

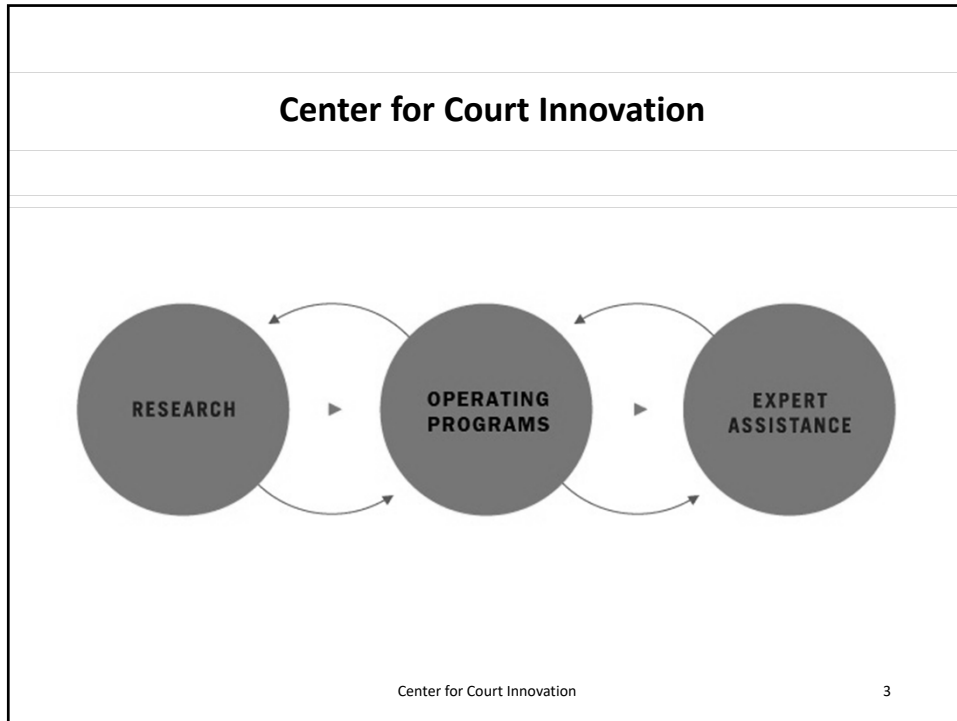


Enhancing Safety and Accountability: Incorporating Risk Assessment into Domestic Violence Cases

Beyond the Bench
San Diego, CA
December 16, 2019

Welcome and Introductions

- ▶ **Hon. Julie Emede**
Superior Court of Santa Clara County
jemedede@scscourt.org
- ▶ **Hon. Janice Rosa (ret.)**
New York State Judiciary
jan.rosa327@gmail.com
- ▶ **Rebecca Thomforde Hauser**
Center for Court Innovation
thomferr@courtinnovation.org
- ▶ **Danielle Pugh-Markie**
Center for Court Innovation
markied@courtinnovation.org



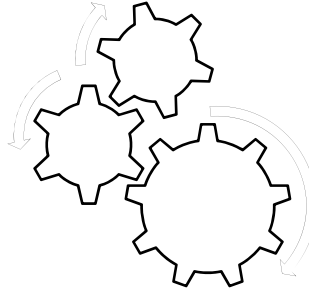
Gender and Family Justice Initiatives Team

Civil Legal Attorneys	□	Policy Developers	□	Victim Advocates	□	Social Workers
						
Nida Abbasi		Liberty Aldrich		Brittany Davis		Kathryn Ford
						
CJ Glackin		Rebecca Thomforde Hauser				
						
Carolina Herrera		Robyn Mazur		Danielle Pugh-Markie		Jenna Smith
						
Kate Wurmfeld						

Center for Court Innovation 4

We Promote

- ▶ Court and Community Collaboration
- ▶ Judicial Leadership
- ▶ Survivor Safety and Well-Being
- ▶ Access to Justice
- ▶ Offender Engagement and Accountability
- ▶ Trauma Informed Responses



Center for Court Innovation

5

Domestic Violence Dynamics, Risk and Lethality

10:15 am-11:15 am

Recognizing and Responding to the Dynamics of Domestic Violence

Small Group Exercise

You will receive a slip of paper with a behavior and subsequent question under it.

Please discuss the question with your group.

Large Group Debrief

- ▶ *Reads partner's email.*
- ▶ *Hits wall next to partner's head.*
- ▶ *Pressures partner to have sex.*
- ▶ *Checks money in partner's wallet.*
- ▶ *Tells a close friend partner is abusive.*
- ▶ *Gives away the family pet.*
- ▶ *Posts loving messages on social media.*

Context Is Everything

9

Context means:

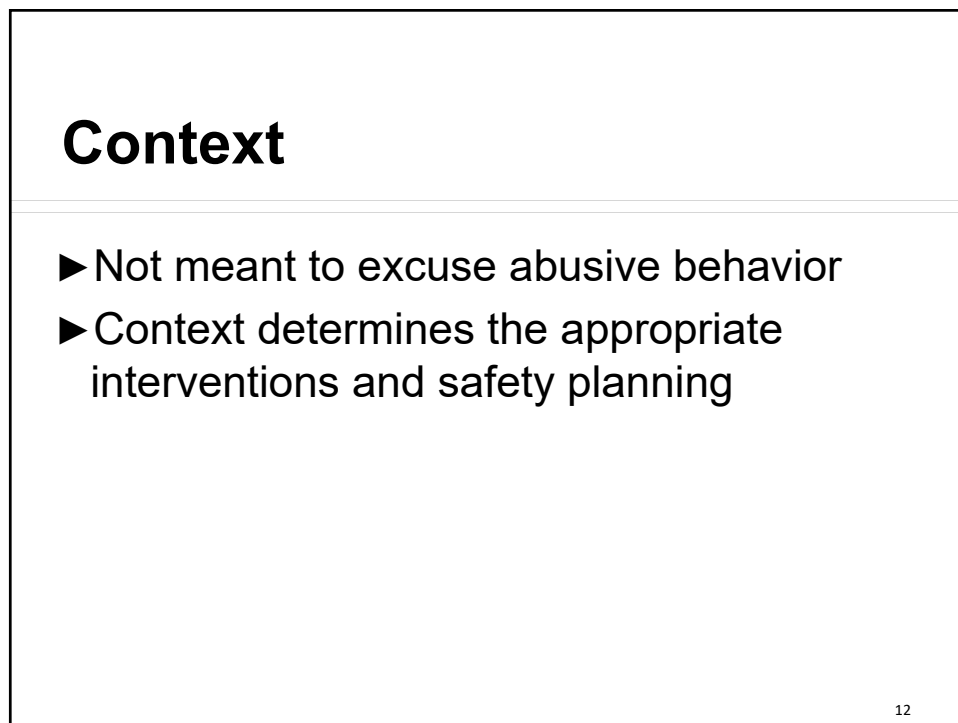
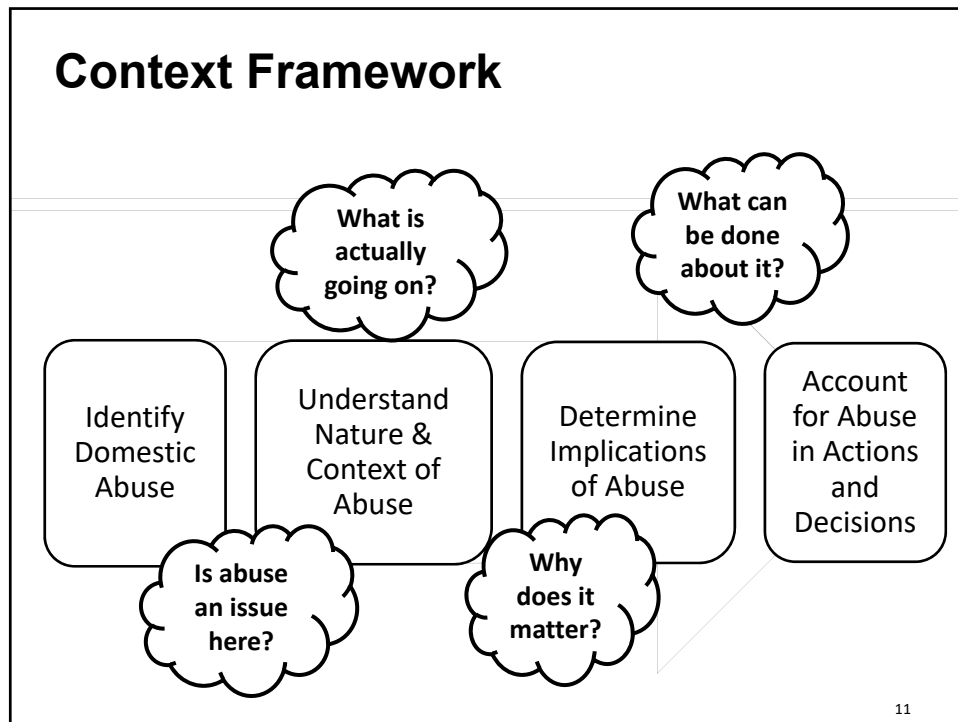
INTENT

MEANING

EFFECT

*WHO is doing WHAT to WHOM
and with what IMPACT?*

10



Context is critical

Failing to distinguish one kind of domestic abuser from another can:

- ▶ Endanger victims of ongoing violence
- ▶ Embolden perpetrators of ongoing violence
- ▶ Place children at risk

13

Understanding Context in Criminal & Family Law Cases

- ▶ What is on the petition/complaint?
- ▶ What is NOT on the petition?
- ▶ Why does context matter?

