



2011 Annual Training Conference



Domestic Violence Matters: Reasonable or Active Efforts in Cases Involving Domestic Violence





2011 Annual Training Conference



Rebecca Orf, Staff Counsel, Violence Against Women Act Project, Oregon Judicial Department

Rebecca G. Orf is currently a staff attorney for the Oregon Judicial Department (OJD), for issues involving family violence, elderly and disabled persons abuse, and civil stalking. From 2009-2010, she also worked as the staff attorney for the Juvenile Court Improvement Program (JCIP). She served as a Circuit Court Judge in Jackson County, Oregon, from 1994-2008. She is currently a member of the State Family Law Advisory Committee (SFLAC) and SFLAC's Domestic Violence Subcommittee, the Violence Against Women Act (VAWA) Advisory Board, the Batterers' Intervention Programs (BIP) Advisory Board, the Oregon Domestic Violence and Firearms Task Force, the Oregon Law Commission's Juvenile Workgroup, and the Interbranch Juvenile Workgroup. She served as a member the Chief Justice's Treatment Court Advisory Committee, the Oregon Family Law Task Force, and the Oregon Family Law Legal Services Commission. She served as the first president of the Jackson County Council Against Domestic & Sexual Violence. She has been a speaker on juvenile law, treatment courts, domestic violence and family law issues for many local, statewide, and national conferences. In 2003, she was a recipient of the Oregon Chief Justice's Juvenile Court Champion Award.

Susan McDaniel, CRB Field Staff

Susan is a Citizen Review Board Field Manager for Klamath and Lake Counties. She has held this position for the past eight years. Prior to her work with the Citizen Review Board, she worked as a Supervisor for Klamath County Circuit Court. She is proud and grateful for her 26 years of employment with the Oregon Judicial Department. Susan graduated from Oregon State University with a Bachelor of Science Degree through the school of Liberal Arts. Susan is married. She and her husband are proud parents of their three adopted children, ages 17, 14 and 12. Susan's husband is a Lieutenant for Klamath Falls Police Department. Susan's passions are being a wife and a mother. She also admires and loves working with her volunteers.

Reasonable/Active Efforts Findings in Dependency Cases Involving Domestic Violence

Every Day Counts

Citizen Review Board Conference ~ 2011

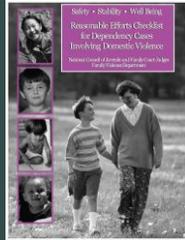
Rebecca Orf (Oregon Judicial Department Staff Counsel, Violence Against Women Act (VAWA) Project)
Susan McDaniel (Citizen Review Board, Field Manager)

Development of Checklist

Copy can be downloaded at no charge from National Council of Juvenile and Family Court Judges' website at:
http://www.ncjfcj.org/images/stories/dept/vd/pdf/reasonable%20efforts%20checklist_web2010.pdf

Children are profoundly affected by domestic violence.

Ensuring reasonable/active efforts should reduce the impact of domestic violence on children.



Why Domestic Violence Matters

- Child's exposure to violence is a complex problem
- Domestic violence impacts parenting
- Child mistreatment and domestic violence overlap
- Removal poses additional risks for children from violent homes
- Some families have multiple issues in addition to domestic violence

POP QUIZ

Why is it important to make reasonable/active efforts?

- a) Expeditious permanency for children is a **goal** of the court system and the child welfare system
- b) The federal and state law **require** it
- c) **Federal funding** for the Agency depends on it
- d) **All of the above**

Historical Context

- Adoption Assistance and Child Welfare Act of 1980
- Adoption and Safe Families Act of 1997
- Indian Child Welfare Act
- State Laws

Research results

- Children's exposure to violence is pervasive
- Witnessing violence affects children in similar ways as direct violence
- Children exposed to one form of violence are at risk of further exposure to other violence
- Many factors determine the impact of violence on children
- Children in violent homes are often subject to many other stressors as well. Some families may have multiple issues apart from domestic violence and child maltreatment
- Removal poses additional risks for children from violent homes
- Domestic violence affects parenting

Research results

- Domestic violence affects every segment of our population
- Abusers can assert control by various means
- Most batterers are abusive only to their family in the home
- Young children are at higher risk of exposure to domestic violence
- Children who witness violence learn to use aggression to resolve conflicts

Research results

- Children may show symptoms of PTSD
- Children may have chronic low self-esteem, anxiety, and self-destructive behaviors
- Brain development may be adversely affected
- Children may have learning disorders and do poorly in school
- Boys are more likely to become aggressive
- Girls display more depression-related responses

CPS Assessment – Threat of Harm

Child Welfare's "Threat of Harm Guidelines" can be accessed at:
<http://dhsforms.hr.state.or.us/Forms/Served/CE9200.pdf>

