggrieved party or minor child by the defendant;
- Threats to commit suicide by the defendant; and
- Serious injuries inflicted upon the aggrieved party or minor child by the defendant.[104]

If the court orders the defendant to surrender firearms, ammunition, and permits, the court is required by statute to inform the plaintiff of these terms of the protective order, including that the defendant is prohibited from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect.[105] The court may also order the defendant not to purchase or possess firearms, even if the defendant is not ordered to surrender firearms.[106]

Violations of Domestic Violence Protective Orders

---

[103] N.C.G.S. 50B-3.1(b) (2005).

[104] N.C. Gen. Stat. 50B-3.1(a) (2005).

[105] N.C. Gen. Stat. 50B-3.1(d)(1) (2005).

[106] *See* N.C. Gen. Stat. 50B-3(11) and (13) (2005). *See* also "Preventing Firearm Violence Among Victims of Inmate Partner Violence: An Evaluation of a New North Carolina Law," National Institute of Justice (NIJ) (10/1/2004 - 3/30/2006) for additional information about the implementation of this statute.

The procedure to enforce a violation of a protective order by holding the defendant in contempt is handled by the clerk of superior court, and usually initiated by the victim going to the clerk's office to file a motion for a show cause order for contempt.[107] If the clerk issues an order, there will be a hearing before a district court judge.[108]

A violation of a protective order may be enforced by contempt or by charging the defendant with the crime of violating a protective order. G.S. 50B-4.1 makes a knowing violation of a valid protective order a Class A1 misdemeanor.

If the magistrate finds probable cause to believe that the defendant has violated any provision in the order, the magistrate must issue criminal process. If an arrest warrant is issued for violating a protective order, when the defendant is arrested, only a judge may set conditions of pre-trial release for the first 48 hours.[109] If the conduct constituting the violation of the protective order also constitutes a separate crime, the magistrate should also issue criminal process for the additional crime or crimes.

A law enforcement officer who has probable cause to believe the defendant has violated a provision in a protective order excluding the defendant from the residence or household occupied by the plaintiff or directing the defendant to refrain from threatening, abusing, following, harassing (including by telephone, or by visiting the home, workplace or the minor child's school or daycare or other place where the child may be with the plaintiff) or otherwise interfering with the plaintiff must arrest the defendant without a warrant.[110] For any other violation of a protective order, an officer may arrest without a warrant.[111]

Civil No-Contact Orders

Chapter 50C, enacted in 2004, governs civil no contact orders between persons who do not have a "personal relationship" as defined in Chapter 50B. The statute is reported here because of its practical impact on the district courts and interplay with Chapter 50B, as described in other sections of this report.

The process for obtaining protection orders under Chapter 50C is similar to the process for obtaining protection orders under Chapter 50B.[112] When court is in session, pro se complainants may obtain the appropriate application forms[113] from the clerk of superior court who also handles service of process and hearing scheduling matters. Temporary

---

[107] *See* N.C. Gen. Stat. 50B-4(a) (2005). Magistrates may also be authorized by the chief district court judge to issue notice of a show cause hearing.

[108] *Id.*

[109] N.C. Gen. Stat. 15A-534.1(b) (2005).

[110] N.C. Gen. Stat. 50B-4.1(b) (2005).

[111] N.C. Gen. Stat. 15A-401(b)(2)(e) (2005).

* In North Carolina, the district court has jurisdiction over misdemeanor and Class H and I felony offenses. All other felonies are within the jurisdiction of the superior court. Hence, the following discussion pertains only to misdemeanors and Class H and I felony offenses.

[112] *See* Chapter 50C of the NC General Statutes (2005).

[113] *See* AOC forms: AOC-CV-520, -521, -522, -523, -524, -525, -526, -527, -528, and -529.

protection orders under Chapter 50C may be obtained ex parte upon certain findings.[114] After proper service of process and notice of hearing to the defendant, the court may enter a permanent Chapter 50C protection order for a period not to exceed one year.[115] When court is not in session, pro se complainants may request a temporary protection order before a judge or magistrate authorized by the chief district court judge to issue 50C protection orders. Chapter 50C orders may be renewed and extended,[116] and violations are punishable by contempt of court.[117]

During site visits, clerks and judges expressed some frustration with the volume and types of cases generated under the new law. The general complaint reported during site visits is the law's use for nuisance purposes between neighbors, relatives, a person's current and former girlfriends, or students in conflict and that these types of complaints undermine the significance of 50B protection orders and consume the court's valuable resources at the expense of more significant matters. Some districts reported few problems with the new law, in some cases crediting the lack of public awareness or knowledge about its enactment. In districts where the volume of requests for 50C protection orders is reported as high, some clerks and magistrates noted that law enforcement officers responding to a call direct complainants to them for 50C protection order applications, suggesting that the degree of understanding by law enforcement and how law enforcement explains the law to the public is an important factor in "feeding" the system these types of complaints.

Criminal Cases in District Court*

Arrest

Either a law enforcement officer or a victim can initiate criminal charges involving domestic violence.[118] An arrest results when either a victim or law enforcement officer, upon a showing of probable cause, secures a warrant for arrest from a magistrate, or a law enforcement officer has probable cause to believe a person has committed a criminal offense in the officer's presence, or when an officer has probable cause to believe a person has committed, though not in the officer's presence, a felony or certain misdemeanors enumerated in statute. Survey data reveals that most charges involving domestic violence are initiated by victims who appear before magistrates seeking warrants for arrest. Among district attorney survey respondents from 35 districts, 15 estimate that 26 to 75% of domestic violence charges are initiated by the victim going to the magistrate; eleven estimate over 75%.

Sometimes law enforcement and magistrates are put in the position of having to issue cross-warrants.[119] North Carolina law provides that "[a] judicial official shall not refuse to issue a

[114] *See* N.C. Gen. Stat. 50C-6 (2005).
[115] N.C. Gen. Stat. 50C-7 (2005).
[116] *See* N.C. Gen. Stat. 50C-8(c) (2005).
[117] N.C. Gen. Stat. 50C-10 (2005).
[118] *See* N.C. Gen. Stat. 15A-304 and 15A-401 through 15A-406 for statutory provisions regarding arrest. A criminal summons may also be issued (see N.C. Gen. Stat. 15A-303 (2005).
[119] Cross-warrant situations typically arise when both victim and offender seek arrest warrants against each other.

warrant for the arrest of a person solely because a prior warrant has been issued for the arrest of another person involved in the same matter."[120] Though the legislative intent of the statute, enacted in 2002, was to protect a victim who appears before a magistrate seeking criminal process when the defendant may have already obtained a warrant against the victim, the law since enacted has been interpreted by some magistrates to mean that they should issue cross warrants whenever two parties seek them against each other. However, some magistrates interviewed reported avoiding issuance of cross-warrants through diligent interviewing of cross-complainants. Others reported that cross-warrants are only sometimes issued, especially when both parties exhibit injuries.

Initial Appearance, First Appearance, and Pre-Trial Release

A law-enforcement officer making an arrest with or without a warrant must take the arrested person without unnecessary delay before a magistrate.[121] The magistrate must inform the defendant of the charges against him, his right to communicate with counsel and friends, and the general circumstances under which he may secure release.[122] However, in all cases in which the defendant is charged in a warrant with (1) assault, communicating a threat, or committing certain specified felonies upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married; (2) domestic criminal trespass; or (3) violation of an order entered pursuant to Chapter 50B, only a judge may determine conditions of pretrial release for the first 48 hours after arrest. If a judge has not determined pre-trial release within 48 hours of arrest, the magistrate must do so.[123] At this stage, the district court judge will also determine whether the defendant has retained counsel, or if determined to be indigent, will assign counsel.

Sixty-nine percent of prosecutors surveyed from 35 prosecutorial districts and 81% of defense attorneys and public offenders surveyed reported that defendants are held in jail as a matter of routine following arrest for a domestic violence offense. Survey responses from prosecutors and defense attorneys and public defenders indicate that magistrates make pre-trial release determinations in a minority of cases.

If a defendant is charged with assault, communicating threats, or a felony against a spouse or former spouse or a person with whom the defendant lives or has lived as if married, or with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, the following specific release conditions may be imposed in an order for pretrial release:

a. That the defendant stay away from the home, school, business or place of employment of the alleged victim;
b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;
c. That the defendant refrain from removing, damaging or injuring specifically

[120] N.C. Gen. Stat. 15A-304(d) (2005).
[121] N.C. Gen. Stat. 15A-511 (2005)
[122] N.C. Gen. Stat. 15A-511(b) (2005)
[123] N.C. Gen. Stat. 15A-534.1(b) (2005). Survey data from prosecutors and defense attorneys suggest some confusion about the interpretation and relationship of sections (a) and (b) of G.S. 15A-534.1 that may merit further study.

identified property; and

d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.[124]

Generally, prosecutors and defense attorneys surveyed report that pre-trial release conditions are imposed when defendants are released from jail most of the time. Survey data from prosecutors and defense attorneys suggest that for all cases regardless of severity (e.g., no assault, minor assault, serious assault) release conditions typically include:

- Defendant stay away from victim (i.e., not threaten, harass, follow, or otherwise interfere with victim);
- Defendant stay away from victim's home, school, business, or work place;
- Defendant refrain from assaulting, beating, molesting, or wounding the victim; and
- That the defendant not possess any dangerous weapon, controlled substance, drug paraphernalia, or alcohol is a condition less frequently imposed, regardless of the severity of the assault alleged.

Conditions that are seldom imposed include:

- Defendant refrain from removing, damaging, or injuring specific property;
- Defendant shall abide by a curfew; and
- Defendant shall reside at a specified residence.

Additionally, prosecutor and defense attorney survey data suggest pre-trial release conditions designed to protect minor children are sometimes imposed. Judges may also inquire about the defendant's past or current mental illness and access to firearms in determining pre-trial release conditions, but less often inquire about any previous psychiatric hospitalizations of the defendant, prior suicide attempts by the defendant, or the defendant's prior compliance with an abuser treatment program. When known to the court, these factors, generally, have the effect of increasing the number of pre-trial release conditions imposed, or how restrictive these conditions are.

If a release order is violated before the defendant's first appearance, an order for arrest may be issued for the defendant to modify the conditions of pre-trial release.[125] However, as discovered during site visits, defendants are not often arrested for violations of pre-trial release conditions because law enforcement may not have knowledge about the order or the release conditions it contains. Currently, there is no uniform or systematic means, such as a database, to inform law enforcement, particularly patrol officers, of pre-trial release conditions. In order to become aware of pre-trial release conditions, some officers go to the clerk of superior court for a certified copy of a pre-trial release order.

Arraignment

At the arraignment, defendants are asked to enter a plea to the charged crime (e.g., guilty, not guilty, no contest). North Carolina law prohibits a defendant from being called upon to

[124] N.C. Gen. Stat. 15A-534.1(a)(2) (2005).

[125] If a release order is violated after the defendant's first appearance, a judge must issue the order for arrest unless the chief district court judge has indicated otherwise. N.C. Gen. Stat. 15A-534(e) (2005).

plead until he or she has had an opportunity to retain counsel, or if he or she is eligible for assignment of counsel, until counsel has been assigned or waived.[126] As observed during site visits, by the time this setting occurs, many defendants have not met with their court-appointed attorney, or they have not yet been appointed an attorney; or they will waive their right to a court-appointed attorney and will seek to retain their own. In all sites visited, it is routine for the court to request that defendants who waive right to counsel sign a statement of waiver.[127]

North Carolina law states that "If an indigent person waives counsel…and pleads guilty to any offense, the court shall inform him of the nature of the offense and the possible consequences of his plea, and as a condition of accepting the plea of guilty the court shall examine the person and shall ascertain that the plea was freely, understandably and voluntarily made, without undue influence, compulsion or duress, and without promise of leniency."[128] In the districts selected for site visits, judges were not observed explicitly examining defendants who waived right to counsel.

Court observations during site visits revealed that, at least in the districts visited, if the defendant chose to be represented by counsel, but did not yet have counsel at the arraignment hearing, this hearing was routinely continued. A defendant who represented himself or who was represented by counsel at the arraignment and was ready to proceed either entered a plea or proceeded to trial.

Trial/Plea

A defendant must enter a plea[129] of guilty, not guilty, or, if the prosecutor and judge consent, no contest. The prosecutor and the defendant or the defendant's attorney may negotiate charges to which the defendant may plead. Such "plea bargaining" may result in an agreement whereby a defendant pleads guilty in exchange for charge reductions or dismissals or for the prosecutor's support of certain sentencing recommendations.

If the defendant chooses to enter a guilty or no contest plea, the defendant must sign a plea transcript. In superior court, North Carolina law requires that the presiding judge review the plea transcript with the defendant in open court.[130] For pleas in district court, the law requires only that the court receive a plea only from the defendant himself in open court.[131] Based on court observations during site visits, in practice, most pleas are accepted in domestic violence cases, and judges do not review plea transcripts with defendants in open

---

[126] N.C. Gen. Stat. 15A-1012(a) (2005). In North Carolina, 14 public defender offices serve defendants in 22 counties, and the Indigent Defense Services Commission maintains a roster of defense attorneys in private practice eligible to be appointed by the court to represent defendants in criminal cases.

[127] *See* AOC form AOC-CR-227.

[128] N.C. Gen. Stat. 7A-457(b) (2005).

[129] *See* N.C. Gen. Stats. 15A-1021 and 15A-1022 (2005) for statutory provisions governing pleas in district court.

[130] *See* N.C. Gen. Stat. 15A-1022 (2005).

[131] N.C. Gen. Stat. 15A-1011 (a). Some exceptions are allowed (i.e., if the defendant is a corporation, the defendant has waived arraignment and files a written plea of not guilty, and in misdemeanor cases there is a written waiver of appearance submitted with the approval of the judge.)

court.

If the defendant enters a plea of not guilty, then his case proceeds to trial. A trial begins with the State's presentation of the evidence against the defendant. Such evidence may be comprised of the victim's testimony, testimony of witnesses, or other physical evidence, such as photographs, medical records, etc. At the close of the State's evidence, the defendant is entitled to present evidence and cross-examine any witnesses for the State, including the victim/complainant. Following presentation of all the evidence, the presiding judge determines whether the State has met its burden of proving beyond a reasonable doubt that the defendant committed the illegal act(s) alleged.[132]

A case pending for trial may be dismissed under certain circumstances. For instance, the prosecutor may dismiss any charges by entering an oral dismissal in open court before or during the trial, or by filing a written dismissal with the clerk at any time.[133] Generally, prosecutors surveyed cited lack of sufficient evidence as the primary reason for dismissals of domestic violence cases by prosecutors. But survey responses also indicated that the victim's failure to appear contributes significantly to a prosecutor's decision to dismiss a case. Also, the prosecutor may enter a dismissal when a defendant does not appear for trial but the prosecutor believes that the defendant cannot be readily found.[134] These dismissals with leave allow the prosecutor to renew the proceedings against the defendant without prejudice at a later time.[135] In practice, site visits revealed that these voluntary dismissals with leave occur infrequently in domestic violence cases. Generally, the court will issue an order for arrest if a defendant with notice of a hearing fails to appear.

Sentencing

Following a determination of a defendant's guilt (either by plea or by trial), the case proceeds to sentencing.[136] Under North Carolina Structured Sentencing law, sentences are based on the defendant's current conviction and prior record level. Prior convictions are weighted for seriousness of offense according to schedules (one for misdemeanor offenses[137] and one for felony offenses[138]) set out in statute. Prior record level is determined by calculating the sum of points assigned to each of the offender's prior convictions.[139] The State has the burden of presenting to the court proof of any prior convictions against the defendant.[140] For each combination of offense and prior record level, North Carolina law prescribes sentence lengths and disposition types. Given the sentence disposition(s) authorized for any given combination of offense and prior record level, the judge may impose an active sentence (a sentence to be served in confinement) or an inactive sentence (a

[132] U.S. Const. amend. 14; *In re* Winship, 397 U.S. 358 (1970).
[133] N.C. Gen Stat. 15A-931(a) (2005).
[134] N.C. Gen. Stat. 15A-932(a)(2) (2005).
[135] See N.C. Gen. Stat. 15A-932(c) and (c) (2005).
[136] *See* N.C. Gen. Stat. 15A-1331 through 15A-1340.23 for statutory provisions governing sentencing.
[137] *See* N.C. Gen. Stat. 15A-1340.21 (2005).
[138] *See* N.C. Gen. Stat. 15A-1340.14 (2005).
[139] *See* N.C. Gen. Stat. 15A-1340.14 (2005) for felonies and N.C. Gen. Stat. 15A-1340.21 for misdemeanors.
[140] See N.C. Gen. Stat. 15A-1340.21(c) (2005) and N.C. Gen. Stat. 15A-1340.14(f) (2005).

sentence to be served on probation).[141] North Carolina law prescribes two levels of probation: intermediate and community. If an intermediate sentence is imposed, the defendant is supervised on probation and the court must impose at least one of the conditions of probation prescribed specifically for intermediate sentences.[142] If a community sentence is imposed, probation may be supervised or unsupervised and any other conditions may be imposed.[143]

A defendant found responsible for acts of domestic violence is required by the court to attend and complete an abuser treatment program if such a program, approved by the Domestic Violence Commission, is reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice.[144]

Interviews during site visits revealed that if the district has a local abuser treatment program, and a defendant is placed on supervised probation for an offense involving domestic violence, the court will impose successful participation and completion of an abuser treatment program as a condition of probation. In some of the districts visited, defendants who fail to comply with the abuser treatment program and are brought back to court for a violation of probation are generally ordered to return to the program as a consequence of the non-compliance.

When a defendant is found guilty of an offense involving assault, or communicating a threat, the presiding judge must determine whether the defendant and victim had a personal relationship,[145] and if so, the judge must indicate on the form reflecting the judgment that the case involved domestic violence.[146] The clerk of court is responsible for ensuring that the official record of the defendant's conviction includes the court's determination, so that any inquiry into the defendant's criminal record will reflect that the offense involved domestic violence.[147] Survey data indicate that judges in most districts are making this finding, and that clerks are recording this finding on the judgment form. AOC data show that 4,864 misdemeanor cases included the finding for the 2005-2006 fiscal year.

If the presiding judge determines that there was a personal relationship between the defendant and the victim, and a sentence to community punishment is imposed, the judge must determine whether the defendant is to comply with one or more special conditions of probation[148] in addition to any other authorized punishment. Special conditions of probation include:

---

[141] *See* N.C. Gen. Stat. 15A-1340.17 (200?) and N.C. Gen. Stat. 15A-1340.23 (200?). When sentencing for Class H and I felonies in district court, the judge must impose a minimum sentence length from one of three sentence ranges: the presumptive range, the aggravated range, or the mitigated range. *See* N.C. Gen. Stat. 15A-1340.16, 15A-1340.17 (2005).