Center for Court Innovation

14

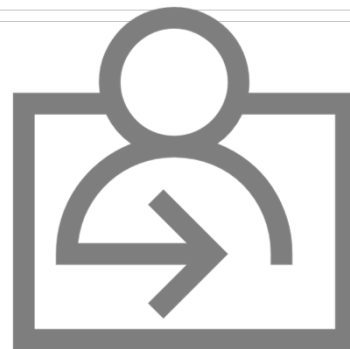
How do we determine the context for this act of violence?

- ▶ Information from Parties:
 - ▶ History of violence
 - ▶ Existence of pattern of intimidation and threats
 - ▶ Intent and meaning of violence to victim
- ▶ Information from others:
 - Review of police reports
 - Risk assessment
 - What else?

15

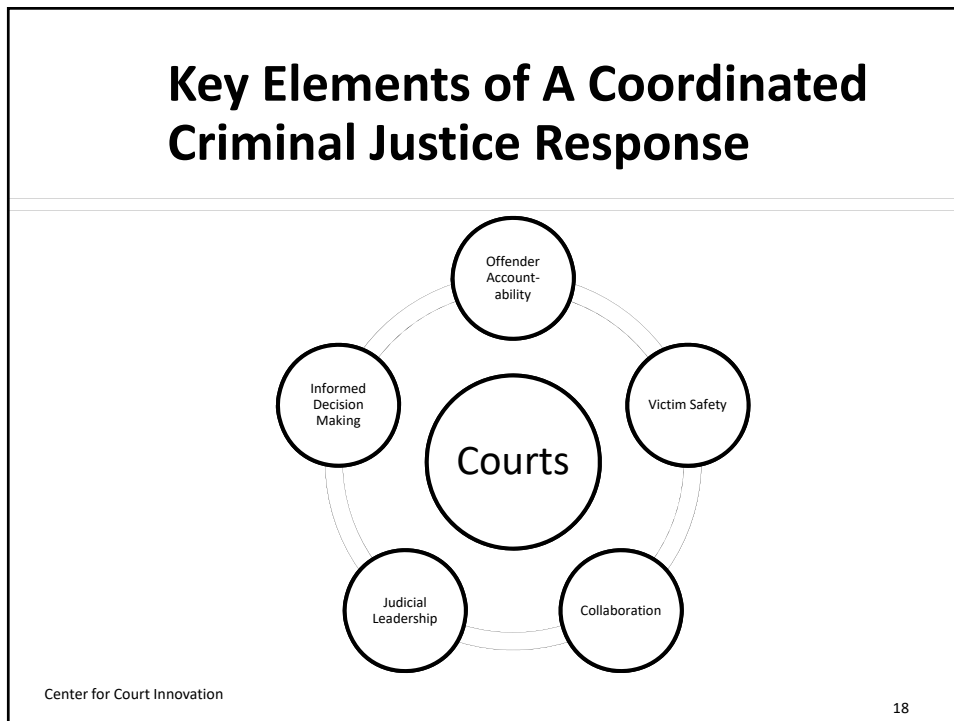
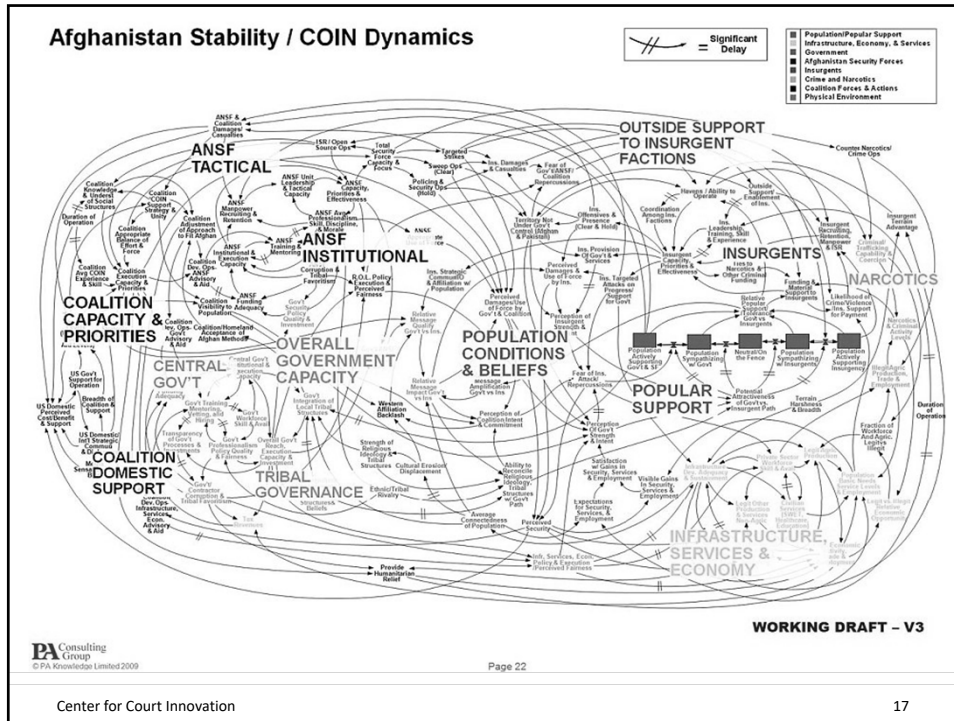


How Can Courts Respond?



Center for Court Innovation

16



Responding to Intimidation

- ▶ Provide a safe waiting area for complainants to minimize contact with respondent/defendants; call cases quickly
- ▶ Monitor respondent/defendants for any intimidating behavior in the courtroom (inc. nonverbal) → put on the record
- ▶ Encourage DV training for court staff, including security personnel
- ▶ Impose sanctions for violations
- ▶ Consider phone hearings
- ▶ Encourage use of counsel/advocates

21

Responding to Emotional Abuse

- ▶ Supportive judicial demeanor; aware of courtroom dynamics
- ▶ Don't allow name-calling or disparagement of parties by each other or attorneys
- ▶ Understand that emotional abuse can be the most damaging to victims
- ▶ Cultural considerations and LGBT issues
- ▶ Don't accept excuses or blame the victim
- ▶ Don't allow joking in the courtroom by respondents or court personnel

22

Responding to Children's Exposure

- ▶ Consider requiring participation in parenting program about impact of DV on children
- ▶ Consider including children & their schools on protective conditions and orders as needed
- ▶ Communicate with Family Court re: cases for custody and/or visitation
- ▶ Inquire about whether children were present during the incident → educate all about impact of DV on children
- ▶ Consider ordering Supervised Visitation

23

Responding to Economic Abuse

- ▶ How can economic abuse manifest? What are appropriate responses?
- ▶ Consider support where appropriate
- ▶ Non W-2 wagger earner issues
- ▶ Victims may be contact advocates for assistance:
 - housing & shelter
 - public benefits

24

Responding to Coercion & Threats

- ▶ Assess risk factors for escalation of violence & lethality; risk increases at separation and after job loss
- ▶ Monitor respondent/defendants' compliance with court orders
- ▶ Communicate with other courts to prevent inconsistent orders and conditions; review op registry
- ▶ Prioritize victims' safety throughout the court process

25

Responding to Isolation

- ▶ Provide DV resource information in your courtroom in a way that is safe for victims
- ▶ Connect victims with needed services
- ▶ Understand victim services available in community: court accompaniment & advocacy programs

26

**What Does California Law Allow
You to Consider?**

27

Abuse (FC § 6203)

Sexual assault

Intentionally
or recklessly
cause/attempt
bodily injury

Create reasonable
apprehension of
imminent serious
bodily injury

28

Abuse, cont'd – Behavior Enjoined by (FC § 6320)

- No molest, attack, threaten, harass, stalk
- No destruction of property
- No contacting – calls, letters etc
- No disturbing the peace of
- Stay away
- No credibly impersonating/falsely personating

29

Disturbing the Other Party's Peace

- ▶ FC § 6320(a) – “The court may issue an . . . order enjoining a party from . . . **disturbing the peace** of the other party”

30

Disturbing the Peace

Nadkarni (2009)

- Accessing, reading, disseminating ex-W's private emails could = "destroying her mental or emotional calm" and trial court should have permitted hearing

Evilsizor v Sweeney & Altafulla v Ervin (2015)

- Disclosing someone's intimate details can = disturbing the peace; first amendment does not protect

Burquet v. Brumbaugh (2014)

- DVPA disturbing the peace has no relation to PC § 415

31

Disturbing Peace of Others

Gao v. Xiao (2014)

- Abuse of child could disturb a parent's peace, so hearing on DVRO request should have been permitted

People v. Kovacich (2011)

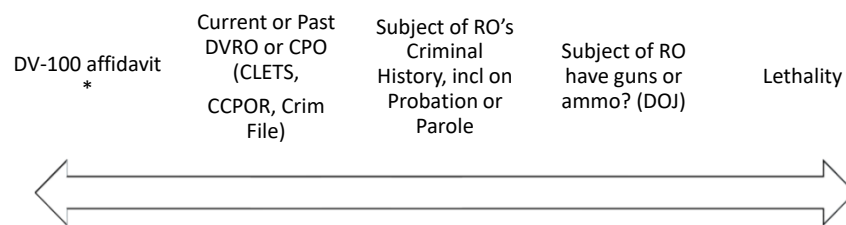
- Criminal case: evidence that defendant abused dog in front of wife and child could be abuse under DVPA and was therefore property permitted in evidence

Perez v. Torres-Hernandez (2016)

- F's abuse of children during parenting time implicates FC 6203 "reasonable apprehension of imminent serious bodily injury to that person or another."

