In the News: Recommendations for State Courts Handling Domestic Violence

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“It’s just a domestic.” How many advocates have heard that dismissive phrase from prosecutors, police, and judges over the years? But more recently, thanks in large part to the domestic violence advocacy community, state courts have begun testing improved responses to domestic violence cases. Efforts are underway across the county to increase victim safety and defendant accountability and reduce the recidivism endemic to this area. But it is not easy—the problems are very complex and the potential solutions are difficult to implement and measure. The Conference of State Court Administrators, COSCA, (http://cosca.ncsc.dni.us/) recently issued a helpful policy paper, “Safety and Accountability: State Courts and Domestic Violence,” (http://cosca.ncsc.dni.us/PositionPapers/SafetyAccountability-DomesticViolence-Nov-04.pdf) which has been endorsed by the Conference of Chief Justices, CCJ, (http://ccj.ncsc.dni.us/). The policy paper fleshes out the issues involved in improving the judicial response to domestic violence, offers examples of good ideas from around the country, and provides a road map for future action.

Judges, attorneys, court administrators, criminal and civil justice professionals, and advocates all face tough questions when a domestic violence victim drops a civil case or refuses to cooperate with the prosecution of a criminal matter. Was it because the system response was inadequate? Did he threaten her and force her to stop the proceeding? Were there cultural or economic pressures that overwhelmed her? Did the children simply want to see their father? Or, as some may still suspect, is it her fault that she can’t stay away? And, given that we often don’t know the answer to these questions, should we respect the decision not to go forward or should we try to
continue without her? These are difficult questions to answer, but it is only by wrestling with these issues that the justice system can hope to improve victim safety.

While there is still much to learn about good practice in domestic violence cases, it is possible to highlight a number of basic principles that all jurisdictions should attempt to implement.

- Orders of protection should be more effectively crafted and more consistently enforced, especially across state borders
- Judges need to be provided with more up-to-date information concerning each defendant/respondent’s history
- Courts must follow up to ensure defendant/respondent compliance with court orders
- Judges and other court personnel should receive specialized training on domestic violence and cultural differences
- Courts need to do a better job of providing meaningful access to justice by streamlining the court process and more effectively managing their cases

The policy paper highlights several court system programs, developed in conjunction with local advocates and service providers, which have implemented these principles. Vermont, for example, has sought to enhance victim safety by allowing litigants access to the courts 24 hours per day. New York State has undertaken a major readjustment of its case processing by creating “one-family/one-judge” courts that bring civil, criminal, and matrimonial cases together before a single judge. Utah has ensured that its state government agencies work collaboratively by convening a Cabinet Council that develops and implements two-year master plans for the prevention of domestic violence and the provision of services to survivors. And Washington, D.C., has increased the accessibility of its courts by setting up satellite intake centers based in neighborhoods.

Based on these and other projects, the policy paper recommends that each state court system take seven steps toward improving its response to domestic violence cases.

- Each state should undertake a complete survey of its current response to domestic violence cases, whether criminal or civil, and elicit both quantitative and qualitative data. It is important to outline the scope of the problem before designing solutions.
Each state should designate a single point of contact within its court administration to coordinate domestic violence programs and responses.

States should identify a statewide model that emphasizes victim safety and defendant accountability and strives to provide consistency in handling domestic violence cases and delivering services to victims.

States should work to address the multi-jurisdictional needs of litigants by eliminating gaps between civil and criminal proceedings while continuing to ensure due process.

Court systems must dedicate sufficient resources to handling domestic violence cases, including providing technology to judges on the bench so that they have the up-to-date information necessary to making good decisions.

Both judicial and nonjudicial personnel should be regularly trained on domestic violence and cultural competency issues by partnering with local criminal justice and domestic violence professionals.

State court leadership should provide the support that judges need to participate in and even spearhead multiagency partnerships to combat domestic violence.

For its part, COSCA and CCJ adopted a National Action Plan in 2004 to support the implementation of these recommendations. It calls for forging a closer partnership with the Department of Justice’s Office on Violence Against Women; conducting a national survey of current court responses to domestic violence; hosting a national conference to identify the essential elements and standards for effective court response to domestic violence; undertaking an annual follow-up review to monitor and evaluate the progress of reform efforts; and promulgating a national research agenda to evaluate and identify the most effective practices.

Making the justice system more responsive to the real needs of battered women and children will be an ongoing struggle. The recommendations developed by COSCA and endorsed by CCJ help ensure that the state court community will be a major partner in efforts to achieve broad systemic reform.