[142] *See* N.C. Gen. Stat. 15A-1340.11(6) (2005).

[143] *See* N.C. Gen. Stat. 15A-1340.11(2) (2005).

[144] N.C. Gen. Stat. 15A-1343(b)(12) (2005). This condition was formerly a special condition of probation, imposed only if the defendant was placed on intermediate probation. The statute was changed in 2003.

[145] *See* N.C. Gen. Stat. 15A-1382.1(c)(3) referencing N.C. Gen. Stat. 50B-1(b) (2005).

[146] *See* N.C. Gen. Stat. 15A-1382.1(a) (2005).

[147] *Id.*

[148] *See* N.C. Gen. Stat. 15A-1382.1(b) (2005).

- Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;
- Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation;
- Participate in and successfully complete a Drug Treatment Court Program;
- Submit to imprisonment required for special probation;[149]
- Submit to supervision by officers assigned to the Intensive Supervision Program and abide by the rules adopted for that Program, including multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment;
- Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training, and submit to (and pay for) electronic monitoring;
- Surrender his or her driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court;
- Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program;
- Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises while the probationer is present;
- Not use, possess, or control any illegal drug or controlled substance…; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used; and
- Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.[150]

Sometimes a defendant convicted of a misdemeanor or Class H or I felony will be placed on unsupervised probation known as deferred prosecution.[151] When this occurs, the prosecutor and defendant with the court's approval agree in writing that the prosecutor will defer prosecution "for the purpose of allowing the defendant to demonstrate his good conduct."[152] Only a defendant who has not been convicted of any felony or of "any misdemeanor involving moral turpitude," has not previously been placed on probation, and is unlikely to commit another offense other than a Class 3 misdemeanor is eligible for a deferred prosecution.[153]

When a defendant placed on probation fails to comply with the conditions of his probation

---

[149] As set forth in N.C. Gen. Stat. 15A-1351(a) or G.S. 15A-1344(e) (2005).
[150] N.C. Gen. Stat. 15A-1343(b1) (2005)
[151] *See* N.C. Gen. Stat. 15A-1341(a1) (2005).
[152] N.C. Gen. Stat. 15A-1341(a1)(1) (2005).
[153] N.C. Gen. Stat. 15A-1341(a1) (2005).

sentence, the court may modify probation, find the offender in criminal contempt of court, or revoke probation and impose an active sentence.[154]

[154] *See* N.C. Gen. Stat. 15A-1344 (2005).

Chapter 4: Practices and Policies

Chapter 50B and Chapter 15A of the North Carolina General Statutes provide the statutory framework for the processing of civil and criminal domestic violence cases, respectively. Implementation of those laws, like many directives to the courts, is based, in part, on local formal and informal practices and policies that are designed not only to satisfy statutory requirements, but the districts' own goals. For North Carolina districts, these goals often include victim safety, offender accountability, and creating a coordinated community response. How statutes are implemented can vary significantly from district to district; likewise, local practices developed to implement statutes can vary significantly from district to district. Typically, these practices develop based on consensus among stakeholders within the courthouse as to feasibility and efficiency; few practices are developed or evaluated using data.

This project identified a variety of practices supplementary to statutory directives used to implement statute or adopted to improve movement of domestic violence cases through the court system. This chapter reports these practices and policies, as well as their prevalence and design.

Organizational Issues

Specialized domestic violence courts

In North Carolina, the district court has jurisdiction over civil domestic violence matters arising under Chapter 50B and criminal misdemeanors involving domestic violence. Within this general framework, district courts in North Carolina employ various organizational strategies for hearing domestic violence cases. The majority of motions for protective orders arising under Chapter 50B are heard in the district court civil court while misdemeanor criminal domestic violence charges are heard in the district court criminal court. When requests for civil protective orders are heard on general criminal dockets, it is usually related to judge availability or court scheduling. In some districts in North Carolina, specialized courts or dockets for hearing domestic violence cases have been created.

In North Carolina the term "domestic violence court" represents a wide variety of practices and policies for handling domestic violence cases adopted in either or both civil and criminal district courts. "Domestic violence courts" in North Carolina have routinely been funded through appropriations from the General Assembly or grants awarded by the Governor's Crime Commission, with each entity either specifying their own criteria or leaving it to beneficiary districts to determine the criteria for the planned "domestic violence court."

Given this lack of a standardized definition for domestic violence courts, this project explored a number of criteria characteristic of specialized domestic violence courts as specified in national research, in an effort to identify judicial districts with specialized systems for hearing domestic violence cases. (See Chapter 2, National Best Practices, page 19 for characteristics of domestic violence courts.) Data from 37 chief district court judges responding to a survey of chief district court judges indicated that:

- Civil domestic violence cases are heard on their own docket in 28 districts.
- Criminal domestic violence cases are heard on their own docket in 14 districts. Of the eleven districts responding regarding the types of cases assigned to these dockets, eight reported that any misdemeanors related to domestic violence are assigned to that docket.
- Twelve districts have both civil and criminal dockets for domestic violence cases. Four districts have a specialized court or calendar for handling both civil and criminal domestic violence cases in the same session (i.e., same courtroom, same judge, same time).
- In up to six districts civil and criminal domestic violence cases *may* be handled in the same session with the consent of the parties.

Districts reporting specialized courts or dockets vary in the frequency of days courts are in session; for instance, in smaller or multi-county districts these courts operate one day every other week while in large single-county districts these courts operate every day. Survey data from chief district court judges indicate that in the majority of these districts all judges rotate through these courts regardless of special training or interest in domestic violence cases. In a site visit to one district, the chief district court judge reported that two retired district court judges solely preside over the district's civil and criminal courtrooms for domestic violence cases.[155]

Family Court districts

Family Courts are currently located in eleven of the 41 judicial districts. Completed surveys were received from chief district court judges in all eleven Family Court districts. Four of the Family Court districts were selected for site visits.

In a 1996 report, the Commission for the Future of Justice and the Courts in North Carolina recommended that Family Courts hear matters including domestic violence civil restraining orders.[156] Survey data indicate that only three of the state's eleven Family Court districts hear civil domestic violence cases as part of a Family Court docket. Only one of these three districts also reported that criminal domestic violence cases are also heard as part of a Family Court docket.

Of the eleven Family Court districts, ten districts have a specialized docket for civil domestic violence cases and seven districts have specialized dockets for criminal domestic violence cases (most of these dockets are comprised of cases involving any misdemeanor related to a domestic violence incident; one district's docket for criminal domestic violence cases includes only assault, communicating threats and 50B violations). The seven districts with specialized dockets for criminal domestic violence cases also have specialized dockets for civil domestic violence cases; two of these districts hear civil and criminal domestic violence cases on the same docket, while a third assigns civil and criminal domestic violence cases to separate dockets though civil and criminal cases involving the same parties are heard at the

[155] Their assignment to these courts was initially supported through grant funds.
[156] *Without Favor, Denial or Delay, A Court System for the 21st Century*, Commission for the Future of Justice and the Courts in North Carolina (December 1996), page 46.

same time before the same judge during the same session of court. In five districts, all judges hear both civil and criminal domestic violence cases on a rotating basis, while in four districts only judges with a special interest or training in domestic violence hear civil and criminal domestic violence cases.

All five Family Court districts selected for site visits are districts with specialized courts for civil and criminal domestic violence cases. In all five districts, judges and clerks generally reported little coordination between their civil domestic violence courts and Family Courts. In two of the (large, metropolitan) districts, judges and clerks reported that clerks filing motions for domestic violence protective orders try to a assign pending civil domestic violence case to the judge assigned to the family in Family Court. This practice is informal in nature, however, as it is contingent in large degree upon a (veteran) clerk recognizing the parties in the domestic violence matter as parties with a Family Court case and/or discovering through a check for related cases that the parties are already involved in Family Court. During a site visit to one of these districts one judge presiding in Family Court questioned the effectiveness of reassigning a civil domestic violence case from their Domestic Violence Court where the same two judges are regularly assigned, to the Family Court judge when the Family Court case had long since been closed.

Local Rules

An analysis of local rules on domestic violence adopted by North Carolina district courts yielded the following:

As of January 2007, 44 counties have adopted local rules governing civil domestic violence cases; 12 counties have rules governing criminal domestic violence cases; 10 counties have rules governing both civil and criminal domestic violence cases. Only one county has a domestic violence policy and procedure manual which governs both civil and criminal domestic violence cases.

Of Family Court districts, nine of the eleven have local rules governing civil domestic violence matters (four districts have rules addressing calendaring; five districts have rules addressing judicial assignment; five districts have rules addressing alternative dispute resolution (exceptions or certification); and seven districts have rules addressing domestic violence exceptions to domestic case filings and/or case management.). Five of the eleven districts have local rules addressing criminal domestic violence matters; three districts have rules addressing pre-trial release/bond determinations.

For all counties, local rules governing matters relating to civil domestic violence cases break down as follows:

- 23 (52%) govern calendaring of cases;
- 8 (18%) govern judicial assignment;
- 14 (31%) relate to general organization of the court;
- 17 address miscellaneous issues including the duties of clerks, confidentiality measures in child support actions, and procedures for seeking temporary custody as part of a 50B action.

For all counties, local rules governing matters relating to criminal domestic violence cases break down as follows:

- 25 (56%) provide exceptions to dispute resolution/mediation settlement procedures; and
- 10 (22%) provide guidelines for pretrial release/bond determinations.

Courthouse security

While courthouse security is important for a variety of reasons not specific to domestic violence, domestic violence cases can be potentially more volatile given the nature of these cases. Risk is thus increased for parties appearing in court together as well as courthouse staff, bystanders, and other citizens with business before the court. Chief district court judges were surveyed about various security measures in effect in their districts. Of 37 chief judges responding to surveys, 20 reported that security measures specifically regarding domestic violence are in place while 16 reported having no such specific security measures for these cases. One judge from a multi-county district reported that security measures specifically regarding domestic violence cases are in place for some of the counties but not all.

Measures to address courthouse security in cases of domestic violence vary from district to district and even between counties within districts, due in some cases to building design and in others to a particular county's courthouse culture.

Measures to address courthouse security vary from district to district. Survey data from chief district court judges indicate that:

- courthouses in 12 districts provide weapons screening with metal detectors at main entrances or entrances to courtrooms where domestic violence cases are heard (this may include either walk-through metal detectors or wands);
- bailiffs are present in the courtrooms where domestic violence cases are heard in 23 districts;
- sixteen districts require defendants to wait a certain amount of time after the plaintiff leaves before departing (this may occur on a case-by-case basis);
- sixteen districts provide plaintiffs security escorts out of the courtroom and to their transportation;
- two districts have written protocols outlining security measures for domestic violence cases;
- court staff is trained on security protocols specific to domestic violence cases in six districts; and
- three districts have separate waiting rooms or areas for victims and defendants.

Site visits to districts yielded additional information about low-cost or low-effort practices. One district visited seats men and women waiting for their case to be called on opposite sides of the courtroom. Another district visited reported having experimented with male-female seating segregation but found it ineffective with same-gender couples. One judge in this same district noted that seeing who arrives to and departs from court together, and who sits in court together provides the court additional information about the parties' situation. Some

districts also reported informal communication between courtroom staff (sheriff's deputies, clerks, attorneys, and judges) regarding cases with potential security issues.

Information Access

Clerks are generally responsible for entering information in two separate information systems maintained by AOC for tracking civil and criminal cases. In surveys, clerks of superior court reported varying levels of access to the Civil Case Processing System ("VCAP") and Automated Criminal Information System ("ACIS") in the courtroom(s) where civil domestic violence cases are heard, the courtroom(s) where criminal domestic violence cases are heard, and in their offices. Among the 91 counties responding to surveys, clerks have access to:

- ACIS in courtrooms where 50B cases are heard in 73 counties;
- ACIS in courtrooms where criminal domestic violence cases are heard in 76 counties;
- ACIS in the Clerk's office in 81 counties;
- VCAP in courtrooms where 50B cases are heard in 80 counties;
- VCAP in courtrooms where criminal domestic violence cases are heard in 66 counties; and
- VCAP in Clerk's office in 82 counties.

Clerks in 57 of the 91 counties (or 62%) reported having access to both systems in all three locations. A few clerks noted on surveys and during site visits that not all deputy and assistant clerks are authorized to have access to both systems[157].

Civil Cases

Ex parte orders - Clerks of Superior Court

As discussed in Chapter 3, Statutory Process, all requests for civil protection orders originate in the office of the Clerk of Superior Court or the county magistrate's office.

Typically, the Clerk of Superior Court is located in the courthouse. As observed during site visits, depending on the design or size of the courthouse, all clerks may be located together in a central office, or clerks performing various functions are located in office space throughout the courthouse. Generally, deputy and assistant clerks are assigned to either civil or criminal responsibilities. Persons seeking civil protective orders must locate the "civil clerk(s)". In some districts visited, the location of the civil clerk is not readily apparent, especially where directional signs are lacking and all clerks are not housed in a single location within the courthouse.

Responses to the survey administered to clerks of superior court indicated varying levels of assistance provided by deputy and assistant clerks to persons seeking civil protection orders. Survey responses suggested that some clerks view their role very narrowly within the context

[157] That access is authorized for individual clerks by AOC by request of the Clerk of Superior Court.

of Chapter 50B and hence provide no more assistance than providing necessary forms and scheduling hearings. Other clerks interpret the statute more broadly and will explain, if asked, what the questions on the 50B application forms mean, prepare "packets" of 50B application forms, including directions for completing the AOC forms, and in some districts, highlight certain sections to show applicants the areas they are to complete. Across this continuum, 14% of clerks reported providing business cards, brochures or other contact information for the local domestic violence advocate as a service provided that is not explicitly required by statute.

Several clerks of superior court have either established or participate in more comprehensive services than statutorily mandated. In Cumberland County, the Clerk of Superior Court has established a program, called SafeLink, initially supported with federal grant funds and now funded as part of the Clerk's budget, whereby the Clerk's office operates an office only for 50B applicants. Two deputy and/or assistant clerks are assigned to this office; they alternate between office and domestic violence courtroom duties. The SafeLink office is child-friendly with a sofa, toys and children's books to occupy children who have accompanied their mothers. When an applicant enters the office, a clerk provides one form requesting identifying information about the applicant and to-be-named defendant. After the applicant completes and returns this form to the clerk, the clerk provides the applicant the 50B application forms with areas to be completed by the applicant highlighted. While the applicant completes these forms, the clerk checks for other court cases involving the parties using the applicant's information form.

In Mecklenburg County, the Clerk of Superior Court led efforts to establish the SelfServe Center designed to assist pro se litigants in family law matters and provide information about family law issues. The SelfServe Center also offers lawyer referral information; conducts legal clinics to educate potential litigants about forms and instructions for completing forms; a list of community resources; a legal glossary to help litigants understand the terminology associated with the courts and the forms required for filing motions and suits; information about the Family Courts; and the hours, location, and important telephone numbers of court staff and court related agencies.

In Forsyth County, the District Attorney's Office has established a program, Safe on Seven that is comprehensive in its assistance to domestic violence victims seeking either criminal or civil relief. The program occupies the seventh floor of the courthouse and jointly houses representatives from the offices of the Clerk of Superior Court, the Sheriff's Department, the District Attorney, the Department of Social Services, Legal Aid, and others in a centrally located office. The goal of the program is to allow complainants seeking relief from domestic violence to access all potentially needed services in one visit to the courthouse.

Other examples given of services beyond what is required by statute, include mailing orders to all local law enforcement agencies in the district, staying beyond normal business hours to process 50B applications,[158] providing transportation to 50B applicants, providing referrals

[158] One common complaint among clerks reported in surveys was the length of time required to process 50B applications. In one district, a clerk reported that if eight people file for 50B protection orders in one day, that is a full day's work as each application takes one hour to process. A common companion complaint

to Legal Aid and other community resources, and escorting plaintiffs into court.

In some counties, clerks will call the local domestic violence advocacy agency requesting an advocate to come to the courthouse to assist a 50B applicant, particularly if the applicant appears distraught, or is confused about completing the 50B forms. In some counties, clerks reported in surveys and during site visits that often, 50B applicants have already received assistance with the forms prior to filing with the clerk (in one district visited the advocate reported having an electronic copy on her office computer), or that advocates from the local agency accompany 50B applicants to the clerk's office to assist them with the paperwork. In one district visited, the clerks noted that the local domestic violence advocate provides much needed assistance in performing some of the duties routinely performed by the clerk, including photocopying 50B forms for the applicant and for the sheriff's department for service on the defendant. The advocate noted that this expedites the process greatly and reduces the plaintiff's anxiety.

In counties where clerks reported domestic violence advocates providing a high level of assistance to 50B applicants, clerks reported less frustration in dealing with domestic violence cases. (See Chapter 6, Recommendations, page 91, for additional discussion.) Additionally, during site visits, clerks reported that what is considered a lengthy process (most clerks interviewed reported that processing 50B applications takes at least an hour from the time the complainant first comes to the clerk to the time the judge has considered a request for an ex parte order) is expedited considerably when complainants are assisted in completing forms by a local domestic violence program advocate.

Once 50B forms are filed, clerks are statutorily required to schedule hearings before judges. Typically, when motions for ex parte 50B protection orders are filed, the attending clerk will locate a district court judge to consider the ex parte motion. In most of the districts visited, clerks reported having few problems locating a district court judge to consider a request for an ex parte 50B order. Typically, clerks will bring ex parte requests to the attention of a district court judge presiding in court between cases or other natural breaks. In districts with specialized domestic violence courts, clerks will bring ex parte requests to these judges if that court is in session. Most clerks in districts visited reported having to wait no more than an hour for a judge to consider a request for an ex parte order, and in one district, the clerks reported being able to expedite the process because judges inform them when they are out of court and in chambers such that any waiting period is eliminated.

Generally, most judges interview applicants seeking ex parte orders. Of 37 chief district court judges surveyed, 18 reported that judges in their district do not issue ex parte orders without interviewing applicants. However, six chief district court judges reported that judges in their districts do issue ex parte orders without first interviewing applicants as a matter of routine, while 13 responded that judges sometimes issue ex parte orders without first interviewing applicants.

During a site visit to one district where judges issue ex parte orders without first

---

was having to stay beyond 5:00 pm to process 50B applications for applicants arriving at the Clerk's office at 4:00 pm or later.

interviewing applicants, clerks reported the district-wide practice of automatically scheduling hearings for permanent protection orders when ex parte orders are denied. If the applicant denied the ex parte refuses a hearing for a permanent order, the clerk obtains a signature on a statement of waiver developed by the Clerk's office for use in these situations. Anecdotally, clerks in this district reported that generally, applicants whose requests for an ex parte have been denied, reject scheduling hearings for permanent orders, and among those who do schedule a hearing for a permanent order fewer than half actually return to court for the hearing. In another variation of this practice, in two districts with specialized domestic violence calendars, judges from each district reported their own individual practices of scheduling hearings for permanent protection orders after interviewing applicants and denying their requests for ex parte protection orders.