32

What Do You Consider? (FC§6300, 6306)



33

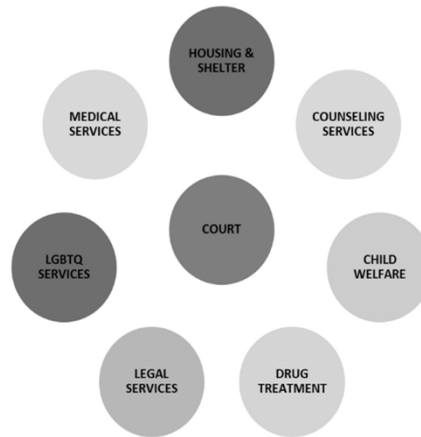
Making the most informed decisions

- ▶ Respondent/Defendant assessment and placement
- ▶ On-going monitoring
- ▶ Intensive supervision/probation
- ▶ Reports from victim advocates
- ▶ Reports from programs
- ▶ Technology systems can help

34

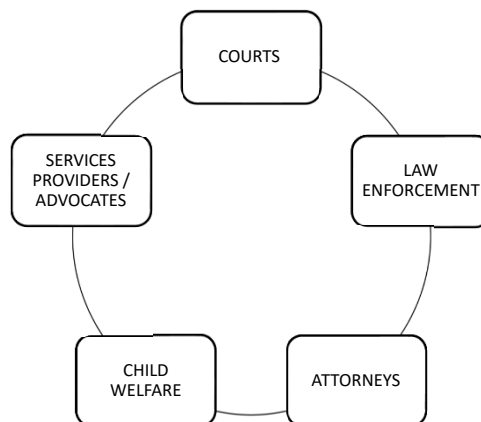
Linking Victims/Respondents to Services

- ▶ Map community resources to address victim/defendant needs
- ▶ Consider proportionality when determining the length of engagement
- ▶ Broker partnerships with trauma-informed and evidence-based programs
 - Seeking Safety
 - Trauma-Focused CBT
 - Risking Connection
 - See: SAMSHA's National Registry of Evidence-Based Programs and Practices



35

Collaboration and Capacity Building: Who Should be at the Table



36

Small Group Exercise: Matt and Souyoup

- ▶ What domestic violence tactics is Matt using?
- ▶ What concerns for Souyoup do you have?
- ▶ How would you handle these concerns?

37

Domestic Violence Dynamics: Thinking about Risk and Lethality



(c) JMRosa 2017

38

Break 11:15-11:30



39

Risk Assessment and Tools

11:30-12:30

40

Why Should We Care About Risk?

- ▶ **Reduce Recidivism:** Use risk information to adjust the intensity of the justice system's response to the offender.
- ▶ **Help Victims:** Promote service linkages & safety planning especially for victims facing high (or moderate) future risk.
- ▶ **Flag Lethality:** Initiate multi-pronged response if an assessment identifies lethality risk in DV cases.

What is Risk?

- ▶ **Risk = Risk of Re-Offense**
- ▶ **Classic Ways of Operationalizing Risk:**
 - ▶ General Risk: Likelihood of *any* re-offense.
 - ▶ Risk of Violence: Likelihood of *violent felony* re-offense.
 - ▶ Risk of Domestic Violence: Likelihood of future DV.
 - ▶ Risk of Lethality: Likelihood of future (DV) homicide.
- ▶ **Classifying Risk:** Low, moderate, high; or in 5 categories: low, low-moderate, moderate, moderate-high, and high.
 - ▶ More to come on unique elements of **domestic violence risk**

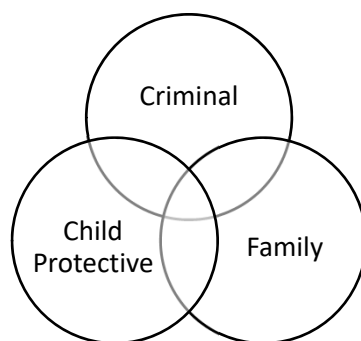
Information on Risk and Need

- **General: “Central Eight” Criminogenic Factors:**
 1. History of criminal behavior (STATIC)
 2. Antisocial personality
 3. Criminal thinking (anti-social beliefs and attitudes)
 4. Antisocial peers
 5. Family or marital problems
 6. School or work problems
 7. Lack of pro-social leisure/recreational activities
 8. Substance abuse
- **DV Specific Risk Factors:**
 - Recidivism
 - Lethality

Center for Court Innovation

43

What is Risk in Domestic Violence Cases?



- ▶ How do our different systems define it?
- ▶ What are the risks to the victim posed by the system?

44

3 RISKS for a Parent seeking help

- ▶ **Batterer** risks – use Assessment tools
- ▶ **Life** Risks – use Community Resources
- ▶ **Institutional** risks - ? What?

(c) JMRosa 2017

45

Institutional Risks

- ▶ **Family Court** versus **Child Welfare** (“failure to protect”) versus **Criminal Court**
- ▶ Protective Orders v. need for Financial support
- ▶ Family Court “Values” and “Myths” at work
- ▶ Custody evaluators, OCRs, Attorneys, Judges – not understanding dynamics, not understanding risks to children

(c) JMRosa 2017

46

What Do We Know about Domestic Violence Risk and Fatality?

47



(c) JMRosa 2017

Photo by [Phil Hearing](#)

**Q: THE HOME
IS THE MOST
VIOLENT
PLACE IN
AMERICA.**

True or False?

48

TRUE.

- ▶ **27%** all violent crime = FAMILY ON FAMILY
- ▶ YET, crime stats under-report home violence.....
Estimated
< **5%** all D.V. results in a
police report

KOOP et al 1992; HOROWITZ et al 1995, STRAUS, 1974

Q: A Woman is most at Risk *before* she leaves for safety.

- ▶ ***True or False?***

FALSE.

- ▶ Most at risk AFTER separation
- ▶ **75%** Women - killed while TRYING TO LEAVE or AFTER leaving
- ▶ **88%** of those killed - STALKED first
- ▶ **80%** of those killed - prior DV incidents

(c) JMRosa 2017

51

Stalking via Child Contact

- ▶ Child contact - 'visitation', custody litigation, continual violations of parenting court orders
- ▶ **This is the most common context for re-assault post-separation (Stark, 2009); & if stalking alleged, there are more frequent Order violations**
- ▶ Children become the 'proxies' for control of survivor-parent
- ▶ Controlling parent feels entitled, superior

(c) JMRosa 2017

52

Cyberstalking: Challenges for Survivor and Court

- What are you seeing?
- What are some challenges?



Cyberstalking: The Reality

- ▶ 90% of 18-29 year-olds use social media;
- ▶ Many teens experience power and control patterns in their technology relationships;
- ▶ Social media may lead to normalization of DV

Q: Most BATTERED WOMEN DO NOT WANT TO BE RESCUED.

▶ *True or False?*

(c) JMRosa 2017

55

TRUE

- ▶ Most “just want it to stop”
- ▶ Want quick and effective intervention to PREVENT repeat & keep their children safe
- ▶ Will usually take her **5-7 YEARS** to leave or stop the violence - WHY?

(c) JMRosa 2017

56

Q: A GUN in the Home increases the Risk of Homicide.

True or False?



(c) JMRosa 2017

57

TRUE

- ▶ Presence of a gun in a domestic violence situation increases homicide risk for women by **500%**.

American Journal of Public Health 2003, Campbell et al

(c) JM Rosa 2019

58

Firearms and D.V: a quick look at numbers --

- ABOUT **40-50%** OF ALL FEMALE MURDERS- COMMITTED BY INTIMATE PARTNER [Amer J of Public Health, 2003]
- GUNS are used in **2/3** of ALL DOMESTIC HOMICIDES- the MOST COMMON form of death - [U.S. Dept. of Justice]
- Women in the US are **11 times** more likely to be killed with a gun than in other high-income countries [J of Trauma, 2011]
- States with background checks for all handguns – **38%** fewer firearm deaths [Violence Policy Center, Washington DC 2012]

(c) JMRosa 2019

59

Firearms + THREATS = SERIOUS Risk Factors

- ▶ WOMEN THREATENED verbally with murder → **15 x** MORE LIKELY TO BE MURDERED
- ▶ WOMEN THREATENED with a GUN → **20 x** MORE LIKELY TO BE MURDERED
- ▶ **7th** leading cause of premature death in women **[#1 for African-American women ages 15-34]**

(c) JMRosa 2017

60

“Choking” is a serious incident?

- ▶ Yes or No?

(c) 2019 JaniceMRosa

61

Extremely serious! But Lack of Understanding

- ▶ Victim of just 1 strangulation event = 700% more likely to be victim of attempted homicide
- ▶ AND – 800% more likely to be a homicide victim by the same partner
- ▶ YET, visible injuries present in only about 50% of strangulation cases – Victims and Responders (Law, Health, Police) all underestimate
- ▶ Even those that result in death
- ▶ Serious injuries – brain damage,
- ▶ Strangulation is highly gendered crime – 99% by men
- ▶ Seen in police killers and mass shooters

(c) 2019 JaniceMRosa

62

Strangulation = Power and Control

- ▶ **“the last warning shot”**
- ▶ Most abusers do not strangle to kill
- ▶ They strangle to make a point:
 - ▶ **“I have the power to kill you, and I can/will”**
- ▶ **“The most dangerous DV offenders strangle their victims.” Casey Gwinn**

63

Some of the latest research..

- ▶ Lasting ‘invisible’ brain injuries often go unrecognized
- ▶ 2019 Study Ohio (J of Aggression, Maltreatment & Trauma) found:
 - ▶ **81% women suffered head injuries**
 - ▶ **83% women have been strangled**
- ▶ Repeated head injuries – memory loss, loss of motivation, anxiety, trouble with processing, hearing, vision
- ▶ TBI – anger, not showing for appointments, confused thinking

(c) 2019JaniceMRosa

64



© Julie Emede

**Abuse of Pets is Fatality Factor:
Animal Protection: FC 6320(b)**



And the CHILDREN....?

**25% OF DOMESTIC HOMICIDES have
been witnessed by the Victim's Child**

DOYNE, BOWERMASTER, & MELOY (1999)

Domestic Violence Frequency

DV households - equally across all ages of childhood?

TRUE OR FALSE?

