

The Court Response to Intimate Partner Abuse

Chapter 13

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Introduction

- With criminalization of domestic violence, lines between criminal and civil actions are blurring
- Protection and relief from domestic violence are both criminal and civil
- Domestic law located within federal and state court jurisdictions
- Most frequent court response to IPV is requirement that offender attend a batterer treatment program
- Protection order and batterer treatment programs are two initiatives representing greatest change in court procedure for DV cases

Advocate Roles

- Advocates assist survivors by providing resources and support
- New initiatives with combined efforts of government and non-profits reflect increased protection and assistance for survivors who access the court system
- Assist in applying for protections and resources, such as:
 - Victim Services
 - Victim Shelters
 - Weapons Confiscation and Gun Ban

Domestic Violence Advocates



- Victim assistance programs are located in law enforcement and prosecutors' offices
- State-run programs receive funding from various sources, including the federal government
- The services offered vary widely
- Advocates provide information about:
 - legal rights and the criminal justice process,
 - assistance in applying for state victim compensation aid, and
 - referrals to social service agencies

Victim Privacy Protections

- Survivors can request their name, telephone number, and address not to be made part of the public record when filing for a court order of protection
- Referred to as **Protection Order Confidentiality**, a standard procedure for those who fear for their safety
- Efforts being made at federal level to offer protection to victims who fear that personal information will be made available to an abuser
- The **Driver Privacy Protection Act (18 U S 123 § 2721)**, effective on September 13, 1997 is one example
- **Address Confidentiality Programs**
- **Voter Registration Confidentiality Programs**

Role of the Courts

- Prosecution of domestic violence cases is not exceptional or rare
- Prevalence of prosecution varies from one jurisdiction to another
- Average arrest prosecution rate is 63.8 percent
- Jurisdictions with specialized domestic violence prosecution programs typically have the highest rates
- Not all cases filed by prosecutors got to trial

Prosecution Outcomes

- 7 in 10 charges were aggravated assault or sexual assault
- One third of these felony assault charges were classified as domestic violence
- Domestic violence definition includes violence between family members, intimate partners, and household cohabitants
- Domestic violence defendants were slightly more likely to be convicted and given longer sentences than non-domestic violence defendants
- Domestic less likely granted pre-trial release

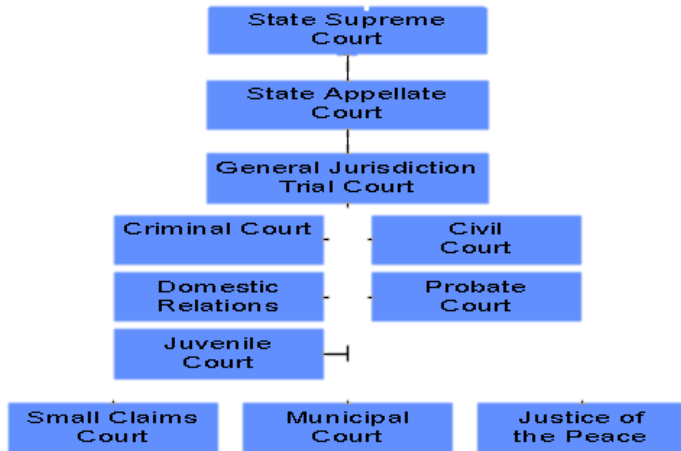
Specialized Prosecution Units

- Specialized units are key to successful prosecution
- Greater interagency collaboration between prosecutors, social service providers, victim advocates, and victims is one major benefit of the organization of specialized prosecution units
- Included in the units are attorneys and victim witness coordinators with special training and skills in obtaining evidence and prosecuting sexual predators and offenders who are batter

Does Prosecution of Offenders Deter Re-Abuse?