Ex parte orders - Magistrates

In districts where magistrates are authorized by the chief district court judge to issue ex parte orders (see Chapter 3, Statutory Process, page 32 for further discussion about magistrates authorized to issue ex parte orders), complainants seeking ex parte orders may also initiate the process of obtaining 50B relief at the magistrate's office. Among the districts visited where magistrates do have authority to issue ex parte orders, that authority is circumscribed by policy limitations determined by the chief district court judge. For example, in one district magistrates are authorized to issue ex parte orders in "emergency situations" when a judge is not available. Typically, these times are before or after normal hours of operation during the business week, on weekends, or when all judges are away (e.g. at the district court judges' conference).

One magistrate explained that "emergency situations" are not necessarily defined by the lack of an available judge, but by the nature of the situation presented by the complainant. Hence, a complainant who presents evidence showing "danger of acts of domestic violence against the [complainant] or minor child" may be denied an ex parte order by a magistrate who determines the situation does not rise to the level of an "emergency" and asked to request the ex parte from a judge when a district court is in session (e.g., the next business day).

In several other districts visited, some magistrates reported that their chief judge restricts magistrates from ordering certain conditions, for example, those relating to property and/or custody and visitation. Additionally, while magistrates may be authorized to issue ex parte orders, some authorized magistrates expressed some reluctance to issue ex parte orders reasoning that an arrest warrant should be issued if the situation described by a complainant supported the elements of a criminal offense and probable cause existed. (See further discussion in the Criminal Cases section below.)

As is true of most magistrates' offices across the state, most magistrates' offices visited during site visits, were located in the jail. A few magistrates' offices were located within the courthouse or in buildings adjacent to or nearby the courthouse. In some districts visited, the location of the magistrate's office within the jail was difficult to discern because signs were lacking or unclear (e.g., posted signs may indicate when to enter the courtroom or appropriate decorum, but not the location of the courtroom).

For magistrates' offices located nearby or adjacent to the courthouse, systems have been established allowing complainants to access magistrates after normal business hours or on weekends. For example, in one county, the 911 dispatcher provides complainants with the on-call magistrate's pager number; and in another county, complainants who come to the magistrate's office may use an emergency phone located outside the magistrate's office that automatically connects to the 911 dispatch that provides the complainant the magistrate's telephone number.

Most of the magistrates interviewed maintained collections of brochures from local domestic violence advocacy and shelter agencies to provide to complainants as necessary. Magistrates interviewed in several districts reported having good working relationships with the local domestic violence provider such that, if called by the magistrate, advocates would come to the magistrate's office and provide assistance. Often, advocates were called to assist in calming an excited or distraught complainant, and secondarily, to provide shelter or other services.

Magistrates also reported referring some complainants to law enforcement, particularly when situations appeared to warrant criminal investigation if there had been none, or for further investigation if law enforcement had already responded.

In districts where magistrates are not authorized to issue ex parte orders, complainants seeking ex parte orders at the magistrate's office during non-business hours or weekends are either referred to the district court judge on call, or if the magistrate finds probable cause, an arrest warrant is issued and the complainant directed to return to court on the next day in which court is in session.

Permanent order hearings

While N.C.G.S. 50B-2(c) provides that "a hearing shall be held within 10 days from the date of issuance of an [ex parte] order or within seven days from the date of service of process on the other party, whichever occurs later," surveys and site visits revealed that for various reasons these hearings do not always occur in the timeframe specified in statute.

Clerks reported during site visits that incomplete or inaccurate information regarding the defendant's whereabouts is generally the cause of any service delays. In surveys, 90% of Legal Aid attorneys reported that service of process sometimes delays the permanent order hearing among cases they handle. Asked to rank the first and second reasons for the permanent order hearing being delayed where service is an impediment, Legal Aid attorneys reported the following:

Defendant evading service	65%
Defendant being out of county (or out of state)	50%
Inadequate or incorrect contact information for the defendant as provided by the plaintiff	30%

Delay in service by sheriff's department	19%

Clerks also reported having difficulty contacting the plaintiff regarding any necessary rescheduling changes (e.g., court is cancelled or the plaintiff fails to appear for the permanent order hearing and the case is continued). Because the AOC domestic violence protection order application form does not request the complainant to provide a contact telephone number, clerks are sometimes unable to contact plaintiffs regarding last-minute scheduling changes. Some clerks interviewed reported that they maintain a separate record with the plaintiff's name and telephone number. Still other clerks reported having ceased this practice, as it then becomes public record accessible by the defendant.

Some clerks interviewed reported having arranged with the sheriff's department informal procedures for expediting service of process particularly in counties where the sheriff's department has a deputy dedicated to responding to and investigating domestic violence calls. In one county, for example, as soon as an ex parte order is issued by a judge, the clerk primarily responsible for processing domestic violence cases, calls the deputy assigned to domestic violence cases to notify him that service of process on a defendant in a domestic violence case is ready to be served. In another county, the clerk has developed a statement of service of process for use when domestic violence protective orders are served on schools pursuant to N.C.G.S. 50B-3(c). (See Appendix P for Return of Service Form.)

Continuances for either party also results in the permanent order hearing being delayed. Sixty-eight percent (68%) of the Legal Aid attorneys surveyed reported that, on average, a domestic violence case is scheduled twice for hearing before an order is entered in a civil case. Fifty-one percent (51%) of domestic violence advocacy agencies surveyed reported that a case is scheduled at least 2-3 times before a one-year protective order is entered. Twenty-three of 37 (62%) chief district judges surveyed reported not having a formal policy limiting continuances in their district while 13 (35%) reported having some policy in place. Generally, for all districts visited, cases were routinely continued the first time for either or both parties to have a chance to retain or meet with counsel. Some judges interviewed during site visits articulated that they will generally allow one continuance each for the plaintiff and the defendant. In addition, in districts where civil and criminal domestic violence matters involving the same parties are heard during the same session of court, permanent order hearings in civil cases are continued until whenever the companion criminal matter is calendared (usually 30 days or so after the defendant's arrest), and may be continued thereafter depending on whether the defendant needs additional time to secure legal representation.

When the permanent order hearing does occur, how these hearings proceed varies from district to district. One factor impacting how the permanent order hearing itself proceeds is whether the parties are represented by legal counsel or are appearing before the court pro se. Legal Aid attorneys and judges interviewed during site visits estimated that generally most 50B plaintiffs and defendants appear pro se. Neither plaintiffs nor defendants in actions arising under Chapter 50B are entitled to legal representation, but often, judges and Legal Aid attorneys reported, defendants are represented by retained legal counsel (commonly attorneys in private practice, and sometimes, legal services lawyers) at the permanent order

hearing while the plaintiff is not. (While 79% of domestic violence advocates responding to the survey reported routinely attending district court sessions when civil domestic violence cases are heard, their services do not include any legal representation.)

Legal Aid lawyers surveyed reported that their representation in civil domestic violence cases generally begins at the permanent order hearing with most referrals coming from the local domestic violence advocacy program. With only 25 attorneys handling domestic violence matters on a full-time basis in 24 offices across the state, Legal Aid attorneys represent only a fraction of parties in all civil domestic violence cases. Legal Aid lawyers interviewed during site visits reported having to prioritize the types of domestic violence cases they represent given their lack of staff to represent parties in all domestic violence cases. Some Legal Aid attorneys suggested that they are most likely to represent plaintiffs or defendants whose cases have potential future issues impacting child custody, child support, and housing (e.g., landlord-tenant) issues, that will require representation beyond the 50B matter. For other plaintiffs and defendants outside these criteria, Legal Aid attorneys provide education about their rights and duties regarding Chapter 50B actions, what to anticipate through the court process, and may also refer parties to other legal counsel (private attorneys, attorney referral services) as available in their geographic area or plaintiffs to the local domestic violence advocacy agency as appropriate. Sometimes, even those parties whom Legal Aid has agreed to represent may not have an attorney physically present with them in court at the permanent order hearing. In one multi-county district visited, for example, one Legal Aid attorney talked of having multiple clients scheduled to be in court in different counties on the same day at the same time.

Another factor impacting the permanent order hearing is how cases are calendared to be heard by the court. In districts visited where all 50B cases are set for same time (e.g., morning session or afternoon session) and all plaintiffs arrive in court at the same time, plaintiffs whose cases are heard later in the session have the benefit of having heard all the other cases called before theirs. In districts visited where civil and criminal domestic violence matters are heard during the same session of court, by the same judge, presentation of evidence varied. In one district, the criminal matter is presented first, with the prosecutor presenting the State's evidence followed by the defense's evidence; then the civil matter is presented, with the civil plaintiff (typically the victim in the criminal matter) presenting any additional evidence not included in the State's case, followed by the defense's evidence in the civil matter. In another district, this same order of presentation of evidence is followed in one judge's courtroom. But with other judges, the civil evidence is presented after the State's evidence, followed by the defense's case.

Differences in judicial style when dealing with unrepresented parties were observed during site visits, and were particularly pronounced when both plaintiff and defendant were unrepresented. Most judges instruct plaintiffs to provide all relevant information, including specific allegations and dates when specific events occurred. One judge observed instructed pro se plaintiffs prior to their testimony that "your responsibility is to tell the court why you need a protective order" and to be "specific about dates and times" then asked no other questions during the plaintiffs' testimony. Some judges would ask questions as plaintiffs testified, such as "What happened next?" or "What happened after so-and-so did such-and-

such?" or "On what date did that occur?" or "Were there children present?" Other judges were silent during the testimony provided.

Judges surveyed and interviewed reported varying levels of information known about the parties' prior or other court involvement. When hearing civil domestic violence cases, chief district court judges responding to the survey reported that among those 37 districts:

- information about criminal domestic violence cases is available in 24 districts and requested for the civil hearing in 27;
- information about any criminal cases, regardless of whether they involve domestic violence is available in 12 districts, and requested for the civil hearing in 10;
- information about civil domestic violence cases is available in 27 districts, and requested for the civil hearing in 24;
- information about any juvenile cases is available in six districts, and requested for the civil hearing in ten;
- information about domestic cases is available in 18 districts, and requested for the civil hearing in 17 (not necessarily the same districts).

Dismissals of requests for domestic violence protection orders

Before a permanent domestic violence protective order is entered, some plaintiffs will seek to have their motion for the order dismissed. Over half of the Legal Aid attorneys responding to surveys report that the most common mechanism for voluntary dismissal of domestic violence protective orders is the plaintiff filing for dismissal. Thirty-three percent of the Legal Aid attorneys report that the plaintiff's failure to appear for the permanent order hearing is the most common mechanism for voluntary dismissal of a protective order.

Some informal practices have been adopted in districts to address requests for dismissals or plaintiffs' failure to appear for the permanent order hearing. Over half of the Legal Aid attorney survey respondents reported that judges question the plaintiff directly (not plaintiff's counsel) about their reasons for requesting the dismissal. Judges interviewed during site visits who subscribe to this practice reported that they want to ensure that the plaintiff seeks dismissal of his or her own volition and not under threat or duress by the defendant. When plaintiffs fail to appear for the permanent order hearing, 84% of the Legal Aid survey respondents reported that judges dismiss cases. A few noted that judges may hold the case open through the end of calendar call in case the plaintiff is late to court. A few also noted that judges may grant one continuance, depending on the circumstances of the case, if there is some concern for the plaintiff expressed by the plaintiff's attorney or any witnesses present, or if the plaintiff has notified the Clerk's office in advance that he or she is not able to be present in court on the scheduled day. One judge in one of the districts visited where the Clerk's office collects plaintiffs' telephone numbers has the clerk call a plaintiff who has failed to appear to find out why the plaintiff is not present in court. These practices likely have the additional effect of increasing a victim's safety, encouraging their participation in the court process, and communicating the message that their case is taken seriously.

In one of the districts visited, plaintiffs seeking dismissal of a motion for a permanent domestic violence protective order after an order has been entered are required to complete a

questionnaire and present it to the judge to use in making findings of fact to support the entry of an order setting aside the domestic violence protective order. (See Appendix Q for Questionnaire in Support of Motion to Set Aside DVPO.) In this same district, plaintiffs who are present at the permanent order hearing for the purposes of seeking dismissal of the order are required by several (but not all) judges in the district to file a formal motion for dismissal.

Review hearings

Review hearings in the 50B setting are provided for in statute when there is a violation of a domestic violence protection order.[159] Traditionally, such hearings are held upon motion of a plaintiff to review alleged violation(s) of a protective order. Reflecting an increasing national practice (see Chapter 2, National Best Practices, page 22) a small number of chief district court judges (four of 37 respondents or 11%) reported that judges in their districts routinely schedule hearings to review a defendant's compliance with court-ordered conditions in civil cases, even absent contempt motions filed by plaintiffs. During site visits to districts where judges do not routinely hold such review hearings, two primary explanations were provided. One reason given was that because compliance with civil orders is not monitored by a third-party, such as a probation officer in criminal cases, violations must come to the attention of the court through a party who files a motion for contempt pursuant to Chapter 50B. Judges also noted that most violations of civil protection orders come to the attention of the court in the criminal setting as a criminal offense. Limited court time for scheduling review hearings and limited and court personnel resources (e.g., clerks) to handle the scheduling and staffing of non-violation review hearings were also cited as a factors.

Criminal Cases

Initiating charges

As discussed in Chapter 3, Statutory Process, criminal charges involving domestic violence may be initiated by either law enforcement or a victim. Forty-three percent of prosecutors surveyed estimate that 26 to 75% of domestic violence charges are initiated by arrest warrants issued by magistrates at the request of a victim seeking arrest warrants; 26% estimate that at least 75% of charges are so initiated.

During site visits, magistrates reported the following observations regarding victims seeking arrest warrants against alleged domestic violence perpetrators:

- Victims seeking relief from acts of domestic violence who appear before magistrates do not necessarily know specifically what type of relief, criminal or civil, they are either eligible for or should be seeking.
- Law enforcement sometimes suggests to victims which type of relief is most appropriate, based on the circumstances of the case, agency policy, or officer experience and/or training.
- Law enforcement officers may or may not accompany victims to the magistrate's

[159] See N.C. Gen. Stat. 50B-4(a) (2005).

office, may or may not conduct investigations, may or may not supply victims who are referred to the magistrate's offices with police reports.

- When a warrant for arrest is the appropriate relief, some law enforcement officers will sign out warrants as the complainant on behalf of victims, especially when victims seem reluctant to do so; others insist on victims signing out warrants for themselves.

Magistrates interviewed indicated that they typically prioritize as their first objective finding out what happened and informing victims of their options to pursue either a warrant for arrest, an ex parte order or both. Assuming probable cause exists, some magistrates interviewed reported that they will issue a warrant for arrest rather than an ex parte order. One reason given was that arrest warrants result in defendants being held in jail long enough for victims to seek ex parte orders from judges. Even when ex parte orders or arrest warrants are issued, some magistrates interviewed reported that they advise victims to plan for their safety. As one magistrate explained, "ex parte is just a piece of paper" or "a defendant may elude arrest."

A few magistrates indicated that when a victim appears before a magistrate and provides a statement that is incomplete or does not, in and of itself, establish probable cause, they may either refer the victim to law enforcement or request law enforcement to further investigate the situation. Magistrates also reported soliciting assistance from local domestic violence advocacy programs not for purposes of establishing the facts, but to provide immediate support to a victim who is exhibiting high levels of emotional distress.

Some districts have developed specialized victim impact statements to be completed at the time victims first come in contact with magistrates and law enforcement in domestic violence cases. These forms are designed to capture information that is particularly relevant to the nature of domestic violence offenses. In some districts, magistrates request that victims complete forms when seeking arrest warrants; in other districts, if law enforcement has been called to the scene, officers will complete the form, or provide the form to the victim to complete. These forms are included in the paperwork that is provided to the district attorney's office for prosecution of domestic violence cases. (See Appendix R for examples of a victim impact statement.)

Pre-trial release

Some magistrates interviewed during site visits reported the practice of using a specialized bond release form for gathering information about a defendant in a domestic violence case that may be helpful to the judge (or magistrate) who will determine a defendant's bond. These pre-trial release questionnaires assist magistrates in capturing information about any injuries to the complainant, past history of domestic violence, and existence of a civil domestic violence protective order. (See Appendix S for examples of specialized bond release forms.)

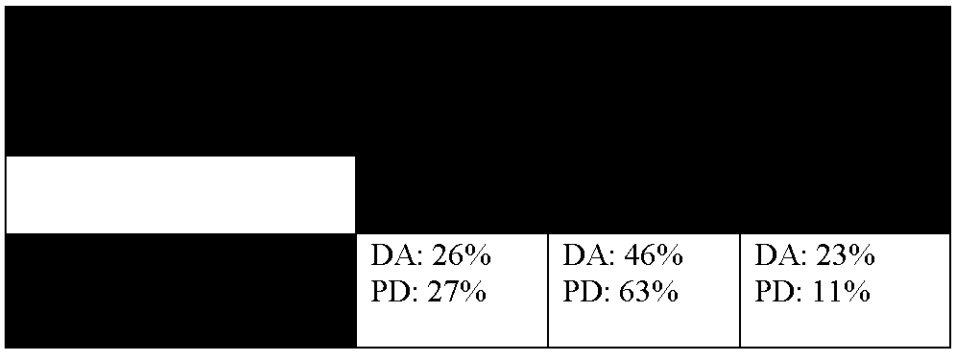
Respondents to the survey for district attorneys and public defenders and defense attorneys were asked about the appropriateness, as applied to domestic violence cases, of guidelines

for bond that may be established by the superior court judge in their district. 41% of respondents to the survey for district attorneys and 38% of respondents to the survey for public defenders and defense attorneys think that the guidelines are appropriate; 26% of respondents to the defense attorney survey and 3% of respondents to the district attorney survey (1 respondent) think that the guidelines are too harsh; 18% of respondents to the district attorney survey and 30% of respondents to the defense attorney survey think that the guidelines are appropriate in most cases but not all.

Respondents to surveys for district attorneys and public defenders and defense attorneys were also asked how often judges inquire about certain factors relating to the defendant when determining pre-trial release conditions. Survey responses suggest that generally judges sometimes inquire about the defendant's past or current mental illness, history of psychiatric hospitalizations, and access to firearms; but less often inquire about the defendant's prior suicide attempts, homicide attempts against the victim or the victim's minor children, or the defendant's prior compliance with abuser treatment programs.

	DA: 14% PD: 4%	DA: 54% PD: 54%	DA: 26% PD: 42%
	DA: 9% PD: 2%	DA: 37% PD: 41%	DA: 46% PD: 57%
	DA: 6% PD: 2%	DA: 20% PD: 21%	DA: 66% PD: 77%
	DA: 26% PD: 31%	DA: 26% PD: 23%	DA: 40% PD: 46%
	DA: 6% PD: 13%	DA: 23% PD: 18%	DA: 63% PD: 69%
	DA: 26% PD: 25%	DA: 40% PD: 48%	DA: 29% PD: 27%

In addition, prosecutor and defense survey responses suggest that generally judges sometimes order conditions of pre-trial release to protect minor children.