(c) JMRosa 2017

67

FALSE – It occurs MORE frequently in homes with children ages **5 or younger**

[TAYLOR, ZUCKERMAN, HARIK, AND GROVES (1994)]

(c) JMRosa 2017

68

Co-Incidence of DV & Child Abuse

AN OVERLAP OF **30 – 60 %** VIOLENCE AGAINST
WOMEN → AGAINST CHILDREN IN THE SAME
FAMILY...

& the most severe = greatest likelihood

(c) JMRosa 2017

69

Lethality Risks for Children

- ▶ Review of the results from Death Review Committees across multiple countries – 2017 publication: ***Domestic Homicides and Death Reviews***
- ▶ **When an ADULT is in DANGER, CHILDREN are equally in danger**
- ▶ Overall finding – children can be at severe risk from DV
- ▶ Risk of – DEATH and
- ▶ Risk of irreversible TRAUMA

(c) JMRosa 2017

70

DOMESTIC VIOLENCE Factors Associated with Increased Risk of Lethality

- ▶ Increase in physical violence over the past year
- ▶ Respondent/Defendant owns a gun
- ▶ Use or Threatened use of lethal weapon
- ▶ **Separation within the past year**
- ▶ Unemployment
- ▶ Strangulation
- ▶ Jealousy
- ▶ Controlling behavior
- ▶ Drug/Alcohol Abuse
- ▶ Abuse During Pregnancy
- ▶ Child Abuse Threats
- ▶ **Child that is not the biological child of the defendant/respondent**
- ▶ Stalking
- ▶ Avoidance of Arrest
- ▶ Victim Belief that defendant/respondent is capable of killing him/her

71

DV Specific Recidivism Factors

- ▶ Prior DV related incidents/violations of OPs
- ▶ Violence towards family members
- ▶ Suicidal/homicidal
- ▶ Access to firearms/use of weapons
- ▶ Obsession with victim
- ▶ Victim fear of re-assault
- ▶ **Attitudes that condone DV**
- ▶ Recent separation
- ▶ **Failure to complete a mandated batterer program**

72

“The majority of victims or perpetrators (up to **83%**) or both had contact with criminal justice, victim assistance, and/or health care agencies in the year prior to the homicide....

This indicates **opportunities** for prevention by identification of women at risk and appropriate intervention.”

Campbell, Ph.D., R.N., F.A.A.N., Johns Hopkins University, Intimate Partner Homicide: Review and Implications of Research and Policy

73

Reminder of the Challenge

Dr. Campbell's research:
Victims rarely over-estimate the level of risk they face but often under-estimate it

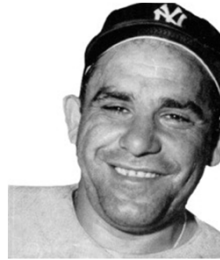
74

Looking For Tools: “Prediction is very difficult – especially about the future”

Neils Bohr



Yogi Berra



(c) Janice M. Rosa, 2019

75

Limitations and Benefits of Risk Assessment

Limitations

- ▶ Retrospective rather than prospective studies
- ▶ Propensity towards “false positives”
- ▶ Risk is dynamic rather than static
- ▶ Potential for Racial Bias

Benefits

- ▶ Development of common language across systems
- ▶ Assists in the prioritization of limited resources
- ▶ Assists with safety planning strategies - may save lives

76

Scientific Considerations

- ▶ **Validity:** Do the resulting risk scores & categories significantly predict re-arrest? (Do “high risk” defendants have significantly higher re-arrest rates than “low risk” defendants?)
- ▶ **Equity:** Does validity differ by gender or race/ethnicity? And, does the tool have a disparate impact—Are people from some groups more likely to be incorrectly classified as high risk?
- ▶ **Reliability:** Do different people administering the same assessment obtain the same results?
- ▶ **Local Validation:** Has good validity, equity, & reliability been demonstrated with the relevant local population?

CONTEXT of Risk Assessment

- ▶ WHO is doing the Assessment?
- ▶ With WHOM?
- ▶ For WHAT purpose?

HELPS DRIVE the Answer to WHICH Instrument?

Overview of Existing Assessments

Lethality Assessment

- Danger Assessment
- LAP

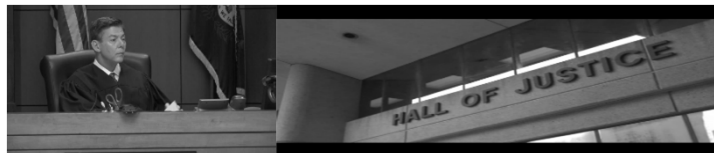
Recidivism Assessment

- Ontario Danger and Risk Assessment
- Domestic Violence Severity Instrument-Revised
- Sexual Assault Risk Assessment

79

So What About the Courts?

- ▶ What makes Court's role different?
- ▶ What is current practice?
- ▶ What are best practices?



80

Key Issues for assessing risk from the Bench

- ▶ Assessment instruments should never be used to DENY a petition.
- ▶ Risk is DYNAMIC over the life of the case – system responsiveness lag
- ▶ **Informed Decision-Making:** gathering information from as many sources as possible
- ▶ Victim input is crucial—how do we safely get that information to the court?

81

Who can help get information to the judge?

- ▶ Role of Court Staff or other pre-petition assistance
- ▶ Information-gathering
 - ▶ Victim Advocates
 - ▶ Attorneys
 - ▶ GALs
 - ▶ Supervised Visitation Centers
 - ▶ Court ordered evaluations
 - ▶ Other Courts

82

Assessing Risk in the Civil Context: National Strategies

83



Strategies in New York State

- Understanding Risk Factors
- Understanding what legal remedies can respond
- Service Providers

84

Judicial Guide

Risk Factor	What to Look For	Legal Context
Context of Violence	<ul style="list-style-type: none"> Was this the first time that something like this happened? If not, what happened before? How long ago? What was the worst or most serious thing that happened? Medical treatment needed? Has the physical violence increased in frequency or severity over the past year? Is there a recent loss of employment? 	Use of some illegal drugs; increased severity/ frequency of violence, unemployment increase lethality and recidivism. INSERT STATE STATUTES HERE
Substance Abuse/Mental Health	<ul style="list-style-type: none"> Is there a history of substance abuse or mental health concerns? 	INSERT STATE STATUTES HERE
Criminal and Family Court History	<ul style="list-style-type: none"> Criminal and Family Court check, OP registry, sex offender registry Pending or prior Orders for Protection Pending order of Support 	Prior OPs/criminal history can be a risk factor for re-offending INSERT STATE STATUTES HERE
Relationship Status	<ul style="list-style-type: none"> When did the relationship begin? When did it end? Where does each party live? Did they live together, if so when? Are they recently separated? 	Separation within the past year increases risk of lethality and recidivism. INSERT STATE STATUTES HERE
Firearms/ Weapons	<ul style="list-style-type: none"> Does respondent have access to a firearm or weapon? Is there a firearm or weapon in the home? Has the respondent ever used or threatened to use a weapon against the petitioner? 	Respondent access to firearm and use or threatened use of lethal weapon increases lethality risk INSERT STATE STATUTES HERE
Strangulation	<ul style="list-style-type: none"> Has respondent ever attempted to strangle or choke the petitioner? 	Strangulation increases lethality. INSERT STATE STATUTES HERE
Threats to Kill/Suicide	<ul style="list-style-type: none"> Has respondent ever threatened to or tried to kill the petitioner? Has the respondent ever threatened to or tried to commit suicide? 	INSERT STATE STATUTES HERE
Sexual	<ul style="list-style-type: none"> Has respondent forced the petitioner to have sex? 	INSERT STATE STATUTES

Self-Represented Litigant Guide

Things to Think About When Writing Your Petition

This Guide will help you:

- Identify things that may put you at risk of repeated injury or death
- Tell the judge about your safety concerns when you write petitions for protective orders or when you write petitions for orders affecting your children, such as custody and parenting time
- Understand what you can ask the court to do

For this Guide: If you are asking the court to protect you, you are the "petitioner" and the person you are asking the court to protect you from is the "respondent."

Things that may put you at risk	What to describe in your petition	What you might ask the court to do ¹
Violence Against You	<input type="checkbox"/> Details about the physical violence including whether it has gotten worse <input type="checkbox"/> Whether and when violence has happened before, and any changes in the violence <input type="checkbox"/> The injuries, level of pain, whether you've gone to the doctor or hospital, and treatment you've needed	Require respondent to: <input type="checkbox"/> stay away from me and my work or from me and the children and school; <input type="checkbox"/> pay for medical bills due to the injuries; <input type="checkbox"/> go to a batterer program;
Sexual violence Against You	<input type="checkbox"/> Whether the respondent forced you to have sex, or forced you to get pregnant or to have an abortion against your wishes <input type="checkbox"/> Whether the respondent tried to choke you or put his or her hands on your neck <input type="checkbox"/> Any pain or injuries and if you lost consciousness	Violence against you may be a crime; you may wish to talk with the police, in addition to filing this petition.
Choking / Strangling	<input type="checkbox"/> How long the respondent has not been working <input type="checkbox"/> What led to the respondent losing his or her job	Require respondent to go to a job readiness, workforce development, or GED program
Loss of Job	<input type="checkbox"/> What kind of drugs the respondent uses (such as illegal drugs such as "uppers" or amphetamines, meth, speed, angel dust, cocaine, crack, street drugs, or mixers) <input type="checkbox"/> If the respondent is an alcoholic or drinks a lot	Order respondent to have drug or alcohol testing or treatment
Drug or Alcohol Use	<input type="checkbox"/> Whether the respondent has been arrested or if you ever called the police or tried to call the police (you can show copies of police reports or describe to the court) <input type="checkbox"/> If you have another order or have asked for an order of protection or child support <input type="checkbox"/> If the respondent has any other court cases now (in this court or other courts)	Make sure this order is the same as any other court order Stop respondent from hurting me
Criminal and Other Court History	<input type="checkbox"/> When your relationship began and ended <input type="checkbox"/> Where you each live and if you ever lived together <input type="checkbox"/> Changes to your relationship	Keep my new address confidential Require respondent to: <input type="checkbox"/> temporarily pay rent or support; <input type="checkbox"/> stay away from my home
Relationship Status	<input type="checkbox"/> Whether the respondent owns or can easily get a gun or other weapon <input type="checkbox"/> The types of weapons the respondent owns or has access to <input type="checkbox"/> Any threats (words or actions) to use a weapon against you	Take all of respondent's guns or weapons
Weapons	<input type="checkbox"/> How the respondent has threatened to kill you or tried to kill you (for example, verbal or electronic threats, physical assault, etc.)	Require respondent to:
Threats to Kill &		

