

Resources**Articles**

- Judith Berman, *Domestic Sexual Assault: A New Opportunity for Court Response*, JUVENILE AND FAMILY COURT JOURNAL 23 (Summer 2004)

Module XIII: Recommendations for Improving Court Response to Intimate Partner Sexual Abuse**A Word of Caution About Court Specialization**

Specialization can lead to improved response to particular problems, but it can also lead to a failure to address problems outside the specialized area of expertise. This is an ongoing difficulty in the area of intimate partner sexual abuse. Police, prosecutors, victim advocates, attorneys, courts and offender resources are often divided into "sexual assault" and "domestic violence" spheres, and then again into "civil" and "criminal" matters. It can be difficult to bring together these specialized stakeholders when a case presents both types of issues.

**Encourage stakeholders to provide a comprehensive response to a family's needs.**

Creating a working group with representatives from each of these interested sectors to identify obstacles in crossover cases and plan for response can do much to improve institutional effectiveness in this area.

Creating a Responsive Court System

- At an administrative level, evaluate the structure of your court system's response to domestic violence and sexual assault, and identify ways to create more overlap between the two.
- Review your jurisdiction's procedures for handling cases that come in as civil petitions for orders of protection, but allege criminal conduct, including sexual assault.
- Revise domestic violence intake forms to include behaviorally-based questions about intimate partner sexual abuse. See [Orders of Protection, Pretrial Release and Dispositions, Intake Forms Should Ask About Forced Sex](#).
- Create an informational pamphlet to be distributed with the domestic violence intake form and elsewhere explaining that sexual assault by an intimate partner may be grounds for receiving a protective order (grounds will vary among jurisdictions). Include information on how victims can use the criminal justice system to protect themselves from all forms of intimate partner abuse.
- Create a safe waiting area in the courthouse for victims, ideally with access to support services.
- Create a safe, supervised waiting area in the courthouse for children.
- Encourage expansion of supervised visitation facilities in your jurisdiction.
- Develop an incident-based system for collecting court data on sexual assault in the context of domestic violence. Judith Berman found in her research that many states omit sex crimes from their domestic violence incident reports, even in cases of marital rape. This perpetuates the invisibility of intimate partner sexual abuse.
- Present education about intimate partner sexual abuse for judicial and non-judicial court personnel.

Module XIII: Recommendations for Improving Court Response to Intimate Partner Sexual Abuse

Conclusion

A judge is in a position to provide meaningful, lasting assistance to families in which there is intimate partner sexual abuse. Awareness of the intricacies of these cases will go far in creating a responsive and effective forum in which these matters can be adjudicated. A court alert to the possibility of intimate partner sexual abuse beneath the surface of a domestic violence allegation will be better able to "obtain the full picture," craft effective orders and render dispositions that enhance victim safety, impose offender accountability and promote intervention/treatment for intimate partner sex offenders that addresses their rehabilitative needs with specificity.



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Module XIII: Recommendations for Improving Court Response to Intimate Partner Sexual Abuse

Creating a Responsive Community

Creating a court system responsive to intimate partner sexual abuse requires collaboration with the community. Codes of Judicial Conduct endorse judges' participation in legal, legislative and community activities intended to improve the law, the legal system and the administration of justice. *See, e.g., American Bar Association Model Code of Judicial Conduct* (2007) (PDF 378KB), Canon 3. Thus, judges can be key educators and leaders in this area.

- Judges sitting in integrated domestic violence courts and serving on domestic violence commissions/coalitions that bring all the stakeholders together are in a key position to initiate a "coordinated community response" to intimate partner sexual abuse. These judges can educate prosecutors and public defenders, domestic violence and sexual assault advocates, law enforcement, probation/parole and intervention/ treatment providers on this topic and with them, develop a plan to raise community awareness, increase reporting and improve support services for victims and rehabilitative services for offenders.
- Encourage all community and justice system organizations and agencies that utilize risk assessment instruments in their work with domestic violence victims to be sure that those instruments include sexual abuse and assault as factors to be inquired about and assessed.
- Encourage collaboration between victim services organizations serving battered women and those serving sexual assault victims so that intimate partner sexual abuse victims can obtain the full range of assistance they need.
- Encourage batterer and sex offender intervention/treatment providers to collaborate to develop strategies for helping batterers identify and stop their sexually abusive behavior and to insure that both types of programs address intimate partner sexual abuse with specificity.
- Include sexual assault experts on domestic violence fatality review committees.
- When issues related to the administration of justice in intimate partner sexual abuse cases are before the legislature – for example, statutes setting standards for batterer intervention programs – educate legislators about what is needed.
- Encourage bar associations and other legal organizations to offer continuing legal education programs about intimate partner sexual abuse.
- Encourage members of the legal, law enforcement, victim services, probation/parole and offender intervention/treatment communities to take this web course on intimate partner sexual abuse. While the course is specifically written for judges, the material and resources are interdisciplinary and applicable to a broad audience. The course is free with registration.