	DA: 26% PD: 27%	DA: 46% PD: 63%	DA: 23% PD: 11%

Adjudication and Sentencing

Court staff interviewed during site visits reported that a defendant's arraignment usually occurs about 30 days following arrest. The time between arrest and when the defendant is actually arraigned may be longer, however, depending on whether arraignment is continued. Arraignment may be continued to allow for the defendant to be appointed or meet with court appointed counsel, or to retain his or her own. Some judges interviewed during site visits reported that they will generally allow one continuance each for the State and the defendant. Continuances in criminal cases are a source of frustration for complaining witnesses/victims: 31% of respondents to the survey for district attorneys and 49% of respondents to the survey for defense attorneys and public defenders identified continuances as a part of the process of prosecuting domestic violence cases that victims find most frustrating.

During site visit courtroom observations, all judges questioned defendants about their right to representation, whether they desired a court-appointed lawyer or intended to retain their own. Defendants who waive their right to a court appointed attorney are required to sign a standard AOC waiver of counsel form. All districts requested defendants to sign such a waiver. Generally, in all districts visited defendants observed did not appear to read the waiver, nor was the waiver statement explained or read to them. Most defendants observed who had elected to proceed without legal representation entered a plea.

Defendants observed during site visits who elected to have a trial were generally represented by legal counsel whether appointed or retained. In districts where civil cases are heard with the related criminal case during the same session, the order for presentation of evidence varied slightly from hearings in which only the civil or criminal matter were considered. In one district, the criminal matter is presented first, with the prosecutor presenting the State's evidence followed by the defense's evidence; then the civil matter is presented, with the civil plaintiff (typically the victim in the criminal matter) presenting any additional evidence not included in the State's case, followed by the defense's evidence in the civil matter. In another district, this same order of presentation of evidence is followed in one judge's courtroom. But with other judges, the civil evidence is presented after the State's evidence, followed by the defense's case.

Judges surveyed and interviewed reported varying levels of information known about the parties' prior or other court involvement. When hearing criminal domestic violence cases, chief district court judges responding to the survey reported that among those 37 districts:

- information about criminal domestic violence cases is available in 31 districts and requested for the criminal hearing in 23;
- information about any criminal cases, regardless of whether they involve domestic violence is available in 26 districts, and requested for the criminal hearing in 22;
- information about civil domestic violence cases is available in 15 districts, and requested for the criminal hearing in 19;
- information about any juvenile cases is available in seven districts, and requested for the criminal hearing in seven (not necessarily the same districts);
- information about domestic cases is available in eight districts, and requested for the criminal hearing in nine.

When information about civil domestic violence protection orders is made known to the court, respondents to the surveys for district attorneys and defense attorneys report that, generally, prosecutors present that information with the chief result being that the court is more likely to impose a greater number of sanctions, more severe sanctions or special conditions on the defendant. During site visits, some judges reported that they incorporate into the criminal disposition order the terms of the civil protection order (by reference to the protection order) such that compliance with the terms of the protective order is a condition of probation, thereby negating any potential conflict between the civil and criminal orders.

Victims' desires and safety, prior history of domestic violence between the defendant and the victim, level of violence and severity of the injury or need for medical treatment were the factors other than prior record and offense class of the current charge(s) most cited by surveyed prosecutors and defense attorneys having the most influence on sentences. Defense attorneys also reported the existence of children (whether the victim and defendant have children between them, child support issues, whether children were present during the offense) as another factor influential on sentencing. Responding prosecutors and defense attorneys reported that generally, if victims are present at sentencing judges ask them for information about the defendant.

In addition to prosecutors and defense attorneys, domestic violence advocates are often present when criminal domestic violence cases are adjudicated. Eighty-five percent of domestic violence advocates surveyed reported routinely attending sessions of district court in which criminal domestic violence cases are heard.

Review hearings

While hearings to re-examine conditions of probation are commonly held when motions to review probation are filed by probation officers for violations of probation conditions, chief district court judges from only 4 of 37 judicial districts responding to surveys reported that review hearings to determine a defendant's compliance with court-ordered conditions without a violation are routinely held. Discussions with judges during site visits revealed

that whether review hearings are held depends on the district or even the individual judge. Though judges did not dispute the value of these hearings, oft-cited difficulties in holding review hearings included lack of personnel to schedule hearings and lack of court time and physical space to hold hearings.

Prosecution policies

Survey data from district attorney's offices suggest variance among and within offices as to when prosecutors first become involved in a domestic violence case. The district attorney's office may first encounter a victim at the defendant's first appearance or after the first appearance. In some cases, the victim witness legal assistant may contact the victim immediately following issuance of an arrest warrant.

District attorneys across the state have adopted a number of practices or policies to assist them in dealing with domestic violence cases. Specialization of certain members of the district attorney's staff is one such practice. For instance, 26 of the 35 district attorney's offices responding to the survey reported having at least one victim witness legal assistant assigned to domestic violence cases. They also reported that the responsibilities of the victim witness legal assistant typically include acting as a liaison between the prosecutor and the victim/complaining witness, referring victims to the local domestic violence program or advocate and other services outside of the court system, referring victims to the clerk of superior court to apply for a 50B order and explaining the differences between civil and criminal domestic violence proceedings, and informing victims of all court dates. In one district visited, the district attorney reported that victim witness legal assistants are also trained as investigators; hence, they interview victims after arrest warrants are issued and conduct their own follow-up investigations of the allegations. According to survey responses, in only six (17%) of the 35 responding district attorney's offices is one "dedicated" prosecutor assigned to handle all domestic violence cases.

Specific policies regarding prosecution of domestic violence cases have been adopted by most District Attorneys across the state. Most notably, "no drop" policies and a companion approach of evidence-based prosecution have gained popularity in recent years.

"No Drop"

Generally, a "no drop" prosecution policy indicates that cases will be prosecuted whether or not the victim cooperates. In surveys, district attorneys were asked whether their office has a "no drop" policy for domestic violence offenses, and were asked to further clarify whether domestic violence cases are prosecuted without the victim's participation, testimony or consent. These elements were distinguished as a means of exploring prosecutors' understanding of their offices' no-drop policies. Of the 35 offices surveyed, 26 (or 75%) reported having a no-drop policy; 25 of those offices reported across the board that domestic violence cases are sometimes or routinely prosecuted without the victim's participation, testimony or consent. Of the nine offices reporting having no such policy, five reported sometimes or routinely prosecuting cases without the victim's participation, seven reported sometimes or routinely prosecuting without the victim's testimony, and eight reported

sometimes or routinely prosecuting with the victim's consent.

During site visits, some interpretation issues regarding the policy became apparent. In some districts visited, prosecutors described their office's no-drop policy as one that absolutely prohibited them from dismissing domestic violence charges regardless of the victim's desires to prosecute. In some districts visited, prosecutors described the policy as a tool that allowed them to deflect victims' requests to dismiss cases rather than an absolute prohibition against dismissals. Other differences in understanding or application of policies became evident, including:

- standard practice allows for prosecutors to exercise discretion in adhering to the no-drop policy under particular circumstances (e.g., parent/victim and child/offender and family has sought treatment for the child);
- no-drop can mean the prosecutor refuses to "drop" or not prosecute cases under any circumstances, regardless of whether available evidence supports successful prosecution; and
- a prosecutor will prosecute all cases that have adequate evidence to proceed.

Asked to opine about practices and policies considered most effective in processing domestic violence cases, 26% of prosecutors surveyed indicated their office's no-drop policy.

Evidence-Based Prosecution

District attorneys were also surveyed regarding adoption of evidence-based prosecution, or prosecution based on non-testimonial evidence, such as photographs, medical records, and 911 recordings, which can negate the need for victim testimony.

While some prosecutors interviewed during site visits reported that recent U.S. Supreme Court decisions have somewhat inhibited prosecutorial efforts to prosecute domestic violence cases without victim testimony,[160] 22 of the 35 districts responded affirmatively reporting, generally, that they prosecute if there is sufficient evidence without victim testimony. Two respondents did note, however, that some judges in their district will not find a defendant guilty without a victim's testimony or some other statement by the victim.

Generally, prosecutors surveyed indicated that lack of sufficient evidence is a primary reason for dismissals of domestic violence cases by prosecutors. But survey responses also indicated that the victim's failure to appear contributes significantly to a prosecutor's decision to dismiss a case. In some of the districts visited, prosecutors reported issuing show cause orders or filing frivolous prosecution, obstruction of justice, or perjury charges against a handful of victims each year who swear out complaints but fail to prosecute (i.e., fail to

[160] *See* Crawford v. Washington, 541 U.S. 36 (2004) and progeny. For further discussion, see Gersten, David B. and Karan, Amy M., *"Crawford v. Washington, One Year Later: Its Practical Effects in Child Abuse and Domestic Violence Cases,"* Juvenile and Family Court Journal, Fall 2005; Smith, Jessica, "*Crawford v. Washington, Confrontation One Year Later,*" School of Government, UNC-CH, April 2005 & Supplement, April 2006.

appear for trial) or refuse to testify at trial. In two districts, the district attorney's office has worked with the local domestic violence advocacy program to develop a domestic violence education program operated by the advocacy agency specifically for these victims. Victims who successfully complete the program are not prosecuted.

Asked to opine about practices and policies considered most effective in processing domestic violence cases, 14% of prosecutors surveyed indicated their office's evidence-based prosecution policy.

Plea practices

Plea practices for domestic violence cases may be different than for other types of offenses. Eighteen of the 36 district attorney's offices responding to the district attorney survey (and 41% of defense attorneys surveyed) reported that plea practices are no different for a defendant alleged to have committed an offense involving domestic violence who has multiple charges pending arising from one or more criminal incidents relative to any other defendant. However, 16 of the district attorney's offices reported that plea practices are different; 12 of these offices indicated that domestic violence cases are considered more carefully resulting in more limited plea arrangements. Fifty-three percent of the defense attorneys surveyed also reported that plea practices were different; nearly half of these defense attorneys reported that domestic violence charges are less likely to be dismissed and that more pleas required.

During site visits, some district attorney's offices also reported having developed working relationships with the local domestic violence advocacy agency, which assist prosecutors in collecting information and evidence, including photographs of injuries, relevant to the prosecution of a domestic violence case.

Chapter 5: Training

Traditionally, judicial training regarding domestic violence has been primarily focused on providing updates on legal changes affecting domestic violence cases, increasing "sensitivity" towards victims of domestic violence primarily by explaining the dynamics of abusive relationships and the philosophy of advocacy services, and more recently though to a lesser degree, tying this information to the job function of a judge (i.e. how such information impacts judicial rulings, the crafting of orders, including those involving visitation arrangements, and referrals of both parties to community-based resources). Most communities (as described in greater detail below, "Other State's Experiences") provide some level of training for the judiciary regarding domestic violence but with varying objectives, strategies, and with very little evaluation as to the impact of the training.

The goal of impacting judicial decision-making in domestic violence cases as a stated outcome of training and the accompanying task of measuring that impact are relatively new developments concerning domestic violence training. The National Council for Juvenile and Family Court Judges (NCJFCJ) is a clear leader in this area, particularly through its establishment of their Judicial Institute and a Family Violence Department within the organization that houses an extensive resource center for court officials. The NCJFCJ domestic violence training curriculum is designed to improve decision-making in domestic violence cases and includes such process objectives as "the impact of violence on adult and child victims, including their protection and restoration requirements; the motivation, behavior, and courtroom presentation of perpetrators and identifying perpetrators' specific rehabilitative needs; and social research relevant to perpetrator conduct and interventions, and applying the law to the facts in criminal and civil cases involving domestic violence, including full faith and credit and tribal court issues, firearms…sentencing, and custody and visitation, and is highly related to the tasks and functions of a judicial officer, and the setting within which that official operates."[161] Specific learning objectives include "managing the legal implications of victim recantation," and "creating effective on-going structure for maximizing compliance with post-disposition controls."[162]

While the development of skills-based training for judicial officials is a very positive development, the impact of the training – whether the stated outcomes of the training are achieved and at what rate – remains largely unanswered. In a manuscript about judicial training and domestic violence, Julia Storberg-Walker, NC State University professor and consultant to the National Council for Juvenile and Family Court Judges, evaluates the capacity of judicial training to help judges to "make new meaning" of rules and statutes in order to change and improve their rulings.[163] This work appears to represent the first methodical approach to devising and evaluating judicial training on domestic violence.

Current Domestic Violence Judicial Training in North Carolina

[161] Court Corner, Synergy: The Newsletter of the Resource Center on Domestic Violence: Child Protection and Custody, Vol. 11, No 1, page 3

[162] *Id.*

[163] Storberg-Walker, Julia, "Beyond Social Capital," unpublished manuscript, 2007.

As part of House Bill 1354, an omnibus domestic violence bill ratified in 2004, the North Carolina General Assembly directed the Administrative Office of the Courts to study the extent to which training is currently being done; the need for additional training; the amounts and types of training that would be most appropriate; and the potential costs and sources of funding for any additional training. As part of the study, a survey was sent to over 1,000 court personnel who were asked whether additional training was needed and to describe which topics were needed, if additional training was indicated. The response rate was so low as to be difficult to generalize any of the findings (less than 16%).

Reporting the results of the study, the director of the Administrative Office of the Courts submitted a memo in August 2005 to members of the General Assembly "summarizing the extent to which court personnel are currently provided training on handling domestic violence cases and additional training needs."[164] In that memo, AOC recommended that the General Assembly fund domestic violence training for all court personnel…"to accomplish the purpose of the 2004 legislation (House Bill 1354), and that the Family Court Advisory Committee establish minimum education and training standards for district court judges and other court personnel handling civil and criminal domestic violence cases."

Like most states, North Carolina does not employ a strategic training plan for judicial education on domestic violence for district court judges, use a standardized curriculum, nor conduct impact evaluations related to those training efforts. Currently, district court judges in North Carolina receive training (i.e., information, professional development, legal updates) on domestic violence from a variety of sources, in a variety of ways and with varying learning objectives.

The School of Government at the bi-annual conferences routinely provides training on the statutory requirements and changes to law for district court judges. Agendas for this training are based primarily upon the stated interest of participants and issues brought to the faculty's attention over time. The conferences have included special topics on domestic violence, such as treatment for domestic violence defendants and how domestic violence impacts children.

Other training is designed to increase knowledge regarding the dynamics of domestic violence and increase sensitivity and empathy for the adult and/or child victims. Much of this type of training promotes community collaboration and seeks to build a system of victim safety and offender accountability. This type of training – often referred to as "DV 101" - is most commonly delivered at the local community level, or at statewide conferences or workshops on domestic violence to general audiences, often by advocates or with advocates serving as co-presenters.

Other types of training or workshops explore so-called "special topics," and are available on a more limited basis, and include such topics as typologies of batterers, conducting lethality assessments, and special populations such as battered immigrants. These types of topics have been provided by statewide advocacy groups, local domestic violence programs, the US Attorney's Offices' annual conference on domestic violence and the Conference for District

[164] August 29, 2005 memo from Judge Ralph Walker to Senate President, House Speaker, and co-chairs Appropriations and Justice and Public Safety

Attorney's domestic violence conference, among others.

Through federal Violence Against Women Act funds administered by the Governor's Crime Commission, the Administrative Office of the Court has solicited and secured for some district court judges the domestic violence training offered by the National Council for Juvenile and Family Court Judges' Judicial College described above. District court judges who have attended training have been those recommended to the AOC for this training by their respective chief district court judges. Judges who have attended this training have included judges who, at the time of the training or currently, are not presiding over domestic violence cases.[165]

In 2006, the Judicial College contracted with Julia Storberg-Walker, a North Carolina State University researcher to develop mechanisms for evaluating the impact of the training. In 2007, AOC Research and Planning contracted with Storberg-Walker to survey North Carolina judges who attended the Judicial College training. Storberg-Walker received survey responses from five of the eleven judges (45% response rate) who attended the Judicial College in September 2006, December 2006, or March 2007.[166] The survey asked respondents to report their knowledge prior to and following the workshop and to estimate (on a Likert scale) how much of an impact the training had on their judicial decision-making.

The results of the survey are inconclusive. Storberg-Walker identified small sample size and incomplete responses (i.e., not all respondents answered every question) as limitations of her study, but an equally significant limitation is the lack of learning objectives against which to measure the impact of the training (i.e., the survey did not measure actual changes in decision-making or knowledge; rather the survey asked for subjective impressions of respondents' knowledge and behavior pre- and post-training.[167]) Nonetheless, results of the survey yielded the following:

- On a scale of 1 (low) to 6 (high), judges' ratings regarding improvement in their knowledge and understanding of issues surrounding domestic violence averaged 1.6.
- Judges strongly agreed that the workshop helps judges improve access to justice through a variety of ways including helping them to identify and control battering behaviors that can impede access and "identify and address cultural barriers."

Other AOC training activities include contracting with a consultant to work in tandem with the training coordinator, based in Human Resources, to develop domestic violence training for magistrates, clerks and judges, including an online module for magistrates. Part of this curriculum may involve using judges as faculty in training sessions for other court staff (e.g., clerks and magistrates), however, some judges, have expressed concern that their engagement, especially at the local level, in forums addressing or providing training on

[165] According to some judges interviewed by project staff during site visits.

[166] Ms. Storberg-Walker transmitted her survey results by email to AOC staff on 9/07/2007

[167] The survey asked respondents to determine retrospectively what they knew prior to the introduction of new knowledge, rate that prior knowledge, and compare that prior knowledge to their estimation of their current knowledge. Such reflections are frequently unreliable. The highly subjective nature of evaluating whether the training changes their own and other judges' judicial behaviors surmises that judges would be better equipped to take certain actions with their new knowledge, but does not ask specifically whether the respondents have taken any such actions since the training (and theoretically as a result of the training).

domestic violence. (e.g., serving as trainers, speakers or members of domestic violence task forces) may cast them in an advocacy role, such that they are potentially perceived as non-neutral, inherently biased against defendants, or "pro" victim. A number of articles have been written over the years regarding whether or not this involvement is appropriate.[168]

Other States' Experiences and Training Plans

Other states are in a similar position as North Carolina in terms of how they build their training agendas for judges, the content of those training initiatives, and how they are able to evaluate the impact of the training.

In order to compare North Carolina's experiences with judicial training with other states' experiences, all states that mandate domestic violence training for judges[169] were contacted in the Spring of 2007 for a telephone interview (N=18). The states that were interviewed included Alaska, California, Connecticut, Florida, Kentucky, Massachusetts, Minnesota, New Jersey, and Oklahoma. States were asked about their mandate, whether they used a standard curriculum or learning objectives, what the training setting was, and how they evaluated the training.