Domestic Violence Risk Factor Guide for Civil Attorneys

Domestic Violence Risk Factor Guide for Civil Legal Attorneys

Risk Factor	Suggested Discussion with Client to Include in Petition	What Can the Client Request: Legal Context ¹
Frequency of Violence/ Nature of Abuse	<ul style="list-style-type: none"> Details about the physical violence including whether it has gotten worse What was the most recent incident? Has violence occurred before and when? What was the worst incident? Have there been any changes in the violence? Did the victim sustain any injuries? For each one, how much did it hurt/level of pain, did the petitioner go to the doctor or hospital, and was treatment needed? 	Increased severity and/or frequency of violence, unemployment increase the risk of lethality and recidivism. INSERT STATE STATUTES HERE
Prior Criminal or Family Court History	<ul style="list-style-type: none"> Has the respondent avoided being arrested for domestic violence in the past, i.e., left the scene before police arrived? Are there prior criminal cases of any kind? Are there any violations of prior orders of protection? Are there other civil cases alleging domestic violence? How many times has the petitioner called the police? Does the petitioner have copies of police reports? 	Prior OPs/criminal history are risk factors for recidivism. Avoiding arrest is a lethality factor. INSERT STATE STATUTES HERE. Include ability to conduct: Criminal and Family Court check, OP registry, sex offender registry for pending or prior cases/orders.
Drug or Alcohol Abuse	<ul style="list-style-type: none"> Is there a history of substance abuse or illegal drug use by the respondent? What kind of drugs does the respondent use (such as illegal drugs including "uppers" or amphetamines, meth, speed, angel dust, cocaine, crack, street drugs, or mixers)? Is the respondent dependent on alcoholic or a frequent drinker? 	Use of some illegal drugs and excessive drinking increase the risk of lethality and recidivism. INSERT STATE STATUTES HERE
Unemployment	<ul style="list-style-type: none"> Is the respondent purposefully unemployed or under-employed? Did the respondent recently lose his/her job? How long has the respondent not been working? What led to the respondent losing his or her job? 	Unemployment or illegal employment increases the risk of lethality and recidivism. INSERT STATE STATUTES HERE

Domestic Violence Risk Factor Guide for Civil Legal Attorneys

Controlling Behavior	<ul style="list-style-type: none"> Does the respondent try to control most or all of the petitioner's daily activities? Is the respondent constantly or violently jealous? Who has access to bank accounts, the car, money, etc.? Has the respondent destroyed any personal property or threatened to or harmed pets? 	Violent jealousy and stalking behaviors are lethality factors and may constitute stalking. INSERT STATE STATUTES HERE
Stalking	<ul style="list-style-type: none"> Does the respondent repeatedly call, text, or email the petitioner? Does the respondent send unwanted gifts or other items to the petitioner? Does the respondent monitor the petitioner's phone calls, computer use, or social media? Does the respondent use technology, like hidden cameras or global positioning systems (GPS), to track the petitioner? Does the respondent drive by or hang out at the petitioner's home, school, or work? Does the respondent follow or show up wherever the petitioner is? 	Stalking increases risk of lethality. INSERT STATE STATUTES HERE
Children	<ul style="list-style-type: none"> Has there been direct physical abuse? Threats to harm children? Child sexual abuse? What is the biological relationship of the respondent and children? Were children present during the incident? Have the children witnessed violence between the parties? 	Having a child who is not the responding party's increases the risk of lethality and recidivism. Assault during pregnancy increases the risk of lethality. Children present during abuse increases the risk of recidivism. INSERT STATE STATUTES HERE

How To Use The Domestic Violence Risk Factor Guide for Civil Legal Attorneys

Research has shown that there are several factors associated with an increased risk of homicide for women in intimate partner domestic violence relationships. This Guide is intended to assist attorneys in identifying domestic violence risk factors when meeting with petitioners, as well as offer legal remedies or specific

Strategies in California

Bench Guide for Recognizing Dangerousness in Domestic Violence Cases
*By Jacquelyn C. Campbell, PhD, RN, FAAN and
 Hon. Sharon A. Chutkan, Superior Court of California, County of Santa Clara*

This tool is a research-based bench guide for use by judicial officers at all stages of judicial proceedings involving allegations of domestic violence and orders of protection in civil and criminal domestic violence cases.

Research has proven that there are several factors associated with an increased risk of homicides (murders) of women in intimate partner domestic violence relationships. This bench guide is not intended to predict what will happen in any given case; it is an informational tool for your consideration as you review a case and become aware of the extent to which the evidence reveals how many lethality factors (danger of homicides) are present. This bench guide is not a substitute for judicial experience, knowledge, and skills.

Pending/Prior:
 Emergency Protective Order Criminal Protective Order Civil Protective Order
 Criminal History Check Registered Firearms Check

Lethality Factors

Does the alleged perpetrator own a gun?	Yes	No	Does the alleged perpetrator use any of these illegal drugs "uppers" or amphetamines, Meth, speed, angel dust, cocaine, "crack," street drugs, or mixers?	Yes	No
Has the physical violence increased in severity or frequency over the past year?	Yes	No	Is the alleged perpetrator an alcoholic or problem drinker?	Yes	No
Has the alleged victim left the alleged perpetrator after they lived together during the past year?	Yes	No	Does the alleged perpetrator try to control most or all of the alleged victim's daily activities? (i.e., tells victim when to see friends or family members or how much money to spend)	Yes	No
Is the alleged perpetrator unemployed?	Yes	No	Is the alleged perpetrator violently and constantly jealous of the alleged victim? (i.e., "If I can't have you, no one can.")	Yes	No
Has the alleged perpetrator ever used or threatened the victim with a lethal weapon?	Yes	No	Has the alleged victim been beaten by the alleged perpetrator while pregnant?	Yes	No
Has the alleged perpetrator ever threatened to kill the victim?	Yes	No	Has the alleged perpetrator ever threatened or tried to commit suicide?	Yes	No
Has the alleged perpetrator avoided being arrested for domestic violence?	Yes	No	Has the alleged perpetrator ever threatened to harm the alleged victim's children?	Yes	No
Does the alleged victim have a child that is not the alleged perpetrator's child?	Yes	No	Does the alleged victim believe that the alleged perpetrator is capable of killing her/him?	Yes	No
Has the alleged perpetrator forced the alleged victim to have sex when the victim did not want to?	Yes	No	Does the alleged perpetrator follow or spy on the alleged victim, leave threatening notes or messages, destroy personal property or make unwanted calls?	Yes	No
Has the alleged perpetrator ever tried to choke/strangle the alleged victim?	Yes	No	Has the alleged victim ever threatened or tried to commit suicide?	Yes	No

NOTES:

89

Best Practices for Risk Assessments in a Court Setting

- ▶ Improve the quality of information coming from petitioner to the Court
- ▶ Improve the quality of information going to Petitioner about risk factors
 - ▶ Guide which improves the likelihood that petitioners will know what matters to the court
 - ▶ Education of all practitioners who interact with petitioners and complaining witnesses
 - ▶ Judges as leaders gathering information, connecting risk factors to the appropriate protective remedies available by statute

90

TAKING IT HOME

- ▶ **Examine** current practice/court culture/community practice
- ▶ **Decide** what info you are getting, what info you want and for what purpose
- ▶ *Examine Statutory Framework*
- ▶ **Partnerships are key:**
- ▶ *Convene, include key stakeholders*

91



LUNCH:

**SEE YOU BACK
HERE AT 1:15**

EFFECTS OF DOMESTIC VIOLENCE ON THE FAMILY: ACES, TOXIC STRESS AND TRAUMA

Hon. Janice M. Rosa JSC (ret), New York ~ PureSupport

(c) JMRosa 2017

93

Child Trauma and DV

~ 60% American children can expect to have their
lives touched by violence.

2012 US Atty General Task Force on Children Exposed to Violence

(c) JMRosa 2017

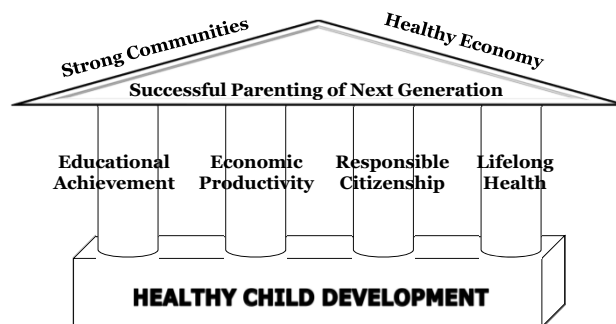
94

“Just the facts” ...

