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FCEP FAMILY COURT ENHANCEMENT PROJECT

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The Family Court Enhancement Project

The Family Court Enhancement Project (FCEP), an initiative funded by the U.S. Department of Justice, Office on Violence Against Women (OVW), is a multi-year demonstration initiative designed to build the capacity of court systems and partner stakeholders to improve child custody decision-making in cases involving domestic violence. Four project sites have engaged in assessing and strengthening their response to domestic violence in custody cases: Cook County, Illinois (Chicago), the State of Delaware (all three counties), Hennepin County, Minnesota (Minneapolis), and Multnomah County, Oregon (Portland).

The National Council of Juvenile and Family Court Judges (NCJFCJ) is responsible for coordinating technical assistance (TA) provision to the four sites through dedicated TA teams composed of representatives from each of the project's National Partner organizations: the NCJFCJ, the Center for Court Innovation (CCI), the Battered Women's Justice Project (BWJP), and OVW. Specifically, TA teams are helping these court systems determine how their procedures, practices, and structures related to custody and parenting time can reduce further violence and trauma and enhance victim and child resilience and well-being.

The FCEP enabled the project sites to explore, implement, and assess new and innovative court and non-court procedures and practices designed to improve custody and parenting time decision-making and overcome existing barriers identified during the assessment phase of the project. One important objective of the FCEP, as a demonstration initiative, is to share lessons learned and experiences and outcomes with other communities so that they can benefit from the focused work at each project site.

This document is one of four site profiles, summarizing the challenges identified by each site, the activities designed to address those challenges, and the impact the FCEP has had on each community.

Development Questions

1 Please provide a short description of your court, including any relevant statistics, descriptions of your previous handling of domestic violence cases, data, number and type of cases, etc.

Delaware's Family Court is a statewide, unified Court with a courthouse located in each of Delaware's three counties. The Court is comprised of seventeen judges, including a Chief Judge, who is the administrative and executive officer for the Court, and sixteen commissioners. Both judges and commissioners are nominated by the Governor and confirmed by the Senate. A judge is appointed to a twelve-year term while a commissioner is initially appointed to a four-year term with six-year terms thereafter. Judges have authority to hear all cases that come before the Court while commissioners hear a broad range of cases including child support, misdemeanor crimes and delinquency, civil orders of protection, bail hearings, and other cases as assigned.

The Court has broad jurisdiction, including jurisdiction over:

- civil orders of protection from abuse (PFA)
- misdemeanor crimes occurring within the family or committed between former spouses, persons cohabitating together and holding themselves out as a couple, and persons living separate and apart with a child in common

- adult misdemeanor crimes against juveniles
- juvenile delinquency
- child abuse, dependency, and neglect (including termination of parental rights)
- guardianship of children
- adoption
- divorce and annulment
- division of marital property
- paternity, custody, and visitation of children
- child and spousal support

In terms of number of filings, the Court received 46,681 filings in fiscal year 2015 with 3,811 being protection from abuse petitions and 4,382 being custody or visitation petitions.

Custody petitions come before judges who apply eight statutory factors in addressing the best interest of the child. These factors include a requirement that the Court consider evidence of domestic violence (DV). Delaware law also provides for a rebuttable presumption against granting custody or placement of a child to a “perpetrator of domestic violence” as that term is defined by law. Further, the law requires that all custody orders include a parental contact schedule or include facts and conclusions in support of a denial or restriction of such contact.

PFA petitions are handled by commissioners. An ex parte request is heard on the day the request is made. A full hearing is then scheduled within 15 days of issuance while the ex parte order can be enforced for up to 30 days. On days that PFAs are heard, court

employees shuttle between litigants in order to inform each party of his or her right to enter into a consent PFA order. If the parties are interested in a consent order, Court staff will assist in memorializing the terms. By statute, PFA orders may provide supplemental relief including, but not limited to: possession of real or personal property, custody of children, counseling, child support, and spousal support.

2

Describe the problems or challenges you chose to work on during the project as identified during the planning phase of the project. Please also discuss how you came to identify those as the challenges you wanted to address during the project.

During the planning phase, focus groups were convened and facilitated by our national TA providers. Focus groups were conducted throughout the State and included advocacy groups, domestic violence survivors, attorneys, court staff, and judicial officers. Participants were asked to share their perspectives and concerns on (1) the ability of self-represented litigants to effectively access justice in the Court; (2) the existing protection from abuse process, including the consent process; and (3) how domestic violence information was used by the Court in determining custody, placement, and visitation. Based on the information collected in the focus groups as further refined by the Collaborative Workgroup and subcommittees, a number of challenges were identified including how to:

- provide judicial officers with the resources, information, and education regarding domestic violence that they need to make informed parenting time decisions that address victim safety and child well-being in both PFA and custody proceedings;

- appropriately use domestic violence information in custody and parenting time decisions and the interplay between the protection from abuse and custody processes;
- identify domestic violence in cases where there is no Delaware PFA order in place, no Delaware criminal convictions, and no other domestic violence indicator in the court file;
- provide self-represented litigants with appropriate information to allow them to make informed decisions throughout the PFA and custody processes; and
- offer, when appropriate, survivors of domestic violence the option to use Court-established ADR forums to resolve custody matters.

3

Describe the steps you took as a court to address the problems or challenges you identified. For example, did you create new positions, change practice, complete studies, change structures, etc.?