Two states reported that their states' court administration agency automatically received all of their VAWA STOP grant allocation (5%), through a sole source contract, to use for training. This reportedly allowed them to be strategic with the resources, and provide resources for staff at the state court administration agency to develop and implement training initiatives.
Four of the states either routinely send judges to the Judicial College at NCJFCJ or have utilized that option in the past on a varying basis. Two of the states reported some dissatisfaction with that training. One state felt it was not tailored to their state statutes and was not well delivered. Another state reported that their judges felt "propagandized" and that the apparent intent of the training to "tell them how to rule" was inappropriate and therefore resisted.

Most states reported that they did not have the human or financial resources to conduct meaningful evaluations on the impact of their judicial training, though all agreed it was a critical component of the efficient use of resources. Some commented that developing these types of tools and distributing them nationally would be a valuable initiative since many of

---

[168] In what may serve as a model practice, the California Administrative Office of the Courts has developed a proposed guideline and recommended practice for judges in this regard, that narrows and articulates the role and rationale for participation in these activities. The guideline states, in part:

> "As ethically appropriate, the court should participate in domestic violence coordinating councils or court-convened committees that provide an opportunity for justice system partners to comment on court practice and procedure relating to domestic violence cases and a mechanism for improving these practices and procedures...[These councils should be] inclusive in that representatives from all interests and sides of the litigation are invited to participate, do not involve discussion of pending cases, and do not involve judicial officers in fundraising... [or] in urging the adoption of legislative measures unrelated to court practice and procedure."

[169] As identified in a list of states mandating domestic violence training for judges provided on February 14, 2007 by the Family Violence Department at the National Council for Juvenile and Family Court Judges.

the objectives and outcomes would be the same. Most states reported that they relied heavily on satisfaction surveys, pre- and post-tests of knowledge, and informal feedback from participants.

The state of California reported the most strategic and organized approach to judicial training. California was also one of the states that reported receiving VAWA STOP grant funds directly to support their training plan. The California approach is to incorporate domestic violence into all current offerings of judicial training, for example, training on family law, criminal law, and juvenile law. All courses are curriculum-based with plans, course outlines, and learning objectives.

The California approach also presents some unique evaluation/impact opportunities to determine the types of cases that are best informed by domestic violence knowledge, from the judge's perspective, as demonstrated in the following sample evaluation question for judicial respondents:

Please indicate the types of cases in which you are most likely to apply what you learned at the training. Please check all that apply and order their frequency.

- *Civil domestic violence protective orders*
- *Criminal Cases that are characterized as domestic violence cases by charging offense (i.e. assault on a female, interfering with emergency response, communicating threats, criminal restraint, aggravated assault)*
- *Criminal Cases that involve domestic violence but are not necessarily characterized as such before the hearing (breaking and entering, larceny)*
- *Domestic violence cases where the parties are of the same gender and are intimate partners*
- *DSS cases*
- *Custody actions (non-50B cases)*
- *Violation Hearings*
- *Review Hearings*

Other findings of note from phone interviews with other states' court administration agencies include the following:

- Connecticut has used written material as the sole method for providing legal updates, in order to free up all conference, workshop or other face to face time with judges for content and process issues.
- Florida's judicial training initiatives are specifically designed to impact rulings as a stated outcome.
- Connecticut and Florida use judges as their primary faculty for judicial training, and in both states training agendas are built by judges; Connecticut has a curriculum subcommittee of their education committee composed of judges.
- New Jersey has an office of Judicial Education within their AOC. California formerly housed domestic violence training initiatives within the Education Division until they created the Center for Families, Children & the Courts (VAWEP Project), Judicial Council of California within the AOC. New Jersey's Judicial Education

division of the AOC bases all training on adult learning principles and evaluates training by pre and post-test and also has a Curriculum Committee.

Other states' efforts to "increase sensitivity"

Given the context within which theories of battering, especially feminist theories of battering, were developed learning objectives that focused on "increased sensitivity and increased awareness" regarding the effects of domestic violence on women and children made sense. Unfortunately, there is no scientific evidence that increasing sensitivity has an impact on judicial decision-making, nor is there adequate evidence that this type of training is effective in increasing sensitivity, an admittedly difficult characteristic to measure in anyone, let alone judicial officials whose training ground encourages and often demands impartiality. Nevertheless, this remains a prevalent objective in much of the training that occurs on domestic violence, particularly on the local level. As reported below, it is a prominent theme among many community-based domestic violence advocates as something they desire and expect from their local judicial officials.

In calls to other states, project staff solicited feedback on the effectiveness of training that is designed to raise awareness and sensitivity among judges to change opinion and/or judicial decision-making. Across the board, the feedback indicated that judges were much more open to training that was directly tied to their duties and often felt "put off" by what they deemed to be "re-education efforts," "indoctrination," or training that otherwise made unflattering assumptions about their private personal beliefs. One interviewee suggested that an expert witness testifying in court about domestic violence would go farther than exposing classrooms full of judges to information about battering theory.

Survey Results Regarding Training

Judges Survey

As part of the current project, chief district court judges were surveyed regarding how civil and criminal domestic violence cases are assigned to judges in their districts. Chief district court judges in 37 judicial districts reported the following:

- In 30 districts, all judges hear civil domestic violence cases on a rotating basis;
- In 29 districts, all judges hear criminal domestic violence cases on a rotating basis;
- In 4 districts, civil domestic violence cases are assigned only to those judges who have an interest or training in domestic violence cases;

In one district visited for this project, civil and criminal domestic violence cases are heard only by two retired judges whom the chief district court judge did not think were eligible to attend the National Council for Juvenile and Family Court Judges Judicial College domestic violence training. (In that same district, other judges who do not and will not hear domestic violence cases attended this training.)

Domestic Violence Advocate Survey

Domestic violence advocates (court-based advocates employed by community-based victim services agencies) surveyed were asked opinion-oriented questions regarding the training North Carolina district court judges receive about laws relevant to domestic violence and the dynamics of domestic violence. The questions were intended to query respondents' subjective determinations based on their observations and interactions with judges in domestic violence cases about the substantive adequacy and impact of training (as opposed to the specific quality and quantity of judicial training - information to which advocates generally would not have access; in fact only one of 53 agencies represented in the survey sample noted, "One 2 hour session at a conference is not enough for anyone to understand the dynamics."). Though very limited in scope and difficult to interpret, survey responses yielded informative results, particularly as to the expectations of some advocates vis-à-vis judicial training on domestic violence. The questions and responses are as follows.

1. Do you think judges receive enough domestic violence training about the law?

Twenty-four (or 45%) of respondents responded affirmatively. Several of these respondents clarified which judges they were referencing with comments such as "the judge in our dv court" and "judges in our district." One comment was illustrative of the lack of shared goals or outcomes of judicial training. Although the respondent said she thought judges received enough training on the law, she commented "some judges understand the issues of domestic violence and treat the clients with care, while other judges do not seem as concerned." Fourteen respondents (or 27%) responded negatively, that they did not think judges receive enough domestic violence training about the law. Fifteen did not provide a "yes" or "no" response but half of those respondents (N=7) provided a comment.

About a quarter of respondents (28%) thought judges did not receive enough training on the law and about a half (45%) of respondents thought judges did not receive enough training about the dynamics of domestic violence.

2. Do you think judges receive enough training about the dynamics of domestic violence?
Only eight respondents (or 15%) responded affirmatively. Twenty-eight respondents (or 54%) said they did not think judges receive enough training about the dynamics of domestic violence. Seventeen respondents did not answer the question, but eleven of those respondents provided comments (one respondent said they were not aware of any domestic violence training for judges).
Many respondents provided comments which, taken collectively, suggest some themes. Some respondents, for example, tied the perceived lack of training directly to the application of the law providing comments such as:

> *"Judges don't even order abuser treatment in criminal cases even though it is a law if the defendant is placed on probation...Judges feel they are above the law."*

> *"There are current laws that aren't being utilized in our county due to misunderstanding/lack of knowledge."*

Some focused specifically on the issue of sensitivity, sometimes tied to understanding dynamics and sometimes tied to the application of the law.

> *"Some of our judges routinely make comments/remarks to victims that clearly illustrate their lack of knowledge/understanding of the dynamics of domestic violence."*

> *"There are a few that seem to bring personal beliefs about family into the courtroom. Some judges will grant protective orders but their speeches generally after hearing the evidence are damaging to the victim and leads to revictimization."*

> *"Judges still don't get... that victims are intimidated and scared when on the stand in front of the batterer and affects the way that the victims testify. Some judges don't 'have time' for victims' tears."*

> *"Our experience is that our Judges are not sensitive to the dynamics involved in these cases and the handling of these cases reflects this lack of sensitivity."*

> *"Judges like to stick to the letter of the law, and fail to take into account that behaviors that m ay seem normal to most people take on a different meaning in domestic violence situations."*

Several comments reflected the issue of the proper role of the judicial official, and being or being perceived as an advocate:

> *"We have also been told that they don't want to get a lot of training on this matter because they don't want to seem 'biased.'"*

> *"Our local task force to prevent domestic violence has invited judges who never attend our meetings."*

Finally, one comment illustrated the complexity of these cases:

> *"The way some Judges let people set aside protective orders without any explanation of why the order should be dropped. Their (sic) are times when a victim comes in contact with the defendant, they are already scared and intiminated (sic) but by the way a person looks at them. Sometimes this causes a person to set an order aside which really shouldn't."*

3. *"What, if any, differences are there between judges that receive domestic violence training and those that do not?"*

Forty-three (or 83%) of respondents answered this question. Of those, thirty-four (or 79%) said training made a positive difference. Two of those respondents noted that judges who were trained knew the laws better than those not trained. All other respondents noted issues

related to sensitivity and understanding regarding dynamics and judges' ability to transfer this training to judicial demeanor and decision-making.

Several respondents explained why it was difficult to provide a response to this survey question. Three respondents said they did not know which judges received training and which did not; two respondents said that they did not know whether training made a difference; and two respondents said there was no difference between judges that receive training and judges that do not. One respondent said all of the judges in her district were trained, and therefore, was unable to distinguish a difference.

The following responses typified much of the feedback to this question:

> *"Our judges who are more aware of the dynamics of DV are better at preventing abusers from manipulating the court."*
>
> *"(Judges) are often more aware of additional services available to clients and also apply more provisions of the law related to domestic violence."*
>
> *"I believe that Judges receive adequate training will do a better job at listening and understanding DV. Most judges do not realize that mental and emotional abuse are part of DV and are unaware that this type of abuse is more devastating than physical abuse."*
>
> *"You will see stiffer punishment and more treatment programs ordered by judges who are training for DV cases."*
>
> *"It is very clear...whether (the judge) has received DV training. For example, asking if the plaintiff called police in a condescending way."*

Chapter 6: Recommendations

Eight areas emerged as those most critical for improving North Carolina's district court response to domestic violence cases. They are:

1. Specialized Domestic Violence Courts
2. Family Court
3. Pro Se Representation
4. Data and Information
5. Community Collaboration
6. Accessibility
7. Training
8. AOC Responsibility

1. Specialized domestic violence courts

The last two decades has seen the emergence and growth of specialized courts designed to focus court attention and resources on civil and criminal domestic violence matters with the goal of improving court response to domestic violence. In North Carolina, the term "domestic violence court" is not standardized across the state and is used informally to reference both specialized courts for civil and/or criminal domestic violence cases (e.g., a courtroom operating daily and handling only domestic violence cases) and dedicated domestic violence dockets (e.g., criminal cases involving domestic violence scheduled for the same day every week in district court). North Carolina judicial districts have established these specialized courts or dockets for various reasons. Significant volume of domestic violence cases and desire to demonstrate a focused and serious response to domestic violence are chief among them.

Absent a specialized court or docket for domestic violence cases, requests for civil domestic violence protection orders are heard in district court on either a general or civil docket depending on the availability of a judge to hear the matter and the court schedule; criminal misdemeanor offenses involving domestic violence are heard on a general criminal docket. According to data generated by AOC's Research and Planning section, the number of domestic violence protective orders granted appears to increase steadily each year. The table below demonstrates this trend over the last five fiscal years:

2005-2006	11,932
2004-2005	11,864
2003-2004	11,738
2002-2003	11,626
2001-2002	11,065

AOC data also shows that 4,854 criminal cases were flagged for domestic violence in the 2005-2006 fiscal year. (These cases are not exclusive of all criminal misdemeanor offenses involving domestic violence as the statutory requirement, enacted in 2004, that judges make the "domestic violence finding" on the judgment form applies only to cases in which a defendant is found guilty of an offense involving assault, or communicating a threat, and the defendant and victim had a personal relationship. This requirement was enacted in 2004.) In at least 28 North Carolina judicial districts where civil domestic violence protective order cases are heard on their own docket and 14 districts where criminal domestic violence cases are heard on their own docket, volume has supported the establishment of separate dockets for these cases.

Given the nature of domestic violence cases, the personal relationships of the parties involved, and the level of danger often associated with domestic violence, advocates of specialized domestic violence courts or dockets contend that when these cases are removed from general civil or criminal dockets, the court is better able to 1) address complicated and often intimate issues between parties, and 2) evaluate lethality. Advocates also argue that specialized courts or dockets communicate the message to the general public that the judicial system considers these cases serious matters and deals with them accordingly. Specialized courts or dockets also engender specialization of court professionals in domestic violence law and issues, including judges, prosecutors, and public defenders.

Some concerns about specialized domestic violence courts have been raised with their proliferation. One concern is that specialized domestic violence courts may be inherently biased against defendants. These concerns are focused generally on the ability of judges to remain fair and impartial when hearing exclusively domestic violence cases given the particular type of victimization associated with domestic violence. Most judges responding to this issue during site visits, however, while recognizing the bias issue, rationalize these concerns. One judge argued that domestic violence courts are no more inherently biased against defendants than other specialized courts, such as traffic court or drug treatment court. Another judge acknowledged that specialized domestic violence courts might be biased against defendants, but that the need to account for heightened lethality in domestic violence cases outweighs any perceived or real bias. Another judge who has conducted an informal analysis of rulings on requests for ex parte orders reported that his review of these rulings over a period of time revealed a significant number of denied ex parte requests suggesting that judges in his district were able to exercise impartial judgment notwithstanding their district's specialized domestic violence court.

Combining civil and criminal domestic violence cases

The issue of whether civil and criminal domestic violence matters should be combined for trial has been of continuing interest. In 2003, the Family Court Advisory Committee was asked to examine (and recommend to the judicial districts) whether civil and criminal domestic violence cases involving the same parties should be combined for trial. Unable to reach a consensus on whether civil and criminal domestic violence cases should be combined for trial, the Family Court Advisory Committee did identify positive and negative aspects of this approach as reported by the districts or considered by the committee.[170] Positive aspects

identified included:

- Reduction in the number of times parties must come to the courthouse by having parties participate in only one trial to resolve both criminal and civil matters, with a consequent decrease in the number of parties who fail to appear for trial resulting in dismissal of requests for protective orders or criminal charges;
- Reduction in confusion and frustration for parties who do not understand differences between civil and criminal processes or why civil and criminal matters are separate matters;
- Reduction in the number of conflicting civil and criminal orders directed toward the same party;
- Reduction in the number of times the criminal matters are continued before being resolved;
- Promotion of the basic Family Court "one-judge one family" concept;
- Increase in the amount of information about the parties known to the judge determining the remedies;
- Increase in the number of remedies available to address the needs of the parties (i.e., civil and criminal remedies); and
- Judges being less likely to feel a strong need to convict in a weak criminal case in order to ensure that a victim has some protection.

Some negative considerations identified by the Committee included:

- Difficulty in scheduling both civil and criminal matters on the same court date;
- Having to continue the civil matter at least once to be heard on the same day as the criminal matter;
- Appearance of judges lacking impartiality or not applying appropriate legal standards when hearing civil and criminal cases at the same time; and
- Increase in the number of criminal cases being resolved by the entry of a prayer for judgment considered (PJC) and civil cases by consent orders without appropriate findings of fact.

---

[170] Memorandum to Chief District Court judges from the Family Court Advisory Committee, June 9, 2003. In its examination of the issue, the Family Court Advisory Committee requested that Institute of Government staff survey chief district court judges regarding their districts' practices for hearing criminal and civil domestic violence cases. Specifically, chief judges were asked, "Do you schedule both civil (Chapter 50B petitions) and criminal domestic violence cases to be heard on the same day, in the same courtroom, by the same judge?" Ten chief judges responded affirmatively, including two family court pilot districts. Of those ten districts, three reported hearing criminal domestic violence cases in the morning and civil cases in the afternoon in the same courtroom with the same judge; two of those districts reported trying to schedule civil and criminal cases involving the same parties on the same court day. All three of these districts reported that civil and criminal cases were not tried at the same time even if cases involved the same parties and were scheduled for the same day. Seven districts reported intentionally trying to schedule both criminal and civil trials for those parties with both civil and criminal cases on the same court day at the same time before the same judge. Project data show that two of these districts have changed practices and no longer fit the IOG survey criteria, and that three additional districts now fit the IOG survey criteria, including one new district created out of a legislative split of one of the ten districts in the IOG survey reporting hearing civil and criminal cases on the same day in the same courtroom before the same judge.

During project site visits, judges, attorneys and other domestic violence stakeholders echoed many of the positive aspects identified by the Family Court Advisory Committee and expanded on the benefits of combining cases:

- Rights of defendants and plaintiffs are preserved efficiently; trying civil and criminal cases together precludes having to try the same case twice and "cuts down on parties losing in one arena and going 'shopping' in another arena."
- Ease in applying criminal and civil burdens of proof; if the higher standard in the criminal case is met, the lower standard in the civil case is more easily met.
- Reduction in frustration among court staff that assist with domestic violence cases because cases are less likely to be dismissed.

Consideration of the motivations for establishing specialized domestic violence courts or dockets, advantages, disadvantages, and criticisms of such courts or dockets leads to the question whether all North Carolina's judicial districts establish a specialized court or docket for domestic violence cases, and if so, what model should be adopted. Traditionally, North Carolina has respected the diversity of its judicial districts in terms of population, economy, culture, and court resources and allowed the individual districts independence and latitude in implementing practices by which statutory directives may be fulfilled. Consequently, with regard to domestic violence cases, various models of specialized domestic violence courts or dockets have been established in North Carolina's judicial districts (see Chapter 4, Practices and Policies, page 47). Because outcome evaluation data is currently unavailable, these specialized courts or dockets have developed based primarily on local consensus about goals a district aims to achieve regarding domestic violence cases or subjective impressions about what will be effective or efficient. (During the course of this project, court staff regularly expressed interest in receiving information and technical support about how to judge the effectiveness of these court organizations.)

Based on project data and observations of practices in North Carolina districts with specialized domestic violence courts or dockets (as described in Chapters 3 and 4) the following recommendations are made to the Administrative Office of the Courts and the judicial districts.