(c) JMRosa 2017

95

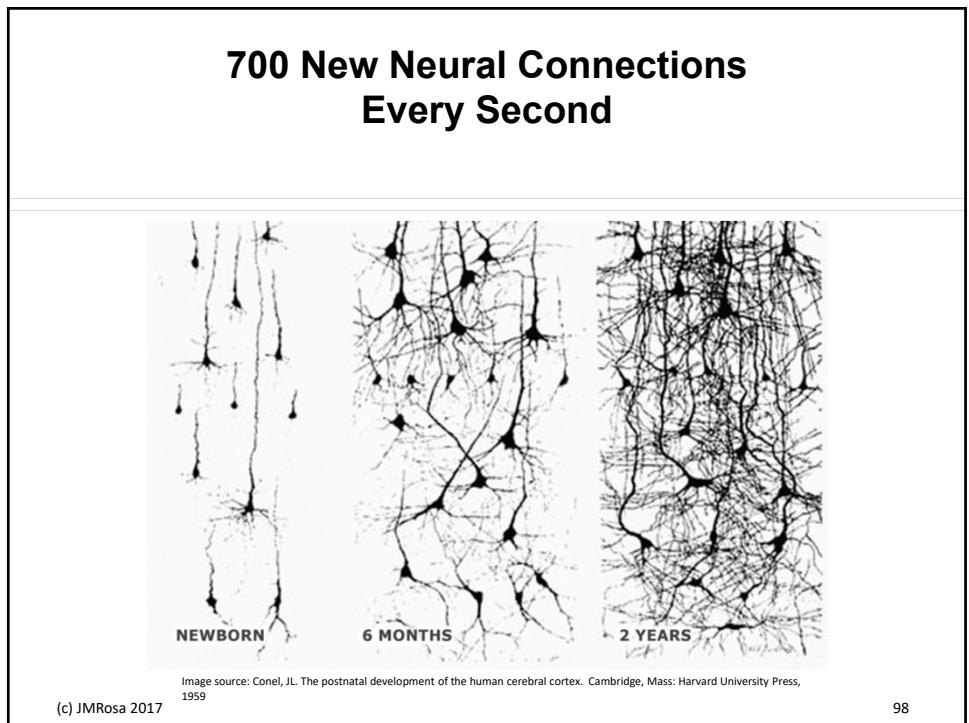
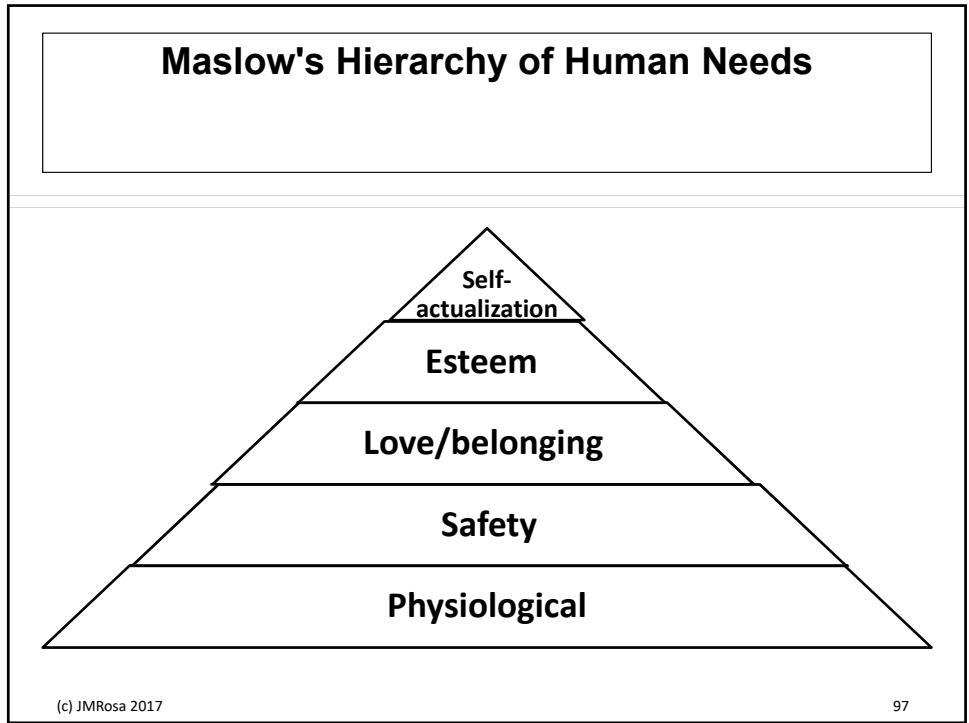
The Foundation of a Successful Society is Built in Early Childhood



© 2011, Center on the Developing Child at Harvard University

(c) JMRosa 2017

96



Child Trauma/ Toxic Stress

(c) JMRosa 2017

99

Trauma

- ▶ Results from an event, series of events, or set of circumstances, that is experienced by an individual as physically and emotionally harmful or threatening.
- ▶ Trauma can be acute—caused by one incident, or it can be chronic—caused by repeated traumas.
- ▶ **Most children (66 percent)** grow up with some level of trauma.

(c) JMRosa 2017

100

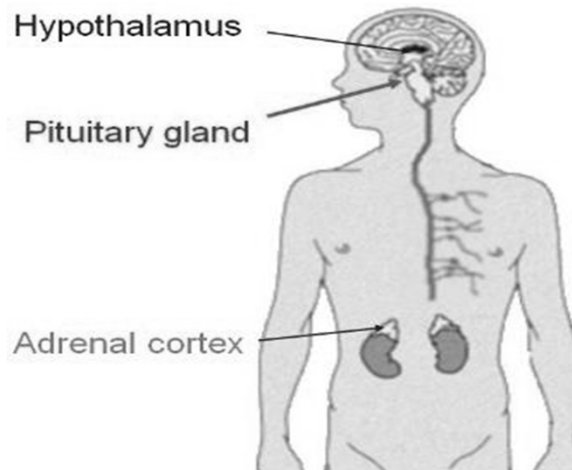
Trauma

- ▶ Natural Causes – flood, earthquake, hurricane, etc
- ▶ Personal – Assault, Rape, Murder, War
- ▶ Workplace/Neighborhood – Threats, Witnessing, Attacks
- ▶ Systemic – Racism, Sexism, Homophobia
- ▶ Institutional – Court systems, Agencies, Community

(c) JMRosa 2017

101

HPA Axis – “Homeland Security” Fight - Flight - Freeze



(c) JMRosa 2017

102

Trauma – “Toxic Stress Frozen in Place”

- ▶ Robin Karr-Morse, in *Scared Sick: The Role of Childhood Trauma in Adult Disease*:
- ▶ Stress and Trauma - on the same continuum but
- ▶ Stress – normal response to threat or being overwhelmed
- ▶ Trauma – TOXIC STRESS FROZEN INTO PLACE in our brains and our bodies, reverberating chemically
- ▶ The chemistry of Trauma keeps us on ‘red alert’

(c) JMRosa 2017

103

Anxiety



- ▶ CNS and Endocrine and Immune Systems
- ▶ The higher brain functions are optional
- ▶ **Lingering low levels of fear**
 - ▶ ANXIETY
 - ▶ Always on an elevated level of risk

(c) JMRosa 2017

104

“ when fear is the architect...”

- ▶ Affects the pleasure and reward center of the brain (*nucleus accumbens*).
- ▶ Inhibits the development of the *prefrontal cortex* – necessary for impulse control.
- ▶ Dr. Bruce Perry and others have shown measurable differences in the *amygdala*, the brain’s fear response center, in children exposed to trauma and children without trauma and adversity.

(c) JMRosa 2017

105

The neurophysiology of *toxic* trauma response

When the tiger lives in our house...



(c) JMRosa 2017

106

Resilient Children

On the surface they were able to withstand the challenges of childhood trauma...



(c) JMRosa 2017

107

The rest of the story....



Childhood is just the tip of the iceberg....

(c) JMRosa 2017

108

Different disciplines

Child Development



Child Psychology



(c) JMRosa 2017

109

Adults - Preventive Medicine



(c) JMRosa 2017

110

When it all began .. mid 1990's

Vincent J. Felitti, MD



Robert F. Anda, MD, MS



(c) JMRosa 2017

111

ACEs Study – Adverse Childhood Experiences

- ▶ Large group - 17,500 members in the study, longitudinal & ongoing, mid-90s
- ▶ CDC - <http://www.cdc.gov/violenceprevention/acestudy/>
- ▶ Study group - 70% Caucasian, 70% college educated, average age mid-50's, great medical care!

(c) JMRosa 2017

112

AVA video

(c) JMRosa 2017

113

ACEs....what are they?

- 1. Physical/emotional/or sexual abuse
- 2. Physical or emotional neglect
- 3. Parental mental illness or sub. abuse
- 4. Parental incarceration
- 5. **Parental separation or divorce**
- 6. **DOMESTIC VIOLENCE**
- 7. Economic Hardship

(c) JMRosa 2017

114

ACEs International

Adds Queries about

- ▶ Peer **Violence**
- ▶ Witnessing Community **Violence**
- ▶ Death of a parent or guardian
- ▶ Relationship Quality with parents
- ▶ Forced Marriage
- ▶ Exposure to War/Collective Violence

(c) JMRosa 2017

115

ACEs Expanded

- ▶ **Witnessed violence**
- ▶ Felt discrimination
- ▶ **Unsafe neighborhood**
- ▶ Experienced bullying
- ▶ Lived in foster care

Note!

- ▶ Each item receives only 1 point – regardless of the length, duration, repetition, of the abuse.
- ▶ Perhaps there is more to study here?
- ▶ Perhaps other stressors need to be added?

(c) JMRosa 2017

117

ACEs Effects on Child Development

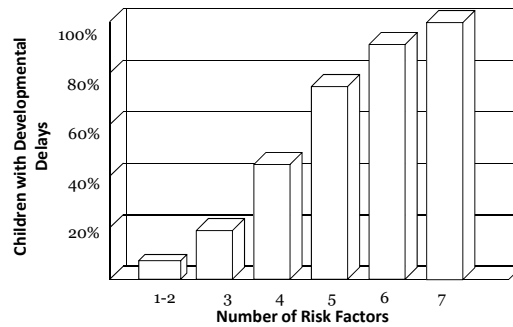
- ▶ ACEs score 3 -- 19%
- ▶ ACEs score 4 -- 41%
- ▶ ACEs score 5 -- **77%**
- ▶ ACEs score 6 -- **95%**
- ▶ ACEs score 7 -- **99% chance of development delays**

From: Dr. Vivian B. Brown, Colo 2014; Source: Barth, et al, 2008, Children with Developmental Delays

(c) JMRosa 2017

118

90-100% Chance of Developmental Delays When Children Experience 6-7 Risk Factors



Data Source: Barth, et al. (2008)
Graphic adapted from 2011, Center on the Developing Child at Harvard University

(c) JMRosa 2017

119

“Resilient” children?

