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BEST PRACTICES

Domestic Violence in Rural Communities

Applying Key Principles of Domestic Violence Courts
in Smaller Jurisdictions

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Applying Key Principles of Domestic Violence Courts in Smaller Jurisdictions

Introduction

Mention the idea of a domestic violence court and most people picture an overwhelmed city docket, complete with a huge waiting area filled with defendants and hundreds of cases. Indeed, New York's domestic violence courts have long been associated with the Brooklyn Felony Domestic Violence part, the state's first. But in the almost 10 years since that court opened, we have learned that domestic violence courts' key principles are transferable to rural and suburban dockets. This paper illustrates how to integrate key domestic violence court principles into local practice.

Background

The last 20 years have witnessed a sea change in the criminal justice response to domestic violence. For centuries, domestic violence had been perceived as a private affair—a personal matter between disputants. Courts did not handle domestic violence cases in large part because domestic or family violence often was not illegal. It took years of hard work from advocates to change this situation.

Even after statutes and case law had made it clear that domestic violence was against the law, many judges, police officers, and other criminal justice professionals believed that legal intervention was a waste of resources. Many simply didn't take domestic violence seriously—an attitude that was reinforced when many victims dropped charges and returned, seemingly voluntarily, to the accused batterer.

What was missing from the system was an understanding of the complexities of domestic violence, especially the powerful social and economic ties that bind victims to their abusers. And, to be fair, there was not a large body of knowledge to build on in the field—no one knew what worked with these difficult cases.

While the reasons for the criminal justice system's failures could be subtle, the consequences were plain as day: in all too many instances, perpetrators were either never brought to court or their cases were quickly dismissed. And domestic violence continued unabated. The Federal Bureau of Investigations estimates that a domestic violence crime is committed at a rate of once every 15 seconds.¹ According to conservative estimates, one million women are battered by an intimate partner annually. Other surveys say the number assaulted each year is as high as four million.

These staggering numbers and the consciousness-raising efforts of domestic violence advocates have led, over the last two decades, to significant changes in the criminal justice response to such offenses. Perhaps the greatest changes occurred in the 1990s, with the passage of the federal Violence Against Women Act and the infamous O.J. Simpson trial, which focused national attention on domestic violence. This

increased attention resulted in, among other things, the passage of mandatory arrest laws, an increase in funding for services for victims, and the creation of specialized domestic violence prosecution and police units.

At the same time, there was a parallel movement taking place within state court systems. More judges and attorneys were becoming frustrated with seeing the same litigants before them time and time again. These system insiders began to search for new tools, strategies and technologies that could help them address difficult cases where social, human and legal problems collide. The result was the creation of “problem-solving courts,” including specialized domestic violence courts. These courts are designed to improve case outcomes for those involved with the justice system and their communities, and have been found mostly in urban and suburban jurisdictions.

As domestic violence courts continue to spread across the country, however many jurisdictions are wrestling with how to administer these courts effectively in rural areas that may not have as many resources as their urban counterparts. This is critical because local criminal courts play an integral role in the effort to eradicate domestic violence—they have the ability to respond quickly and are located directly in the community. Giving them the tools to improve the judicial response to domestic violence ensures that victims have equal access to justice throughout the state.

Confronting the Challenge of Domestic Violence

Very few data-based studies of rural battered women exist, but we do know two things: the first is that the numbers of domestic violence incidents is high. Some research shows that women in rural areas are as likely as women in cities and suburban areas to report being the victims of intimate partner violence.² Additionally, we know that the already significant challenges faced by battered women are exacerbated by rural factors. Poverty, lack of public transportation, shortages of health care providers, under-insurance or lack of health insurance, and decreased access to many resources (such as advanced education, job opportunities and adequate child care) all may make it more difficult for rural women to escape abusive relationships. Geographical isolation and cultural values common in rural households, such as strong allegiance to the community, kinship ties, the increased availability of weapons (such as firearms and knives) highlight the additional obstacles faced by rural women when they attempt to end the abuse in their lives.³

How can courts help? In a 2000 study of rural victims of domestic violence conducted jointly by the New York State Office for the Prevention of Domestic Violence and the New York State Division of Criminal Justice Services, Office of Justice Systems Analysis, victims repeatedly cited the court response as critical to their experience of the justice system. Overall, victims felt that courts did little to hold offenders accountable. On the other hand, victims were ultimately more satisfied with their court experiences when they felt that they had been heard and were not “invisible.”

