

Considerations for Family Courts' Response to Domestic Violence



This document describes a set of consideration for projects addressing family courts' response to domestic violence. The document focuses on efforts to improve custody decision-making in family court cases involving domestic violence that have been identified during the Family Court Enhancement Project (FCEP), a demonstration initiative project funded by the U.S. Department of Justice, Office on Violence Against Women (OVW), and designed to build the capacity of four FCEP project sites' court systems to improve outcomes for survivors and their children involved in custody cases.¹ The FCEP project sites have been assisted by a team of technical assistance providers and other national partners—including judges, attorneys, and advocates—who have worked intensively with the sites over several years and have learned a great deal about successful strategies and persistent gaps and challenges in this area. The considerations below describe approaches that we have found to be effective as well as critical areas in need of new or increased attention.

Program Considerations

The program considerations have been organized into several categories, and for each category we provide examples of specific project focus areas and activities that communities should consider implementing. Communities should keep in mind that these suggestions should be tailored to each community's particular characteristics and needs, and the goals of the policy priority areas may be met through different strategies not described in this document.

1. Projects that improve processes to achieve safer and more appropriate child-custody outcomes in both civil protection order cases and in long-term family court cases involving domestic violence by:

- Promoting judicial leadership in improving the court's response to custody cases involving domestic violence, including community outreach and education about the family court processes, the relief available, clarifying the roles of practitioners involved in custody cases, and engaging stakeholders in efforts to improve the system's effectiveness and responsiveness;
- Granting the full range of child-related relief to which the parties are legally entitled regardless of the forum in which relief is sought (e.g., granting temporary custody and/or economic relief in a civil protection order case instead of requiring victims to file a long-term custody case or initiate a separate child support establishment proceeding);
- Streamlining procedures for parents who wish to obtain long-term custody relief, including eliminating financial,

procedural, language, and informational barriers, especially for parties without legal representation; and

- Identifying and addressing challenges related to the relationship between child-related relief in protection orders and such relief in long-term custody orders, including confusion about the effect of a protection order that addresses child-related relief on a long-term custody case.

2. Projects that increase access to justice by:

- Developing and implementing tools, strategies, and guidance for courts to assess and meaningfully respond to litigants', professional stakeholders', and the public's perceptions of the custody process, including regarding procedural justice;
- Encouraging and supporting judicial officers' participation in court observation focused on judicial demeanor, as well as other aspects of case handling;
- Developing, implementing, and evaluating practices to make every step of the family court process more understandable to all litigants, especially those who are self-represented, including efforts to improve advocates'

understanding of the family court process to increase their capacity to assist and support survivors;

- Assessing whether existing court processes, forms, and practices in custody cases are user-friendly, understandable to all litigants, truly necessary, and not unduly burdensome, and developing improved approaches that meet these standards;
- Providing guidance to judicial officers regarding adoption of an approach to family court hearings based upon “engaged neutrality” and regarding the effectiveness and propriety of providing support to self-represented litigants in cases involving domestic violence; and
- Encouraging and supporting the development of community-specific resources for self-represented litigants with family law cases involving domestic violence.

3. Projects that better address the needs of underserved communities and enhance cultural responsiveness by:

- Encouraging and providing guidance to courts regarding outreach to underserved communities to educate them about available legal relief, court processes and services, and other topics intended to increase community members’ perception of the court as a welcoming, responsive, and useful option; and
- Learning about the needs and concerns of underserved communities and using that knowledge to enhance and improve court processes.

4. Projects that increase the effectiveness of child custody decision-making in cases involving domestic violence by:

- Ensuring that court entities share available information, to the extent allowable, about related cases, including orders that include fact-finding about abuse and related issues;
- Developing and adopting tools and strategies to ensure that decision-making regarding custody focuses on children—the effects of abuse on children, parenting arrangements and interventions that help ameliorate negative effects, strategies to promote resilience and recovery through court orders, etc.; and
- Applying a systematic, behaviorally specific approach to child custody decision-making in cases in which domestic violence is identified (for example, the SAFeR approach developed by the Battered Women’s Justice Project).

5. Projects that ensure the safety and effectiveness of any court-adopted alternative dispute resolution processes by:

- Providing guidance to courts and communities regarding the development and implementation of optional alternative dispute resolution processes in cases involving domestic violence that respond to the parties’ needs (and are not designed primarily to meet the system’s needs) and that prioritize safety and victims’ autonomous and informed decision-making.

6. Projects to improve research and its use by decision makers and other stakeholders by:

- Gathering, assessing, and disseminating (including through training) clear and accurate information about current research on how domestic violence affects children and parenting, as well as on the outcomes in cases of shared legal custody, for application by policymakers, judicial officers, and others in the context of child custody and related legal issues;
- Supporting new research on these topics, including through collaboration between researchers and practitioners;
- Identifying the misuse and misapplication of research in child custody decision-making by all professionals, and addressing these challenges through training, development of written resources and tools, and other forms of technical assistance;
- Providing guidance to judicial officers regarding the appropriate role of research in judicial decision-making;
- Providing guidance to attorneys regarding how to incorporate research findings in legal arguments in individual cases;
- Providing guidance to other stakeholders (advocates, guardians *ad litem*, custody evaluators, and others) regarding the role of research in their work;
- Identifying and disseminating existing research (and supporting new research) on the risk to children present in a case involving domestic violence and the identification of specific child-focused risk factors; and
- Supporting new research on the efficacy of particular family court practices and processes in child custody cases with domestic violence, to identify evidence-based best practices.

¹ The four court sites are located in Cook County, Illinois (Chicago), the State of Delaware (all three counties), Hennepin County, Minnesota (Minneapolis), and Multnomah County, Oregon (Portland).