- ▶ Is it just high-risk behavior?
- ▶ Science says – No
- ▶ Even with 0 risk factors – if person has a ACE 7+ - there’s a 360% increased risk of heart disease
- ▶ And 300% increased risk of lung cancer
- ▶ Hidden time bombs.....

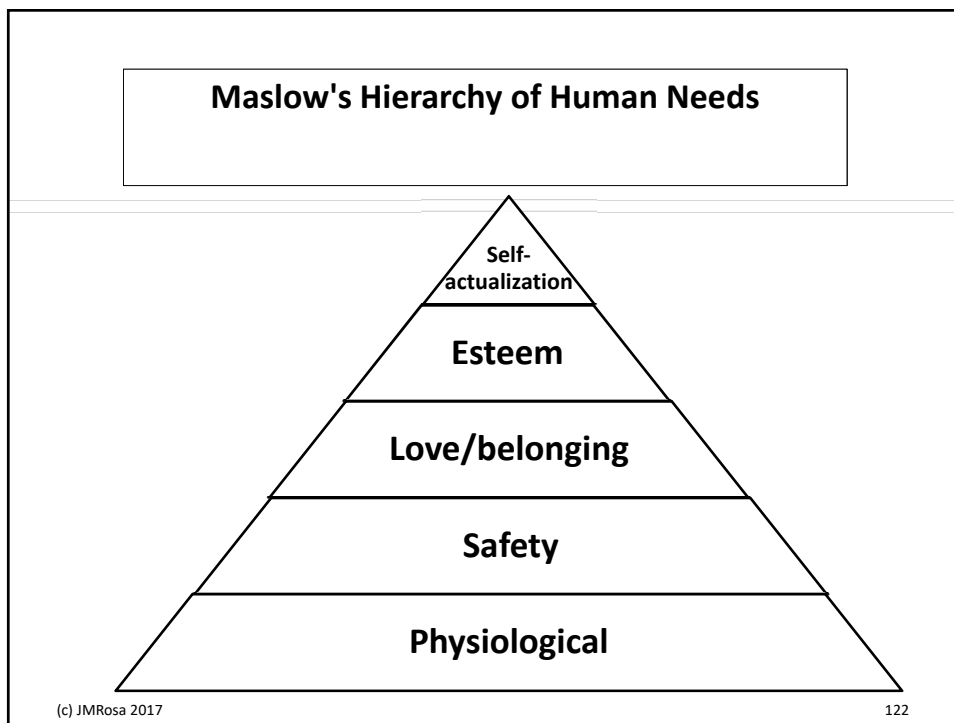
(c) JMRosa 2017

120

The ACEs Pyramid



Maslow's Hierarchy of Human Needs



National-State

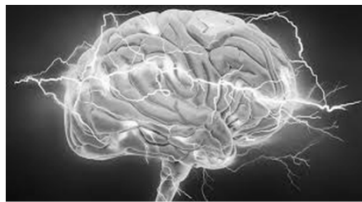
- ▶ Most common ACE – **Economic Hardship**
- ▶ 2nd Most common ACE – **Divorce/Separation**
- ▶ Top 5 include – **Abuse of Alcohol/Drugs, Community Violence, Mental Illness**
- ▶ **California** – same rankings as national

(c) JMRosa 2017

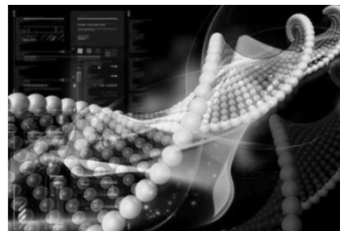
123

BUT there's more....

Neurobiology



Epigenetics



(c) JMRosa 2017

124

Behavioral Epigenetics

- ▶ “When Fear is the Architect” – the work of Dr. Bruce Perry and others
- ▶ Repeated assault on child’s stress system can lead to physical changes.
- ▶ **What we pass to the next generation is NOT stable and immutable.**
- ▶ Trauma experiences in our past, or parent’s past, leave molecular scars that adhere to our DNA

(c) JMRosa 2017

125

Behavioral Epigenetics

- ▶ How Nurture shapes Nature
- ▶ Not an actual change in the DNA (mutation), but rather a change in how genes are going to engage and react
- ▶ Makes changes at the cellular level
- ▶ Not a death sentence – not a life sentence !!
- ▶ This mechanism may have kept the species alive and thriving

(c) JMRosa 2017

126

Historical Trauma

- ▶ Slavery
- ▶ Oppression
- ▶ Native American/Indigenous
- ▶ Cultural
- ▶ Gender

(c) JMRosa 2017

127

What Can We Do?

“Iron Lungs” and “Cannons”

(c) JMRosa 2017

128

A, B, and C

- ▶ **AWARENESS** – Knowledge – of Topic – of Community
- ▶ **BALANCE** – Accountability (court and law enforcement processes) balanced with Reducing Forensic Trauma and Increasing Healing
- ▶ **CONNECTIONS** – Partnerships are KEY – for institutions, for trauma victim, for community

(c) JMRosa 2017

129

Responses – for Children

- ▶ Relationships
- ▶ Activities
- ▶ Safe and Stable Environment
- ▶ Modeling “Serve and Return” interactions
- ▶ Reduce/Eliminate ACEs
- ▶ Early Pre-School

(c) JMRosa 2017

130

Trauma – in Adults – What do we see?

- ▶ Low expectations, low self-esteem
- ▶ Disrespect – of self (e.g. addictive behavior) or community
- ▶ Short term view – a survivor mentality
- ▶ Relationships – distrustful, volatile, vulnerable, angry
- ▶ Emotions – fear, hyper vigilance, hurting, depressed, anger

(c) JMRosa 2017

131

In the Courtroom

- ▶ All of these affect how we react to litigants and children
- ▶ The FIGHT/FLIGHT/FREEZE response may look like:
 - Fight – anger and hostility, ‘chip on the shoulder’
 - Flight – failure to return, noncompliance with plan
 - Freeze – non-communicative, sullen, closed down
- ▶ How much of this could be coming from Traumatic Brain Injury?

(c) JMRosa 2017

132

“Just get over it” – doesn’t work

- ▶ Our frustration with parents....
- ▶ But if methyl groups and histones were added during childhood to the genes in the brain.....
- ▶ A litigant stands before us in virtual handcuffs to certain patterns....
- ▶ Our role is to allow a space for healing
- ▶ Timing matters! The earlier the better

(c) JMRosa 2017

133

Resilience

- ▶ The key to healing
- ▶ Focuses on individual’s strengths
- ▶ Comes from within the individual
- ▶ Self-actualization - choices
- ▶ ***Is fed and nurtured by OTHERS (assurance of success)***

(c) JMRosa 2017

134

A message that works -



(c) JMRosa 2017

135

Court & Community: Responses

- ▶ Be “Trauma-Informed” – know what is *actually* happening
- ▶ SAFETY FIRST environment
- ▶ Respectful responses to litigant, *COLLABORATION*
- ▶ Empowerment, Self-determination
- ▶ ***Humiliation, Control, Critical Authorities – all triggers***

(c) JMRosa 2017

136

“Trauma Informed”

- ▶ Shared MEANING?
- ▶ Shared INFORMATION? – “systems penetration”
- ▶ Shared PLAN, shared RESPONSE?
- ▶ Shared VISION of what healing looks like?
- ▶ Shared staff training?

(c) JMRosa 2017

137

Relationships Buffer Toxic Stress

- ▶ Learning how to cope with moderate, short-lived stress can build a healthy stress response system
- ▶ Caring adults for both children AND adults are key
- ▶ Consider SAMSHA Guidelines



Source: Center on the Developing Child at Harvard University (2012).

(c) JMRosa 2017

138

SAMHSA Guidelines

1. Safety
2. Trustworthiness and Transparency
3. Peer Support
4. Collaboration, Mutuality
5. Empowerment – *“Voice and Choice”*
6. Cultural, Historical, Gender Issues.

(c) JMRosa 2017

139

Physical/Emotional Safety

- ▶ Physical space – well lit, noise/overcrowding, ‘cattle call’
- ▶ Clear (to litigant!) safety measures in place - PERCEPTION
- ▶ Confidentiality upheld
- ▶ Predictability
- ▶ RESPECT- and Litigant/Client Autonomy
- ▶ Informed, Consistent, Clear communications - signage too!

(c) JMRosa 2017

140

Ask this question....

“How are we providing.....

- ▶ SAFETY
- ▶ PREDICTABILITY
- ▶ CONTROL

for the traumatized adult before us?”