New York’s Chief Judge Judith S. Kaye has written:

One possible judicial response to the current situation is to continue to process domestic violence cases as any other kind of case, and to continue to observe sys-

temic failures. Another response, however, the problem-solving response, is to try to design court programs that explicitly take into account the special characteristics that domestic violence cases present. If domestic violence defendants present a particular risk of future violence, then why not enhance monitoring efforts to deter such actions? If victims remain in abusive situations due to fear for their own and their children's well-being, then why not provide links to services and safety planning that may expand the choices available to them? If cases are slipping between the cracks of a fragmented criminal justice system, then why not work together to improve coordination and consistency?⁴

As Kaye makes clear, domestic violence is not like other crimes: it does not involve violence between strangers, like a barroom brawl, but violence between intimates. Victims, under the influence of their abuser even after an arrest, are often isolated and reluctant to prosecute. The abuser may reinforce these feelings through additional threats and abuse, which may make the victim reluctant to take steps to protect herself. These simple facts make it more difficult to prevent and prosecute crimes of domestic violence. Any effort to break this dangerous cycle must stress both intensive victim service provision and defendant accountability.

**The Domestic
Violence Court
Model: From Urban
to Rural**

New York's domestic violence courts are designed to address challenges specific to domestic violence cases, whether rural or urban. The courts work to change the way the criminal justice community views domestic violence by stimulating a more coordinated response. All domestic violence courts host stakeholders' meetings, which include judges, court personnel, victim advocates, prosecutors, defense attorneys, probation and parole officers, representatives from batterers programs, and a variety of social service agencies. Discussions at these partners' meetings can help close the gaps in their work with both victims and offenders.

There are some encouraging signs that the domestic violence court model makes a difference. More than conventional courts, domestic violence courts link victims to advocacy and services and are perceived by victims to do a good job of case handling, to produce fair outcomes, and to be generally more satisfactory than conventional courts.⁵ The introduction of a domestic violence court has been found to result in significant reductions in dismissal rates, to increase the pursuit of cases with lower charges, to increase the percentage of defendants mandated to batterer intervention programs, and to increase the frequency and regularity of judicial monitoring, as well as to increase the incidence of jail sentences.⁶ A survey of domestic violence victims found overwhelming support for the idea of a dedicated court, with almost three-quarters of respondents saying that they believed such a court would benefit them, and that knowing of the existence of such a court would increase their chances of reporting future violence.⁷

The New York State Unified Court System has developed domestic violence courts throughout the state, testing its key lessons in diverse jurisdictions. To date, there are domestic violence courts in operation or planning in both felony and misdemeanor

courts, and in urban, suburban, and rural jurisdictions. Among the smaller jurisdictions are Amherst, Clarkstown and Spring Valley Town Courts, Binghamton City Court, Glens Falls City Court and Auburn City Court, among others.

In addition to the felony and misdemeanor court models, the state court system has also created “integrated” domestic violence courts in counties across the state including such rural jurisdictions as Franklin, Clinton, Essex and Wyoming Counties and smaller cities such as Ithaca and Schenectady. It is expected that all counties in New York State will have an integrated court by the end of 2006. These multi-jurisdictional courts are dedicated to the idea of “one family—one judge.” They allow a single judge to see the full picture including criminal cases, orders of protection, custody, visitation and divorce matters affecting one family. From a practical perspective, these courts simplify the court process for families in distress, creating an environment where litigants no longer have to navigate multiple court systems simultaneously and reducing the risk that they will receive conflicting court orders.

Principles

Based on the collective experience of the New York State domestic violence courts two core principles have emerged that are easily adapted to every setting: coordination with victim services and judicial monitoring. While these key elements may be easier to implement with a designated judge handling a specialized docket, this is not a necessary prerequisite to better practice. The following discussion of these two key planning points is intended to illustrate why they are essential to all courts handling domestic violence and to give some suggestions for implementing them.

