

Domestic Violence Advocacy in Court

Topics

- Domestic Violence (DV) and Integrated Domestic Violence (IDV) courts – what's the difference?
- Community vs. system-based advocates
- Educating and empowering victims
- Legal jargon and court dates
- Recent DV laws

DV and IDV Courts

- 46 IDV courts and 40 DV courts statewide.
- IDV: Serve families with overlapping criminal and family or matrimonial cases.
- IDV: One family, one judge.
- Both have as goals: victim safety and offender accountability.
- Both courts may have stakeholder meetings to gather feedback about court operations and gaps in service.
- Both courts have a Resource Coordinator.

DV and IDV Courts

- Statewide Statistics as of October 2010:
 - 46 operational courts/ 9 IDV-Initiatives
 - 2 IDV-Initiatives in planning
 - 109,646 cases heard
 - 20,993 families served
 - Average cases per family: 5.22

Benefits of IDV Model

- Training for judges and court personnel.
- More informed decision-making.
- Elimination of conflicting orders.
- Fewer court dates for litigants.
- Compliance monitoring.
- On-site victim advocates.
- Integration of social services.
- Coordinated community response.

Community-Based Advocates

- Work for the *victim*.
- Support victim's decisions.
- Provide crisis intervention and safety planning.
- Refer for needed services.
- Help victims complete some paperwork – crime victim compensation forms, etc.
- CONFIDENTIALITY.

System-Based Victim Advocates

- Victim-Witness Liaisons.
- Main point of contact with the victim, but don't work *for* the victim.
- Orient victims to the criminal justice system.
- Provide crisis intervention and safety planning.
- NO confidentiality.
- Refer for and coordinate services.
- Inform victims about the status of their case and conditions in their OPs.
- Help victims access restitution and compensation.
- Advocating for the victim, working for the prosecutor.

Battered women appear uncooperative to prosecutors who don't understand the dynamics of abuse. The power and control exercised by abusers over battered women wreak havoc over prosecution strategies. Women may ask for charges to be dismissed, want no contact orders dropped, change their stories, minimize details, or take all the blame for the violence.

In this situation....

- What's the advocate's responsibility?
- What role can each kind of advocate play in victim safety?
- Victims' ambivalence

You may think an abuser should be prosecuted, and encourage the victim to cooperate with the DA, but take her or his ambivalence seriously.

"I was always afraid. If I refused to testify he would maybe not blame me for him getting arrested. If I testified and he didn't get convicted he'd have more power over me than ever before. If I testified and he didn't get jail time, I'd be in the same boat. It seemed like there were about eight scenarios that would go against me and only one that would work out."

Questions for Discussion

- As victim advocates, what has your experience with the IDV Court been like?
- What has changed since IDV Courts opened? What hasn't?
- Are there other differences between the two types of advocates?
- How can we collaborate more?

Educating and Empowering Victims: Knowing what to expect is empowering

Educating Victims: Court Proceedings

- Court proceedings and language.
- District Attorney (DA) policies and procedures.
- DA represents the People, not the victim.
- Who's in the courtroom – judge, Assistant District Attorneys, clerks, deputies.
- How the judge runs her or his schedule.
- What the victim can and can't do in court.
- What to wear to court and what not to wear.

Educating Victims: Legal Jargon

- Arraignment
- Petitioner or Plaintiff vs. Respondent or Defendant
- *Pro se*
- Order of protection (OP): temporary and permanent
 - Final OP Limits: Felonies, 8 years; misdemeanors, 5 years; violations, 2 years
- Substantive vs. procedural motion to dismiss
- Physical vs. circumstantial evidence
- Joint physical custody vs. joint legal custody

Educating Victims: What to Expect

- Interviews or phone contacts with DA.
- Arraignment : Abuser will plead not guilty; jail or bail will be set; temporary OP may be given.
- Case transfer to DV or IDV Court.
- Defense attorney may demand discovery and move to dismiss the order of protection. Victim may have to attend another hearing.
- Victim may have to sit in court all day, to deal with criminal and family court issues, which are dealt with by same judge.

Empowering Victims

- Help victim make all courtroom appearances.
- Sit with the victim in court.
- Work with the victim to help her feel safe in the courtroom.
- Ask questions of the judge or DA if you don't know what something means.
- After a hearing, explain what happened.
- What can you do to help the victim take back some of the control held by the defendant?

What *Can't* You Do?

- Engage in unauthorized practice of law, which includes:
 - Giving advice on how the law applies to specific facts and situations.
 - Preparing legal documents or agreements which affect someone's legal rights.
 - Representing someone's interests in court.
- Coach the victim in court.
- Testify.

Recent Domestic Violence and Related Laws: What Advocates Need to Know

Expanded Access

- *All* DV victims can now file for civil orders of protection in family court, in addition to, or instead of, pursuing charges in criminal court.
- The law gives wider protections to intimate partners, including:
 - Heterosexual couples who are not married and do not have a child in common.
 - Same sex couples.
 - Adolescent and elder couples.

Expanded Access

- Also applies to:
 - Mandatory arrest.
 - Domestic Incident Reports (DIRs).
 - Primary Aggressor determination.
 - Enhanced criminal contempt charges that apply only to violations of family offense OPs.
 - Alternative voting options that keep the victim's address confidential.
 - Protection against workplace discrimination based on being a DV victim.

Strangulation

- Penal Law 121 established the new family offenses of:
 - Criminal obstruction of breathing or blood circulation (A misdemeanor).
 - Strangulation in the second degree – causing loss of conscious or other injury (D violent felony).
 - Strangulation in the first degree – causing serious physical injury (C violent felony).
- Took effect in 2010, and is being widely used by police.

Divorce

- No-Fault Divorce: on the grounds that the marriage has irretrievably broken down for at least six months.
 - Property distribution, spousal/child support, custody and visitation, and attorney fees must be resolved first.
- Courts must assess the parties' incomes and award temporary maintenance to the spouse who has less money.
- That spouse is also presumed to be entitled to payment of counsel and expert witness fees.

Orders of Protection

- Family Court can extend an OP for a reasonable time, with good cause or consent of the parties, *even when* abuse has not occurred while the OP has been in effect.
- Courts may not deny an OP petition solely because the acts alleged are not recent.
- Final OPs will be issued at sentencing, not at conviction. Temporary OPs will remain in force until sentencing.

Orders of Protection

- Police officers must provide for service of OPs free of charge.
- Companies that provide phone service must, upon request from victims who have a permanent OP, provide them with an unlisted telephone number or alternative listing, at no charge, for the duration of the OP.

Guns – Supreme Court Case

- Under the federal Lautenberg Amendment, anyone who has been convicted of a DV crime or is subject to an OP is prohibited from owning or using a gun.
- In *US v. Hayes*, the Court held that if the victim is the wife or a relative of the offender, the offense does not need to include the element of a domestic relationship, as long as the state can prove that a domestic relationship existed.