Recommendations

1. AOC should assist with designing and supporting district and statewide outcome evaluations to determine if specialized courts do result in increased victim safety and offender accountability.

2. AOC should disseminate to districts planning to create domestic violence courts the "North Carolina Blueprint" for creating domestic violence courts prepared by the National Center for State Courts in September 2007 as part of the District 12 (Cumberland County) Integrated Domestic Violence Court Project as a planning and implementation guide. (See Appendix T.)

3. To ensure the uniform and consistent understanding of goals and processes of a specialized domestic violence court districts with specialized domestic violence courts should have written protocols that include, at a minimum:

- Types of cases to be assigned to such courts (e.g., civil protection orders; contempt proceedings for violations of civil protection orders; any criminal misdemeanor related to a domestic violence incident; only misdemeanor assaults, communicating threats, violations of civil protective orders; probation violations for domestic violence cases; review of probation conditions for domestic violence cases, etc.);
- Training requirements (pre-service and ongoing) for prosecutors, defense attorneys, judges, and clerks in domestic violence;
- Courtroom and courthouse security measures;
- Policies on limiting continuances; and
- Policies regarding how the court interfaces with community resources for plaintiffs and defendants.

4. Court staff in specialized domestic violence courts should be authorized to access information regarding parties in both civil (VCAP) and criminal (ACIS) databases.

5. Districts with specialized domestic violence courts should convene a regular domestic violence court working group consisting of judges, magistrates, trial court administrators, Family Court Administrators, clerks, prosecutors, defense attorneys, law enforcement, victim service providers, abuser treatment programs, probation, child protective services, etc. to identify issues affecting the court's response to domestic violence cases and problem-solve barriers to effective and efficient processing of domestic violence cases. (See also Community Collaboration discussion in this chapter.)

2. Family Court

The Family Court model has gained significant popularity in North Carolina, among members of the legislature, the judiciary and others. "One family, one judge" and other Family Court principles have broad appeal as effective and efficient practices for addressing the needs of families with multiple and different matters before the court.
Like many persons involved in the court system, parties in domestic violence cases frequently have other matters before the court, including related criminal charges, child custody, and child abuse, neglect, and dependency cases. The risk of inconsistent court orders and appearing before multiple judges in a series of court appearances has particular implications for victim safety and offender accountability. The high percentage of overlap of child abuse and domestic violence within the same families[171] belies the fact that civil and criminal actions often arise from the same incident, and suggests that these matters should be considered concurrently within the context of safety and other needs of all family members. Hence, the Family Court model has the potential to bring a number of benefits to the handling of domestic violence cases.

[171]Schechter, Susan, "Early childhood, domestic violence, and poverty," Helping Young Children and Their Families, January 2004, pg 2.

In fact, as originally conceived by the 1996 North Carolina Futures Commission[172], civil domestic violence protective orders were to be included in the types of cases on the Family Court docket. However, as discussed in Chapter 4, Policies and Practices (see page 48), *only three* of the eleven Family Court districts include civil domestic violence protective orders on their Family Court dockets. (Only one of these three also includes criminal domestic violence cases as part of the Family Court docket; three other Family Court districts "combine" civil and criminal domestic violence cases and hear them on the same docket, but not as part of the Family Court docket.) Thus, *almost three-quarters of Family Court districts do not include civil domestic violence protective order cases on the Family Court docket.*

The AOC's 2006 report on Family Courts, "North Carolina's United Family Courts - Best Practices and Guidelines,"[173] references the Futures Commission report and states:

> A major goal of Family Court is to coordinate all the case management of court events and service agency efforts for a single family in distress, in order to better serve that family and provide more consistent, efficient use of trial court time. Thus, in a Unified Family Court any issue relating to a family - juvenile delinquency charges, neglect and abuse charges, termination of parental rights and adoptions, *domestic violence* (italics added), child custody and visitation rights, divorce and related financial issues like child support, alimony, or equitable distribution of property, and involuntary commitments - will be assigned to one case management team of judges and court staff.[174]

A 2006 evaluation of Family Court pilots for the NC Administrative Office of the Courts,[175] designed to determine the extent to which Family Courts adopted and adhered to Model Rules for operation of a Family Court[176] also puts forth "domestic violence and civil restraining orders"[177] as among the 15 types of cases that should be heard within the Family Court. The 2006 AOC Family Court report also includes domestic violence criminal cases as among those cases that would be considered under the "One Judge/One Family" best practice.[178] Clearly, the ten best Family Court practices espoused by the AOC 2006 Family Court report apply to effective case handling of domestic violence.

Support for careful and consistent expansion of Family Courts in North Carolina to include domestic violence cases has much widespread support. Much of the lobbying for expanding these models originates in domestic violence initiatives or legislation, including the 2003 omnibus bill on domestic violence, the 2002 Child Well-Being and Domestic Violence Task Force, and the 2004 report on domestic violence by the NC Center for Public Policy

---

[172] Commission for the Future of Justice and the Courts in North Carolina, "Without Favor, Denial or Delay: A Court System for the 21st Century," December 1996.
[173] N.C. Administrative Office of the Courts, Court Programs and Management Services Division, October 2006.
[174] Ibid, pg 4.
[175] Kirk, Phil, and Griffith, Diane, "Evaluation of the North Carolina Family Court Pilots," Report to the North Carolina Administrative Office of the Courts, Sept 2006.
[176] Ibid, pg iii.
[177] Ibid, pg 2.
[178] Ibid at n. 171, pg 7.

Research. Furthermore, efforts of other state agencies[179] highlight the importance of interdisciplinary practice in domestic violence and child abuse cases[180] and make this an opportune time for the courts to integrate these cases into the work of Family Courts.

Recommendations

1. AOC should encourage Family Court districts to develop local rules on the handling of civil and criminal domestic violence cases.

2. AOC should survey Family Court districts in order to determine why the majority of districts do not include domestic violence cases.

3. Pre-implementation efforts, as developed by the Family Court Advisory Committee, should include a review of examples and models for handling domestic violence cases within a Family Court.

4. Any recommendations to combine civil and criminal domestic violence cases should not be made until further evaluation occurs both to determine the qualitative and quantitative outcomes of this practice (by random sampling of data from certain districts) and to develop internal expertise within AOC to provide technical assistance to districts considering adopting this practice. (For additional discussion see also Specialized Courts discussion within this chapter)

5. AOC should determine, through the convening of family court administrators and chief district court judges, the feasibility of Family Court Administrators or other court staff assuming responsibilities related to expanding Family Court to include civil domestic violence cases. Research conducted in other states may be helpful in estimating the amount of staff effort required for these cases.[181]

3. Pro se representation

Theoretically, pro se representation allows any victim of domestic violence (regardless of whether the circumstances amount to a criminal offense) to access relief from the courts without having to retain the services of an attorney. But in actuality, pro se plaintiffs and even defendants without legal representation are particularly challenged as they navigate the

[179] For instance, North Carolina's child protection system has focused a significant amount of resources over the past four years on the development of policy and staff training on domestic violence and its intersection with child abuse and impact on children.

[180] Freedman, Karen and Kramer, Betsy, "New York Raises the Bar for Interdisciplinary Practice in Family Violence Cases," National Center for Youth Law, Oct-Dec 2004.

[181] Administrative Office of the Courts (NJ). Family Division Case Weighting/Staffing Ratio Study – Final Report. Trenton, NJ: Administrative Office of the Courts, 1996; Judicial Council of California, Administrative Office of the Courts. Unified Courts for Families Deskbook: A Guide for California Courts on Unifying and Coordinating Family and Juvenile Law Matters. San Francisco, CA: Judicial Council of California, Administrative Office of the Courts, 2004. .

court system. The processes are complex, and access to free legal representation is severely limited.

Federal law recognizes that economic dependence often characterizes relationships involving domestic violence. For example, the Violence Against Women Act prohibits the charging of filing fees for protective orders, and federal legal services funds are earmarked for victims of domestic violence. However, legal services funding does not begin to meet the demand. In North Carolina, 25 full time attorneys handle domestic violence matters in 24 offices across the state, allowing Legal Aid attorneys to represent only a fraction of parties in all civil domestic violence cases. The volume of cases eligible for representation, coupled with the geographical challenges of covering large service areas, present often-insurmountable difficulties. For example, in District 1, one Legal Aid attorney is designated to cover six counties; AOC data shows that 379 domestic violence protective orders were filed in these six counties in the 2005-2006 fiscal year. This same attorney handles domestic violence cases in two other counties as well.

Filing Paperwork

The challenges faced by pro se plaintiffs in actions for civil domestic violence protective orders are apparent from the beginning of the process. Offices of Clerks of Superior Court where civil domestic violence protective orders are filed during normal court hours can be difficult to find in courthouses, especially when clerks performing different functions are scattered in offices throughout the courthouse and few or no signs direct complainants to the appropriate office. Complainants seeking emergency relief from magistrates in districts where magistrates are authorized to issue ex parte orders find themselves in jails more oriented toward dealing with offenders than victims (see discussion on Accessibility within this chapter, page 96). After locating the appropriate place to file for domestic violence protective orders, plaintiffs are then faced with having to complete five or six forms, some required to be completed in triplicate.

As public policy has advanced in the area of domestic violence, so too has the complexity of the forms required to be completed as part of the process for filing for protective orders. For example, the main form, the Complaint and Motion for Domestic Violence Protective Order, is a three-page form containing 28 questions, many written to reflect statutory language from Chapter 50B that may not be easily understood by a person without legal training or experience in the judicial system. Clerks are precluded from offering any help that may be construed as assistance in completing forms, increasing the likelihood for some complainants that their requests for relief will be denied for inadequacy of information or lack of specificity.

Court

Based on court observations during site visits of contested domestic violence protective order hearings involving pro se parties, generally, the amount of time devoted to one case was significantly greater than cases in which at least one party was represented by legal counsel. Plaintiffs and defendants observed during site visits giving testimony provided less clear and direct accounts of what had happened than parties whose testimony was elicited through

questioning by attorneys. Parties often decline to cross-examine opposing parties, appear not to understand the purpose of cross-examination, or parties do cross-examine each other perpetuating the issues of power and control characteristic of relationships in which there is domestic violence. Sometimes the presiding judge acted as an intermediary, explained the purpose of cross-examination to parties, and in some cases, guided the parties in their questioning. As often, however, the judge maintained a neutral position and said little during direct or cross-examination. The following exchange between a plaintiff and defendant illustrates a typical exchange observed during court observations:

Judge to Defendant: Mr. Smith, you have a constitutional right to cross-examine the witness. You'll have your turn to tell your side of the story but for now, are there any questions you have for the witness?

Defendant to Plaintiff: Why are you doing this to me?

Judge to Defendant: Sir, that's not a question for cross-examination. Is there anything you want to ask the witness to clarify her testimony?

Defendant to Plaintiff: Isn't it true you still love me?

A party who is unrepresented appearing against a party who has legal representation may not understand objections based on rules of evidence (relevance, hearsay, etc.). Some judges offered in surveys and during site visits that judges do not generally ask questions except to clarify testimony, unless parties are not represented by legal counsel. One judge's comment in a survey response illustrates the dilemma faced by judges who see mostly unrepresented parties: "Judges are NOT supposed to be advocates, we are supposed to be impartial. The present state of domestic violence laws requires the judge to be an advocate, especially in civil court…"
The role of interpreter services for non-English speaking pro se plaintiffs and defendants in both civil and criminal domestic violence proceedings adds another dimension to the issue. Like clerks, interpreters do not provide legal assistance, although they are often called upon by parties to do so. During one court observation, defendants (in traffic cases) were routinely asked by the judge, just prior to imposing sentence, whether they had "anything to add." A number of defendants responded by asking what the question asked by the judge meant.

Pro se representation can compromise the court system's ability to hold domestic violence offenders accountable. During site visits, pro se defendants in criminal domestic violence cases were observed making plea deals directly with prosecutors who do not complete plea transcripts, what appeared to be standard practice in district court. Judges were observed asking few if any questions as to a defendant's understanding about the pleas they were entering. Generally, judges asked defendants one or two questions about their intentions to hire an attorney or have the state appoint one for them, and when defendants waived court appointed counsel, defendants were told to "sign a waiver." No defendants observed ever read the waiver nor was court staff ever observed reading the waiver to defendants, including non-English speaking defendants. It was also not clear whether or how the court would determine how a native speaking or non-English speaking defendant possessed or did not

possess basic literacy skills.

Most judges announced sentences in the language of structured sentencing (e.g., "Class x misdemeanor, Level x, x months supervised probation, x days suspended," etc.) increasing the likelihood that unrepresented defendants did not understand the sentence or conditions imposed. As noted in other sections of this report, a critical component to accountability is assuring that defendants (and plaintiffs) understand the conditions that are being imposed.

Several districts in North Carolina have established programs for pro se complainants seeking civil domestic violence protective orders, designed to facilitate pro se litigation. Examples include specially designated clerks in Cumberland (District 12) and Forsyth (District 21) counties and self-serve centers in Mecklenburg (District 26)[182] described in Chapter 4, Policies and Practices (see page 52).

Recommendations

1. AOC should explore lawyer-free options for guiding pro se parties through civil domestic violence proceedings, including standardized information forms (e.g., FAQ brochures explaining differences between civil and criminal relief, process for obtaining civil or criminal relief, location of offices where appropriate forms may be obtained, court staff located, court hearings and procedures, etc.), and support individual district efforts to establish programs to assist pro se complainants (e.g., specialized assistant or deputy clerks to handle domestic violence matters exclusively, self serve centers, clinics for pro se litigants).

2. AOC should advocate for additional funds to support Legal Aid and other legal assistance entities that provide representation for civil domestic violence plaintiffs and defendants, and encourage districts to develop scheduling protocols or policies for cases in which parties are represented by legal assistance agencies such that those services are maximized, including policies on continuances.

AOC should also consider ways in which districts can sponsor or host separate clinics given by legal service agencies for plaintiffs and defendants to explain the court process.

3. Judges should communicate to pro se defendants terms and conditions of orders in civil and criminal cases clearly and plainly and ensure that defendants understand the effects and consequences of their rulings. AOC should encourage clear communication of judgments through training of judicial officers.

4. AOC should examine the impact of pro se representation on recidivism of domestic violence offenders, including re-arrest and probation violations.

---

[182] According to Todd Nuccio, Trial Court Administrator for the 26th Judicial District, the Mecklenburg Self Serve Center has not increased the number of pro se litigants, but instead has provided a service to 60% of all civil complainants who proceed pro se. (Comments delivered at the Summit on Civil Access to Justice Symposium sponsored by the Equal Access to Justice Symposium (chaired by NC Supreme Court Chief Justice Sarah Parker) and the NC Bar Association, Cary, North Carolina, October 12, 2007.)

5. AOC should examine ways in which to streamline or simplify application forms for 50B orders.

4. Data and information issues

The Administrative Office of the Courts maintains two databases that contain data on civil and criminal cases filed and disposed in North Carolina courts. Both the Automated Criminal Information System (ACIS) and the Civil Case Processing System (VCAP) collect basic information about court cases intended to assist with case-management functions (e.g., tracking and volume of domestic violence cases filed and disposed per year).

VCAP provides data about permanent domestic violence protective orders issued with and without ex parte orders per year, one-year protective orders granted in whole or in part, denied or dismissed per year, ex parte orders issued when a one-year domestic violence protective order was issued per year, and dates when such orders were issued.

ACIS provides data regarding charge and conviction on a case-by-case basis, including whether a case includes a "flag" for domestic violence (i.e., assault, communicating threats, or violation of Chapter 50B order in which the parties have a personal relationship as defined by Chapter 50B).

Court staff and community agencies identified the greatest data need as data that could be utilized for purposes of program and policy planning, and evaluation. Examples of data that could provide a snap shot of what is occurring and inform a variety of policies include:

- Domestic violence case volume by type, including cases heard in designated domestic violence courts and in general courts;
- Percentages of victims having contact with advocates and types of referrals received;
- Domestic violence arrests by type;
- Arrest rates for offenders who flee the scene of a domestic violence incident;
- Percentage of arrests resulting in prosecutions and relationship between top charge at arrest and top charge prosecuted;
- Dismissal rates;
- Recidivism rates;
- Compliance with court-ordered mandates;
- Percentage of temporary civil protection orders results in final orders;
- Percentage of protection order cases in which respondent is served by time of first appearance for hearing;[183] and
- Outcomes of domestic violence protective order ex parte applications where judges routinely do not interview plaintiffs vs. those applications where they do.

Two primary impediments prevent districts from obtaining information they desire. First, ACIS and VCAP data do not provide certain necessary information. For example, VCAP

[183] Sack, Emily, "Creating a Domestic Violence Court: Guidelines and Best Practices, page 17.

collects data regarding the number of ex parte orders issued with subsequent permanent protective orders, but not the number of ex parte orders issued without subsequent permanent protective orders. This limits the district's ability to track the course of the cases. ACIS can report cases in which judges make a domestic violence finding defined by statute, however, this data does not necessarily include all cases involving domestic violence (e.g., damage to property, interference with an emergency call, trespass, violation of a civil protective order, etc). Also, no data is provided about court-imposed conditions or types of relief granted, thereby limiting the scope of analysis.

In order to maximize the utility of information currently collected and reported to the public through the agency's public website about domestic violence cases, community stakeholders expressed a desire that AOC improve the "user-friendliness" of the data. To the extent that current AOC data can provide information or insight regarding the processing of domestic violence cases through data reports posted to the AOC website, lay persons report difficulty in understanding the information provided in the format and language currently used.

Court staff also reported that they lack staff and resources necessary to utilize currently available data. For instance, ACIS and VCAP can provide information such as recidivism rates, the number of cases involving parties with more than one matter before the court (e.g., juvenile, domestic, civil domestic violence, criminal domestic violence, etc.), and which case – civil or criminal – was filed first as an overall percentage of cases. However, districts reported lacking staff with time to analyze this information.

As an example, District 12 recently contracted with the National Center for State Courts (NCSC) to develop a domestic violence court. The project included an analysis of AOC data by NCSC for District 12 to determine the number of cases processed in both District 12's civil and criminal domestic violence courts, which case, civil or criminal, involving the same parties, was filed first, and how many so-called "cross over" cases the district has. This information, identified by court staff in District 12 as useful for planning efforts, is beyond the capacity of the district to collect and analyze, particularly on a routine basis.

Districts also reported that the physical configurations of information systems and staff issues impede the districts' abilities even to access certain information. Because ACIS and VCAP databases are separate systems without cross-communication capabilities, when judges request information about other civil and criminal cases involving the same parties in a domestic violence case, clerks must access each system separately. Districts point out that not all clerks are automatically authorized by AOC to access both systems and many have access or are trained to operate only one system. Most judges are sensitive to the high demands faced by clerks and recognize their limitations to perform additional information-gathering functions.