Coordination with Victim Services and Other Providers

Domestic violence complainants in rural communities have unique needs and concerns. As in cities and suburbs, a victim in a rural area may be economically dependent on, or have children with, her assailant. She may also be threatened by the defendant or his family during the course of a case. In addition, however, she may be restricted by poor public transportation and a shortage of services. These factors and others complicate domestic violence cases and make the prompt provision of social services to victims of paramount importance. What follows are lessons, drawn from existing domestic violence courts, that have improved victims’ access to services:

Provide victims with immediate access to advocates Victim safety is the cornerstone of domestic violence courts. Every victim should be given immediate access to an advocate who can assist with safety planning and explain court procedures. Victim advocacy should include access to counseling, job training, immigration assistance, children’s services and other programs aimed at improving self-sufficiency. A victim should remain paired with her advocate throughout the pendency of the case, ideally from police response through post-disposition. For example, the Spring Valley Town Court has been working closely with its local service provider, the Rockland Family Shelter, to ensure that each and every complaining witness/victim is connected with an advocate as soon as the case is heard.

“Frontload” social services Advocates should help victims make immediate linkages with other social service agencies, emergency shelter, food, and civil legal services. Studies have shown that when complaining witnesses/victims receive assistance early and understand the court process, they are much more likely to remain engaged in their cases.

Keep victims informed In addition to providing general information and referrals, advocates should provide complaining witnesses/victims with up-to-date information on their cases. This reduces the burden of having to reappear in court to find out the status of the case, and ultimately, reduces the victim’s chances of being placed in further danger. It also gives the victim the feeling that the system cares about her welfare. This may, in turn, persuade her to participate in the prosecution.

Schedule cases promptly Another way to enhance victim safety is to schedule domestic violence cases promptly so that they don’t drag on, exacerbating the safety risks to the complaining witness/victim. While this may be difficult in a rural jurisdiction where court is in session only a few times a month, the longer the victim must wait for legal action, the longer she is at risk. It also allows the court to link victims to services as early in the process as possible. Experience indicates that delays give the defendant more time to convince the complaining witness/victim to stop cooperating with the prosecution.

Create “safe spaces” within the courthouse Victim safety and security are critical to making the court seem responsive to victims’ concerns. In smaller jurisdictions, court may be held in a variety of municipal buildings that are not solely used for court purposes. Setting aside a private space to speak with advocates and separate waiting areas so that incidental contact with offenders is limited can still be achieved—even if the space is a conference room or office. Allowing materials and information from the local domestic violence agency to be placed in the safe space also helps. If a local victim advocate can be on-site when the court is in session, the advocate should have a designated space within the safe waiting area.

Create strong linkages with a wide range of partners Convene regular meetings with criminal justice and social service partners. Interagency collaboration is crucial to ensuring communication, consistency, and continuing education about the court and domestic violence. The judge can be a catalyst by inviting all of the court’s partners, including representatives from the prosecutor’s office, the defense bar, court officers, victim advocates, resource coordinators, and probation, to participate in regular meetings. Ethical opinions from New York and around the country have stated that task forces and committees that have invited representation from a wide range of views do not pose a problem for the judge’s impartiality.⁸ The Clarkstown Town Court, for example, has held regular meetings with key stakeholders since opening in

2002. These meetings have enabled participants to gain a greater understanding of each other's roles and generated new ideas for innovation.

Judicial Monitoring

Domestic violence courts seek to take advantage of the coercive and symbolic authority of judges. There is good reason for this: research indicates that on-going judicial monitoring may be the most effective technique for reducing domestic violence recidivism.⁹ Monitoring sends the message that repeat offenses will not be tolerated and ensures that the full weight of the judge's authority is directed at stopping the violence. Judge Mark Farrell, town justice in Amherst, New York, believes that local criminal courts play an integral role in responding quickly to domestic violence. By holding regular compliance dates, Farrell feels that he has "an opportunity to demand accountability" from defendants in a way that traditional courts are not able to. Based on the experience of Farrell and other domestic violence judges, here are six lessons for improving the monitoring of defendants:

Participate in judicial training on domestic violence The judge's ability to hold a defendant accountable is compromised if he or she is not aware of the dynamics of domestic violence and how they may influence the case presentation.

Supervise defendants continuously Courts should monitor defendants who have been convicted or taken a plea through regular compliance hearings. Courts may use these hearing to ensure that the offender has enrolled in a batterers education program and is refraining from contacting the victim. Frequent reporting means that if a violation of a sentence occurs, the court can respond immediately.

Explore new methods of judicial monitoring Even if a court does not meet frequently, judges can still enhance judicial monitoring. Courts have explored curfews, phone check-ins, and ankle monitors. Additionally, local probation department and victim service providers may be able to provide the court with information concerning defendant compliance.