Module XIII: Recommendations for Improving Court Response to Intimate Partner Sexual Abuse

Creating a Responsive Court System

A key element in creating a responsive court system is **ensuring that each court knows the status of a family's other past and pending court matters.**

Because intimate partner sexual abuse implicates a range of legal issues, a family may have cases pending in criminal court, family court, matrimonial court and juvenile court, among others. Within these courts, cases may be pending in specialized courts addressing domestic violence, child abuse and neglect, sex offenses, mental health, child support, housing and visitation/custody, depending on how your jurisdiction is configured. When these systems are administered independently, it can be challenging for a single judge to learn about the existence of other pending matters and their status, and what orders may have been entered. Litigants may not always have complete, current or accurate information. Multiple judges considering different facets of a family's situation through distinct, specialized lenses can lead to fragmented, inconsistent and ineffective results that endanger safety.



It is helpful if the court can establish a system for uncovering, tracking and sharing this sort of information. Conflicting orders of protection issued by different judges can cause confusion and endanger a victim. A judge considering an application for visitation between parent and child should know that, for example, there is a criminal matter pending in which the parent is accused of assaulting the other parent in the presence of the child. A computerized tracking system for domestic violence orders from all courts can help, but information gaps appear even in those systems.

Thus, **best practice for comprehensively addressing complex domestic violence/intimate partner sexual abuse cases is the creation of an "integrated domestic violence (IDV) court,"** which assigns one judge per family to handle all the matters before the court – from criminal to family issues – relating to that family. This "one family-one judge" approach ensures that different courts do not issue conflicting orders, which jeopardize victim safety. Additionally, having one judge monitor an offender's progress and compliance with court orders maximizes accountability.

Several jurisdictions have introduced these innovative IDV courts, which seek to bring all of a family's legal matters before a single judge for resolution. There are extensive resources to help court systems develop these courts. See Sack, [Creating a Domestic Violence Court](#) (PDF 1.36MB) (2002) ; Wolf *et al.*, [Planning a Domestic Violence Court](#) (PDF 132KB) (2004); Mazur & Aldrich, [What Makes a Domestic Violence Court Work?](#) (PDF 64KB) (2003).

However, even if your jurisdiction has not formally adopted such an approach or cannot do so due to budgetary constraints, **there are important principles behind an integrated court that can be adapted by any court system.** The above reports and article provide suggestions that any judge or court personnel can adapt when addressing domestic violence and intimate partner sexual abuse cases.

Learn about how other courts in your jurisdiction process cases, and meet with administrators of those courts to discuss overlapping areas. This will enable you to uncover the full picture of a family's situation. For advice about information sharing within the court system visit the Center for Court Innovation, "[Integrated Domestic Violence Courts.](#)"

By learning how other courts in your jurisdiction process cases, and meeting with administrators of those courts to discuss overlapping areas, much progress can be made in uncovering the full picture of a family's situation.

Resources

Nonperiodical Literature

- Judith Reichler, Liberty Aldrich, Center for Court Innovation, [CHILD SUPPORT PROTOCOL: A GUIDE FOR INTEGRATED DOMESTIC VIOLENCE COURTS](#) (2004) PDF 81KB

Articles

- Judith Berman, *Domestic Sexual Assault: A New Opportunity for Court Response*, JUVENILE AND FAMILY COURT JOURNAL 23 (Summer 2004)
- Robyn Mazur, Liberty Aldrich, [What Makes a Domestic Violence Court Work?](#), JUDGES' JOURNAL at 5 (Spring 2003)
- Emily Sack, Family Violence Prevention Fund, [CREATING A DOMESTIC VIOLENCE COURT: GUIDELINES AND BEST PRACTICES](#) (2002) PDF 1.36MB
- Robert Wolf, Liberty Aldrich, [PLANNING A DOMESTIC VIOLENCE COURT](#) (2004) PDF 132KB