Child was present and in direct proximity to violence AND/OR

Child was actively intervening or threatening to intervene AND/OR

Child has been exposed to battering behaviors of a parent/caregiver AND

It is reasonable to believe battering behaviors could result in severe harm to child

CPS Assessment

- Case-by-case determination
- Violence must be out of control
- Child must be at threat of harm
- Threat of harm must be imminent
- Behaviors and impact must be specific and observable
- Child must be vulnerable

The severity of a child's response is affected by:

- Child's age and developmental stage
- Type and frequency of violence
- Proximity to violence
- Type of neighborhood and community response
- Quality of support from caregivers
- History of previous trauma
- Relationship of child to batterer
- Level of violence in the family
- Other stressors in child's life
- Child's resiliency

Decision Points

- ❖ Removal
- ❖ Reunification
- ❖ Permanency

If the Child is Removed

- The shelter hearing is the court's first opportunity to make a reasonable/active efforts finding
- If they qualify, the court should appoint separate counsel for the adult victim and the batterer to avoid conflicts of interest

At the shelter hearing, the court should focus on:

Why was the child removed?

Did the agency make reasonable/active efforts to prevent the need for removal?

If ICWA case: Will leaving the child with a parent(s) likely to result in serious emotional or physical damage to the child?

Inquiry as to Services Offered

- Trauma informed services
- Individual assessments
- Culturally competent services
- Immigration issues should be addressed
- Language issues
- Safe place to live
- Immediate access to any needed substance abuse treatment

Why was the child removed?

A number of inquiries are necessary:

- How did the family come to the agency's attention?
- How did the agency determine that domestic violence was an issue?
- Did the agency screen and assess for the presence of domestic violence?

Why was the child removed?

- What is the severity and frequency of the violence?
- What injury/harm to the child is the agency alleging? (physical, emotional, undetermined?)
- Has the agency been previously involved with the family?

Why was the child removed?

- Has the child been exposed to domestic violence?
- Who is the perpetrator of the violence? (Is the alleged perpetrator of the domestic violence the alleged primary perpetrator of the abuse or neglect?)
- What services and supports could have prevented the need for child placement? (Was the adult victim offered assistance to keep herself and her children safe and together?)

Why was the child removed?

How did the agency address domestic violence with the family prior to seeking removal?

OR

Why was immediate removal necessary?

Why can't the child stay home?

- o Does the adult victim have strategies to keep the child safe?
- o Why aren't the strategies effective?
- o Did the caseworker consult with a domestic violence expert?
- o Did the caseworker consult with the batterer's probation or parole officer?
- o Did the caseworker consult with the batterer's treatment provider?
- o Did the caseworker assess the case to determine the likelihood of future violence?

Can the child go home today?

- Has the adult victim been offered assistance to keep herself/himself and the child safe and together?

This question goes to the heart of the reasonable/active efforts inquiry — what services and supports will prevent or eliminate the need for placement of the child?

Getting the Child Home

- What is needed to allow the child to return home safely?
- What services are needed to support the child's return?
- What is an effective safety plan?

Remove the batterer -- not the child

- How did the agency deal with the batterer?
- Did the agency seek to remove the batterer from the home—either through voluntary agreement or by court order?
- Will a Juvenile Court restraining order prevent removal?
- Do allegations in the petition hold the batterer accountable for the violence?

Adjudication

Allegations must be specific and allege harm to child

Agency should refer child for assessment of harm prior to the hearing and have expert testimony available

Court hearings must be safe for child and adult victim of violence

Disposition: Additional Inquiries

- What services have been offered to the family since the removal hearing?
- Has the agency assessed the impact of the DV on the child?
- Did the agency identify protective factors in the child's life?
- How about the risk factors in the child's life?

Disposition: Additional Inquiries

- Are there separate case plans?
- What services being offered to the child and each of the parents directly relate to the DV and other allegations that brought the child into care?
- Is the case plan practical and realistic?
- Must the child remain in out-of-home care in order to be safe?

Disposition/Case Plan

- Therapy for victim parent and child
- Safety planning for victim parent and child
- Community-based DV services
- Housing, employment, and economic advocacy services for victim parent
- Legal assistance with immigration issues for victim parent (and child if not a citizen)
- Batterer Intervention Program if jurisdiction over abuser
- Supervised visitation

If the victim stays:

- If the adult victim remains with the abuser, services should focus on safety for victim and child

Services Ordered

- Timely
- Accessible
- Provided by those with expertise
- Tied to an identified need
- Safe
- Useful
- Culturally appropriate
- In victim's language

“Comings and Goings”

An Exercise about Choices

As a result of this exercise you will be better able to identify the complex reasons a victim might choose to remain in or return to an abusive relationship

Adapted from an exercise by the National Clearinghouse on Abuse in Later Life

Your role

- You are a 35 year old woman who has been married for 15 years.
- You have three children, Gabriella, age 5, Maya, age 8 and Luis, age 14.
- You work part-time as a nurse's aide while your kids are at school.
- You are devoutly religious. You have a modest home in a rural area.
- Your husband works in construction.
- You love your 3 year old dog.