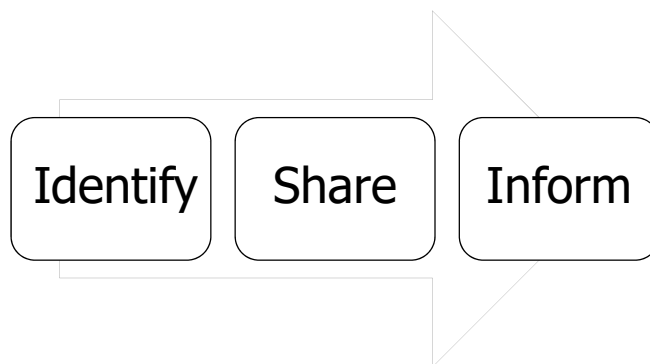
**Eliminating
ACEs is a
public
health
issue**

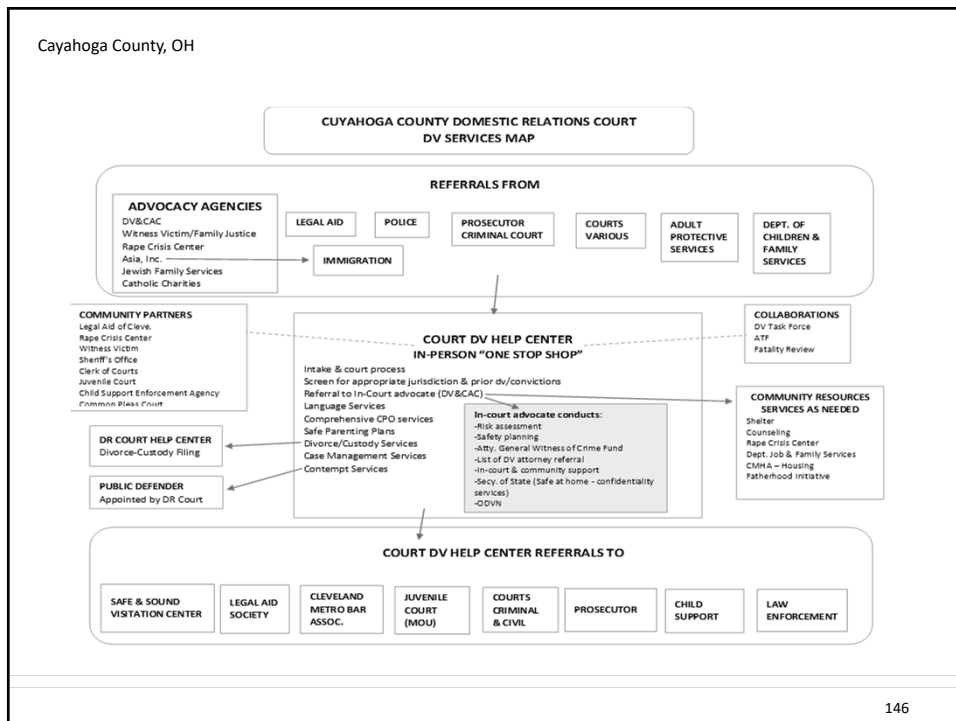
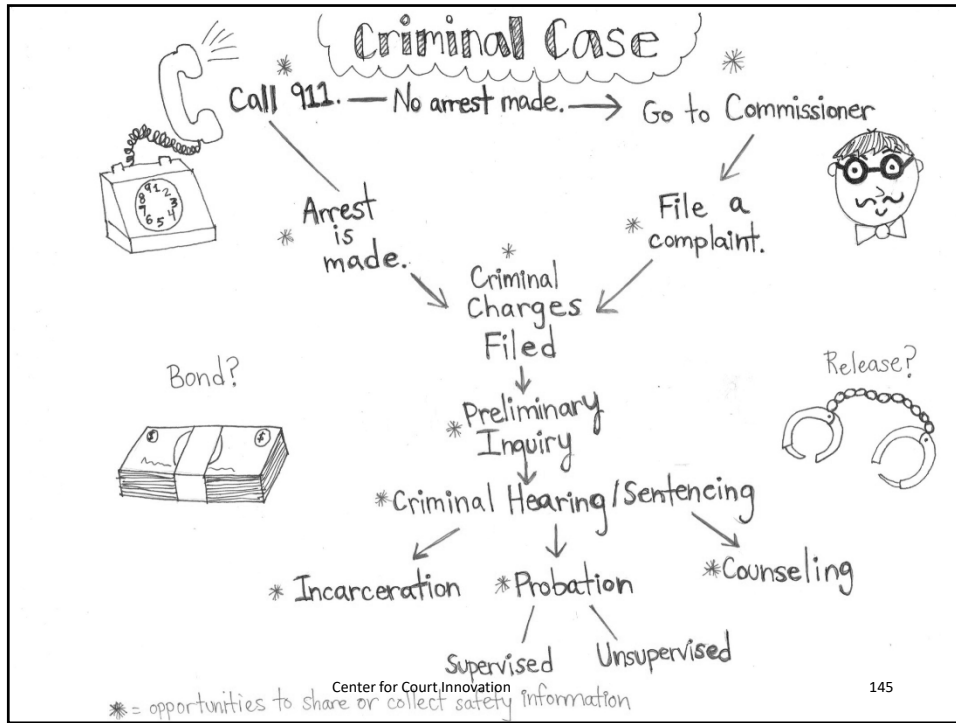
the effects can be moderated with
counseling, environment, &
intervention

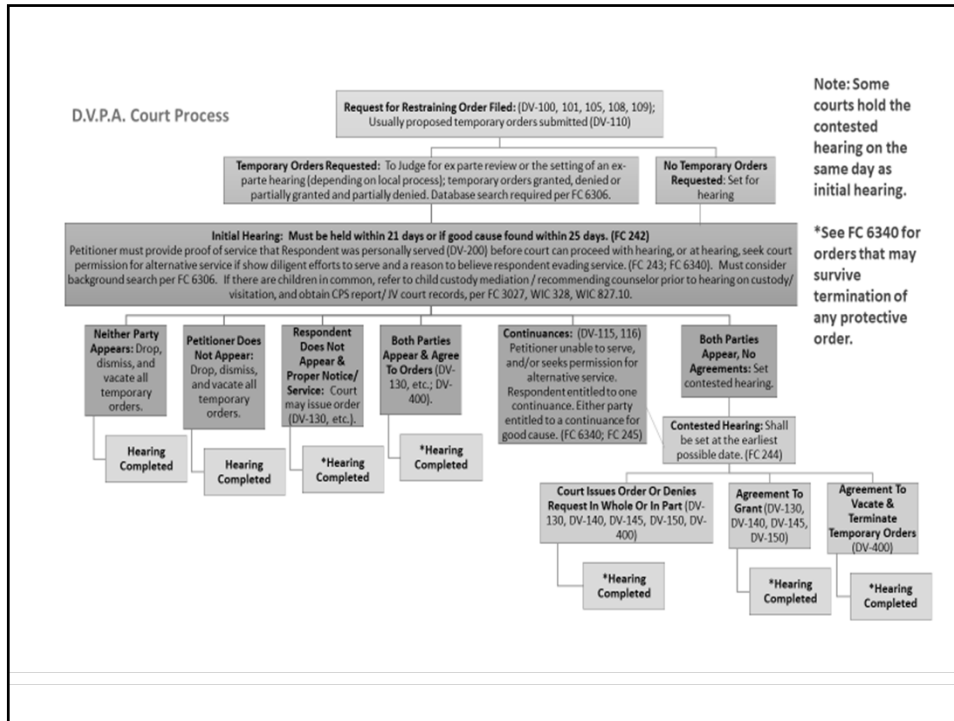
by COURTS and COMMUNITY

Incorporating Risk into Decision-Making: System Mapping

System Mapping







CA System Map: Exercise

At your table:

Review the sample CA System Map:

- ▶ What are the strengths in your system in identifying and responding to risk and lethality?
- ▶ What are the challenges to gathering risk information in your system response?
- ▶ Who else needs to be at the table to create YOUR COMMUNITY map to better understand WHO is assessing for risk and lethality for WHAT PURPOSE and HOW it is being shared?

Break 3:15-3:30



**Incorporating Risk into Decision-Making:
Restraining Orders, Parenting Plans and
Judicial Leadership**

Why it's so important to 'get it right'

Important note:* children of batterers are at risk of **homicide

- ❑ More than 1 in 8 DV homicides involves murder of a child
- ❑ DV is a risk factor for child abuse fatalities
 - ❑ In one study, 55% of families with a child homicide had a documented DV history

151

DOMESTIC VIOLENCE ~ IN THE CONTEXT OF PARENTING

What does it mean?

(c) JMRosa 2017

152

Putting it in the context of California

Practical exercises A, B, C

- ▶ What more do you want to know about risk, parenting, child safety?
- ▶ How would you gather that information?
- ▶ What safety provisions would you include in your order?
- ▶ Using the Bench Guide, go through the scenario again. What custody/parenting plan orders would you make? What factors did you consider?

153

PUTTING THE PIECES TOGETHER: JUDICIAL LEADERSHIP

154

The Privilege of Shaping Tomorrow....

Your unique positionhaving the privilege of shaping tomorrow in your community.

155

Change needs both.....

CREATIVITY

- ▶ Creativity is THINKING UP NEW THINGS



The transformational leader has the key to unlock "what is" in order to discover "what can be!"

INNOVATION

- ▶ Innovation is DOING NEW THINGS



156



**And...
Courage to
Take
Action**

157

Leadership Role

- ▶ **Judicial leadership** – promote shared leadership among colleagues and other system players; institutionalizing change
- ▶ We influence and impact outcomes both in and out of the courthouse.

Judge as Leader

- ▶ Our highest calling is to improve outcomes for the members of our community
- ▶ ABA Code of Judicial Conduct (2007) Rule 3. 1-
 - ▶ Reverses the emphasis -- now a judge may engage “except where prohibited by law”
 - ▶ Comment: Judges “encouraged to engage”
 - ▶ Comment: Participation in both legal and community activities helps integrate the judge into his/her community

159

The Power of an Unshakeable Vision



160

Share bench Power

- ▶ “Leading from behind”
- ▶ Empower others with authority as leader
- ▶ Run interference
- ▶ Support and ratify



161

Other Leaders – great value

- ▶ Court Administrators
- ▶ Domestic Violence Advocates
- ▶ Bar leaders
- ▶ Tribal, segments of community leaders
- ▶ Who else is a potential leader in your community?

162

THANK YOU!