Online

- Center for Court Innovation, [Integrated Domestic Violence Courts](#)

Module XIII: Recommendations for Improving Court Response to Intimate Partner Sexual Abuse

Creating a Responsive Courtroom (cont'd)

- Be aware of the effects of your language and demeanor on jurors' attitudes throughout a case.
- Recognize that all evidentiary rules concerning sexual assault, such as rape shield law, apply to intimate partner sexual abuse cases as well.
- Recognize the need for expert testimony by professionals who can explain the nature of intimate partner sexual abuse, the heightened risk for lethality, its devastating psychological effect on victims and why victims would not want to disclose this kind of abuse.
- Educate yourself about the various dispositional options available in your jurisdiction and how they specifically address intimate partner sexual abuse. When sentencing an intimate partner sexual abuse offender to intervention/treatment, be sure the proposed program will actually meet the offender's needs.
- Retain control over the case for as long as your jurisdiction permits. Judicial monitoring encourages compliance, fosters stability and permits the parties to seek the court's help if problems arise. While more intensive initial and ongoing supervisory contact with families might seem to demand more of judicial and other resources, the efficiency and benefit of such an approach are realized when a family does not return to court with multiple new matters stemming from still unresolved issues, and stability and safety are achieved.
- Submit for publication your opinions in intimate partner sexual abuse cases so the issue is less hidden in the court system.



And see *Judicial Responses that Empower Battered Women*, from JAMES PTACEK, [BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSE \(PDF\)](#), 1999.

Resources

Articles

- Judith Berman, *Domestic Sexual Assault: A New Opportunity for Court Response*, JUVENILE AND FAMILY COURT JOURNAL 23 (Summer 2004)

Nonperiodical Literature

- James Ptacek, *Judicial Responses that Empower Battered Women* BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES (1999)

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Module XIII: Recommendations for Improving Court Response to Intimate Partner Sexual Abuse**Creating a Responsive Courtroom**

Because intimate partner sexual abuse is a hidden aspect of domestic violence of which judges need to be aware, courts should be proactive in creating a secure and receptive environment in which victims feel safe making this difficult disclosure and testifying about this particularly humiliating form of domestic abuse. There are many steps judges can take to create a responsive courtroom.



- Recognize that intimate partner sexual abuse may be a factor in cases where the domestic violence charges are based on physical assault alone. To increase the likelihood of developing information about possible intimate partner sexual abuse:
 - Work with your court administrator to revise your court's domestic violence intake form to ask the behaviorally-based questions about intimate partner sexual abuse suggested in [Orders of Protection, Pretrial Release and Dispositions, Intake Forms Should Ask About Forced Sex](#).
 - In the courtroom, use behaviorally-based questions to gently ask domestic violence victims about any possible intimate partner sexual abuse. Be aware of the sensitive nature of this issue and the extreme difficulty of publicly disclosing it. Judith Berman suggests that when a victim struggles to start her account of the physical violence and trails off without quite finishing, judges can ask "what happened next" and, after the witness' next painful pause, ask again "what happened next," which may elicit an account of sexual violence as well.
- If your current law does not enumerate forms of sexual assault as conduct that will support issuance of an order of protection against the offender, consider how facts constituting sexual assault might fit into other categories, such as harassment, menacing or assault, depending on the law in your State.
- Support victims by emphasizing that the abuse is not their fault and by taking the threat to their safety seriously.
- Work with your court administrator to create a secure waiting area for victims so the parties are separated when not in the courtroom.
- Use a respectful tone of speech.
- Utilize creative methods to secure all information necessary to make informed pretrial release and dispositional orders and to enhance victim safety. See statement of [Kentucky Judge Janice Martin](#).