Create a separate compliance docket It may make sense to create a separate "compliance calendar" to monitor offenders' compliance after imposition of the sentence. A separate calendar sends the message that the judge is still watching the case. The court needs timely reports or an on-site representative from probation or the batterers education program so that the defendant's compliance with mandates can be verified.

Build strong relationships with service providers Information is crucial. Strong relationships with service providers, such as batterers intervention programs and substance abuse treatment providers, ensure that when a defendant is noncompliant, the court is notified right away and can act accordingly. Because there may be only one service provider in rural areas, it is especially important for the court to inform the program of the court's expectations and to understand what services are actually provided.

Think creatively and use the resources you have In many jurisdictions, the local probation department can provide the court with specialized domestic violence officers to help supervise offenders, and can provide the court with information through pre-plea or pre-sentence investigation reports. Probation and parole departments can monitor offenders even when they are no longer being monitored directly by the court. And local non-profits can pitch in as well by keeping in touch with complaining witness and reporting any violations—assuming that the victim signs a release.

Obstacles

Working on domestic violence cases is not without its challenges, of course. Changing the way that domestic violence cases are handled requires the buy-in of numerous agencies including court administrators, judges, prosecutors, victim advocates and, where possible, the defense bar. Each of these stakeholders will have their own concerns. Addressing as many of these issues up front will help prevent problems down the road.

Defense Objections Defense counsel may oppose the court's use of intensive judicial monitoring and/or pre-disposition conditions of release. Emphasizing the court's responsibility in ensuring due process at all stages of the proceedings and including defense counsel in all aspects of court development and implementation will assist in mitigating these concerns. New York domestic violence courts have discovered that there are issues that engage the defense bar (e.g., battered women defendants, defendants with mental illness) and have used these topics as a catalyst to encourage their participation. These issues are worthy of special attention because both defense counsel and victim advocates agree that these cases present unique difficulties.

Judicial Objections Some judges may feel that treating domestic violence cases differently makes it appear as if their objectivity has been compromised. Indeed, some judges have worried that domestic violence trainings can appear to align them too closely with the victim's perspective. However, New York Chief Judge Judith S. Kaye has mandated that all judges that hear family-related cases participate in domestic violence training biannually. Understanding the dynamics of domestic violence does not mandate any particular finding in any individual case. And, judges who have presided over domestic violence courts have helped protect their objectivity by inviting all court partners, including the defense bar, to meetings.

Partner Objections Criminal justice professionals (i.e., attorneys, police, probation officers) may claim, with good reason, that they are too short-staffed to provide additional scrutiny to domestic violence cases. New York State experience has shown, however, that working together on domestic violence cases minimizes complications and saves time in the long run.

Conclusion

Recent history has shown that courts can play a key role in changing the way that the criminal justice system approaches domestic violence cases. Domestic violence

is a unique crime that demands innovation from the entire criminal justice system. The progressive nature of domestic violence—it tends to become more and more violent over time—underscores the need for courts to look beyond individual cases. They must look at broader system outcomes, seeking to reduce recidivism, increase safety for victims, and improve inter-agency collaboration. Courts alone cannot eliminate family violence, but they can play an important role, increasing accountability for defendants and safety for victims.

To get a copy of “Next Steps: A Best Practice Checklist for Handling Domestic Violence Cases in Rural Jurisdictions” or for additional information about or technical assistance in implementing these key practices, please contact Liberty Aldrich at info@courtinnovation.org.

Notes

1. NYS Office for the Prevention of Domestic Violence, Domestic Violence Data Sheet 2001. It is worth noting that domestic violence is not limited to male-female relationships and is not always perpetrated by men. This document uses “she” in order to refer to the complainant/victim and “he” to refer to the defendant for simplicity and in order to reflect the results of studies which show that approximately 95 percent of domestic violence victims are female.
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4. Judith S. Kaye and Susan K. Knipps, “Judicial Responses to Domestic Violence,” 27 *W. St. U.K. Rev.* 1. 1999/2000, p. 3.
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7. Smith, A. 2001, “Domestic violence laws: The voices of battered women,” *Vio & Victims*, 16(1): 91.
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Center for Court Innovation

The winner of an Innovations in American Government Award from the Ford Foundation and Harvard's John F. Kennedy School of Government, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how courts and criminal justice agencies can aid victims, change the behavior of offenders and strengthen communities.

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