These pressures are unique in multi-county districts where clerks can not automatically access records outside of their county. In one district visited, each of the offices of the Clerks of Superior Court within the county maintains their own files on civil cases even if the same plaintiff or defendant has cases pending in each of the counties. Relying on the judge to remember a defendant from different courts in different counties is a method relied upon in

some districts. A standard system of cross-checking would be a more reliable process, though would require staff time.

During site visits, court and community stakeholders expressed the need for a district wide communications system to connect law enforcement, magistrates, clerks, district attorney's Offices, and probation for timely, comprehensive information sharing about offenders as a tool to promote victim safety and offender accountability. A system allowing shared access to information would assist the court and community stakeholders to closely monitor a defendant's compliance or noncompliance with court orders and respond quickly to events that might increase the risk of harm to a plaintiff or others (e.g., noncompliance with pre-trial release conditions and conditions of probation).

Recommendations

1. AOC should: 1) work with districts to identify court data that would assist in managing individual cases and be useful for evaluating district outcomes by surveying districts as to the utility of current data and the need for additional data; and then 2) convene a work group to determine both the technical and other resources necessary to support such an enhanced set of data.

2. Technical assistance provided by AOC to districts should include the type of inquiries conducted in District 12 through its contract with the National Center for State Courts, including analysis of district data and assistance in designing and performing outcome evaluations. Such analysis would especially assist districts that have established special practices for handling domestic violence cases to measure the efficiency and effectiveness of such courts.

3. AOC should investigate ways, either through functional changes or technical upgrades, including processor speed or memory, or through enhanced training on how to utilize the technology, to facilitate less cumbersome multi-county and statewide searches to enable districts to more quickly and easily check for civil and criminal cases.
4. AOC should evaluate the content and presentation of data regarding domestic violence cases presented to the public through the AOC website for clarity and comprehension and make suggested revisions in order to maximize the current utility of the data for policymaking and program development.

AOC should consider eliciting recommendations from domestic violence advocates, stakeholders at the state level (e.g., Domestic Violence Commission), private and public funders, and court professionals regarding ways to improve domestic violence data and information presented on the AOC website.

5. Community collaboration

The court relies on various sectors within the community in order to maximize their impact and complement their resources. For example, substance abuse providers and mental health practitioners play an integral role in the court system in some cases; and with the emergence

of Family Courts and other unified courts, the community is often viewed as an equal partner in achieving justice and increasing the likelihood of successful rehabilitation and reduced recidivism.

In cases of domestic violence, three of the key community-based agencies are domestic violence advocacy agencies, abuser treatment programs, and legal aid service providers, and serve as primary strategies for increasing victim safety and offender accountability.

With a set of funding and policy mandates in place to support the establishment and structure of these services and some research regarding the indicated role and structure of these services, responsibility is largely in the individual community's hands as to how to organize these services, success of which will be measured to a significant degree by the level of coordination present in that community. Arguably, because resources for these three particular services are limited,[184] coordination is that much more critical.
Survey data and site visits suggest that where agencies within a community establish cross-agency relationships and coordinate procedures, policies, and services for domestic violence litigants, stakeholders generally perceive their responses to domestic violence as effective and efficient.

The following are examples of this coordination revealed during site visits, including several examples of coordination within the court system:

- In some districts, the office of the Clerk of Superior Court has established a strong working relationship with the local domestic violence advocacy agency whose advocates are available to assist civil complainants by providing information about the legal process and support during that process. In some of these counties, the advocate even maintains office space within the courthouse. In others, clerks call or page advocates.

  In districts where clerks of superior court (and some magistrate offices) have coordinated with domestic violence advocates to help civil complainants complete forms for a protective order, clerks consistently report more efficient processing of these cases and less frustration in dealing with these complainants.

- Clerks of superior court in several counties have established informal procedures with the local sheriff's department for ensuring timely service of process on defendants in civil domestic violence protective order cases. For instance, in one county where the sheriff has designated a deputy to serve subpoenas on defendants named in Chapter 50B actions, the deputy clerk who handles most domestic violence protective order filings calls the sheriff's deputy to inform him of a prepared subpoena as soon as she has completed the paperwork. The deputy either picks up the papers to serve immediately, or informs the clerk of when he will be available to

[184] Legal services resources are detailed elsewhere in this report. Domestic violence agencies, which are present in every county in the state, receive $60,000 in state funds to provide a variety of services including legal or court based advocacy, and state-approved abuser treatment programs receive no state funds and operate almost exclusively on the fees collected from participating offenders.

come to the Clerk's office.

- In several districts, the district attorney's office uses "victim impact statements" utilized by magistrates and law enforcement that first come into contact with domestic violence victims or complainants. Designed to capture information particularly relevant to domestic violence cases, these forms support evidence-based prosecution policies. (See Appendix Q for examples of victim impact statements.)

- In some districts, the local domestic violence advocacy agency also provides photographs of victim injuries and copies of criminal records and other legal documents to the district attorney, to support prosecution efforts. This arrangement has the added advantage of collecting this information in a setting that is designed for maximum comfort and support to the victim.

- Districts that coordinate the screening for and provision of legal services through a close working relationship between the local domestic violence advocacy agency and the legal aid office are able to maximize their resources and prioritize needs. For example, rather than requiring the victim to find out about legal aid services and embark on an intake process that may or may not determine her eligibility, the local domestic violence program, familiar with the legal aid criteria, can make that initial determination.

  Additionally, because of the established relationship, domestic violence advocates can bring particularly urgent matters to the attention of the legal aid attorney handling domestic violence cases (and provide useful background information for making decisions), while also identifying those clients who are either ineligible for legal aid services, or clients with matters of a much less urgent nature. Legal services can also provide information about the legal process which in turn can be delivered to domestic violence victims by an able advocate at the domestic violence agency.

- Discussions with prosecutors in some of the sites visited revealed the importance of the district attorney's office coordinating with law enforcement to support evidence-based prosecution policies. As previously mentioned, the local domestic violence agency can also be instrumental in collecting evidence and information that will assist with prosecution either by facilitating the collection directly or by working with the victim to educate her on the importance of collecting certain information (i.e., photographs, letters, legal documents, hospital records) while providing support during the process.

Just as coordination promotes efficient responses to domestic violence, the lack of coordination can result in inefficiencies and worse. For example, in one district visited, judges and defense attorneys reported during the roundtable discussion that one assistant district attorney formerly assigned to handle domestic violence cases refused to dismiss charges against domestic violence defendants in accordance with the office's "no-drop policy" when the victim/prosecuting witness refused to testify or fails to appear for trial. However, because there was no companion policy on using an evidence-based model of

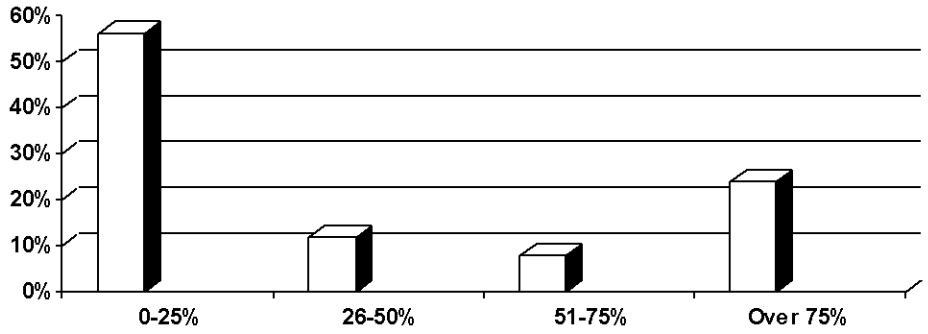
prosecution, the prosecutor often lacked evidence other than the victim's testimony, and ultimately, the court would dismiss the case, leaving the victim unprotected and without consequence to the offender.

Sometimes, coordination is threatened by lack of resources or standard mechanisms. For example, survey data indicates that the majority of defendants arrested for domestic violence offenses involving assault, communicating threats, or violation of a Chapter 50B protective order, are held in jail then released with pre-trial release conditions. Interviews and round-table discussions during site visits revealed that defendants are often not arrested for violations of pre-trial release conditions *because there is no uniform or systematic means, such as a database, to inform law enforcement, particularly patrol officers, of pre-trial release conditions.* Consequently, law enforcement may not have knowledge about a pre-trial release order or the conditions imposed. In order to become aware of pre-trial release conditions, some officers obtain a certified copy of a pre-trial release order from the clerk of superior court.

Developing a database or system for communicating this information from the courthouse to law enforcement has been an issue considered for legislation in North Carolina in the past. One example of such a system can be found in Michigan where court officers enter bond conditions into a statewide law enforcement database accessible to all law enforcement officers in the state.[185]

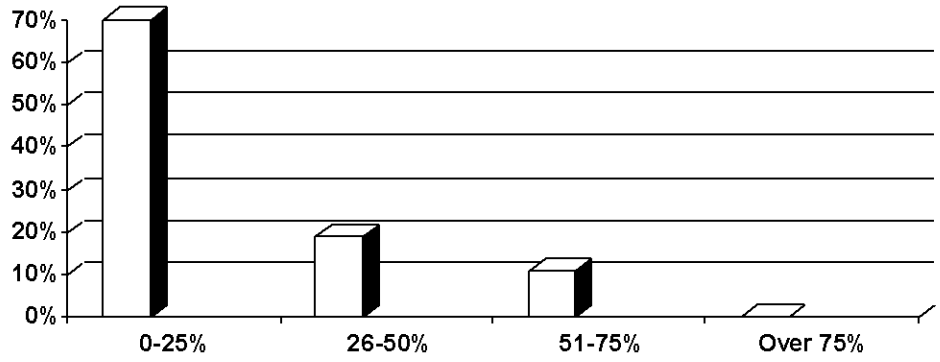
Perhaps most troublesome with regard to coordination is an apparent inconsistency and inadequacy in holding offenders accountable through the court's utilization of abuser treatment programs. Described elsewhere in this report, this program is rooted in statute and policy as an integral component of addressing the behavior of domestic violence offenders; however, its role as a response to domestic violence is inconsistent district to district.

Data reported by Abuser Treatment Programs and as illustrated in the following charts illustrate the concern:

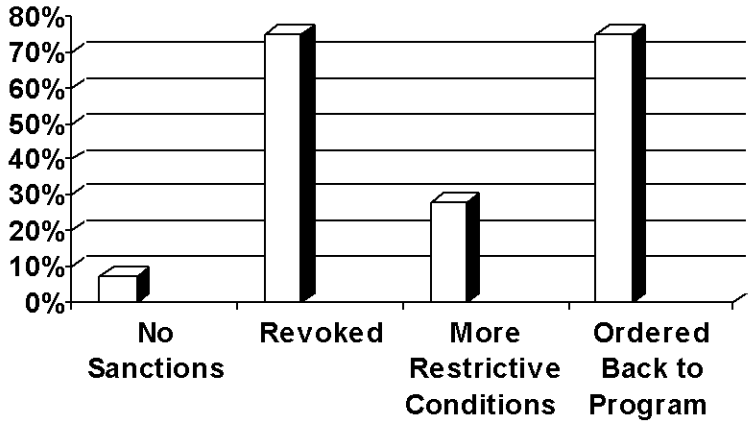


[185] *See* "Pretrial Innovations for Domestic Violence Offenders and Victims: Lessons from the Judicial Oversight Demonstration Initiative," NIJ Research for Practice, US Dept of Justice, August 2007, page 6.

Percentage of domestic violence offenders court-ordered to enroll in an abuser treatment program (ATP) as a condition of probation.



Percentage of offenders ordered to enroll who fail to comply with the ATP's requirements



Sanctions routinely imposed on defendant who fails to comply with ATP

Collaboration must occur at the community level and will have the best chance for success and maximum efficiency when such collaboration is planned collectively with each component of the system contributing in the process. Roles and purposes of the various community partners must be clearly defined (and documented in writing, whenever possible) and regularly reexamined. While this report highlights some of the court systems most critical collaborative partners – domestic violence programs, legal aid services, law enforcement, and abuser treatment program services – other key resources, including probation, child protective services, child advocacy centers, etc. exist within the community.

Interestingly, several roundtable discussions held during site visits as a part of the project protocol were received as rare, if not novel, opportunities for stakeholders to congregate as a single body to discuss issues affecting domestic violence case processing in district court. Several districts, particularly those with specialized domestic violence courts, have convened such working groups, which meet on a regular basis. In one district, this domestic violence

court committee meets monthly to communicate problems, discuss challenges facing the court, and problem-solve solutions. A judge designated by the chief district court judge to organize the committee coordinates meetings and determines the agenda.

Recommendations

1. AOC should encourage districts to convene working groups of domestic violence stakeholders from the court system and community agencies for the purpose of establishing common goals, reviewing and candidly evaluating the current system, and identifying problems and solutions to issues affecting the processing of domestic violence cases that may be addressed through collaboration between agencies.

2. AOC should provide materials to support the establishment of these discussions that includes the purpose of collaboration and the convening of the working group, and a sample list of mechanisms to evaluate, including, but not limited to, issues raised in this discussion such as: referrals to abuser treatment, levels of compliance, consequences of noncompliance; how the court can communicate pre-trial release conditions to law enforcement; and how to maximize the court's response to domestic violence through collaboration with legal aid or other legal services to victims, law enforcement, and probation among others.

3. Such working groups should be broad based and include judges, prosecutors, public defenders, private defense attorneys, magistrates, family law attorneys, clerks, Legal Aid attorneys, advocates from local domestic violence victim service providers, abuser treatment program providers, law enforcement, probation, and child protective services. Chief district court judges should assume leadership responsibilities, or appoint another judge to convene this working group, determine the agenda, and organize meetings.

6. Accessibility

For many lay people (and even court professionals), the court system can present as an imposing and cumbersome system, one encoded in "legalese" and technical jargon. The ease with which members of the public (the court's "customers") navigate the court system is a significant matter that has been considered by AOC and local districts. Because of the type and often the recent nature of victimization experienced by domestic violence victims, and the level of pro se representation among parties in these cases, courthouse accessibility for these persons is a matter of particular concern.

Civil and criminal laws addressing domestic violence have been structured to allow domestic violence victims to obtain immediate legal protection. Unfortunately, some of the processes that have evolved for obtaining this protection can sometimes hinder or deter victims from seeking relief from the courts. The following discussion addresses these issues of accessibility as they relate specifically to courthouses, clerk's offices, and magistrate's offices.

Persons that may have experienced a relatively recent episode of battering are typically negotiating the legal system without a lawyer and may or may not have the services of an

advocate upon entry to courthouses, clerk's offices, or magistrate's offices. In fact, project survey data indicates that most contact with advocacy agencies is initiated by a referral from the clerk of superior court. [Unmet legal needs are detailed elsewhere in this report, and the NC Equal Access to Justice Commission is considering the legal needs of parties involved in domestic violence cases.]

Victims must consider a number of factors when they decide to access the justice system including whether seeking legal relief will result in retaliation, harassment, or intimidation by the offender; whether the system is equipped to provide protection in light of those threats; whether their claims will be judged to be legitimate by persons with whom they may come into contact; and whether they will ultimately be successful in acquiring whatever justice they seek. While juggling these considerations, access to the courthouse can represent another hurdle.

Persons that have just experienced an episode of battering can be prone to confusion and they may function in a disorganized way. In their work with trauma survivors, including those affected by natural disasters, trauma experts recommend that the basic tenets of so-called "psychological first aid" include predictability and structure.[186] Court systems would benefit from applying some of the strategies of Child Advocacy Centers who design their services specifically to reduce the potential for secondary trauma to victims by adopting strategies such as service integration and enhancing overall access to victims.

In order to assess access within the public facilities of magistrate's offices and courthouses, including offices of clerks of superior court, this project focused on two basic areas of inquiry:

1. Is the building or office that victims of domestic violence are entering a secure area and is there access to a security response should they require it?
2. Is there predictability in terms of where a person would need to go and what the process that they are embarking upon involves? (and is information about this process clear and available?)

Courthouses

In most districts visited, entering local courthouses entails immediate passage through weapons screening (usually walk-through metal detectors and possession searches by deputies; in one district, sheriff's deputies used hand held metal detectors or "wands"). In most districts visited, signs are posted as to the location of certain offices and courtroom locations and deputies are friendly and approachable. The importance of setting this tone of security and accessibility upon initial entry into the courthouses cannot be overstated. In many cases, courthouse reception areas displayed posters advertising the Attorney General's Address Confidentiality Program indicating in a highly visible and specific way that the courthouse is a place that is concerned about the welfare of victims of domestic violence, sexual assault, and stalking.

[186] National Child Traumatic Stress Network, Psychological First Aid, Field Operations Guide, 2nd Edition, 2007.

Depending on age and physical layout, once past the entrances, the courthouse can become an ominous place and therefore less accessible, particularly if it is dimly lit, if offices that victims will need to access (clerks' or advocates offices, for example) are located down isolated hallways, or on floors that are either overcrowded or sparsely populated.

Offices of Clerks of Superior Court

Given the variety of generally clerical, record oriented responsibilities held by clerks of superior court, dealing with victims of domestic violence can be a markedly different experience for most deputy and assistant clerks. As one Clerk noted, the Clerk's office is many times the first stop a victim makes after enduring an assault (even before medical attention is sought or an attorney or law enforcement are called or have been consulted). These persons present with very different needs than, for example, a citizen looking for a form on guardianship. Some examples of frequent scenarios:

- The party is injured, traumatized and emotionally distraught, and therefore has difficulty focusing or understanding directions;
- The party is soliciting support, guidance, and information on a variety of matters including legal ones and those related to support services (i.e. shelter, counseling);
- The party appears with minor children and is concerned that the perpetrator of the violence has followed them to the courthouse.

Given these circumstances, clerks report that the forms plaintiffs must complete to obtain relief under Chapter 50B are too voluminous and complex. Questions are often misunderstood yet clerks are not permitted to provide much assistance in completing forms. An exacerbating problem is the ever-increasing percentage of non-English speaking applicants. (For additional discussion regarding forms see Chapter 3, Statutory Process, page 30).

The physical space of clerk's offices is sometimes inadequate to afford plaintiffs privacy or security (68% of clerks reported being able to provide a private area, including "semi-private" areas for plaintiffs to fill out forms[187]). A more thorough assessment that accounts for safety, security, privacy and confidentiality should be conducted.

Magistrates Offices

Like clerks of superior court, magistrates are charged with a vast array of responsibilities, such that depending on the shift that a magistrate works, civil or criminal domestic violence matters may constitute only a small percentage of a magistrate's overall work load.