Module XIII: Recommendations for Improving Court Response to Intimate Partner Sexual Abuse

Creating a Responsive Courtroom (cont'd)

- Ensure that court officers, clerks, bailiffs and others who regularly circulate through the courtroom maintain a quiet, respectful attitude while litigants are in the courtroom or testifying.
- Many litigants must bring their children to court for lack of childcare arrangements. Do not allow children to be present in the courtroom when the victim is describing the abuse inflicted by her partner. Work with your court administrator to create a supervised children's waiting area in the courthouse.
- If an interpreter is necessary, do not ask children or family members or non-professionals to interpret. Require interpreters to follow the anti-bias requirements of their own code of conduct. The Georgia Supreme Court Commission on Interpreters has developed guidelines for certification and a code of professional responsibility for interpreters. See the [Georgia model](#) (PDF 63KB).
- Always leave room for the victim to return whenever necessary. Failure to follow through on prosecution may be the result of duress or fear for safety, not "manipulation" or because the victim "likes being a punching bag." Reassure a litigant that if at any time she chooses to seek court assistance again, personnel stand ready to help. Encourage her to speak privately with an advocate, even if she is unwilling to talk openly with the court, and make sure that court personnel are trained to provide litigants all necessary contact information.
- Provide accused offenders with all necessary information they need in order to secure visitation rights, obtain personal property from the home, work out child support obligations or address any other issue that they may feel "requires" them to have contact with the victim.
- If an offender has been excluded from the home, explore with him where he will stay for the immediate future. If he claims to have no options, consider a social services referral.
- During *voir dire*, allow exploration of jurors' attitudes toward intimate partner sexual abuse.



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Nonperiodical Literature

- Georgia Supreme Court Commission on Interpreters, [USE OF INTERPRETERS FOR NON-ENGLISH SPEAKING PERSONS](#) (2003) PDF (PDF 378KB)

Module XIII: Recommendations for Improving Court Response to Intimate Partner Sexual Abuse

Key Points: Recommendations for Improving Court Repsonse to Intimate Partner Sexual Abuse

Creating a Responsive Courtroom

- Utilize a variety of approaches to create a courtroom environment where victims feel safe disclosing intimate partner sexual abuse in domestic violence cases, given its prevalence, victims' reluctance to disclose and the importance to judges of knowing about it.
- Work with your court administrator to develop an intake form that asks behaviorally-based questions about possible intimate partner sexual abuse and ask those questions directly but with sensitivity during protection order hearings.
- In jury trials where intimate partner sexual abuse is a factor, be sure juror attitudes toward this crime are fully investigated during *voir dire*.
- Recognize that evidentiary rules such as rape shield law apply to intimate partner sexual abuse cases, and that expert witness testimony about the nature and harm of this type of abuse may be essential to a fair trial.
- Require the batterer intervention and sex offender treatment programs to which you sentence intimate partner sexual abuse offenders to address this issue comprehensively.

Creating a Responsive Court System

- Establish a "one judge-one family" system, which assigns a single judge to handle all a family's matters before the court – civil, criminal, family, juvenile or probate.
- Consider establishing an integrated domestic violence court to accomplish the "one judge-one family" ideal.
- Revise intake forms to ask behaviorally-based questions about intimate partner sexual abuse and create an informational pamphlet to distribute with the form and elsewhere explaining that such conduct may be grounds for receiving a protective order.
- Develop an incident-based system for collecting court data on intimate partner sexual abuse in the context of domestic violence cases.
- Inside the courthouse, create secure waiting rooms for victims and a supervised waiting area for children.
- Outside the courthouse, support expansion of supervised visitation facilities to promote safety for victims and children.
- Present education for judicial and non-judicial court personnel about intimate partner sexual abuse.

Creating a Responsive Community

- As permitted in many codes of judicial conduct, judges can take a leadership role in the community, with the legislature and in the courts to improve the justice system and community response to intimate partner sexual abuse.
- Judges in integrated domestic violence courts or on domestic violence coalitions are in a unique position to bring together all the stakeholders to create a coordinated community response to intimate partner sexual abuse.
- Judges can encourage and participate in education about intimate partner sexual abuse for law enforcement, the civil and criminal bar, victim services, probation/parole and offender intervention/treatment providers as well as the community at large.

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Learning Objectives:

This module will enable a judge to:

- Maintain a safe, respectful courtroom environment in which victims of intimate partner sexual abuse are more likely to disclose, thus enabling the court to make more effective orders and dispositions.
- Work with court staff to improve the court system's response to intimate partner sexual abuse.
- Work with community stakeholders to improve the community and justice system response to intimate partner sexual abuse as allowed under the code of judicial conduct.
- Suggest and support legislative reforms respecting intimate partner sexual abuse as allowed under the code of judicial conduct.