- The key to deterrence is the disposition imposed
- Those who receive more intrusive sentences, including jail, work release, electronic monitoring, and/or probation, show significantly reduced re-arrest rates when compared with those who received less intrusive sentences of fines or suspended sentences without probation
- Other studies have shown conflicting results

Court Jurisdiction



- network of courts across the United States makes up the judicial system
- Scope and authority of each court is called its **jurisdiction**
- Constitutional or statutory parameters within which judicial power may be exercised limit the court to a geographical area and to specific subject matter
- One group of courts in the system maintains federal jurisdiction
- District courts is also the name give to lower courts of the states

Court Jurisdiction

United States Supreme Court

- Highest court in the nation; has power to choose cases it wishes to hear
- Cases are presented through appeals from lower federal courts and from state supreme courts on the interpretation of federal law or of the Constitution itself
- Opinions of the Courts provide precedent or guidelines for the states to follow
- Decisions of the Court become case law
- States cannot take away any citizen rights afforded by the U S Constitution as interpreted by the U S Supreme Court

United States Court of Appeals

- Federal courts have jurisdiction over decisions of U S District Courts
- The country is broken down into areas referred to as *circuits* *They hear appeals from the lower courts*

United States District Courts

- Federal laws alleged to have been violated will come before a U S District Court
- These courts have original jurisdiction in all matters of federal criminal law
- Domestic violence offenses committed after crossing a state line, for example, may be prosecuted here

Federal Versus State Jurisdiction

- Until recently, domestic violence was not within federal jurisdiction
- Early attempts to criminalize domestic violence at the federal level failed to pass
- In the 1970's federal legislation was again proposed
- Family violence was exclusive of state courts

Family Violence Prevention and Services Act, 1984

- Provides federal funding for victim services to the states
- Provides public education for family violence prevention
- Help states provide:
 - Shelters,
 - Education,
 - Research, and
 - Crime Victim Compensation for domestic violence

The Victims of Crime Act, 1984

- Another major funding source for victims, including family violence survivors
- Crime Victims Fund, established by the VOCA, receives millions of dollars annually from criminal fines, forfeited bail bonds, penalties, and special assessments collected by the U S offices, courts, and prisons (Office for Victims of Crime, 2005)
- Under the USA Patriot Act (2001), the deposit of donations from private entities into the fund was also authorized
- Domestic violence continued to be under the exclusive criminal jurisdiction of the states until the 1990's

The Violence Against Women Act, 1990

- Introduced for the first time in history legislation called for the federal prosecution of a person who travels across state lines and intentionally injures or sexually abuses spouse or intimate partner
- Reintroduced, some provisions were incorporated into the ***Violent Crime Control and Law Enforcement Act of 1994***, referred to as Title IV of VAWA
- States continue to legislate and control criminal and civil actions relative to domestic violence for the majority of cases

Differences Between State Court and Federal Jurisdiction

- Domestic violence offenses have traditionally been state crimes
- State statutes and civil codes protect citizens within their jurisdiction
- New federal offenses make it unlawful to cross a state line to commit domestic violence crimes or to violate a protection order
- The full faith and credit provision of VAWA requires that foreign orders of protection be recognized and enforced in every state as if they had originated in the jurisdiction of the offense
- Some states have responded with their own statutes to implement the requirement; others rely on the federal mandate
- Federal statutes prohibit domestic violence crimes on federal property

Civil Versus Criminal Court in the State System

- Allegation of a criminal law violation can be tried in a court of general jurisdiction at the state level
- Some states issue criminal protection orders
- Provisions for civil protection orders found in state codes
- Overlap between the criminal and civil law is inherent in family violence cases
- Traditionally, family courts of limited jurisdiction have handled relationship issues
- **Concurrent jurisdiction**: occurs when different courts are each authorized to deal with the same subject matter within a similar geographical area

Federal statutes may be used when:

1. An interstate crime makes it difficult for local law enforcement to gather evidence
2. Penalties for domestic violence, because of old statutes or early parole, don't fit the crime
3. Release of the defendant on bond is an issue
4. The offense occurs on federal property, such as tribal lands or military installations
5. A civil rights violation that is gender motivated is alleged

The Role of the Judge

- Characterized by the jurisdiction where the judge resides
- Judge who sits in a criminal court will hear domestic-violence-related crimes in addition to nondomestic violence–related crimes
- Power to hear cases varies, and victim needs sometimes overlap between courts
- Role judge plays in the issuance of civil domestic violence restraining orders cannot be underestimated
- It is the judge who can help ensure the likelihood of success of protection by his or her attitude and demeanor during the hearing