A game about choices...

- Interactive exercise about choices
- Role
- Facts
- Decide where to go
 - Home
 - DV shelter
 - Apartment
 - Homelessness
 - Friend's Home
 - Hotel

A game about choices

Cost (green cards, yellow cards)

Conditions

Ground Rules

- Movement = pay the fare
- Ringing bell = pay fare or move
- No more resources = go home

Silence

Large group discussion:

- How did it feel to make these choices?
- What obstacles did you face?
- Did anyone cheat or steal?

[Questions]

- Why was the exercise conducted in silence?
- What were some reasons for returning home or staying home?
- How does this exercise apply to your role as a CRB member?

Conclusion/Learning points:

A victim's decision-making may be affected by:

- Economic dependency
- Religion
- Family pressure
- Need for the children to have a father
- Need to protect family from exposure (loss of abuser's job, etc.)
- Lack of alternatives
- Hope that things will change.
- Continuing to love the abuser though not the abuse
- Fear and a conviction that it is safer to stay
- Distrust that the system can protect or offer a realistic way out
- Complications of immigration (fear of deportation)

The Batterer and Services

- Batterers often are invisible in child welfare cases
- Adult victims and batterers should have separate case plans and separate counsel, even if they plan to continue their relationship
- The batterer's case plan should focus on safety risks to the child

Services for Batterers

- Criminal violence assessment
- Batterer intervention programs
- Supervised visitation services
- Substance abuse/mental health services
- Parenting classes incorporating information on the impact of violence on children
- Probation/parole contacts
- Translator/interpreter services
- Housing services
- Employment services

Special Considerations

- Does the abuser have a pattern of sabotaging recovery efforts?
- Is there drug or alcohol abuse?
- Is he more violent when using or not using?
- Do probation or parole requirements compliment the case?
- Are there criminal charges pending?

Children

- Safety first!
- Case plan should include assessment/therapy for the child
- Look at the long-term needs of the child
- Address visits with parents and siblings
- Are relatives a safe place for the child?
- Minimize the risks of re-traumatization
- Assure child it is not child's fault

Permanency Hearings

- Regardless of the plan, the court should ensure that the child receives services that target child's problems due to exposure to violence.
- The court should ask if the child's caregivers are committed to child's continued participation in services.
- The court should ask that prospective adoptive parents or guardians are screened for domestic violence to safeguard the child from further violence.

Inquiries for Review Hearings

(As with all dependency reviews)

- Does the plan still accurately reflect the needs of the family?
- Are services continuing to be made available to all family members?
- In what manner are the family members availing themselves of these services?
- Are changes occurring in the child's conditions and circumstances as a result of these services?

Role of the Judge and Citizen Review Board (CRB)

- Community context is important in cases involving family violence.
- Judges and CRB members must understand domestic violence and its effect on children.
- Judges and CRB members must be aware of available services for children and families.

Role of the Attorney

- ❖ Parents
- ❖ Agency
- ❖ Children

Role of Attorney

- Communicate with client
- Review the case plan
- Understand domestic violence
- Know community resources
- Be aware of best practice expectations of other stakeholders
- Be honest with client
- Be collaborative and build relationships when possible
- Be aware of conflicts and bias

Role of Court Appointed Special Advocate (CASA)

- Talk with child and explain as appropriate
- Review the case plan
- Understand domestic violence
- Know community resources
- Be aware of best practice expectations of other stakeholders
- Be collaborative and build relationships when possible
- Advocate for best interests

Role of Child Welfare

- Child should be safe and with the non-offending parent
- Partnership with non-offending parent is default position.
- Non-offending parent needs comprehensive assessment of parenting strengths.
- Intervention with batterer will reduce the risk to child.
- Do not burden non-offending parent with unnecessary services.

Role of Child Welfare

- Was the service delivery process safe for the child and non-offending parent?
- Were efforts made to engage the batterer in services?
- Was the DHS response coordinated with other services/responses?
- Is someone available to help child cope with trauma?
- Was DHS documentation clear and thorough?

Acknowledgement and Special Thanks to:

The Honorable Dale Koch, [retired] Circuit Court
Judge, Multnomah County; currently acting
Director, National Council of Juvenile and
Family Court Judges

The Honorable Paula Brownhill, Circuit Court
Judge, Clatsop County
Katy Yetter, Senior Attorney, National Council of
Juvenile and Family Court Judges

Contact Information: Rebecca Orf
(Oregon Judicial Department)

rebecca.orf@ojd.state.or.us