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Module XIII: Recommendations for Improving Court Response to Intimate Partner Sexual Abuse**Tools for Lasting Resolutions**

Courts and judges are powerfully situated to lead an effort to address intimate partner sexual abuse and by doing so, support and validate victims and hold offenders accountable while directing them to more effective intervention. Based on the material presented throughout this course and the suggestions in [Domestic Sexual Assault: A New Opportunity for Court Response](#) (PDF 1.17MB) by Judith Berman, a research paper funded by the State Justice Institute, this section suggests ways to improve the judicial response to intimate partner sexual abuse in courtrooms and communities.

Tools for Lasting Resolutions

Most cases involving intimate partner sexual abuse come to court under the heading domestic violence. Judges who handle domestic violence cases quickly come to recognize that these cases are different from other types of criminal cases, which most often focus on the factual and legal questions arising from a past, completed event—whether, for example, a robbery took place in the time and manner alleged by the prosecution. Domestic violence cases, in contrast, are ongoing events. Multiple concerns—emotional, legal, financial, parental—may pull victim and offender together again and again, with increasingly negative results. A court seeking to attain stability and safety for victim and children as well as accountability for the offender is faced with many knots to untangle.



These challenges increase when intimate partner sexual abuse is added to the picture. Because it is so hidden, accurate factual determinations may be harder to obtain. Danger may be significantly increased. Effective resolutions may be more difficult to define and attain. While significant research has heightened understanding of effective handling of domestic violence cases, and, to a lesser extent, treatment of sex offenders, expertise in the area of batterers who are also sex offenders is limited. Similarly, while services for battered women as well as rape crisis centers are now found in many communities, support for persons who experienced both physical and sexual abuse at the hands of the same person is limited. A well-informed judge can provide critical guidance and wisdom in addressing these intersecting issues.

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Module XIII: Recommendations for Improving Court Response to Intimate Partner Sexual Abuse**Tools for Lasting Resolutions (cont'd)**

Safety is the overwhelming concern for a court faced with family violence. In this respect, intimate partner sexual abuse cases are domestic violence cases, and the same tools should be employed. The goal should be to address any unresolved issues that tend to pull the parties back into contact. Orders of protection, with provisions directing the abuser to stay away from the victim, should be clear, complete in their terms, and easily enforced by the victim. Incarceration should be an accepted option if ongoing compliance with judicial orders is unlikely.

Careful consideration of whether, when and how an abuser should have contact with a couple's children is imperative. Children also face increased risk when intimate partner sexual abuse is added to the picture.

An order directing an abuser to stay away from the victim is more effective if the court has addressed as many reasons as possible why the abuser might be drawn back to the victim. An expressed desire for contact with children is a very common reason an abuser will give for violating an order of protection. If the court has provided the family with a mechanism for addressing the questions of child custody and visitation, and stressed that all issues relating to those matters must be handled through the court and not privately by the parties, then an important area of conflict has been taken off the table.

Similarly, the need for child support may lead a victim to contact an abuser even when an order of protection is in place. Many jurisdictions allow the court to issue temporary orders of child support as part of an order of protection. That can allow a parent to achieve some level of independence and safety until a child support petition can be heard.

Courtroom policies and procedures can also enhance victim safety. Abusers may attempt to intimidate or even harm victims in the courtroom or on the way to or from the courthouse. Judges may be able to ensure that victims are provided with a separate waiting area; they may also be able to offer to send an escort with the victim to her mode of transportation, or require the abuser to delay his departure to ensure that he does not follow or attack her. When available, metal detectors can be set up at courthouse entrances to screen for weapons. Court officers should be trained to remain especially alert for such disturbances and to intervene whenever indicated.

Rather than sweeping intimate partner sexual abuse under the general heading of domestic violence, a court will achieve more effective outcomes if it addresses the issue directly. This includes creating a courtroom atmosphere where victims feel comfortable raising these issues, and where the particular rehabilitative needs of a defendant are specifically addressed. When the defendant or respondent engages in intimate partner sexual abuse, it is unlikely that a traditional batterer intervention program will adequately address the issue. (See [Orders of Protection, Pretrial Release and Disposition, Batterer Intervention Programs](#)). Judges have a critical role to play in bringing intervention programs and sex offender treatment programs up to par in this area.