Most magistrate offices visited during the course of this project were located in local jails. In most of the facilities visited, the exact location of the magistrate office was difficult to determine due in part either to lack of directional signs or personnel from whom to obtain directions. Existing signs when found (for instance, in or near the magistrate's offices) were often dictatorial and vague in their directions to the public or embodied lists of rules for

[187] Survey conducted by Jo McCants, Associate Legal Counsel, NC Administrative Office of the Courts, February 2007.

required conduct and confusing directions about where to wait and for how long and for what purpose (e.g., "Do not approach the window until directed." "Keep children quiet." Wait until the judge is finished with other business before approaching the window.") In one county, the magistrate's office was located next to the door that inmates being released from custody exited and in several counties, windows from inside the jail facility permitted visual access into the magistrates' office area.

In addition, the nature of magistrates' work and the lack of clerical support they have access to, including the ability to provide reception services to the public, makes clearly posted and customer-friendly signs especially important. This is true not only for victims of domestic violence, but for all members of the public.

Customer Service

Apart from physical layout, signs and accessible materials, the importance of professionalism and customer-oriented practices should be noted.

Surveys and site visits revealed that some court officials, and certain groups in particular, experience relatively high levels of frustration with cases involving domestic violence. Due to the nature of their responsibilities including their role as gatekeepers in the process, clerks were specifically surveyed about these frustrations. Clerks were candid in their responses and provided detailed comments about their frustrations, as reflected in complaints about having to invest significant time providing services to plaintiffs "only to have the victim dismiss or not show up for the permanent order hearing," suspicions that plaintiffs are "using" 50B relief to obtain custody, property, or for revenge or to buttress a 50A custody case, and recommendations for a fee or fine or other consequence for dismissals. Inevitably, these frustrations will impact service to the public, potentially manifesting as either suspicion regarding the legitimacy of the claim, or exasperation and impatience, and subsequently have a chilling effect on the public's confidence in and access to the court system. Job satisfaction on the part of the court official may also be impacted.

Court observations during site visits also revealed the degree to which judicial demeanor and courtroom decorum appeared to positively impact court proceedings. Judicial courtesy towards litigants and all court staff (i.e. prosecutors, defense attorneys, bailiffs) set the tone for respectful interaction between and among other court staff and litigants. Public confidence and respect for the process are obvious outcomes of this conduct and behavior. Where this professionalism was lacking, courts were generally less orderly and interactions between parties and court officials more hectic.

Recommendations

1. AOC should convene a working group of magistrates, law enforcement, clerks of superior court, and chief district court judges for the purposes of:

- Developing suggested protocol, to include linguistically inclusive sample posters, signs, information packets and videos, that advise the public about the process they can expect, including waiting times to see the magistrate.

- Developing customer friendly signs at the entrances to the building where the magistrate is located and to the courthouses, indicating where offices are located and over what business that office has authority.
- Designing a tool to conduct an environmental audit of the physical space in courthouses (including the offices of the Clerk of Superior Court and magistrates) in order to determine access and make improvements.

2. Customer service and professionalism should be integral components of a domestic violence response as outlined in the strategic training plan and best practices manual recommended herein (See discussion on Court Organization in this chapter).

Clerks should receive training on specific communication strategies that includes 1) de-escalation techniques, and 2) ascertaining the need for security.

7. Training

The importance of a strategic training plan for court officials that provides the necessary information to inform decision-making in cases of domestic violence cannot be overstated. As has been documented throughout this report, this topical area is highly implicated in the court's caseload, has unique complexities to consider, and is an evolving area of practice and research.

Currently, training initiatives are bifurcated between the Administrative Office of the Courts and the School of Government. Some initiatives are ad-hoc in nature and most do not follow a standardized curriculum nor are they evaluated to determine the extent to which learning objectives are reached. Improving the handling of these cases across all districts and through a variety of methods including technical assistance from the AOC rests in large part on the conscientious use of training dollars to assure the quality and consistency of training or workforce development as outlined in Chapter 5, Training.

Based on a review of current training provided by AOC and the School of Government, as discussed in Chapter 5, Training, the following short and long term strategies for judicial training in domestic violence are recommended:

Recommendations

In the short-term:
1. AOC should create criteria based on need and impact for determining which district court judges attend the National Council for Juvenile and Family Court Judge's Judicial Institute. AOC should consider criteria such as whether participants should be judges who are or will be presiding over domestic violence cases, or Family Court judges who are in districts where civil domestic violence protective orders are included in the Family Court docket.

2. AOC should evaluate the feasibility of establishing a structure whereby judges who have received training can share their learning with other judges.

3. AOC should investigate the direct allocation of training dollars available for courts available under the federal Violence Against Women Act funds to the Administrative Office of the Courts in order to support the development and implementation of a strategic judicial training plan for domestic violence.

4. AOC should convene a committee to include district court judges to discuss the various approaches to training raised in this report. Issues to consider include whether domestic violence training should be a "stand-alone" issue or an issue that is woven into a variety of topics applicable in different court settings where domestic violence has an impact on the cases and the families before the court,[188] including dependency, Family Court matters, and custody actions.

5. AOC should examine and assess the content and extent of training for other court officials and staff including clerks and magistrates.

In the long-term:

6. In collaboration with the School of Government, AOC should develop a systematic method for developing and evaluating the effectiveness of all court training, including training on domestic violence that establishes standard learning objectives, utilizes adult learning techniques, establishes standards for on-line learning, and develops tools to determine the impact of training on decision making.

8. AOC Responsibility

Domestic violence is an issue that can dramatically impact a court's resources and efficiency. The public policy generated over the past decade in North Carolina and the nation, and the increasing body of research on practices related to court functions and domestic violence, has led to challenges as well as opportunities for the court system to change the way it processes these cases. As evidenced by the volume and complexity of the issues raised in this report, the internal resources required for AOC to successfully implement recommendations are significant. This section outlines some categories of responsibilities and raises some considerations for internal organization.

Analysis and Distribution of Grant Funded Project Outcomes

A number of grants have been awarded to the courts relating to establishing or helping to staff domestic violence courts, assisting with functions associated with the processing of domestic violence cases, or providing judicial training on domestic violence. The information that emerges as a result of these grants, including research grants, is not currently shared in a systematic way within the organization, or with districts.

Ongoing and Follow-Up Research Activities

[188] This is the California approach.

Follow up research should be conducted on the following:

- Evaluation of judicial districts' ability to implement enacted legislation and anticipate resource needs. For example, legislation was enacted in 2003 directing Clerks of Superior Court to make private space available for plaintiffs to fill out forms, when possible. Two years later, legislation was enacted directing Clerks of Superior Court to make private space for plaintiffs available, when possible, who are waiting for court. Proactively reporting to the legislature on the status of implementation of the first proposal would allow AOC to weigh in on resource and other policy issues related to creating courthouse space, and effect the discussion about this and broader issues facing the court related to domestic violence issues (e.g., courthouse security).

- Examination of the interplay between child custody, visitation, and family violence, and the impact of family violence on custody decisions.

- Examination of no-drop, evidence-based prosecution, and other policies employed by district attorneys in prosecution of domestic violence offenders, and conviction rates for domestic violence offenders.

- Examination of the use of deferred prosecution in domestic violence cases (i.e., conditions under which deferred prosecution is used), a practice discouraged by victim advocates and some districts, but not specifically addressed in statute or any current local rules. (Such examination is highly suggested by national researchers.[189])

- Determination of the extent to which the availability and/or quality of abuser treatment programs affects the court's statutorily required referral of defendants to such programs[190] (i.e., to what degree is the lack of referral related to the location (driving distance) of the program, the capacity of the program, a lack of confidence in the effectiveness of the service, or judicial preference for other community based services like substance abuse or mental health counseling). Determining these reasons, interpreting the results, and tracking the progress or lack thereof in this area, has the potential to not only impact the degree to which courts reduce domestic violence by enhancing monitoring, assuring consequences, and providing treatment, but also to impact those practices that may be ineffective (i.e. anger management or mental health counseling).

---

[189] In "Court Responses to Batterer Program Noncompliance" by the Center for Court Innovation, March 2007, the authors note that their findings from a national survey suggested that a majority (68%) of responding courts reported that completion of the batterer program conferred a legal benefit at disposition. In addition, the authors describe competing arguments regarding the issue: on one hand, accountability is undermined if the program becomes an alternative to more serious legal outcomes; on the other, that if the use of legal incentives increases compliance, then accountability is promoted, particularly when more severe penalties would be unavailable anyway. (See pages 51-52).

[190] N.C. Gen. Stat. 15A-1343(b)(12) (2005).

- Examination of the intent and value of local rules to standardize and improve the handling of civil and criminal domestic violence cases. Dissemination of project findings regarding local rules (see Chapter 4, Policies and Practices, page 49) to court leaders and convening a discussion regarding the value and impact of those rules could be accomplished with minimal resources.
- Examination of the adequacy of courthouse security in the districts (perhaps through the use of homeland security funds), including physical security systems and protocols.

Internal Organization

Many divisions within AOC are tasked with developing and/or carrying out policies and practices related to domestic violence and the courts. For instance:

- Court Programs provides technical assistance and consultation to new and existing courts on a variety of efficiency issues. Sometimes these requests relate to the handling of domestic violence cases – whether these are requests for national or statewide best practices, research, or consultation on various issues related to the court. Many of the programs housed within the Court Programs division encounter domestic violence in their program design and contemplate its impact through awareness, guidelines, or formal policy. For example, the Child Custody Mediation Program addresses domestic violence cases in its policy manual, and provides training for mediators in domestic violence. Also, Family Courts across the state have various organizational structures for addressing civil and criminal domestic violence cases, as discussed in this report.
- Crime Victim Services, which includes victim witness legal assistants, the Conference for District Attorneys, Crime Victims Compensation Program, and SAVAN, has a variety of issues related to domestic violence to consider.
- Court Services develops and manages the forms related to the filing and processing of civil and criminal domestic violence actions are developed and managed within the division. (As noted within this report, clerks of superior court provided significant negative feedback related to the volume and complexity of these forms, particularly for pro se plaintiffs.)
- The Legal division currently represents AOC at legislative committees addressing domestic violence proposals. In this capacity, they gather information requested by legislators, make reports to the committee regarding the progress and implementation of legislative directives, and are asked to comment on pending proposals involving the courts. Staff from this division has also provided training to magistrates, clerks, and others on domestic violence issues, on an ad hoc basis.
- In collaboration with the School of Government, this division is responsible for developing and implementing judicial and other court staff training.

Given the current status of the issue within the organization and the breadth and complexity of the work this report proposes, there is a need to develop new or assign current resources to a variety of functions, including most importantly, developing a strategic plan for implementing these recommendations, improving coordination of activities such that they endorse the same set of principles for the court, and assisting districts. As long as the

leadership is strong within the organization and on a variety of levels - director, division heads, individual positions tasks with implementation – it matters less how the work is designated. However, the following factors are offered for consideration.

Centralizing responsibility in a position or a division could:

- ✓ Establish a point of contact for people inside and outside of the organization
- ✓ Create the opportunity to develop high levels of content and technical assistance expertise
- ✓ Provide a liaison function within the agency to ensure the sharing of information across divisions, and the establishment and implementation of a shared set of principles and guidelines for divisions to evaluate their work against, a particularly important function in the early stages of implementation.
- ✓ Provide support to a liaison between the courts and other public and private entities regarding research on the court's response to domestic violence in North Carolina or other activities related to domestic violence.

Conversely, spreading out the roles and responsibilities across many divisions could guard against housing the expertise and responsibility with one person or entity thereby disengaging and potentially discouraging other positions or functions in the organization from "owning" the issue. One strategy might be to centralize responsibility in a division or within a position to develop a plan and ultimately phase out the position upon completion of a transition to each division's adoption of their own plan.

Recommendations

1. AOC should create a systematic mechanism for collecting, interpreting and disseminating the results of these grant-funded projects to a) appropriate AOC staff and/or b) districts for the purposes of information sharing and potential replication.

2. AOC should identify priority areas for further study, including, but not limited to, the topics identified above.

3. AOC should conduct qualitative and quantitative research regarding domestic violence (e.g., by developing surveys, reviewing survey methodology, evaluating sampling measures, and assisting in the interpretation of results).

4. AOC should examine its current organizational structure to determine how it may more effectively and efficiently address and coordinate matters relating to domestic violence cases.

Chapter 7: Conclusions

Districts across North Carolina have developed a variety of court organizations, policies and practices to handle civil and criminal domestic violence cases. By and large, these policies have been designed based on local resources and culture, rather than through the adoption of a standard model. Often, a need to manage a high volume of civil cases, the recognition that cases can be complicated and involve varying degrees of risk, and the recognition of the importance of partnering with community service providers have served as the driving forces behind these decisions.

Though not rigorously evaluated, the preferred approach to these cases suggests the development of a specific set of widely understood and endorsed practices that are established on a set of shared principles – most notably victim safety and offender accountability, and more recently, a comprehensive approach that accounts for all needs of the family as revealed, in part, by consolidated or at least shared information about the family's various matters simultaneously before various courts.

This project concludes that resources should be put in place to: 1) support districts' current efforts and the realities under which they work and create a degree of standardization through the delivery of technical assistance and consultation by AOC; and 2) to assume a more intentional approach to assure that Family Court districts standardize their handling of domestic violence cases with the primary intent that cases in these courts would benefit from the purported components of that model.

The areas identified in Chapter 6, Recommendations are those that have either the greatest potential for improving the court's response to domestic violence, and/or pose the greatest threat to effectiveness and efficiency. Recommendations can be summarized as follows:

1. While implementation of specialized domestic violence courts is widespread in North Carolina, the uniform adoption of these courts across the state may not be feasible given resource and other issues. Furthermore, outcome evaluation of specialized domestic violence courts is necessary to determine whether these courts are superior in handling domestic violence cases. At the same time, districts that currently operate specialized domestic violence courts should be supported in their efforts and provided with technical assistance and consultation particularly in the area of developing written protocol.

2. The high degree of pro se representation in domestic violence cases threatens not only the efficiency with which courts operate, but also the quality of justice parties receive. Low cost solutions such as informational materials made widely available in accessible forms (i.e. reading level and different languages) should be developed, and expanded legal services should be advocated.

3. Current AOC data should be evaluated for its utility to districts for evaluating individual case outcomes and establishing and evaluating program policy. In addition, the capacity of AOC and court staff to access and use data should be examined, and modified as appropriate in order to optimize data use.

4. Coordination between the court and community partners should be improved so that limited resources are maximized (e.g., clerks of superior court utilize domestic violence agencies to provide information and support to victims), and because coordination can provide key mechanisms for accomplishing system objectives, such as victim safety and offender accountability. Improving this coordination should begin with enhanced communication and leadership, rather than the pursuit of additional funding.

5. Improving access to the court system is a key concern and can be addressed, in large part, through increased awareness and leadership, formal assessment, and the adoption of low-cost strategies including directional signs in courthouses and improved customer service.

6. Family Court districts should contemplate and memorialize, through local rules and written protocol, how domestic violence cases will be handled within the Family Court model. AOC staff should develop the capacity to deliver technical assistance and consultation to help districts establish and evaluate practices that best suit their needs and resources.

7. A strategic judicial training plan should be developed. In the meantime, criteria should be set for how resources are currently expended when contracting for such training.

8. The Administrative Office of the Courts should develop a strategy for creating new or dispatching current human resources for the purposes of addressing recommendations contained in this report. The current assignment of responsibilities for fulfilling domestic violence-related tasks is inconsistent and lacks coordination across the organization.

****

The breadth and scope of the recommendations contained in this report reflect the myriad issues impacting the handling of domestic violence cases in North Carolina district courts. In order to maximize the effectiveness of practices currently in place and judicial resources, ***the Administrative Office of the Courts should, as a starting point, develop a best practices manual designed to address and resolve numerous issues raised in this report.***

The primary purpose of the manual would be to establish guidelines relating to the handling of domestic violence cases in district court to be conveyed to individual districts, supplemented by technical assistance and consultation provided by AOC staff. The manual should be made available online in order to provide for regular updates and easy referencing, and should be used to design training agendas and develop evaluation outcomes.

A number of models for this document exist and could be adapted for North Carolina by integrating issues that are unique and specific to conditions in North Carolina, as described in this report. Such a manual would support the development of standard practices and protocols in the districts and would assist in allaying concerns by some stakeholders that domestic violence courts (and courts with strong victim advocacy) embody a "one size fits all" approach to handling domestic violence cases with little regard to individual case

specifics.

The manual should address the following considerations specific to North Carolina:

- Most judges rotate through civil and criminal courts and hear all types of cases. Domestic violence cases may or may not constitute a routine and relatively significant percentage of those cases, and may be raised within a variety of settings including civil court, custody actions, delinquency proceedings, and criminal court. Also, judicial assignment is not based, by and large, on an interest in or training on domestic violence.

- Most contact with the court for domestic violence matters initiates with a civil protective order filing (vs. a criminal domestic violence case triggering a request for a protective order).

- Concerns about illegitimate claims of abuse are significant, especially among certain groups within the court system.

- System accessibility should be increased including environmental enhancements to facilities and improved customer service.

- Some districts combine civil and criminal domestic violence hearings.

- Most Family Court districts do not include civil domestic violence protective order cases in their Family Court docket.

- Policies on continuances for civil and criminal domestic violence cases either do not exist or are not formalized in many districts.

- Policies on the withdrawal or dismissals of applications for protective orders should be adopted as a standard practice for all districts.

- The types of relief available to plaintiffs under Chapter 50B that relate to children, (i.e. child support, custody and visitation, not interfering with the minor child) are frequently not considered and/or not ordered by the courts.

- Most districts do not have local rules on civil and criminal domestic violence cases, procedures that should be "memorialized in writing and accessible to the public."[191]

- Courtroom, as well as courthouse security methods and protocol, are not widespread.

- Calendar management does not routinely include a mechanism for consistently identifying past and present domestic violence cases.

---

[191] "Draft Guidelines and Recommended Practices for Improving the Administration of Justice in Domestic Violence cases" Judicial Council of California Domestic Violence Practice and Procedure Task Force, Administrative Office of the Courts, Center for Families, Children, and the Courts, January 2007, p. 15.

- Pro se litigants constitute a significant population of domestic violence plaintiffs as well as defendants. A lack of affordable and accessible legal services, and the current system of appointing and supervising magistrates presents unique considerations and challenges.

- A system of accountability for domestic violence offenders is critical, but is currently fragmented and inconsistent. Components of offender accountability include the use of review hearings, links to probation, the rational determination of release conditions, and communication of bond and release conditions to law enforcement.

- The routine collection and analysis of local domestic violence statistics for the purposes of tracking individual case outcomes and evaluating the court system's response to domestic violence is currently not institutionalized.

- State firearms law and policy should be clarified, especially for clerks.

- Policies on criminal procedure, including policies on compelling testimony and holding victims in contempt should be developed.

- Guidelines that are specific to the Family Court setting should be developed to include suggested organization schemes and practices that complement, reinforce, and *operationalize* Family Court principles including the one-judge, one-family concept, and the collection and consideration of information regarding all cases involving all parties.