Specialized Domestic Violence Courts

- Refers to those courts that assign judicial officers to hear a domestic violence cases
- Courts vary in their scope of jurisdiction, structure, and processes
- Many have jurisdiction over the issuance of civil protection orders but a few have jurisdiction over criminal domestic violence cases
- Some have jurisdiction over criminal cases but not over protection orders
- Emerged slowly over the past several years

Integrated Domestic Violence Courts

- Most innovative model
- One judge handles criminal domestic violence cases and related family issues, including custody, visitation, and civil protection orders, in addition to matrimonial issues
- This approach is taken when the court seeks to handle all related cases pertaining to a single family where the underlying issue is intimate partner violence
- Dade County, Florida, and Baltimore, Maryland, have established integrated domestic violence courts
- The goal of this approach is to streamline and centralize the court processes

Civil Protection Orders

- Most significant legislative change for protection against domestic violence is the civil protection order
- Until recently, use of protective orders restricted to protect crime victims and witnesses from harassment by defendants
- Now available to adults in every state
- Designed to limit or eliminate contact between two or more individuals

Forms of Available Relief

1. Restraining orders
2. Exclusive use of a residence or eviction of a perpetrator from the victim's household
3. Custody or visitation
4. Payment of child or spousal support

Limitations of Protection Orders

- Professionals warn that obtaining a protection or stay-away order has its limitations and should not replace taking safety precautions
- Although orders do provide immediate relief for the victims of domestic violence, they may only be a temporary measure
- Citing frequent revictimization within two years of the restraining order, some experts suggest that they offer a false sense of security
- Remember—the probability of violence to the victim increase 75% when she/he tries to leave
- A protection order may in fact escalate the violence

Enforcement of Restraining Orders

- Violator might be charged with a misdemeanor, a felony, or contempt of court
- A combination of these options may apply
- Related penalties, may include:
 - Treated as a new offense,
 - Bail forfeiture,
 - Probation revocation,
 - Incarceration, minimum confinement,
 - Mandated counseling, and
 - Electronic monitoring

Gay and Lesbian Victims of Intimate Partner Violence

- Definitions vary from state to state
- What constitutes a domestic partner depends on the state definition
- Categories of domestic relationships invoking criminal justice intervention may include married and previously married persons, those who live together as husband and wife, persons who have a child in common, and partners in same-sex relationships
- Some states expand on traditional meanings of “domestic” through the recognition of persons that live under the same roof, regardless of affiliation (e.g., roommates)

Batterer Intervention Programs

- Mandating offenders to attend batterer treatment program is most common court response to IPV
- All types of cases, diverted, probated, and jailed abusers, are given these programs...but do they work?
- About 90 percent of these batterer intervention programs are based on the power and control feminist model
- Debate on the efficacy of the traditional batterer's programs in ongoing

Specialized Batterer Intervention

- Trend toward specialized batterer treatment programs came with the recognition that the batterer's socioeconomic status, racial or ethnic identity, country of origin, and sexual orientation can affect intervention
- In response to concerns regarding diversity, culturally competent interventions were developed to draw on the strength of the offender's family or community social systems

Three Major Intervention Programs

1. Duluth Curriculum
2. EMERGE
3. The Amend Model

Program Procedures for Male-Perpetrators – Five Stages

1. Intake and Assessment
2. Orientation
3. Victim Orientation
4. Program
5. Ending the Program

Program Procedure for Female Perpetrators

- Disagreement on the existence of women as batterers
- Numbers of women arrested for domestic violence have grown in recent years, despite the decline in the rates of intimate violence
- Typically, response to these offenders is a feminized version of male intervention
- Strategies are inconsistent and or nonexistent
- Domestic Abuse Project (DAP) created first published manual specifically intended to address the problems and behaviors of women offenders

Can Program Interventions Stop Battering?

- Evaluations of batterer programs have yielded inconsistent results
- Modest treatment effect with a minimal reduction in recidivism noted
- Most studies indicate no positive effects at all
- Programs, by themselves, are not likely to protect victims or new intimate partners from further harm from higher-risk abusers
- Completers are less likely to re-abuse compared with those who drop out of programs