

Assessing Risk for Domestic Violence: A Pilot in New York

How can judges respond to risk when issuing protective orders? What information can be shared safely and ethically about domestic violence risk? The Center for Court Innovation, with support from the Office on Violence Against Women, has been testing these questions in New York State's 8th Judicial District, which includes the city of Buffalo.

In 2012, the 8th Judicial District (representing eight counties in Western New York State) identified the issue of risk assessment as a crucial component to judicial decision-making in domestic violence cases. Based on this interest, in June 2012, the New York State Office of Court Administration, together with the Center for Court Innovation, used federal funding to support the 8th Judicial District Risk Assessment Project. This document reviews the results of the initial pilot period and makes recommendations for wider implementation.

The Problem

Assessing risk in domestic violence cases can be a challenge for many reasons. Domestic violence is not static—factors such as possession of a weapon, employment status, and dissolution of the relationship through temporary separation or divorce, are all dynamic, fluctuating factors in the lives of domestic violence perpetrators and victims. Additionally, justice system agencies may be operating under significant information and time constraints when making decisions regarding arrest, bail, protective orders or probation supervision.

In order to better understand the risk of lethality to the victim or risk of recidivism of the defendant, many risk assessment tools have been developed over the past several years. Jackie Campbell's Danger Assessment, created for use in confidential social service settings, was one of the nation's first risk assessment tools that

was validated to accurately predict the risk of lethality for domestic violence victims.¹

The usefulness of this tool and its widespread use throughout hospitals and domestic violence shelters, has led to more criminal justice agencies seeking tools to enable them to better gauge the risk for their clients (either defendant or victim). Over the past several years, law enforcement, probation, prosecution, and courts have been using risk assessment tools to assist in more accurately responding to the safety of the domestic violence victim and the accountability of the domestic violence offender.²

However, challenges remain for judges. How can judges ethically and safely gather information about risk in civil proceedings? What information is important to know when crafting orders of protection? How can judges craft orders that respond to risk and safety concerns?

The Idea

Starting in 2012, an advisory group of judges and court personnel in Criminal, Family, Domestic Violence and Integrated Domestic Violence Courts in the 8th Judicial District met regularly to review local and national best practices. In particular, they were interested in how risk assessments could improve the quality of information at both initial application and modification proceedings for orders of protection. Additionally, Center for Court Innovation staff conducted research into how

courts could adapt current risk assessment tools—which were originally designed for use by community or corrections based personnel—for use within the court system.

The Center for Court Innovation and New York State Unified Court System's Office of Policy and Planning, together with experts from the Battered Women's Justice Project, facilitated a two day meeting with judges and stakeholders in the 8th Judicial District, providing hands-on expertise in how to implement a risk assessment tool. The goal was to develop a tool that would incorporate assistance from victim advocates and guide, but not limit, judicial review. Based on this research and discussion, Center staff drafted a Domestic Violence Risk Factor Guide for Judges that was reviewed by the advisory group and stakeholder agencies.

The Domestic Violence Risk Factor Guide for Judges is a two-sided document to be used by advocates assisting petitioners drafting order of protection petitions and by judges conducting initial hearings. The guide includes chart identifying risk factors, what follow up questions to ask or factors to look for in a petition, and New York Family Law specific to each of the factors. This tool was created to allow judges to view language in a petition through the lens of risk factors, to gather additional information as needed, and to apply case law and remedies that would more accurately address the risk indicated by the petition.

Implementation

During the summer of 2013, two judges and one court attorney referee piloted the Risk Guide in the 8th Judicial District. A community-based domestic violence service provider, Haven House, identified an advocate who agreed to use the tool when working with petitioners in Erie Family Court. The advocate used the tool to assist in the filing of the petition and to create safety plans. After filing, two of the judicial officers, used Risk Guide to help provide context for their review and questions for the petitioner.

Initial feedback on the usefulness of the Risk Guide has been positive. Both advocates and judges find the guide allows them to better assess for risk.

Impact on Judges: Judges report that they find the Risk Guide useful, particularly the legal framework. They use it primarily at ex-parte temporary order of protection hearings to guide any questioning of the petitioner and to make decisions regarding particular conditions of the order and to gauge the context of the violence. They have also found the guide helpful in making decisions regarding modifications of orders including violation hearings.

Most importantly, the judges have seen a difference in the quality of the information on petitions when the advocate or clerk has used the guide with petitioners: the petitions have more information, allowing judges to make more informed decisions.

Impact on Advocates: Haven House, which provides an on-site advocate to Erie Family Court, finds the Risk Guide useful in assisting petitioners in drafting temporary protective order petitions, particularly in using language in the petition to convey the risk factors. The advocate also uses the Risk Guide to discuss safety planning with petitioners either prior to or after the initial court appearance. From September to December 2013, the advocate used the Guide with over 170 petitioners.

Impact on Clerks: The clerks' offices also have copies of the Risk Guide and refer to it when talking with petitioners (not to give legal advice but to assist in reviewing the petition for basic sufficiency).

Adaptation Ideas

The initial implementation of the Risk Guide demonstrates that providing judges, court staff and advocates with a concise, easy to navigate tool to assess risk can enhance their ability to respond to domestic violence. With further planning the guide could be replicated in other

contexts. For example, advocates who may have remote access to online petitions could use the guide to assist petitioners. Or it could be adapted to fit on-line order of protection applications that are used by several states. Finally, the guide could be adapted to be used in criminal court settings.

Technical Assistance

Since 1996, the Center for Court Innovation has helped dozens of jurisdictions develop programs that respond to violence against women, whether domestic violence, sexual assault, prostitution or trafficking. The Center for Court Innovation is able to provide a variety of services, including on-site support, site visits and peer-to-peer contacts. For more information the Center for Court Innovation at expertassistance@courtinnovation.org or 646.386.3100.

References

1. www.dangerassessment.org.
2. Tools such as the DVSI-R, the ODARA, LAP are being used by probation and law enforcement agencies.

About

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