Given our desire to fully understand the existing structure, we engaged in a comprehensive system review and completed the following activities:

- System-mapped the PFA and custody processes;
- created two subcommittees, the Access to Justice Subcommittee and the Differentiation Subcommittee, to allow team members to focus on specific challenge areas;
- utilizing the National Center on Protection Orders and Full Faith and Credit's *Engaging in a Best Practice Assessment of the Civil Protection Order System* tool, assessed Court policies and

procedures, Court-created self-represented litigant materials, and relevant statutes. During the assessment, team members also conducted walk-throughs and observations of the PFA and custody processes allowing members to identify strengths and areas for improvement within the current system. Crucial to their work was that the members endeavored to place themselves in the position of a domestic violence survivor;

- partnered with NCJFCJ to conduct a case file review. The study was a quantitative analysis of selected custody and PFA cases, which identified relationships between factors including legal representation of parties, types of abuse alleged, and the final disposition of the cases. Analysis of the data revealed a pattern of decisions that, taken as a whole, created a phenomenon that the subcommittee described as “disappearing DV”;
- conducted an impact review with a goal of discerning those aspects of processing custody petitions that contributed to the phenomenon of “disappearing DV”;
- participated in site visits to model courts (including Brooklyn’s Integrated Domestic Violence Court and Winnebago County’s Domestic Violence Coordinated Court) with a goal of importing effective elements to Delaware; and
- utilized information from a weighted caseload study conducted by the National Center for State Courts to complement the work of the FCEP.

4

Describe the successes you have experienced as a result of your participation in the Project. How did your work help improve your court's handling of domestic violence cases in which custody and visitation decisions are made? Did your changes improve the lives or experiences of victims and their children, improve safety, etc.? Provide real-life examples of your success.

The Court is now involved in the implementation stage of our work, which has taken a broad look at our processing of and decision-making regarding custody cases in which domestic violence is or has been present. We believe that our work thus far has laid a strong foundation for lasting and broad changes in the way we approach such cases, from the time a victim walks through the door to the time the final disposition is entered.

5

What data did you collect or seek to collect as part of the project? What have you done with the data or what do you plan to do with the data as you reach the end of the project? Was data collection helpful? What challenges did you come across when trying to collect or analyze your data?

- During the planning phase of the project, the Court collected qualitative data on the experiences and observations of focus group participants related to the PFA and custody processes. The results of this data collection were memorialized and informed the challenge areas that ultimately became the focus of our work.
- Quantitative data was collected by the Differentiation subcommittee during the review of over 160 case files. A report on the data, written by NCJFCJ, was approved by the subcommittee in summer 2015. The report was shared with all

stakeholders and is maintained by the Court.

- Qualitative data was collected throughout the implementation phase by the Differentiation Subcommittee through its impact review. During this review, members of the subcommittee conducted in-depth examinations of selected files and created a case summary for each case reviewed. The case summaries were then discussed by the entire subcommittee. The Access to Justice Subcommittee also gathered extensive qualitative data through its walk-throughs and observations of the Courts' facilities, staff, and processes related to PFAs and custody. The observations of each member were memorialized and are maintained by the Court.
- The data collected to date has provided experience and evidenced-based information that has been essential to the formulating of recommendations for change.

6 What obstacles did you experience as a court working to change practice or create change? How did you deal with those challenges?

The focus of Delaware's work has been in extensively analyzing and mapping our existing system, including consideration of the system's current strengths and weaknesses. Delaware is in the final stages of this analysis and expects to issue recommendations for system change in late 2016.

During this work, one challenge we faced was the truly expansive scope of the project we undertook. The time and energy that has been committed to this work by our partners has been astounding. In looking so comprehensively at our system, one difficulty we faced was in efficiently processing the information we gathered in order to

ultimately formulate specific recommendations that would produce the most positive impact.

Additionally, as we have worked toward finalizing recommendations for change, it has, at times, challenged our patience, as we wish to move forward quickly with changes as they are identified. However, we have recognized that the process of analysis and consensus-building around systemic change is crucial to the long term success of such change. We nevertheless recognized the need to effectuate some incremental change throughout the process as consensus was built as a way to maintain the energy of the team. We have endeavored to strike this delicate balance.

7

What were some of the most challenging aspects of being a FCEP court?

- The limited time duration was a challenge as our Court experienced multiple judicial and personnel transitions during the initial two-year grant period.
- The Court has enjoyed long-standing, collaborative relationships with the stakeholders involved in the FCEP. These existing relationships allowed us to hit the ground running as we began analyzing our existing system. Perhaps because of the close relationships between the stakeholders, it was, at times, challenging to clearly establish the responsibilities of the Court versus the responsibilities of social services, legal services, and advocacy organizations in providing resources and supports for victims and perpetrators of domestic violence. Another challenge was determining whether and how to incorporate experiences from different jurisdictions to address the unique needs of our Court.

8 **Describe how the assistance of national TA providers helped your work.**

Our national TA providers gave our Court access to a wealth of resources and a broad base of knowledge regarding domestic violence and its influence on custody, placement, and visitation decisions. Our TA providers frequently participated in subcommittee meetings, engaging the participants and helping them to consider issues from multiple perspectives. Our TA providers also were able to share tools that were vital to our data collection efforts.

9 **What aspect(s) of your participation in the Project do you believe should be highlighted in detail on the website for other courts?**

- The thorough system analysis we completed, which informed recommendations for change.
- Focus groups comprised of advocacy groups, DV survivors, attorneys, court staff, and judicial officers provided a unique perspective, which informed the establishment of the objectives and challenge areas of the FCEP.





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